

МЕЖДУНАРОДНЫЕ ОРГАНИЗАЦИИ, МЕЖДУНАРОДНОЕ ПРАВО И ВНУТРИГОСУДАРСТВЕННОЕ ПРАВО

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HISTORICAL DEVELOPMENT OF THE ORGANIZATION OF THE CRIMINAL JUSTICE SYSTEM IN ALBANIA AND ITS EUROPEAN INTEGRATION

Аннотация. *The study and analysis of the legal system in Albania in its entirety and in particular the criminal one is important firstly for the citizens of this country, in the fight against crime in general and against organized crime in particular, to protect them and guarantee the right to a better and more peaceful life. Secondly, it is beneficial in terms of doctrine but also practice, being the backbone of democracy and the rule of law. In the context of its historical development, during these hundred years in Albania there have been judicial institutions that responded to different developments, according to state formations, from antiquity up to the fourth century in Illyria, to the present, when we were free or occupied by different invaders in years, foreign and Albanian legislations have been implemented. Starting with the Albanian customary law like the Kanun of Lek Dukagjin, that of Laberia, of Skanderbeg, of the Mountains, followed by the Sharia Law, the Ottoman Criminal Code, the Ottoman Criminal Procedure Code, which adopted the model of the Napoleonic Code of 1808, the Kanun of the Elderly of 1913, the Prince Vid Act on Judicial Organization of 1914, the King Zog Criminal Code, laws on the functioning of the criminal legal system, etc. Based on these acts of the Albanian customary law, on the Albanian and foreign legislation, the functions of the powers of courts were assigned, as well as their composition, establishing the criteria to be a judge, as well as the implementation of a criminal proceeding, judgment, decision and its execution, voluntary or forced, as rendered by the court. Even during the war, until 1944, the legal system of justice operated in pursuance of the legislation of the invading countries or the Albanian legislation in force at the time. From 1944 to 1990, the legal system of criminal justice functioned referring to the post-war laws, the Criminal Code, the Criminal Procedure Code, the Civil Code and the Civil Procedure Code in force for several years, even with the amendments that have been subsequently made. Upon the amendments made to these basic laws and infrastructure stemming from their implementation, the rights of litigants were increasingly restricted, attaching priority to the executive and those who raised charges to the court, removing protection and trying the defendants, without a defense counsel, disadvantaging and unbalancing him, in relation to the prosecuting party, the prosecutor, who was in the service of the state of the proletariat dictatorship. From 1990 to 2012, with the advent of the democratic system in Albania and the victory of the democratic forces, the legal system of criminal justice has been reformed. It continues to be reformed, while respecting the principles of the functioning of a democratic state, like the separation of powers, judicial independence and the right to a fair trial. This reform is carried out consistently, through the development and adoption of the Constitution of the Republic of Albania and different codes, like the Criminal Code, the Criminal Procedure Code, the Civil Code, the Civil Procedure Code, the Law on the Prosecutor's Office, the Judicial Police, for execution of court decisions, etc.. These laws are in line with the EU democratic countries' laws, and beyond, which like the European countries' laws are implemented to develop a due legal process, by equality of arms, precisely reflecting the European Convention of Human Rights «.1)*

Ключевые слова: *History, development, organization, criminal justice, Judicial Organization, legal system, Albania, European integration, european law.*

Organization of the justice system in 1912-1944

In the context of historical development of the criminal and criminal procedural law in Albania during these 100 years, referring to the period of 1912-1945, we note that

the first interim government run by Ismail Qemali, applied the Albanian customs law and Ottoman legislation. To organize the functioning of the state and fight criminality through the National Assembly of Vlora, to establish the state administration by developing legislation so that to exercise powers they

had, but also to operate the state activity, the legal system had to operate as well, for which it declared that in criminal matters “The Ottoman legislation remains effective as long as other justice Kanuns are formulated”. 2) “The courts functioned after this act for which the reputable lawyer, Koco Nova, inter alia, stated: Only after the declaration of independence we may refer to genuine Albanian courts as part of the state mechanism” 3) The new criminal justice system, namely, the Albanian courts were established by the new independent state with the approval of the Kanun of the Elderly, on 13 May 1913. 4) Notwithstanding the importance of that date, referred to in article 2 of Law No.9877 dated 18.02.2008 “On organization of judicial power in Albania”, 5) it has set the date of 10 May 1913, a date which has still remained a remarkable day for the Albanian justice and is celebrated as the Day of Justice in Albania. This fundamental law of that time divided the guilt into damages, intense guilt and ugly guilt. The two first ones were tried by non-collegial Courts and the crimes were tried by the elderly, namely, the people’s representatives called a jury. The application of this Kanun did not last for a long time. By the decree of Prince Vide on 4 June 1914, the judicial system was re-organized at the council of elders, reconciliation court, first instance court, appellate court and high court. Also, this organization was not made possible as Albania was invaded in the First World War.

The High Council and the Regency established in the wake of Lushnja Congress on 11.01.1921, set up the Albanian judicial system with reconciliation courts, first instance courts, high court, religious courts, military courts and special courts. This law provided for rules about the powers of each court, jurisdiction, competence for the composition of courts, appointment modalities etc. It is worth highlighting a particularity regarding the judges, citing the fact that: “... to ensure impartiality in rendering the decision, both the judges and other judicial clerks were not allowed to be appointed in their birthplace locality” 6) Koco Nova “Development of judicial organization in Albania”, Tirana, 1982, page 68. Further, in 1923 the judicial system was further reformed, with a large number of democratic principles in the trial and the trial was organized with three courts, such as the reconciliation, primary and high court. Efforts to reform the judicial system were also made in the short-lived Government of Fan Noli

of the year 1924 but the legislation in force until that time, continued to be enforced.

Ahmet Zogu came in power in December 1924, a time where in 1925 the “Fundamental Statute of the Republic of Albania” was approved. 7) This statute, inter alia, established the High Court and “the Statute of Albanian Kingdom” in 1928. 8) Referring to these statutes, the judicial system was further reformed, affirming the principle of the division of powers, independence of judges, their guarantees in exercising their duty as judges, their appointment, the right of defense assigned by the defendant or ex officio, implementation of the public trial as a rule, taking of decision and voting “secretly from the court” and universal proclamation, rationale of the decision and legal references in the decision etc. The Military Court was established in Shkoder by virtue of the draft law No. 39 dated 1 February 1925 9) but other courts, which were not provided by the Statute, were not established as it had foreseen the prohibition for their establishment, a prohibition which the Legislative Assembly has further corrected the Statute of the Republic, precisely in this legal definition of prohibition. Further, in the Fundamental Statute of the Kingdom approved in the second Constitutional Assembly on 1 December 1928, the lawmaking body provided for in article 126 of the Fundamental Statute of the Kingdom that: “Extraordinary courts shall not be established in any way. Only for political guilt, if deemed necessary, a special court may be established by a special law and for a definite period of time”, 10) thus creating the legal basis for the establishment of extraordinary courts. By Law No. 37 dated 2 May 1925 “On organization of courts of justice” 11, the criminal judicial system was re-organized, introducing the collegial courts as an innovation in this recently approved law, composed by a president and two members. They tried criminal cases for which the law provided a sentence up to 4000 Francs and civil and commercial matters, whose value amounted to 2000-6000 golden francs.

The law on organization of the justice system was approved and became effective on 12. 12.1927, organizing the criminal judicial system in primary courts, appellate courts and the High Court. That Albanian Criminal Code was approved, which became effective on 1.06.1928. 12) The entry into

force of this code, whose model was borrowed by the Italian Criminal Code was the detachment from the Ottoman Criminal Code and orientation to the European criminal legislation. Approval and implementation of this code was extended all over the country in order to fight criminality. In 1937, article 1 of Law "On some special trials in criminal matters" 13) provides for the direct trial and the decree trial borrowed by the Italian Criminal Procedure Code of that time, which like those special proceedings and other related ones, are re-introduced in the subsequent Codes of Criminal Procedure in years, as in 1980 in the Albanian Criminal Procedure Code, in its article 73 "Non-initiation of criminal case" 14), by decree No.5265 dated 29.1.1975 "On some addenda and amendments to the Criminal Procedure Code", it was admitted the direct trial 15), and in the New Code of Criminal Procedure approved in 1995 "Special trials" 16) where inter alia provides for "Direct trial" and "Abbreviated trial". From 1939 to 1944 Albania has been initially conquered by the fascist Italy and then by the Nazi Germany and the criminal legal system operated in support of the occupiers.

Organization of the justice system in 1944-1990

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Organization of the justice system in the period 1944-1990

During the National Liberation War the partisan courts were organized and were made operational to be followed by the military courts, including the military courts of the corps, military region of the corps, high military trial, hearing all criminal offences up to war criminals. By virtue of Law No. 59 dated 17 May 1945 "On interim judicial organization", 17) the criminal judicial system consisted of popular courts, prefecture court and high court. In addition to this law, the Law No.60 dated 17 May 1945 "On elections of popular judges", was approved. 18) This selection, obviously in favor of the party in power, was set out to be made by the national liberation councils, prefecture or subprefecture to which the jurisdiction of the popular court was extended. In 1946 the Constitution of the People's Republic of Albania was approved, 19) which served as a basis for the full amendment of the criminal justice system supporting the Party-state. This fundamental act of the state paved the way for the organization of the judicial system, where the fourth Chapter "Court and Prosecutor's Office", provides for the judicial organization consisted of the High Court, popular courts and military courts. Article 79 of this constitution provided for the establishment of special courts for certain categories of cases, as foreseen in the Fundamental Statute of the Kingdom of King Zog, in 1928. A provision was made for the independence of courts in exercising their functions, establishment of the right of defense of the defendant, public trial, jury trial consisted of assistant judges for cases provided by a jury by virtue of law, selection of judges by the people and the right of the court to sit as a first and second instance court but that competence would be assigned by law. This Constitution provided for the activity of the prosecutor's office by virtue of articles 88-91. Law No.275 dated 13 August 1946 "On judicial organization" 20) and marked a key turning point in the organization of the criminal justice system. Inter

alia, it was highlighted the removal of the restriction of diploma and professional training for the exercise of the duty of judge, affording the opportunity of manning from among the people, without precluding the absence of professionals. Pre-trial investigation was reformed, abolishing the system of investigating judges. The judicial system operated at three levels and the High Court consisted of sections/colleges and the Plenum of the High Court. In addition to these courts, there were military courts, which operated in accordance with Law No.239 dated 5 December 1946 “On organization and competences of military courts 21). By law No.1284 dated 09.06.1951”On judicial organization” 22),which was further amended in 1953, 1956, 1961, the criminal judicial system was structured at three instances of trial such as the high court, popular court and military court. The new law No.4406 dated 24.06.1968 “On judicial organization” 23) established that justice was rendered by popular courts, including the popular court, high court, district courts, courts of villages, cities and quarters of cities. This change was positive as it established a legal trial system, starting from villages and quarters of cities up to the high court, providing an opportunity of a more effective complaint against judicial decisions to higher courts, in conformity with law. A specific feature was the accountability before the electors of judges and assistant judges while the High Court was accountable before the People’s Assembly and its Presidium. The Criminal Code was approved in 1952 24) and the Criminal Procedure Code was approved in 1953 25), which was subsequently amended. Unlike all countries of the Eastern Europe, a unique characteristic was displayed in Albania in respect of the reforms made in the field of justice as in 1966 the Ministry of Justice was not any longer operational and the functions were assigned to the High Court, abolishing the lawyer’s system by decree 4277 dated 20 June 1967, which was considered a detrimental and unnecessary institution. The legal aid offices were established 26). The Constitution of the People’s Socialist Republic of Albania was approved in 1976 and the criminal justice turned an abrupt direction, supporting the state of the proletariat dictatorship. The criminal prosecution had changed, as well as the function of the prosecutor’s office. The latter was assigned as an authority for the inspection of law enforcement and in case of violations, it protested as a means of response, while the criminal prosecution

was a duty of the investigation office, as provided by Article 104 of the Constitution of the Republic of Albania.27) The investigation according to the decree No. 5139 dated 30. 01. 1974 “On unification of the investigation office, its removal from the prosecution system and its subordination to the Ministry of Interior”. Such a reform brought a lower professional level and increase of the number of violations of law in the course of the pre-trial investigation. The prosecutor was entitled to institute criminal prosecution and approve the bill of indictment of the investigation office for more serious crimes. Additionally, those powers were abolished from the Criminal Procedure Code of 1979, approved by Law No. 6069 dated 25. 12. 1979 and Law No. 6298 dated 27. 03. 1981 “On Prosecutor’s Office of the People’s Socialist Republic of Albania”. The prosecutor had only the right to approve the arrest and search of the building” 28) the Criminal Procedure Code of 1979 provided for in the criminal procedural legislation the Party leadership, class struggle and implementation of mass guidance principles. Further, it did not recognize the equality of arms in the judicial process but disturbed the criminal process in favor of the prosecutor’s office, orality, dual principle etc. A key element was the Law No. 7174 dated 1 February 1988 “On judicial organization of the People’s Socialist Republic of Albania” 29) a provision was made that the criminal judicial system in Albania consisted of the courts of villages, cities, quarters of cities, courts of districts, regions and the High Court. Accordingly, an innovation of that law was the establishment of regional courts instead of the previous circuit courts. Those courts adjudicated at second instance the appealed decisions of the inferior courts and reviewed as a first instance court, cases designated by the President of the High Court, as well as cases falling within the scope of the district court, whose decisions were annulled for the second time. The plenum of the High Court had the duty to unify the case law and approve the composition of the High Court sections, such competences having not previously recognized.

Organization of the justice system after – 90s

Following the events occurred in 1990 in the Eastern Europe, similar events also took place in Albania. Due to these developments it was shifted to the political pluralism and the legislation started

to change, subject to amendments and reform approximated to the western legislation, continuing with the collapse of the dictatorial regime to date, improving and democratizing the criminal justice system. This reform guided by the objectives for the accession to the European Union warranted and still warrants reforms in the legislative field, such as the approximation of the domestic legislation to the *acquis communautaire* and the implementation of this reforming legislation. The Constitution of 1976 was repealed by Law No. 7491 dated 29. 04. 1991 “On main constitutional provisions” 30) after the adoption of this law, a series of amendments were made, which were incorporated in specific laws, by virtue of Law No. 7535 dated 17 December 1991 “On some addenda and amendments to Law No. 7174 dated 1 February 1988 “On judicial organization”. 31) democratization of the criminal justice system started in comparison to the legislation that was previously adopted by the People’s Assembly. Based on this law the military courts were established, which adjudicated at first instance the criminal offences committed by military subjects and other offences which in conformity with law, fell within the scope of those courts which did not exist in the preceding law, as amended, Law No. 7491 dated 29 April 1991 “On constitutional provisions”. 31) provided for the principle of the division of powers, principle of independence of courts and in transitional provisions it reiterated that the establishment, organization and activity of the court and of the prosecutor’s office is done in accordance with the rules stipulated by the existing legal provisions. Therefore, the foundations of the democratic state were laid and of a fully democratic legislation, completely different from the previous one. After the above cited law the People’s Assembly approved the Law No. 7561 dated 29 April 1992 “On some amendments and addenda to Law No. 7491 dated 29 April 1991 “On main constitutional provisions” 32) covered the criminal justice system that introduced a series of innovations as follows: there was a reduction of the number of courts of cities, villages, quarters of cities and courts of regions. The Appellate Court was established, as well as the Military Courts, Cassation Court, Constitutional Court, High Council of Justice with 13 members. The lawyers’ activity was confirmed as a free-lance profession. Some other laws were promulgated on re-organization of

the criminal justice system. The Criminal Code, Civil Code, Criminal Procedure Code and Civil Procedure Code were drafted and approved in 1995. 33) and the Constitution of the Republic of Albania was approved in 1998. 34) Clearly, the Constitution of the Republic of Albania served as the fundamental law and all other laws to follow it on the judicial system, such as Law No. 9877 dated 18 February 2008 “On organization of the judicial power in the Republic of Albania” 35) but also the laws on prosecutor’s office, judicial police, enforcement of judicial rulings etc, have served and still serve the continuous reform of the criminal justice system. Hence, the courts of serious crimes were established. The High Court acquired powers to adjudicate as a first instance court the charges brought against the President of the Republic, Head and members of the government, members of parliament, judges of the High Court and judges of the Constitutional Court etc. The approval of the 1998 Constitution and approximation of the Albanian legislation to the *acquis communautaire*, as well as the signature of a series of conventions and bilateral and multilateral treaties have operated as a basis for the reform in the evolving social and economic political life of the country and the judicial system, to meet the standards required by the European Union, with the primary purpose of maintaining the independence of the judiciary, fight against corruption and further development of the prosecutor’s office and of the judicial police, to conduct a modern democratic investigation and observe the implementation of a due legal process.

Reform of justice system and rule of law in Albania toward the European integration

Article 145 of the Constitution of the Republic of Albania reads that: “Judges are independent and shall be subject only to Constitution and laws” 36) In the meeting of 16.2.2011, the Head of HCJ requested from HCJ, in collaboration with the associations of judges, to draft a law providing for the restriction of the immunity of judges, which according to him: “..would improve the judiciary and relations, would make us act directly to ensure the transparency of work of each judge, submitted to the High Council of Justice....”37) There have been different opinions regarding the full removal of the immunity of judges

or restriction of immunity both in terms of jurisprudence up to the law commission and the Parliament, and not all of them were fair and substantiated. We believe these opinions submitted in the HCJ meeting on the removal or restriction of the immunity of judges, do not seem fair and in line with the current Albanian legislation in force, such as the Constitution of the Republic of Albania, articles 137/3 and 147/6, Law No.8678 dated 14.05.2001 “On Organization and Functioning of the Ministry of Justice”, as amended, Law No.9877, dated 18.02.2008 “On Organization of Judicial Power in the Republic of Albania”³⁸⁾ and Law No.8811 dated 17.05.2001 “On Organization and Functioning of the High Council of Justice”³⁹⁾, as amended. Referring to these legal acts in force, in all cases when the judge has committed a criminal offence or investigation is instituted, in each case when the Prosecutor’s Office has requested from the HCJ the removal of immunity of the judge, HCJ has not hesitated to do so and the prosecutor’s office has raised charges against the judges and imposed security measures. After having implemented the trial of these criminal proceedings, the Courts, according to their belief established from the evidence reviewed in the judicial hearing, have rendered guilt or innocence verdicts. In no case there were any challenges or hardships, neither to review them to the HCJ, nor to punish them, when the request has been fair, not only with the removal of immunity but also for other measures provided for in the above laws. In no case the relations of this reviewing body were affected and in cases when HCJ has taken decisions in contravention to the Constitution, facts and the decisions taken by the judges, the anti-constitutional decisions of HCJ and of the Joint Benches were restored by the Constitutional Court of the Republic of Albania, declaring them as incompatible with the Constitution and in some cases has favored the judges. Accordingly, the notion of the formulation of this law on restriction of the immunity of judges is not prerequisite and a positive innovation in our legislation regarding this independent institution, the judiciary, so that the judges, notwithstanding their observations, shall trust and resort to justice, in the conflicts they have, as a guarantor of their rights provided by the Constitution of the Republic of Albania. Furthermore, the Constitutional Court of the Republic of Albania referred about the immunity of judges by Decision No.14, dated 22.05.2006”⁴⁰⁾, which also reviewed

the immunity of HCJ members, declaring that: “The failure to grant these safeguards shall be argued by the very conception of the constitution-maker that the nine members elected by the judiciary, being part of the High Council of Justice, continue to work effectively as judges and as such, according to article 137 of the Constitution, enjoy immunity like all other judges.”⁴⁰⁾ The autonomy and independence safeguards granted to the judges are not only to the benefit of judges but to the benefit of all citizens. Autonomy and independence of the judges represent an effective guarantee for the citizens’ rights, which are enshrined by article 147 of the Constitution of the Republic of Albania. The lawmaker did not intend to make the judges a privileged category but protecting the function of judges, strived to reach the protection of each citizen from abuses they are exposed to. The guarantee of the autonomy and independence of judges is stipulated in the Constitution and in article 20 of Law No. 9877, dated 18.02.2008 “On Organization of the Judicial Power in the Republic of Albania”⁴¹⁾. Taking into consideration the discussions of scholars, lawyers and lawmakers, the People’s Assembly, by Law No.88/2012 “On some amendments to Law No.8417, dated 21 October 1988”, Constitution of the Republic of Albania”⁴²⁾as amended, decided to amend articles 126 and 137 of the Constitution, associating it with the exercise of functions in the course of duty as a judge, which do not prejudice, neither restrict the immunity of judges of all instances of the judiciary, including the High Court or the Constitutional Court. Thus, they effectively enjoy the guarantee to exercise their sacred duty of rendering justice.

The life-time career of judges, as also provided by some European Constitutions such as the French, German, Spanish and Portuguese ones, is established by the Constitutional Court of the Republic of Albania by Decision No.21, dated 07.06.2007.⁴³⁾, by which it repealed as incompliant to the Constitution, article 42/5 of Law No.8436, dated 28.12.1998 “On organization of the Judicial Power in the Republic of Albania”. That was done upon the request of the Judicial District Court of Tirana, considering the complaint submitted by a judge of the Appellate Court of Tirana against the HCJ Decision No.175/2, dated 28.04.2005,⁴⁴⁾ on his transfer to a First Instance Court of another District. The High Council of Justice had rendered other similar decisions in term of which the judges unjustly transferred had filed a complaint to the court, upon

a request. Those decisions, as it turned out from that decision of the Constitutional Court, were incompatible with the Constitution of the Republic of Albania. Each of us must be sure that the judges to whom we trust our freedom, honor and goods, shall be protected from external influences, illegal pressures and to be capable to uniformly apply law to everyone as the unfair transfer from their position discriminates them and may affect their independence in the trial and fair performance in the judicial hearings they implement both for civil and criminal trials. A serious consequence would arise if the judges were exposed to political parties and would have to silently pursue the fate, of a certain political party. Fortunately, this has not been the case. Turning to the argument about the relation between HCJ and other state stakeholders, there are people who support the theory that to run the judiciary means not only to decide on admissions, transfers and promotions of judges but also to have the power of making proposals to the Ministry of Justice about anything pertaining to the organization and functioning of justice-related services. Again, it means to have the power to suggest the selection of the judicial policy and discuss about the decisions taken, the criticism directed to particular judges or to the whole judiciary by other state bodies. Hence, it means to be preoccupied about the so-called external pressures, if they affect the autonomy of the judicial system and threaten to subdue the judiciary to the political power. Some years ago, the HCJ decided to dismiss three judges of the District Court of Tirana, as a result of the implementation of an undue legal process at the HCJ for the review of some disciplinary proceedings instituted by the Minister of Justice. Joint Benches of the High Court of the Republic of Albania have taken decisions not about the annulment of these three decisions as of the time they were rendered by HCJ, following the complaint filed to them by judges unjustly dismissed from their duty, although those decisions were incompliant to the Constitution, as they were caused by an undue legal process incompatible with the constitutional rights it provided and article 6 of the European Convention of Human Rights 45), for the conduct of a due legal process. On the contrary, it upheld them. The three complaining judges referred to the Constitutional Court by a complaint against these decisions, either of the High Council of Justice and of the Joint Benches of the High Court of the Republic of Albania. By Decision

No.29 dated 30.04.2001, 46) the Constitutional Court repealed as anti-constitutional the Decision No.1066 dated 01.11.2000 of the Joint Benches of the High Court and the HCJ Decision No. 87 dated 15.7.2000 , and the delivery to the HCJ for reviewing purpose. By Decision No. 11 dated 02. 04. 2003 47), the Constitutional Court of the Republic of Albania has repealed as anti-constitutional the Decision No. 125 dated 04.04.2001 of the Joint Benches of the High Court of the Republic of Albania and the HCJ Decision No. 99, dated 20.12.2000, ordering the remand for review to the HCJ. By Decision of the Constitutional Court No.16, dated 27.04.2007 48), it has repealed as anti-constitutional the Decision No. 15, dated 29.06.2004, of the Joint Benches of the High Court, and the HCJ Decision No.154/2 dated 31.03.2004, ordering the review by the HCJ. These Constitutional Court decisions and other similar ones highlighted the incompatibility of the due legal process, firstly conducted by the HCJ against judges and what makes things worse, the Joint Benches of the Albanian High Court have not carried out their duty as stipulated by Law No. 8588, dated 15.03.2000 “On organization and functioning of the High Court”49), in order to prevent this anti-constitutionality for judges, let alone other civil or criminal matters referred by common citizens to this court as the highest court of our judicial system. However, as a result of the consistent legal position of the Constitutional Court, violations of constitutional rights of these judges were stopped but the right claimed by them was not restored, notwithstanding the binding nature of the Constitutional Court decisions. Indeed, in the framework of the non-observance of constitutional obligations by the President as the Head of High Council of Justice, the Government as the central executive body and the Minister of Justice as the Head of this institution being essential for the judiciary, for many years and the High Council of Justice, those judges were heard by noone, not by those who were bound not only to hear them but also to meet their requirements, to enforce the Constitutional Court decisions which noone has the right to not implement. For many consecutive years, they did not make the least effort, neither to introduce them in the review procedure as the Constitutional Court had decided, for each of them, this being an indicator of the crisis of constitutional institutions which did not function properly, when there were no technical or legal

grounds for them to be heard according to law by the HCJ since their decisions were caused by an undue legal process.

Only by the end of 2009 and in early 2010, after a request submitted by the Minister of Justice, it was made possible the review of those disciplinary proceedings at the HCJ and after the judges were heard, it was decided their return after many years of service in their former duty, as judges at the District Court of Tirana.

We believe that to enhance the objectiveness and credibility of the High Council of Justice, it would be better that in addition to 9 HCJ members elected by the Judiciary Conference, the appointment of other 3 members should not be made any longer by the parliament, as it presently occurs and as provided by the current legislation to avoid the positions of majorities at the parliament, but by the Head of State as the representative of people's unity. This is provided by article 86 of the Constitution of the Republic of Albania, thus amending article 147 of the Constitution of the Republic of Albania, an amendment we deem to be effective in the work of this constitutional body. The current Law No.8811, dated 17.05.20101 "On organization and functioning of the High Council of Justice"50) shall be amended, so that the head of state shall not be any longer the Head of HCJ, as being a constitutional body, he cannot be part of the same positions as the other members in the Council activity and be subject to, as it has previously occurred and may occur that the majority members of this constitutional body, take a decision in contravention to the minority, pursuant to the definitions made in article 26 of the law providing that: "The High Council of Justice takes decisions by voting majority of the present members", so that the decision be taken by the opposite majority or be subject to the agenda determined by others. The in clarity of standards builds between the State forces an unfavorable climate in the context of proper functioning of relations between the institutions, a climate causing obstacles between the judiciary and other stakeholders, hedged by the lack of communication and of mutual trust.

Further, the Minister of Justice has the political responsibility for the operation of the judiciary and has also the power to institute disciplinary proceeding against judges, as a consequence of inspections he conducts through the inspectorate attached to the Ministry of Justice, at the HCJ, to whom it is granted

the right to obtain information on the operation of justice. He is also entitled to attend HCJ meetings, clearly without a voting right, in accordance with article 24 of the Law. However, referring to Law No.8811, dated 17.05.2001: "On Organization and Functioning of the High Council of Justice", its articles 28 and 4 of the Law No .8678 dated 14.05.2008 "On Organization and Functioning of the Ministry of Justice", he enjoys the right to submit vacancies for judges to the High Council of Justice. There are opinions he may be entitled to voting both for the appointment and taking of disciplinary measures for the disciplinary proceedings he has initiated to the HCJ, which, if acceptable, should be associated with the relevant amendments to the above law. In contrast to this opinion, the authors abide by the opinion envisioned by law, in that: "the latter has the decision making right and separates the function of "charge" or of the proposer from the one of trial and affords greater opportunities for the HCJ to maintain impartiality in the decision making process. This is a key principle for a due legal process"51). We believe the most recent opinion is currently more fair and responds to the critical situation in Albania.

In the current circumstances, in order to further strengthen the democratic system, it is required a quick explanation specifying the rules to be applied by each institution, in order to restore the citizens' trust. In particular now that the visa system is abolished in Albania, concentrated efforts are made for the implementation of the legislation in line with the European one and such implementation will further continue to approximate the Albanian legislation to the *acquis communautaire* as Albania strives to be a prospective EU member. However, the judiciary in Albania enjoys the respect of the self-autonomy without objections from the other state stakeholders, thus demonstrating that before being a written norm, the principle of division of powers in the executive, legislative and judicial one, as conceived by its authors, is an expression of the human natural need, having experimented in the course of history, though late, notwithstanding the challenges it had to face though the judges were deprived of political power.

Regarding the functional aspect of the crisis, there should be taken into account that the enhancement of economic welfare and civil and social growth of the community have increased the number of cases when citizens resort to justice. The judiciary attempted to

set in motion the mechanism of justice, in order to respond to the growing requirements for justice, which is currently progressing at a slow pace. The High Council of Justice has constantly drawn the attention on the delay of civil and penal judicial processes, such as the recent ones, which have put an end to the pre-trial detention phase and the release of the pre-detainees as a result of delays of the decisions from the prosecutor's office and the judiciary, such as the Gerdec case, where in addition to other consequences, there are tens of dead persons and a large number of injured persons, without mentioning the material damages caused by the explosion to the inhabitants of the surrounding area. The duration of the judicial processes is recently growing progressively, making the process' timeframe unbearable. Further, we no longer refer to a slow justice but a justice denied. In civil matters, the long time scheduled processes are a real burden and insult for the poorest part of the population, which in order to obtain even a small portion of the reimbursement from the damages they have sustained, and having no trust in a normal process, are obliged to accept a symbolic reimbursement.

Lack of execution of the final judicial decisions is a violation of human rights. Even after a long time from the final decision for resolved conflicts or cash obligations from private or public parties, or other individuals declared not guilty to be compensated for unjust pre-trial detention, they are not executed and remain unsolved one after the other, thus demonstrating that the rule of law is not properly functional. This service is under the subordination of the Ministry of Justice but the execution of judicial decisions is also linked with the relations between individuals, with the obligations of other state institutions to remunerate the winners of judicial processes, as well as with the treasury subordinate to the Ministry of Finance, which are not properly and efficiently working, so the citizens lose the trust for the execution of their related decisions. This situation should be changed for better not only through improvement of the legislation, because another chain of the private bailiff office is already established, but it is also required that the private bailiff office should be staffed with professional, qualified personal with moral integrity, in order to change everything for better, in the interest of the citizens of this country, and upgrading of the required level of cash in the state treasury to remunerate the winners of trials when the respondent is the

state. The enforcement of final civil judicial rulings will increase the already shaken trust of the citizens in the state.

In the criminal matters, this delay in the establishment of the rule of law, encourages the criminals to commit other crimes, affects the rationale of the defense, and generates frustration and hesitation among the citizens. It is worth emphasizing that it is getting more and more difficult to localize/detect and arrest the guilty persons accused of more serious crimes, especially homicide, organized crimes, which authors are being verified and apprehended with higher difficulty. It is necessary that they are brought under criminal liability either when they are in the country or have left the country and hidden elsewhere. This should be done in coordination with Interpol and through international cooperation with the rule of law agencies in other countries, where these criminals have found temporary dwelling.

In order to provide solutions to this situation, an extensive support is required in basic principles, infrastructure, legal and human area. Some people think the justice machinery is only a machine, being merely an instrument in the service of people, a necessary but simple service. Other people believe that justice is more than a simple service; it is the first prerequisite, it is the foundation of the society. Without justice we cannot have true freedom and democracy, because both of them can be accomplished only if the same rules are applied by everyone and by free, independent and professional judges respected by the others. In order to build a functional justice system it is of primary importance to change the assessment for the judicial branch, and have a properly planned and allocated budget support every year, based on the positive experience of other countries. A separate budget allocation for the judiciary branch from the executive and self-managed by the judiciary itself could lead to an independent and efficient functional justice system. Further, it is necessary to adopt the judicial table of organization, administrative personnel, increase of the population and enhancement of the level of ambition for justice.

Currently, the judicial table of organization at national level consists of 377 judges. There are courts lacking the necessary judges and those required by the table of organization. For instance, in larger judicial districts there are fewer judges

than provided by the table of organization, but with the workload of judges, other judges should be recruited because the work overload is one of the reasons for the delays of the judicial processes. In these circumstances, it is necessary to initiate some legal amendments, in order to increase the number of civil cases heard by a single judge, compared to those conducted by a jury of 3 judges, pursuant to the article 35 of the Civil Procedure Code 52) as amended, by amending and completing this provision of the Civil Procedure Code, by which the cost of the lawsuit conducted by 3 judges is increased from the previous one of 10 million to 20 million ALL. The increase of cost of the lawsuit had a positive impact on the current difficulties of civil cases, because of the previous legal necessity and the formation of the jury. This difficulty was more present in the larger judicial districts.

The judges are recruited only after completing studies at the School of Magistrates. From year to year the number of women in the judicial system is increased. From 377 judges as part of the organization table at national level, 343 of them are currently working as judges, i.e. 146 women and 208 men at the First Instance Judicial District and Appellate Court; so the female judges constitute a core part of the total judicial panel of personnel courts. The women's presence among the judges community, initially accepted with discretion and some reservations, had a beneficial impact both for the invaluable contribution regarding the professional expertise and performance and for the human mission, generosity and hard daily work. Together with the proper number of the judges it is also of specific importance to develop and allocate an appropriate administrative and technical staff, necessary to increase the efficiency of their work.

In the recent years, the penal justice is faced within the system of two opposite needs. On one side, it has been under a strong social movement, exercising pressure to the justice institutions to assume a more active role and allow them, in front of the insufficiency of powers of other state institutions, to fight without tolerance the organized crime activities; and on the other side, it has made progress which has guaranteed the affirmation of a third position of the judge, against the litigants. This last tendency has a priority in the new penal process, with a strong focus on the guarantee of

the maximal justice of judicial decisions, and attribution of the third role of judges, beyond the litigants, the prosecutor and the defendant, and equally positioned among them.

This equality of arms in the penal procedure cannot and should not be understood as a partial cooperation, between the court as an arbiter, and the prosecutor's office as the accusing party. Recently, we often hear that option from several individuals in power or not, highlighting the cooperation between the prosecutor's office and the court. This concept of cooperation between the prosecutor's office and the court is now over; it is over together with those claiming this type of cooperation. It is true that the Prosecutor's Office is organized to work in harmony with the court system, but it is not within the judicial authority. The concept of impartiality of the cooperation of the prosecutor's office, as an accusing party and the court as a third party, or the triangle among the prosecutor and the defendant with his/her defense counsel, on the lawsuits raised by the prosecutor to the court, and opposed by the defendant, belong not only to the penal procedural system as described in the Code of Penal Procedure of 1979, 53) before the democratic changes occurred in our country and before the approval of the Code of Penal Procedure of 1995, 54) by the Albanian Parliament. The court does not and cannot cooperate with none of the parties separately. In the authority of the arbiter, for its position as a third party above other parties, which are equal in the process, the court can request from both parties to be part of the hearing process for a specific case, so that they respect the law and ethics, but it can never cooperate with the prosecutor being the accusing party and set aside the defendant and his defense lawyer, when he/ she has used his/her constitutional right to be defended by a lawyer. This cooperation required in contravention to the constitution and the Criminal Procedure Code, causes a deviation of the balance of justice among the parties, entrusted to the court by the Constitution and the law, because it violates the independence, objectivity and impartiality and final decision of the court based on justice. When taking a decision, the court is guided by the internal conviction, after the full examination of all evidence in hearing sessions and does not cooperate with none of the parties in the process. If a partial cooperation is required, it will violate the trust of citizens for the justice of the decisions rendered by the court.

Following the procedural system we have in place, and referring to the Criminal Procedure Code approved in 1996, 55) the proof issue is resolved, which is one of the most sensitive components of the penal process, attaching the level of civilization to the code. In the previous code of 1979, the proof is established during the stage of investigation. The investigators and the prosecutor had the task to gather in an investigation, partially secret; the elements of evidence identified in papers, which later were read or taken as read during the judicial hearing sessions. Then, this would be completed in years through other evidence elements, when the witnesses had lost the exact recollection of evidence and were limited to the confirmation of declarations. The lack of intermediate dialectics of the prosecutor and the defendant, and especially after 1966, when the chain of the defense lawyer and the lawyer's system was eliminated, with the absurd reason as not any longer necessary because the defense would be made by the prosecutor and the court), caused a challenging situation for the court. The court could not credibly organize the defense of the defendant and the judge could do nothing but the exclusive use of evidence collected in the investigation phase, without any direct control of the litigants.

On the contrary, according to the new Code approved in 1995, the proof is not any longer established during the investigation but through a debate, in front of all interested parties, where the litigants provide to the judges all elements he may need as an impartial third party, to establish his belief. This need to guarantee the improvement of the quality of penal process should be associated, based on requirements for a speedy process, with the need for abbreviated trials. It seems difficult, in the presence of a procedural system which is initially driven by the commission of the criminal offence, in the presumption of the innocence, shifting to all judicial hearings at all levels of the judiciary, to make them integrated with a process conducted in a short period of time. In all cases, the judicial process continues to be held in ordinary hearing sessions. The schedule of the process is normally delayed, except the cases of specific judicial cases, which process duration and the decision is kept normally within the schedule and a positive result is identified in the decisions. In the abbreviated trials, one third of the sentence provided by the court is imposed, when this case is asked to be applied in the current situation of acts and if accepted

by the court. In the direct trials, the hearing session starts immediately without the files being returned to the prosecutor's office wherefrom it was sent, by shortening the time of the start of the debate and examination of the evidence as in the ordinary trial. To be operational and to produce fast-tracking outcomes, these ad-hoc trials must be associated with a new mentality of all the litigants, being really involved but tending to better support the abbreviated trial instead of the direct trial which is less applied than the abbreviated trial. In order to increase the speed of the trial, the courts should keep applying the uninterrupted judicial process with a better organization of the process, for the purpose of having abbreviated trials and the decisions influencing positively the fight against criminal activities in general, and organized crime in particular. The legislator should also schedule other specific proceedings, such as those envisioned by the Italian Criminal Procedure Code, the decree trial, the application of the punishment with a request of the parties 56), as well as from the US useful experience of plea-bargaining, which is reached between the prosecutor and the defendant, "... where in 90% of cases the prosecutor and the defense reach an agreement" 57), for the criminal offence and the sentence, when the lawsuit against the defendant is made by the prosecutor. The agreement is approved by the court in a hearing session after it examines that the rights of the defendant are respected.

A higher priority of the state should be attached to the Ministry of Justice, in order that this institution accomplishes the mission foreseen by law, with high efficiency. If there are more judges and their work is facilitated by a clear legislation, in order that they are aware of their work, and more promptly serving the true interests of the citizens, we will have a more immediate justice, the citizens will benefit the protection of their rights, the security and stability conditions will be set for all interested parties in the processes. Bearing this in mind, the principles where the civil society is founded will be fully applied, such as justice and freedom, which are values that can be easily lost and can be hardly built based on a daily hard work. The judicial system needs support, promotion, and protection in the accomplishment of its challenging and sensitive mission, to fight criminal activities, to settle social conflicts, to render equal, fair and professional justice before the law, serving the rule of law and further progress of democracy.

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