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**Justice Reform in Albania with Particular Focus on the
Establishment of New Institutions**

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Abstract: This paper aims to focus to a very historic period of Albanian legislation that is the new Justice Reform. The Republic of Albania has several years on reforming all the justice system by changing the structures and scope of most important justice institutions. These fundamental changes began with the Constitutional amendments in 2016, by establishing a totally new system, and adding a number of new institutions such as Judicial Councils, High Judicial Council (HJC), High Prosecutorial Council (HPC), Justice Appointments Council (JAC), High Justice Inspectorate (HJI), Court against corruption and organized crime, Special Prosecutor's Office against corruption and organized crime, Special Investigation Unit/National Bureau of Investigation and Re-evaluation Institutions. The method used for this paper is by analyzing the current legal provisions and describes the new structures and competences of each institution, by giving a presentation of the new Justice System in Albania.

Keywords: Constitution; Justice Reform; institutions; parliamentary commission

1. Origin of the Justice Reform

The origin of the Justice Reform starts in 2014, by Parliament's Decision No. 96/2014 "*On the establishment of the ad hoc parliamentary commission on the justice system reform*"², in which the Parliament of the Republic of Albania, perform its constitutional role and assumed the responsibility to actively contribute to the reform of the justice system, by exercising its legislative function.

The *ad hoc* parliamentary commission established by Parliament's Decision No. 96/2014 "*On the establishment of the ad hoc parliamentary commission on the justice system reform*", started its activity with the aim to make an analysis of the situation in the justice system, to establish the objectives of the judiciary reform and to propose the necessary constitutional and legal amendments.

The main purpose of the parliamentary commission was analysing the justice system focused on the situation in the organisation, functioning, good-governance, efficiency and administration of the justice system, with the intention to evidence the gaps and needs for improvement, in close collaboration with the Ministry of Justice and other institutions of the justice system, national and international experts, other interested subjects and the public opinion.

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² Parliament's Decision No. 96/2014 "*On the establishment of the ad hoc parliamentary commission on the justice system reform*".

The *ad hoc Parliamentary Commission*¹ proposed the adoption of a full package of draft laws that will be the first step of a justice system reform, which would re-model the organisation and functioning of the justice institutions, starting by amending the Constitution itself.

For the accomplishment of the above mentioned task the Group of the High Level Experts was established at the Ad Hoc Parliamentary Commission to prepare an analysis of the actual situation of the justice system, as well as an analysis of the reasons of this situation.

The Commission², adopted its work process by different phases, more exactly 3 phases³. *First phase* was consolidated by Decision No. 14, dated on 30.07.2015 “*On the adoption of the Document “The Analysis of the Justice System in Albania”*”⁴ adopted the Document “The Analysis of the Justice System in Albania”. This document concludes the first phase of the process.

The second phase was consolidated by Decision No. 15, dated on 30.07.2015 “*On the adoption in principle of the Strategy and the Action Plan for the Justice System reform in Albania*”⁵. These documents conclude the second phase of the process and convert into concrete measures the strategic objectives of the justice system reform. They also define the laws which will undergo intervention in the third phase of the Ad Hoc Commission’s activity. *The third phase* of the Ad Hoc Commission’s activity started with the work of the Group of High Level Experts (national and international), assigned to draft constitutional amendments. This group drafted the constitutional amendments which aimed to reform the institutions of the justice system, from the institutional, organisational and competences.

2. History of the Constitutional Amendments in 2016 and the Progress in Legislation

Law no. 76/2016, dated 22/07/2016 “*On some addenda and amendments to the Constitution of Albania*”⁶, aims at reforming the main institutions of the Justice System from the institutional and competences organisation.

Based on the request of the High Level Experts Group to have the opinion of the Venice Commission on the draft law on some addenda and amendments to the Constitution of the Republic of Albania, the Commission decided to submit to the Venice Commission the request for an opinion on the draft law on some addenda and amendments to the Constitution of the Republic of Albania, drafted by the High Level national and international Experts Group. Following the decision of the Ad Hoc Parliamentary Commission, the Speaker of Parliament officially addressed to the Venice Commission, by sending the draft law prepared by the high level experts group and asked for its assessment, based on the best international standards and on the standards set by the Venice Commission.

Based on the final opinion of the Venice Commission and on the comments made during the discussion held in the Ad Hoc Parliamentary Commission on the final opinion of the Venice Commission, the experts reflected in the constitutional project the requested amendments and on 4 May 2016, they presented to the Ad Hoc Parliamentary Commission the constitutional project with the reflections of the

¹ Parliament’s Decision No. 96/2014 “*On the establishment of the ad hoc parliamentary commission on the justice system reform*”.

² The ad hoc Parliamentary Commission, established by Parliament’s Decision No. 96/2014.

³ Explanatory note, <https://www.parlament.al/Files/ProjektLigje/relacion-shtesa-dhe-ndryshime-ne-ligjin-nr.-84172c-date-21.10.1998-kushtetura-e-r.sh-te-ndryshuar.pdf>.

⁴ Decision No. 14, dated on 30.07.2015 “*On the adoption of the Document “The Analysis of the Justice System in Albania”*”.

⁵ Decision No. 15, dated on 30.07.2015 “*On the adoption in principle of the Strategy and the Action Plan for the Justice System reform in Albania*”.

⁶ Explanatory note, <https://www.parlament.al/Files/ProjektLigje/relacion-shtesa-dhe-ndryshime-ne-ligjin-nr.-84172c-date-21.10.1998-kushtetura-e-r.sh-te-ndryshuar.pdf>.

Final Opinion of the Venice Commission, as well as the comments and proposals of the Commission members.

During the article by article discussion of the draft law the committee members both from the majority and the opposition, gave their opinions, evaluations and suggestions. The commission suggested proposals that reformulated several provisions of the draft law and passed the detailed regulations to the respective laws of the constitutional bodies. The purpose of these changes was to not overload constitutional amendments with legal arrangements. Significant improvements were made in the proposals' text for the terminology to be in compliance with the language used in the provisions of the constitution in force.

On 21 July 2016, the Ad Hoc Commission adopted, by Decision No. 23, dated on 21.07.2016 the final draft of the Law "On some addenda and amendments to Law No. 8417, dated on 21.10.1998 "the Constitution of the Republic of Albania", as amended" and submitted it for review in Parliament's plenary session.

Parliament of Albania unanimously adopted by 140 votes in favour, the draft Law "On some addenda and amendments to Law No. 8417, dated on 21.10.1998, "The Constitution of the Republic of Albania"¹, as amended, on 22 July 2016, by Law No. 76/2016, dated on 22.07.2016.

The draft law consists of 58 provisions, of which 28 amend the current provisions and 29 are new provisions or new paragraphs in the existing provisions and 10 provisions annex named "Transitional Reassessment of Judges and Prosecutors". Additions and amendments are divided into three groups²:

First, amendments that are considered necessary for Albania to become a member state of the European Union;

Second, amendments aimed at bringing about a permanent reform of the justice system and,

Third, the transitional provisions regarding special measures aimed at assessing the suitability of existing judges and prosecutors and clearing the system of those who are corrupt, incompetent or linked to organized crime.

Along with the drafting of constitutional amendments, the High Level Experts introduced to the *Ad Hoc* Parliamentary Commission the 7 priority draft laws of the reform, which accompany the constitutional projects. The Ad Hoc Commission, adopted the draft calendar for the examination of the 7 priority draft laws of the judiciary reform.

At the conclusion of the consultation process, and after consideration and approval by the *Ad Hoc* Parliamentary Commission:

- Parliament of Albania, in an extraordinary session adopted, on 30 August 2016, Law No. 84/2016 "*On the transitional revaluation of judges and prosecutors in the Republic of Albania*"³ which defines the criteria and the procedure for the revaluation of judges and prosecutors. This law entered in force on October 8th, 2016;

¹ Law no. 76/2016, "On some addenda and amendments to Law No. 8417, dated on 21.10.1998, "The Constitution of the Republic of Albania".

² Explanatory note on Law n. 76/2016, <https://www.parlament.al/Files/ProjektLigje/relacion-shtesa-dhe-ndryshime-ne-ligjin-nr.-84172c-date-21.10.1998-kushtetura-e-r.sh-te-ndryshuar.pdf>.

³ Law No. 84/2016 "On the transitional revaluation of judges and prosecutors in the Republic of Albania".

- Parliament of Albania adopted on 06.10.2016, by 122 votes in favour, no vote against, no vote abstention, Law No. 95/2016 “*On the organisation and functioning of institutions in the fight against corruption and organised crime*”¹. This law entered in force on November 5th, 2016;
- On 06.10.2016, Parliament of Albania adopted with three fifth of the votes of all its members, Law No 96/2016 “*On the status of judges and prosecutors in the Republic of Albania*”². This law entered in force on November 22nd, 2016;
- On 06.10.2016, Parliament of Albania adopted with three fifth of the votes of all its members, Law No. 97/2016 “*On the organisation and functioning of the Prosecution in the Republic of Albania*”³. This law entered in force on November 22nd, 2016;
- On 06.10.2016, Parliament of Albania adopted with three fifth of the votes of all its members, Law no. 98/2016 “*On the organisation of the judicial power in the Republic of Albania*”⁴. This law entered in force on November 22nd, 2016;
- On 06.10.2016, Parliament of Albania adopted with three fifth of the votes of all its members, Law No. 99/2016 “*On some addenda and amendments to Law No. 8577, dated on 10.02.2000 “On the organisation and functioning of the Constitutional Court of the Republic of Albania*”⁵”. This law entered in force on November 24th, 2016;
- On 03.11.2016, Parliament of Albania adopted with three fifth of the votes of all its members, Law no. 115/2016 “*On the governing bodies of the justice system*”⁶. This law entered in force on December 16th, 2016.

Through the approval of Law No. 76/2016 “*On some addenda and amendments to Law No. 8417/1998 “Constitution of the Republic of Albania” as amended, Albania started the implementation of its justice system reform. The constitutional amendments and the package of the organic laws adopted in the framework of the justice reform, contain clearly defined provisions that guarantee independence, impartiality, professionalism, integrity of the judicial system, as well as improvement of the accountability and monitoring mechanisms of its functioning.*

In line with the drafting and adoption of constitutional amendments and the package of 7 priority laws, work continued on the preparation of the third package of draft laws, based on the 7 pillars of the Justice System, the pillar of constitutional institutions, judiciary, criminal justice, law education, freelance, anti-corruption measures and the funding of the justice system.

3. Progress in Institutional Setting

The justice reform has brought about significant changes in the institutional setting of the Albanian judiciary. Existing institutions have been modified and new institutions have been created by the constitutional amendments and the abovementioned specific organic laws. The newly created institutions are the following:

¹ Law No. 95/2016 “*On the organisation and functioning of institutions in the fight against corruption and organised crime*”.

² Law No 96/2016 “*On the status of judges and prosecutors in the Republic of Albania*”.

³ Law No. 97/2016 “*On the organisation and functioning of the Prosecution in the Republic of Albania*”.

⁴ Law no. 98/2016 “*On the organisation of the judicial power in the Republic of Albania*”.

⁵ Law No. 99/2016 “*On some addenda and amendments to Law No. 8577, dated on 10.02.2000 “On the organisation and functioning of the Constitutional Court of the Republic of Albania*”.

⁶ Law no. 115/2016 “*On the governing bodies of the justice system*”.

- High Judicial Council (HJC)¹;
- High Prosecutorial Council (HPC)²;
- High Justice Inspectorate (HJI)³;
- Justice Appointments Council (JAC)⁴;
- Court against corruption and organized crime⁵;
- Special Prosecutor's Office against corruption and organized crime⁶;
- Special Investigation Unit/National Bureau of Investigation⁷;
- Re-evaluation Institutions.

Further progress was made in the establishment of these new institutions. In concrete terms:

3.1. High Judicial Council (HJC) and the High Prosecutorial Council

The Constitution of the Republic of Albania⁸, in Article 147, provides for the establishment of *the High Judicial Council*. The High Judicial Council based on constitutional provisions ensures the independence, accountability and good functioning of the judicial power in the Republic of Albania. The High Judicial Council is composed of 11 members, six of whom are elected from the judges of all levels of the judiciary and five members are elected by the Assembly, among the non-judge lawyers, respectively:

- 2 members from the ranks of lawyers;
- 2 members from the staff of law faculty professors and the School of Magistrates;
- 1 member from the civil society.

The High Judicial Council exercises the following functions:

- a) appoints, assesses, promotes and transfers judges of all levels;
- b) decides on disciplinary measures against judges of all levels;
- c) proposes to the President of the Republic candidates for judges of the Supreme Court according to the law;
- d) adopts the rules of judicial ethics and supervises their observance;
- e) directs the performance of work in the court administration, with the exception of the functioning of the information technology structures, which is regulated by a decision of the Council of Ministers;
- f) proposes and administers its own and court's budget;
- g) informs the public and the Assembly about the state of judicial system;

¹ Articles 147-147 (ç) of the Albanian Constitution and Law no 115/2016.

² Articles 149-149 (ç) of the Albanian Constitution and Law no 115/2016.

³ Articles 147 (d) and 147 (ë) of the Albanian Constitution and Law no 115/2016.

⁴ Article 149 (d) of the Constitution and Law No. 115/2016.

⁵ Article 135 of the Constitution and Law No. 95/2016.

⁶ Article 148 (dh) of the Constitution and Law No. 95/2016.

⁷ Article 148 of the Constitution and Law No. 95/2016.

⁸ Law no No. 8417, dated 21.10.1998, "Constitution of the Republic of Albania", as amended.

h) exercises other functions defined by law.

The Constitution of the Republic of Albania¹, in Article 149, provides for the establishment of the High Prosecutorial Council. The High Prosecutorial Council referring to the constitutional provisions guarantees the independence, accountability, discipline, status and career of the prosecutors of the Republic of Albania. The High Prosecutorial Council consists of 11 members, six of whom are elected from the prosecutors of all levels of prosecution and five members are elected by the Assembly, respectively from among non-prosecutor lawyers:

- 2 members from the ranks of lawyers;
- 2 members from the staff of law faculty professors and the School of Magistrates;
- 1 member from the civil society.

The High Prosecutorial Council exercises these responsibilities:

- a) appoints, assesses, promotes and transfers prosecutors of all levels;
- b) decides on disciplinary measures for prosecutors of all levels;
- c) according to the law, proposes to the Assembly the candidates for the General Prosecutor,
- d) adopt the rules on the ethics of prosecutors and supervises their observance;
- e) proposes and administers its budget;
- f) informs the public and the Assembly on the state of the prosecution;
- g) exercises other functions as defined by law.

3.2. The Justice Appointments Council

Justice Appointments Council is established as an independent organ responsible to assess the fulfilment of the legal conditions and professional and moral requirements of the candidates for the High Justice Inspectorate and candidates of the Constitutional Court. The Justice Appointments Council consists of 9 selected members elected by drawing the lot, among judges and prosecutors.

Pursuant to Article 149/d of the Constitution², the Justice Appointments Council carry out the verification of the legal conditions and the assessment of the professional and moral criteria of the candidates for the High Inspector of Justice, as well as the candidates for members of the Constitutional Court.

3.3. The High Justice Inspector

The Constitution of the Republic of Albania, in Articles 147/d, 147/dh, 147/e and 147/ë provides for the conditions and procedures for the election of the High Justice Inspector, a new body in the justice system provided by constitutional amendments³. According to the constitutional provisions, the High Justice Inspector is responsible for the verification of complaints, investigation of violations and initiation of

¹ Law no No. 8417, dated 21.10.1998, “Constitution of the Republic of Albania”, as amended.

² Law no No. 8417, dated 21.10.1998, “Constitution of the Republic of Albania”, as amended

³ Law no. 76/2016, “On some addenda and amendments to Law No. 8417, dated on 21.10.1998, “The Constitution of the Republic of Albania”.

disciplinary proceedings against judges and prosecutors of all levels, members of the High Judicial Council, members of the High Prosecutorial Council and the Prosecutor General.

The High Justice Inspector (HJI) is elected by three-fifths of all members of the Assembly for a period of nine years, without the right of re-election, among the distinguished jurists with no less than 15 years of professional experience in the profession, with a high moral and professional integrity. Further rules on the functioning and organization of the High Justice Inspector Office¹ are set out in Law No. 115/2016 “On the Justice System Governing Bodies”, as well as in the transitional provisions of this law².

HJI is a constitutional body which is responsible for the assessment of complaints, *ex-officio* initiation of investigations regarding violation and initiation of disciplinary proceedings with regards to judges and prosecutors of all levels, member of the HJC, member of the HPC and the General Prosecutor. In addition the HJI is responsible for institutional inspection of courts and prosecutor offices. It is elected for a 9 years period selected based on merits by the Justice Appointments Council pursuant to a public and transparent procedure.

3.4. The Special Prosecutor’s Office against Corruption & Organized Crime and Special Investigation Unit/National Bureau of Investigation and Court for high level corruption

The Special Prosecution Office³ is one of the new institutions provided by the Justice Reform. According to Article 148/dh of the Constitution, and the Law no. 95/2016 “On the organization and functioning of institutions for combating corruption and organised crime”, the Special Prosecution Office exercises criminal prosecution and represents the accusation on behalf of the state to the First Instance Court against Corruption and Organised Crime, the Appellate Court against corruption and organised crime, and the High Court, as well as measures and supervises the execution of criminal decisions.

The Special Prosecution Office consists of at least 10 Prosecutors, who are appointed by the High Prosecution Council for 9 years, without the right to reappointment. Based on Article 148/dh of the Constitution⁴, the head of Special Prosecution is elected among the prosecutors of this Prosecution Office, with a majority of members of the High Prosecutor Council, for a 3 year term without the right of re-election.

The National Bureau of Investigation⁵, based on the provisions of Law No. 95/2016, is a specialized Judicial Police structure operating under the authority of the Special Prosecution Office. The Director of the National Bureau of Investigation is appointed by the High Prosecutor's Council based on the recommendation given after an open and transparent recruitment process by a commission composed of the head of Special Prosecutor Office and two special prosecutors. The Director of the National Bureau of Investigation is appointed for a five-year term, with the right of reappointment once.

Special Courts decide on criminal offences of Corruption and Organised Crime⁶ as well as criminal charges against the President of the Republic, the Speaker of Parliament, the Prime Minister, the Council of Ministers, the Judge of the Constitutional Court and of the High Court, the General Prosecutor, the High Justice Inspector, the Mayors, the MPs, the Deputy Ministers, the members of the High Judicial

¹ Law No. 115/2016 “On the Justice System Governing Bodies”

² Law No. 115/2016 “On the Justice System Governing Bodies”.

³ Law no. 95/2016 “On the organization and functioning of institutions for combating corruption and organised crime”.

⁴ Law no No. 8417, dated 21.10.1998, “Constitution of the Republic of Albania”, as amended.

⁵ Law no. 95/2016 “On the organization and functioning of institutions for combating corruption and organised crime”.

⁶ Law no. 95/2016 “On the organization and functioning of institutions for combating corruption and organised crime”.

Council and of the High Prosecutor Council, and the directors of central or independent institutions set forth in the Constitution or the law, as well as allegations against the former aforementioned officials.

3.5. Vetting Process

The Independent Qualification Commission is a new constitutional body with a five-year term created by the new constitutional amendments¹ as part of the Justice Reform package² for the establishment of a free professional, independent and uncorrupted judiciary system. The activity of the Independent Qualification Commission is based on the Constitution of the Republic of Albania³ and Law No 84/2016 “On the transitional re-evaluation of judges and prosecutors in the Republic of Albania”⁴. The purpose of this law is the transitional re-evaluation of judges and prosecutors in the Republic of Albania.

The Commission evaluates the cases of the assesses organised in four adjudication panels composed of three members each, based on three criteria such as asset assessment, background assessment and proficiency assessment.

4. Conclusions

Justice Reform in Albania was unanimously adopted by 140 votes in favour in the Parliament of Albania, by approving the draft Law “On some addenda and amendments to Law No. 8417, dated on 21.10.1998, “The Constitution of the Republic of Albania”, as amended, on 22 July 2016. As we can understand very clearly the Justice Reform was not only a need to the Republic of Albania as a country that works hard to be part of the European Union, but is a Reform that represents all Albanian's citizens will. Albanians believe in this justice reform, because the system has already collapsed, and in the meantime the new system is more necessary than ever.

Albania needed more than ever a fair organization, functioning, good-governance, efficiency and administration of the justice system which will bring back the faith of its citizen in the justice system.

During these four years the progress of the implementation of the justice reform perhaps may not be the best, and perhaps many things are still very necessary to be done, most important of all is the establishment of the Constitutional Court.

With the new organization and the new institutions that we described above, such as Judicial Councils, High Judicial Council (HJC), High Prosecutorial Council (HPC), Justice Appointments Council (JAC)- High Justice Inspectorate (HJI), Court against corruption and organized crime, Special Prosecutor's Office against corruption and organized crime, Special Investigation Unit/National Bureau of Investigation and Re-evaluation Institutions and still with too much work we can go through this difficult process and succeed in Justice Reform.

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¹ Law no. 76/2016, “On some addenda and amendments to Law No. 8417, dated on 21.10.1998, “The Constitution of the Republic of Albania”.

² Parliament's Decision No. 96/2014 “On the establishment of the ad hoc parliamentary commission on the justice system reform”.

³ Law no No. 8417, dated 21.10.1998, “Constitution of the Republic of Albania”, as amended.

⁴ Law No 84/2016 “On the transitional re-evaluation of judges and prosecutors in the Republic of Albania”.

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