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Review article

THE ROLE OF THE EU AS A PROMOTER OF JUDICIARY REFORM IN CANDIDATE COUNTRIES: THE CASE OF VETTING PROCESS IN ALBANIA

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ABSTRACT

The European Union (EU) enlargement policy has been considered the most effective tool of the EU as an "EU external governance" in exporting democracy, the rule of law, fundamental freedoms, and other values on which the EU is founded in third countries. Considering the lessons learned from previous accession cases– especially Romania, Bulgaria and Croatia, the EU approach to addressing the rule of law reforms early in the accession process shifted toward a bold strategy. This paper analyses the role of the EU as a promoter of judiciary reform in candidate countries, focusing on the vetting process in Albanian. The paper argues that a dilemma exists between legal compliance with EU standards and implementing reforms. While the EU, through judiciary reform, aims to transform the Albanian judiciary system in compliance with the Justice and Home Affairs acquis, political polarisation in Albania has hampered institutional set-up, effectiveness, independence, and the fight against corruption. Moreover, the vetting process has paralysed the judiciary system by increasing the backlog and delaying the length of proceedings. By adopting a dogmatic legal methodology, the paper provides a detailed theoretical discussion of the EU's external dimension as a (legal) normative power and analyses the Europeanization of the judiciary system in Albania. Moreover, the paper assesses

the impact of judiciary reform and discusses the extent to which judiciary reform in Albania is considered successful.

***Keywords**: Albania, EU acquis, Europeanization, Judiciary Reform, Rule of Law*

1. INTRODUCTION

In the EU context, the principle of the rule of law has undergone a profound gradual affirmation, becoming part of other fundamental principles such as liberty, democracy, respect for human rights and four freedoms.[1] The European Coal and Steel Community[2] and the European Economic Community, established by the Treaty of Rome,[3] did not foresee the concept of the rule of law either as a principle or as a fundamental principle of the Community. This is understandable since the EEC was more of an economic project.

Despite its non-recognition, the principle of the rule of law became well-known by judicial practice. In the *Les Vert* case, the European Court of Justice (ECJ) explained that "the European Economic Community is a Community based on the rule of law, inasmuch as neither its Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the basic constitutional charter, the Treaty".[4] By making reference on a "Community based on the rule of law", the ECJ underlined the right of individuals to judicial protection of their rights and interests.

As the EEC/EU evolved from an economic organisation to a more cooperation organisation, the Maastricht Treaty recognised the rule of law as one of the founding principles of the Union, which is common to the Member States, and as a guiding objective of foreign policy.[5] The Lisbon Treaty, which entered into force on 1 December 2009, reaffirmed the principle of the rule of law in internal and external dimensions. Internally, the rule of law has been listed among the founding principles of the Union. Article 2 TEU stipulates that "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities".

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1 Appicciafuoco, L., *The Promotion of the Rule of Law in the Western Balkans: The European Union's Role,* German Law Journal, Vol. 11 No. 08, pp. 744-758; Skara, S., *The Bumpy Road of EULEX as an Exporter of Rule of Law in Kosovo,* Academicus – International Scientific Journal [2017] No. 16.

2 Treaty establishing the European Coal and Steel Community (ECSC Treaty) [1951] OJ Special edition.

3 Treaty establishing the European Economic Community (EEC Treaty) [1957] OJ Special edition.

4 Judgement of 23 April 1986, *Les Verts v Parliament*, C-294/83, ECLI:EU:C:1986:166, para 23.

5 Consolidated Version of the Treaty on European Union [1997] OJ C 340/145, Articles 6 and 11(1).

Additionally, Article 7 TEU envisaged a mechanism for safeguarding the rule of law within the Member States. It introduces 2 different procedures. According to Article 7 (1), based on a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, after obtaining the consent of Parliament, may determine the existence of a clear risk of a serious breach by a Member State of the values stipulated in Article 2. Before deciding, the Council hears the Member States in question. Secondly, acting by unanimity on a proposal by one third of the Member States or by the Commission, the Council, after obtaining the consent of the European Parliament may determine the existence of a serious and persistent breach by a Member State of the values referred to in Article 2.[6] In case that a Member State is determined responsible for a serious and persistent breach of fundamental principles (including the rule of law), the Council may decide to suspend certain of the rights.[7]

In the absence of a definition of the rule of law, in 2014, the Commission issued a communication setting out "a new framework to ensure an effective and coherent protection of the rule of law in all Member States".[8] The Commission highlighted the importance of the principle of the rule of law and unpacked the content around six principles, namely: i) legality; ii) legal certainty; iii) prohibition of arbitrariness of the executive powers; iv) independent and impartial courts; v) effective judicial review including respect for fundamental rights; and vi) equality before the law.[9] Such definition of the principle of the rule of law was embedded in Regulation 2020/2092 on a general regime of conditionality for the protection of the Union budget.[10]

Externally, the promotion of the rule of law is a guiding principle of the Union's external relations, especially in the Common Foreign and Security Policy and the enlargement policy. As noted in Article 21 TEU, "The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law […]". In addition, the EU has promoted

6 TEU, Art 7 (2).

7 TEU, Art 7 (3).

8 Commission, *A New Framework to Strengthen Rule for Law*, COM(2014) 158 final, p. 4.

9 Commission, *A New Framework to Strengthen Rule for Law*, COM(2014) 158 final, p. 4.

10 Regulation 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget [202] OJ L 433 1/1. Article 2 (a) reads as follows: "the rule of law' refers to the Union value enshrined in Article 2 TEU. It includes the principles of legality implying a transparent, accountable, democratic and pluralistic law-making process; legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection, including access to justice, by independent and impartial courts, also as regards fundamental rights; separation of powers; and non-discrimination and equality before the law.".

the rule of law in third countries through the Common Security and Defence Policy (CSDP) mission which is an integral part of the Common Foreign and Security Policy. In the Santa Maria da Feira Summit (2000), the European Council laid down its approach to promoting the rule of law in third countries by civilian operations. In Annex 1, the European Council acknowledged the following measures to be considered for strengthening the rule of law: i) deploying in third countries judges, prosecutors penal experts and other relevant categories within the judicial and penal system; ii) promoting guidelines for the selection and training of international judges and penal experts in liaison with the UN and regional organisations (particularly the Council of Europe and and the Organisation for Security and Cooperation in Europe); and iii) supporting the establishment/renovation of infrastructures of local courts and prisons as well as recruitment of local court personnel and prison officers.[11] Since 2003, the EU has launched in total over 40 civilian and military missions on three continents. As of 15 March 2024, 13 civilian operations are ongoing.[12] These missions are focusing on rule of law promotion, security, reforming the police sector and border security.

In the context of Enlargement policy, the promotion of rule of law is rooted in the socalled Copenhagen Criteria. In 1993, the European Council decided that each country wishing to join the Union was required to achieve "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities."[13] At that time, Copenhagen Criteria served as a blueprint for candidate countries to join the EU. These criteria were not foreseen in the treaties (TEU or TEC). With the entry into force of the Treaty of Lisbon, Article 49 (1) TEU explicitly acknowledges the legally binding nature on the conditions of eligibility agreed by the European Council. Thus, fulfilment of Copenhagen Criteria is obligatory for candidate countries.

The EU enlargement policy has been considered the most effective tool of the EU as an "EU external governance" in exporting democracy, the rule of law, fundamental freedoms, and other values on which the EU is founded in third countries. Considering the lessons learned from previous accession cases – especially those in Romania, Bulgaria and Croatia, the EU approach to addressing the rule of law

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11 European Council, *Santa Maria da Feira European Council 19 and 20 June 2000: Conclusions of the Presidency*, Annex 1, Appendix 3B,
[https://www.europarl.europa.eu/summits/fei2_en.htm#an1], Accessed 1 April 2024.

12 European Union External Action, *EU Missions and Operations*,
[https://www.eeas.europa.eu/eeas/missions-and-operations_en], Accessed 1 April 2024.

13 European Council, *Conclusion of the Presidency*, SN 180 / 1 / 93 Rev 1, 21 – 22 June 1993, pt 7A (iii) [https://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/72921.pdf], Accessed 1 April 2024.

reforms shifted toward a bold strategy. Accordingly, the 2011 Enlargement Strategy emphasised the importance of issues related to the judiciary and fundamental rights and to justice and home affairs and stipulated that "these should be tackled early in the accession process and the corresponding chapters opened accordingly on the basis of action plans, as they require the establishment of convincing track records".[14]

Following the Commission approach, on 21 - 22 June 2016, the Albanian parliament, with the "blessing" of the EU and USA, approved constitutional changes by revamping the "Europeanization" of the judiciary system. The 2016 judiciary reform package aimed to make the country's judiciary independent and impartial, strengthen professionalism, fight corruption, end politicians' impunity and rebuild public confidence in the judiciary.

Due to the scope of this article, this paper analyses the role of the EU as a promoter of the rule of law in candidate countries, with a particular interest in the vetting process in Albania. The vetting process consists of re-evaluation process of all judges, prosecutors, and their legal advisers based on three cumulative criteria: i) the assets of judges and prosecutors, ii) the detection or identification of their links to organized crime, and iii) the evaluation of their work and professional skills. To vet the magistrates, two institutions were established, namely: the Independent Qualification Commission and the Appeal Chamber. The paper argues that a dilemma exists between legal compliance with EU standards and implementing reforms. While the EU, through judiciary reform, aims to transform the Albanian judiciary system in compliance with the Justice and Home Affairs *acquis*, political polarisation in Albania has hampered institutional set-up, effectiveness, independence, and the fight against corruption.

By adopting a dogmatic legal methodology, the paper provides a detailed theoretical discussion of the EU's external dimension as a (legal) normative power and analyses the Europeanization of the judiciary system in Albania. Moreover, the paper assesses the impact of judiciary reform and discusses the extent to which judiciary reform in Albania is considered successful.

The paper contains this introduction and 4 sections. The second section provides a literature review on the Europeanization of Judiciary Reform in candidate countries. The third section introduces the 2016 judicial reform focusing on the vetting process. The remaining sections discuss whether and to what extent the vetting process has been a successful model.

[14] Commission, *Enlargement Strategy and Main Challenges 2011-2012*, COM(2011) 666 final, p. 5.

2. EUROPEANIZATION OF JUDICIARY REFORM IN CANDIDATE COUNTRIES

In the academic literature, Europeanization represents a distinct research area in European studies. It is used for internal and external purposes to denote domestic changes as a result of EU influence.[15] For internal purposes, Europeanization is linked to the EU's influence on the polity, politics, and policies of the EU Member States.[16] In this regard, the EU has influenced the Member States to adapt their institutional and legal structures in accordance with EU requirements. Externally, Europeanization is associated with the growing role of the EU as a global actor in various policies and initiatives toward third countries.[17] For instance, Europeanization was the driving force in the accession of the Central and Eastern European countries which were obliged to adopt the EU acquis in order to meet the membership criteria.[18] Likewise, Europeanization has been used in the case of Western Balkan countries.[19]

The first who provided a concrete definition of the concept of Europeanization is attributed to Robert Ladrecht. In his article, Ladrecht defined Europeaniza-

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15 Petrov, P.; Kalinichenko, P., *The Europeanization of Third Country Judiciaries through the Application of the EU Acquis: The Cases of Russia and Ukraine*, The International and Comparative Law Quarterly, Vol. 60, No. 2, 2011, pp. 325-353, 326.

16 Ágh, A., *Europeanization of Policy Making in East Central Europe: The Hungarian Approach to EU Accession,* Journal of European Public Policy, Vol. 6, No. 5, 1999, pp. 839–854; Ladrech, R., *Europeanization of Domestic Politics and Institutions: The Case of France*, Journal of Common Market Studies, Vol. 32, No. 1, 1994; Cowles, M.G. *et al.*, *Transforming Europe: Europeanization and Domestic Change*, Cornell University Press, Cornell, 2001.

17 Cremona, M., *The Union as a Global Actor: Roles, Models and Identity*, CMLR, Vol. 41, pp. 553-573.

18 Schimmelfenning, F.; Sedelmeier, U., (eds.), *The Europeanization of Central and Eastern Europe*, Cornell, Cornell University Press, 2005; Cowles *et al.*, *op. cit.,* note 14; Grabbe, H., *The EU's Transformative Power: Europeanization through Conditionality in Central and Eastern Europe*, Palgrave, 2006; Papadimitriou, D.; Phinnemore, D., *Europeanization, Conditionality and Domestic Change: The Twinning Exercise and Administrative Reform in Romania*, JCMS: Journal of Common Market Studies, Vol. 42, Issue 3 pp. 619-639; Sotiropoulos, A D., *Southern European Public Bureaucracies in Comparative Perspective*, West European Politics, Vol. 27, Issue 3, 2004, pp. 405-422; Lippert, B. *et al.*, *Europeanization of the CEE Executives: EU Membership Negotiations as a Shaping Power*, Journal of European Public Policy, Vol. 8, No. 6, 2001, pp. 980–1012.

19 Knezović, S., *EU's Conditionality Mechanism in South-East Europe – Lessons Learned and Challenges for the Future*. European Perspectives – Journal on European Perspectives of the Western Balkans, 2009, p. 93; Anastasakis, O., *The Europeanization of the Balkans* The Brown Journal of World, Vol. XII, Issue 1, 2005, pp. 77-88; Anastasakis, O.; Bechev, D. *EU Conditionality in South East Europe: Bringing Commitment to the Process*, St. Antony's College University of Oxford, 2003; Börzel, A T. *When Europeanization Hits Limited Statehood: The Western Balkans as a Test Case for the Transformative Power of Europe,* KGF Working Paper Series, 2011 [http://userpage.fu-berlin.de/kfgeu/kfgwp/wpseries/WorkingPaperKFG_30.pdf], Accessed 1 April 2024; Bradford, A., *The Brussels Effect: How the European Union Rules the World*, Oxford University Press, 2020.

tion as "an incremental process reorienting the direction and shape of politics to the degree that European Community (EC) political and economic dynamics become part of the organisational logic of national politics and policy-making."[20] Ladrecht's definition of "organisational logic of national politics and policy-making" includes governmental and non-governmental actors. Changes in organisational logic refer to the adaptive processes of organisations to a changed or changing environment.[21]

In 2001, Risse, Cowles, and Caporaso published a book that highlights the impact of Europeanization on national legal systems, domestic institutions, and political cultures. [22] In the introduction chapter, Cowles *et al* have defined Europeanization as "the emergence and development at the European level of distinct structures of governance, that is, of political, legal, and social institutions associated with political problem-solving that formalise interactions among the actors, and of policy networks specialising in the creation of authoritative European rules".[23]

Drawing upon Ladrecht's definition, Claudio Radaelli has provided the most comprehensive definition of Europeanization. Radaelli defined Europeanization as the "process of construction, diffusion, and institutionalisation of formal and informal rules, procedures, policy paradigms, styles (ways of doing things) and shared beliefs and norms which are first defined and consolidated in the making of EU public policy and politics and then incorporated in the logic of domestic discourse, identities, political structures, and public policies".[24]

As can be seen from the abovementioned definition, Europeanization is understood broadly not only as a foreign policy to regulate the international relations with third countries, but also as a form of "governance export" and "norm diffusion".[25] The academic literature on the Europeanization of the Central Eastern European

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20 Ladrech, R., *op, cit.,* note 16, p. 69.

21 *Ibid*, p. 71.

22 Cowles, M. G. *et al*., *op. cit.,* note 17.

23 Risse, T., *et al*., *Europeanization and Domestic Change: Introduction,* in: Cowles, *et al.*, (eds), Transforming Europe: Europeanization and Domestic Change, Cornell, Cornell University Press, 2001, p. 3.

24 Radaelli, CM., *The Europeanization of Public Policy*, in: Featherstone, K.; Radaelli, CM. (eds.), The Politics of Europeanization*,* OUP, 2003, 30.

25 Schimmelfenning, F., *International Socializaton in the New Europe: Acton in a Rational Institutional Environment*, European Journal of International Relations, Vol, 6, Issue, 1, 2000, pp. 109-139; Mungiu-Pippidi, A., *The EU as a Transformation Agent. Lessons Learned from governance reforms in East Central Europe*, Hertie School of Governance, Working Papers 33:22, 2008; Kmezić, M., *Europeanization by Rule of Law Implementation in South East Europe*' in: Kmezić, M., (ed.), Europeanization by Rule of Law Implementation in the Western Balkans, Institute for Democracy SOCIETAS CIVILIS Skopje, 2014.

countries (CEEc) has confirmed the role of the EU "as a massive exporter of EU norms" through enlargement policy.[26]

In the case of the Western Balkan countries, the main strategy designed to Europeanize this region is the Stabilisation and Association Process. The Stabilisation and Association Agreement (SAA), the main treaty relations between the EU and Member States and candidate countries, offers a clear prospect of membership based on the conditionality of carrying out necessary reforms. Conditionality is considered one of the predominant mechanisms for the Europeanization of the candidate countries to diffuse its norms in an unprecedented way.[27] Conditionality is defined as "the linking of perceived benefits (e.g. political support, economic aid, membership in an organisation) to the fulfilment of a certain programme, in this case, the advancement of democratic principles and institutions in a "target" state)".[28] By relying on the conditionality mechanisms, the EU exerting its power "to address the difficulties of the post-conflict and ethnically divisive situation in the Western Balkans, the weakness of their state structure, and the delayed character of their political transition."[29]

While all SAAs signed with the Western Balkan countries provide a clear perspective of membership based on conditionality, it induces the necessary incentives to carry out the required reforms on the approximation and implementation of the EU *acquis,* including reform of the judiciary system. For instance, Article 78 of the SAA with Albania states that:

> The Parties shall attach *particular importance to the consolidation of the rule of law*, and the reinforcement of institutions at all levels in the areas of administration in general and law enforcement and the administration of justice in particular. *Cooperation shall notably aim at strengthening the independence of the judiciary and improving its efficiency, improving the functioning of the*

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[26] Schimmelfenning, F.; Sedelmeier, U., (eds.) *op. cit.,* note 16; Kochenov, D., *Behind the Copenhagen Facade. The Meaning and Structure of the Copenhagen Political Criterion of Democracy and the Rule of Law*, European Integration online Papers, Vol. 8, Issue 10, 2004; Grabbe, *op. cit.*, note 16; Kmezić, M., *Literature Review on Europeanization and Rule of Law*" in: Kmezić, M., (ed.), Europeanization by Rule of Law Implementation in the Western Balkans, Institute for Democracy SOCIETAS CIVILIS Skopje, 2014.

[27] Schimmelfenning, F.; Sedelmeier, U., (eds.) *op. cit.,* note 19.

[28] Kubicek JP., *International Norms, the European Union, and Democratization: Tentative Theory and Evidence*, in: Paul J Kubicek, JP., (ed.), *The European Union and Democratization*, Routledge, 2003, p. 7.

[29] Anastasakis, O., *The EU's Political Conditionality in the Western Balkans: Towards a more Pragmatic Approach*, Southeast European and Black Sea Studies, 2008, p. 368.

police and other law enforcement bodies, providing adequate training and fighting corruption and organised crime.[30]

In addition, the EU has used accession negotiation as an instrument to induce domestic reforms in the Western Balkan countries, particularly in the judiciary reform.[31] Thus, an independent and functioning judiciary system is a fundamental component of the rule of law and democratisation of a country. Researchers have analysed the EU's transformative power with regard to the effectiveness of the rule of law and judicial sector reform. Marko Kmezić has investigated the Europeanization of judicial independence in the Western Balkans.[32] His contributions provide a comprehensive historical and legal analysis of the EU's role as a promoter of the rule of law in the Western Balkan. Elbasani and Šabić have analysed the rule of law, corruption and accountability in the course of EU enlargement. Their article draws on a cross-comparison between Albania and Croatia.[33]

The cases of Romania, Bulgaria, and Croatia showed that the EU paid more attention to judicial reformation in the pre-accession phase. According to Kristian Turkajl, a former member of the Negotiation Team responsible for Chapters 23 and 24 for Croatia, Chapter 23 on 'Judiciary and Fundamental Rights' is considered to be "crucial" for the outcome of the entire negotiation process. [34] For these reasons, in October 2011, the Commission proposed a new approach to the rule of law issues in candidate countries. The new approach rests on the principle that issues related to judiciary and fundamental rights (Chapter 23 of the acquis) and justice, freedom, and security (Chapter 24) "should be tackled early in the accession process and the corresponding chapters opened accordingly on the basis of action plans, as they require the establishment of convincing track records."[35] Likewise, in the 2012 annual Enlargement Package, Commissioner Stefan Füle said: "[o]ur recommendations place the rule of law firmly at the centre of the accession process. To create a more stable and prosperous Europe, momentum needs

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30 Emphasise added by author.

31 Preshova, D., *et al., 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*, CLEER Papers, 2017/1, p. 7; Bobek, M.; Kosar, D., *Global Solutions, Local Damages: A Critical Study in Judicial Councils in Central and Eastern Europe*, German Law Journal, Vol. 15, Issue 7, 2014, pp. 1275-1276.

32 Kmezić, M., (ed.), *Europeanization by Rule of Law Implementation in the Western Balkans*, Institute for Democracy SOCIETAS CIVILIS, Skopje, 2014; Kmezić, M., *EU Rule of Law Promotion: Judiciary Reform in the Western Balkans,* Routledge, 2017.

33 Elbasani, A.; Šabić, S.S., *Rule of law, corruption and democratic accountability in the course of EU enlargement,* Journal of European Public Policy, Vol. 25, Issue 9, pp. 1317-1335.

34 Quoted in Kmezić, M., *Europeanization by Rule of Law Implementation in South East Europe' op. cit.* note 33.

35 Commission, *Enlargement Strategy and Main Challenges 2011-2012*, COM(2011) 666 final, p. 5.

to be maintained both for merit-based enlargement process on the EU side and for reforms on the ground in the enlargement countries".[36] As progress on the rule of law reforms was slow, in 2018, the Commission highlighted the need to address the rule of law issues in Montenegro and Serbia "before technical talks on other chapters of the accession negotiations can be provisionally closed".[37] While this approach was not followed, the new enlargement methodology (2020) emphasised the importance of judiciary reforms, which are included in the first cluster (fundamentals), which are opened first and closed last.

While strengthening the rule of law is considered a key criterion for accession, as rooted in the Copenhagen criteria,[38] in the case of Western Balkan countries, it has been identified as a "continuing major challenge and a crucial condition for countries moving towards EU membership".[39] Judicial reform in Western Balkan countries has become the 'Achille wheel' of the enlargement process. In its 2018 communication on enlargement and the Western Balkans, the Commission clearly acknowledged the serious rule of law situation in the region, stating that there were "clear elements of state capture, including links with organised crime and corruption at all levels of government and administration, as well as a strong entanglement of public and private interests".[40] Moreover. citizen's perception in the judiciary system is very high. According to the SELDI Corruption Monitoring System 2019, between 55% and 94% of the citizens believe that judiciary officials in the Western Balkans countries are corrupt.[41] The main deficiencies in the governance and functioning of the judiciary are as follows: i) the influence of legislative and executive branches in the selection and promotion of judges and prosecutors; ii) the bodies governing the judiciary and the prosecutions are not defined properly; iii) the procedures for appointment and dismissal of judges and prosecutors are not transparent; iv) the enforcement of the disciplinary accountability and of the codes of ethics for judges and prosecutors is very limited; and v) public prosecutor's offices lack resources.[42]

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36 Commission, *Commission outlines next steps for EU enlargement*, (Press Release) [https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_12_1087/IP_12_1087_EN.pdf], Accessed 1 April 2024.

37 Commission, *A Credible Enlargement Perspective for and enhanced EU engagement with the Western Balkans*, (Communication) COM(2018) 65 final, p. 9

38 Hoxhaj, A., *The Rule of Law Initiative Toward the Western Balkans*, Hague Journal on the Rule of Law, Vol. 13, 2021, p. 143.

39 Commission, *Enlargement Strategy and Main Challenges 2011-2012*, COM(2011) 666 final, p. 4 .

40 Commission, *A Credible Enlargement Perspective for and enhanced EU engagement with the Western Balkans*, (Communication) COM(2018) 65 final, p. 3.

41 SELDI, *Corruption in the Western Balkans 2019: Trends and Policy Options*, SELDI Policy Brief No. 9, December 2019.

42 SELDI, *Western Balkans 2020: State-Capture Risks and Policy Reforms*, SELDI, 2020.

Establishing an independent, impartial and efficient judiciary is considered to be the main component of the rule of law. Chapter 23 on the Judiciary and Fundamental rights provides the following explanation for judiciary reform:

> EU policies in the area of judiciary and fundamental rights aim to maintain and further develop the Union as an area of freedom, security and justice. *The establishment of an independent and efficient judiciary is of paramount importance*. *Impartiality, integrity and a high standard of adjudication by the courts are essential for safeguarding the rule of law*. This requires a firm commitment to eliminating external influences over the judiciary and to devoting adequate financial resources and training. Legal guarantees for fair trial procedures must be in place. Equally, Member States must fight corruption effectively, as it represents a threat to the stability of democratic institutions and the rule of law. A solid legal framework and reliable institutions are required to underpin a coherent policy of prevention and deterrence of corruption. Member States must ensure respect for fundamental rights and EU citizens' rights, as guaranteed by the acquis and by the Fundamental Rights Charter.[43] (emphasise added)

Pursuant to the content definition of the rule of law[44] and the abovementioned explanation, the EU rule of law promotion in the enlargement policy tends to "translate the rule of law into an institutional checklist, with primary emphasis on the judiciary." [45] Thus, the alignment of domestic judiciary legislation with the EU acquis is measured by legal and institutional benchmarks.

The following section analyses the 2016 judiciary reform in Albania, which has been one of the requirements for opening accession. Due to the limited scope of this paper, the focus will be only on the vetting process and its impact on the judiciary system.

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43 Commission, *Chapters of the Acquis*, [https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/conditions-membership/chapters-acquis_en], Accessed 31 March 2024.

44 Commission, *A New Framework to Strengthen Rule for Law*, (Communication), COM(2014) 158 final, p. 4; Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget [2020] OJ L 433 1/1.

45 Carothers, T., (ed.), 2006. *Promoting the Rule of Law Abroad: In search of Knowledge*. Carnegie Endowment for International Peace, p. 20.

3. ALBANIA JUDICIAL REFORM: THE VETTING PROCESS

In Albania, the Europeanization process has been focused on reforming the rule of law, with specific attention on tackling corruption and organised crime and reforming the judiciary.[46] Reforming the judicial system was a key condition for opening accession talks. The judiciary reform package aims to make the country's judiciary independent, capable of fighting corruption, and end impunity for politicians. Before the 2016 judicial reform, the Albanian judicial system was characterised by: i) a low level of public trust; ii) a high corruption rate; iii) personal connections of judges and prosecutors with organised crime; iv) political interests and pressure on sensitive cases; v) the inactivity of the National Judicial Conference, which affects the selection negatively, career advancement, training, and disciplinary proceedings against judges.[47]

Judiciary reform consists of establishing a new judicial governance system to guarantee its integrity, independence, impartiality, accountability, efficiency, and transparency.[48] Albanian legislators identified around 40 laws and by-laws to implement the reform. The laws addressed the establishment of new judicial institutions and the re-evaluation of judges, prosecutors, and legal advisors.

The vetting process (temporary re-evaluation) was introduced to address two issues. First, the judiciary system was considered highly corrupt by international experts and domestic organisations.[49] The 2014 European Commission (EC) Progress report also noted this observation, acknowledging that "institutions involved in the fight against corruption remain vulnerable to political pressure and other undue influence. Corruption remains prevalent in many areas, including the judiciary, and remains a particularly serious problem."[50] Second, public trust in the

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46 Fagan, A.; Indraneel, S., *Judicial Independence in the Western Balkans: Is the EU's 'New Approach' Changing Judicial Practices?*, MAXCAP Working Paper No. 11, p. 6.

47 GRECO (Group of States against Corruption), *Corruption prevention in respect of members of Parliament, judges and prosecutors: Evaluation Report Albania*, 4th Evaluation Round, Greco Eval IV Rep, 2013, para. 4-5; Group of High-Level Experts, *Strategy on Justice System Reform*, 2015, [https://euralius.eu/images/Justice-Reform/Strategy-on-Justice-System-Reform_24-07-2015.pdf], Accessed 15 March 2024, p. 38; GHLE (Group of High-Level Experts), *Analysis of the Justice System in Albania: Document open for evaluation, comments and proposals,* 2015, [https://euralius.eu/images/Justice-Reform/Analysis-of-the-Justice-System-in-Albania.pdf], Accessed 15 March 2024, p. 10; Commission, *Albania 2014 Progress Report*, SWD(2014) 304 final.

48 Group of High-Level Experts, *Strategy on Justice System Reform*, *op. cit.,* note 47, p. 10-20.

49 GHLE (Group of High-Level Experts), *Analysis of the Justice System in Albania: Document open for evaluation, comments and proposals, op. cit.,* note 47, p. 10.

50 Commission, *Albania 2014 Progress Report*, SWD (2014) 304 final, p. 45.

judiciary system was very low.[51] Accepting these facts, the Venice Commission issued two *amicus curiae* to support the judiciary reform, including the vetting process.[52] Based on the previous similar situation in Ukraine, [53] the Venice Commission believes that:

> a similar drastic remedy may be seen as appropriate in the Albanian context. However, it remains an exceptional measure. All subsequent recommendations in the present interim opinion are based on the assumption that the comprehensive vetting of the judiciary and of the prosecution service has wide political and public support within the country, that it is an extraordinary and a strictly temporary measure, and that this measure would not be advised to other countries where the problem of corruption within the judiciary did not reach that magnitude.[54]

Pursuant to the Venice Commission's positive recommendation to proceed with the vetting process, constitutional changes were needed as the process would interrupt the judge's career and undermine the guarantee of independence for the judge in office.[55] Moreover, as a result of the vetting process, some rights guaranteed by the Constitution would be temporarily limited.[56] To address these two constitutional issues, the Constitution of the Republic of Albania laid down the foundations for the vetting process through a special Annex. The Annex contains 10 detailed articles explaining the principles, procedure, and responsible institu-

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51 Venice Commission, *Interim Opinion on the Draft Constitutional Amendments on the Judiciary of Albania*, 2015 [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)045-e], Accessed 15 March 2024, para 98.

52 Venice Commission, *Interim Opinion on the Draft Constitutional Amendments on the Judiciary of Albania*, 2015 [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)045-e], Accessed 15 March 2024; Venice Commission, *Albania: Draft Amicus Curiae Brief for the Constitutional Court*, 2016, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2016)040-e], Accessed 15 March 2024.

53 Venice Commission, *Joint opinion by the Venice Commission and the Directorate of Human Rights of the Directorate General of Human Rights and the Rule of Law on the Law on the Judiciary and the Status of Judges and amendments to the Law on the High Council of Justice of Ukraine*, 2015, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)007-e], Accessed 15 March 2024.

54 Venice Commission, *Interim Opinion on the Draft Constitutional Amendments on the Judiciary of Albania*, 2015 [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)045-e], Accessed 15 March 2024, para 100.

55 *Cf*., Law 8417/1998 *The Constitution of the Republic of Albania* [1998] OJ 28, Arts 138 and 147 (7).

56 The Constitution of Albania, Annex, Article A (1) reads as follows: "To the extent necessary to carry out the re-evaluation the application range of some articles of this Constitution, in particular provisions regarding privacy, to include Articles 36 and 37, provisions related to the burden of proof, and other provisions including Articles 128, 131, paragraph f, 135, 138, 140, 145 paragraph 1, 147/a paragraph 1, letter b), 149/a paragraph 1, letter b), are partly limited in accordance with Article 17 of the Constitution."

tion of the vetting process. After the adoption of the Constitutional Amendment, a special law was adopted which regulated all the material and procedural aspects of the vetting process.[57]

Article C of the Annex of the Albanian Constitution established two special institutions to carry out the vetting process. The first institution is the Independent Qualification Commission, which carries out the re-evaluation process at the first level. The second body is the Appeal Chamber, which examines the complaints submitted by the subjects. In addition, two other institutions were set up: i) the public commission whose function is to protect the public interest and can file an appeal against the Independent Qualification Commission's decision;[58] and ii) the International Monitoring Operation (IOM) which is an institution consisting of observers named by the partners of European integration and Euro-Atlantic cooperation led by the European Commission.[59] The IOM main function is to support the re-evaluation process through monitoring and supervision of the entire process with the help of observers appointed by them. After two levels of review, subjects that are re-evaluated can appeal to the European Court of Human Rights.[60]

The vetting process is based on evaluating three criteria: i) the asset criteria; ii) background assessment, and iii) proficiency assessment (assessment of professional skills).[61] The asset criteria aim to identify whether the magistrates' fortunes are made by legal sources. The background assessment seeks to verify magistrate connections with organised crime. While the professional criterion evaluates the work performed, as well as their professional skills.[62] The decision on the final evaluation of the magistrate is based on: i) one or several criteria, ii) on an overall evaluation of the three criteria, or iii) the overall assessment of the proceedings.[63] At the end of the process, the Commission may decide regarding the subject of re-evaluation: i) confirmation in duty; ii) suspension from duty for a period of one year and the obligation to follow the training program according to the curricula approved by the School of Magistrates; iii) dismissal from office.[64]

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57 Law 84/2016 On the transitional re-evaluation of judges and prosecutors in the Republic of Albania [2016] OJ 180 (hereafter Law 84/2016).

58 The Constitution of Albania, Annex, Arts B, C, F.

59 The Constitution of Albania, Annex, Art B.

60 The Constitution of Albania, Annex, Art F (8).

61 Law 84/2016, Art 4 (2).

62 The Constitution of Albania, Annex, Arts Ç, D, DH, E.

63 Law 84/2016, Art 4 (2).

64 Law 84/2016, Art 58 (1).

In contrast to the criminal proceedings, in the vetting process, the burden of proof is on the magistrates, who are subject to re-evaluation. This exception has been foreseen in Article Ç paragraph (5) of the Annex to avoid any confusion in the future. Additionally, the independent institution, entitled to make the re-evaluation, shall exercise their duties "based on the principles of equality before the law, constitutionality and lawfulness, proportionality and other principles which guarantee the rights of assessees for a due legal process".[65] Whereas the right to information may be limited only by "complying with the principle of proportionality if giving the information causes evident and grave damage to the administration of the re-evaluation process".[66]

About 805 magistrates are subject to the vetting process.[67] According to the constitutional provisions, the vetting process for the first level would be closed within 5 years, while the Appeal chamber would close its activities after 9 years.[68] As of 11 April 2024, out of 805 magistrates who are subject to the vetting process, 693 judges/prosecutors have been vetted. 303 judges/prosecutors have been confirmed in office, 237 judges/prosecutors have been dismissed, and 153 judges/prosecutors have voluntarily resigned.[69]

4. THE VETTING PROCESS IMPLEMENTATION AND ITS CONSEQUENCES

Although Albanian politics received the vetting process positively and the international community (most prominently the US and EU) supported it, its implementation encountered several challenges and, in certain cases, was criticised for delays, political influence, lack of professionalism, and double standards. The remaining part of this section discusses some of the problems encountered during its implementation.

From the beginning, the vetting process was adopted as an extraordinary and temporary tool. The Law on the vetting process was adopted by the Assembly on 30 July 2016.[70] While the whole vetting process was foreseen to last 5 years for the first level, the Independent Qualification Commission began with a delay of about 2 years

65 Law 84/2016, Art 4 (5).

66 Law 84/2016, Art 4 (7).

67 Commission, *Albania 2023 Progress Report*, SWD(2023) 690 final, p. 19.

68 Law 84/2016, Art 5 (2).

69 Reporter.al, *Vetingu*, [2024], [https://reporter.al/vetingu/], Accessed 11 April 2024.

70 Law 84/2016 On the transitional re-evaluation of judges and prosecutors in the Republic of Albania [2016] OJ 180.

and the first hearing was held on March 2018.[71] The main reason for such delay is the Albanian Constitutional Court suspension decision as a result of the complaint made by a group of 1/5 of the deputies and the Union of Judges which required the repeal as incompatible with the Constitution the Law 84/2016 (Vetting Law), and suspension of the enforcement of the Vetting Law.[72] Another delay relates to the appointment of the Commission and Appeal Chamber members or supporting staff. The appointment of the Commission and Appeal Chamber members took about 10 months.[73] Supporting staff appointments were made seven months after the appointment of the Commission members (first-level institution).[74]

The delay in establishing vetting bodies, the temporary work suspension of the High Council of Justice and the High Prosecutorial Council in the COVID-19 situation, and the continuation of maintaining the same standard served as the main justification for extending the mandate.[75] The Albanian Constitution foresaw the situation of not completing the process within the set deadline (end of 2022). In Article 179/b (8), the Albanian Constitution predicted that the new governing bodies would continue with the vetting process of the magistrates who would not be vetted within the deadline.[76] Even the Venice Commission, which was asked about the constitutional changes, suggested the possibility of extension.[77] Until the time of the Venice Commission's opinion on mandate extension

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71 Merkuri, E., *Organet e sistemit të drejtësisë: Monitorimi i Zbatimit të Reformës në Drejtësi I*, OSFA, 2020, p. 33.

72 Judgment of 18 January 2017, Constitution Court Decision No 2/2017.

73 The vetting law was adopted in July 2016, whereas members were elected in June 2018.Vendim Nr. 82/2017 Për Miratimin e Listës në Bllok të Kandidatëve të Zgjedhur në Institucionet e Rivlerësimit, sipas Ligjit Nr. 84/2016 "Për Rivlerësimin Kalimtar të Gjyqtarëve dhe Prokurorëve në Republikën e Shqipërisë" [https://kpk.al/wp-content/uploads/2018/04/vendim-nr-82-dt-17-6-2017-1.pdf], Accessed 11 April 2024.

74 Komiteti Shqiptar i Helsinkit, *Raport Përmbledhës i Gjetjeve dhe Rekomandimeve Kryesore: Monitorimi i Procesit të Vettingut të Gjyqtarëve dhe Prokurorëve,* [2018] [https://ahc.org.al/wp-content/uploads/2018/06/Draft-Raport-Monitorimi-i-procesit-te-vettingut.pdf], Accessed 11 April 2024, p. 10.

75 Commission, *Albania 2020 Progress Report*, SWD(2020) 354 final, p. 19.

76 Article 179/b (8) of the Constitution of Albania reads as follows: "The mandate of the Commission and the Public Commissioner expires after five years of operation. The Appeal Chamber shall cease to exist after nine years of operation. After the dissolution of the Commission pending cases shall be conducted by the High Judicial Council in accordance with the law. Pending cases of the prosecutors shall be conducted by the High Prosecutorial Council in accordance with the law. After the dissolution of the Public Commissioner, their competencies shall be exercised by the Chief Special Prosecutor of the Special Prosecution Office. The judges at the Appeal Chamber shall serve until the end of their 9 year mandate. Any appeals shall be adjudicated by the Constitutional Court."

77 Venice Commission, *Compilation of Venice Commission Opinions and Reports Concerning Vetting of Judges and Prosecutors,* 2022, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2022)051-e], Accessed 12 April 2024.

(2022), half of the magistrates were not evaluated. To vet other magistrates, Law 16/2022 was adopted, which extended the mandate until 31 December 2024.[78]

Another controversy was the selection of the Commission and Appeal Chamber members. To be a member of these Commissions, Article C (5) of the Annex of the Albanian Constitution stipulated as a first criterion that its members should come from judiciary and prosecutor system, law professor, advocate, notary, senior employees in public administration, or other legal profession related to the justice sector.[79] However, Qualification Commission (first-level institution) was filled by lawyers who met the formal criteria. Their professional experience was either in public administration or private sector.[80]

During the Assembly hearings and election process, the candidates were put under political pressure, mainly dealing with formal legal criteria rather than professional training.[81] From the beginning, it was intended to select persons with high professional qualifications and integrity. However, a member of the Independent Qualification Commission was accused of a false statement in fulfilment of the criteria. Against him, a criminal proceeding was initiated which ended with dismissal and a sentence.[82] Based on this decision, several dismissed magistrates appealed their case.[83]

Furthermore, the principle of impartiality has been undermined in several cases. The Independent Qualification Commission has applied different standards on

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78 Ligji 16/2022 Për një ndryshim në ligjin nr. 8417, datë 21.10.1998, "Kushtetuta e Republikës së Shqipërisë", të ndryshuar [2022] FZ 37.

79 Article C (5) of the Annex of the Constitution of Albania reads as follows: "All members of the Commission and the judges of the Appeal Chamber shall have a university degree in law, and no less than fifteen years' experience as a judge, prosecutor, law professor, advocate, notary, senior employees in public administration, or other legal profession related to the justice sector. Candidates for member of the Commission and judges at the Appeal Chamber may not have been judges, prosecutors or legal advisors or legal assistants in the two years prior to their nomination. They shall not have held a political post in the public administration or a leadership position in a political party for the past 10 years before becoming af nominee."

80 Independent Qualification Commission, *About Commissioners,* 2024, [https://kpk.al/komisioneret/], Accessed 1 June 2024.

81 Komiteti Shqiptar i Helsinkit, *Raport Përmbledhës i Gjetjeve dhe Rekomandimeve Kryesore: Monitorimi i Procesit të Vettingut të Gjyqtarëve dhe Prokurorëve,* 2018, [https://ahc.org.al/wp-content/uploads/2018/06/Draft-Raport-Monitorimi-i-procesit-te-vettingut.pdf], p. 8

82 Decision of 9 December 2021, Appeal Chamber, [https://kpa.al/wp-content/uploads/2021/12/Vendim-JD-5_2021_Luan_Daci_anonimizuar-1.pdf], Accessed 11 April 2024.

83 *Judgment*, *Besnik Cani v. Albania* (2022) Application No. 37474/20.

decision making process concerning on cases with similar issues.[84] For instance, E.T. was confirmed in office irrespective of the fact that he had deficiencies in completing the statements. While one magistrate was dismissed for inaccuracies similar to the ones in another case. In both these cases, the 2/3 of the Independent Qualification Commission members were the same.[85] Such examples have led to criticism of the Independent Qualification Commission's work by using double standards in the decision-making process.[86]

Another problem relates to the length of proceedings and lack of clarity in the reasoning of the decisions. In the first stage of the process, decision-making lasted over one year and, in some cases, over two years.[87] The main reasons for such delay are related to: i) investigations on the three criteria; ii) examination of requests for exclusion of the judging panel; iii) the duration of the subjects' tenure and the complexity of the evidence; iv) collection of evidence from other institutions; v) investigation of related persons; vi) postponement to guarantee the right of defence; and vii) the consequences of the Covid-19 pandemic.[88] Moreover, the Independent Qualification Commission decisions are relatively long, and they lack clarity. This makes it difficult to understand the reasons that led to concrete decision-making.[89]

Also, the implementation of the vetting process has been criticised as deviating from the intention of the legislator. Article 4 (2) of the Vetting Law stipulated the following criteria for re-evaluation: i) the assets of judges and prosecutors, ii) the detection or identification of their links to organised crime, and iii) the evaluation of their work and professional skills.[90] The decision on the final re-evaluation is based on: i) one or several criteria, ii) on an overall evaluation of the three criteria, or iii) the overall assessment of the proceedings.[91] Nevertheless, a large number

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84 Komiteti Shqiptar i Helsinkit, *Mbi Vendimarrjen e Institucioneve të rivlerësimit Kalimtar (Vetingu): Janar – Dhjetor 2019,* 2020, [https://ahc.org.al/wp-content/uploads/2020/10/Raport-Studimor_Vendimmarrja-e-Organeve-te-vettingut_2019.pdf], Accessed 11 April 2024; Karaj, V., *Ekspertët rezerva për cilësinë e vetingut, progresin dhe standardet*, 2018, [https://www.reporter.al/2018/11/28/ekspertet-rezerva-per-cilesine-e-vetingut-progresin-dhe-standardet/], Accessed 11 April 2024.

85 Komiteti Shqiptar i Helsinkit, *op. cit.,* note 84, pp. 9-10; Karaj, V., *op. cit.,* note 84.

86 Karaj, V., *op. cit.,* note 84.

87 Skendaj, E., *et al.*, *Proçesi i Vetingut në kuadër të detyrimeve të Integrimit në Bashkimin* Evropian, 2022, [https://ahc.org.al/wp-content/uploads/2022/05/Final_Policy-Paper-1-_-Vetting-Process.pdf], Accessed 11 April 2024, p. 24.

88 *Ibid*, p. 24.

89 *Ibid*, p. 23.

90 Law 84/2016 On the transitional re-evaluation of judges and prosecutors in the Republic of Albania [2016] OJ 180, Art 4.

91 Law 84/2016, Art 4 (2).

of cases are closed with dismissal based on the evaluation of one or two criteria without analysing all three criteria. The Independent Qualification Commission approach to assess the subject of vetting in only one criterion is criticised by Albanian lawyers.[92] Recently, the European Court of Human Rights, in the decision Thanza v Albania, concluded that

> "Considering the above-mentioned findings cumulatively, *the Court concludes that the vetting bodies' approach to the assessment of the second component of the vetting process*, resulting in far-reaching findings deemed to be sufficient for dismissal from office, *did not comply with the fairness requirement of Article 6 § 1 of the Convention in the present case*. There has therefore been a violation of that Article in relation to the second component of the vetting process" (Emphasise added by Authors).[93]

5. THE IMPACT OF THE VETTING PROCESS IN THE JUDICIARY SYSTEM

Considering the situation in the judiciary system, the vetting process was necessary to restore public trust in the judiciary. In this context, the vetting process has been the most effective tool to increase magistrates' integrity by dismissing corrupt magistrates, those linked to organised crime, or those with insufficient professional skills. Five years after the vetting process, citizens' trust in the judiciary system, particularly in the magistrates' figure, has increased.[94] As noted by the Institute for Democracy and Negotiations report, 50 percent of Albanians trust the Special Prosecution Office against Organized Crime and Corruption (SPAK). This percentage is higher compared to the trust levels reported towards the prosecution (35.2 percent) and courts (36.2 percent).[95]

While the vetting process has had a positive impact on increasing magistrates' integrity, such an extreme measure had negative consequences on i) the efficiency of the judiciary, ii) the quality of the delivery of justice, and iii) further implementation of judicial reform.

At the beginning of the Vetting process approval, no one expected a large number of magistrates to be dismissed or voluntarily resign. As noted in the previous sec-

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92 Karaj, V., *op. cit.,* note 84.

93 *Judgment, Thanza v Albania* (2023) Application no. 41047/19, para 123.

94 RCC, *H60_1 How much trust do you have in judicial institutions (e.g. courts)?*, [https://www.rcc.int/balkanbarometer/inc/get_indic.php?id=68&cat_id=2], Accessed 11 April 2024; IDM, *Opinion Poll 2022: Trust in Governance,* (10 edition, IDM 2023) pp. 25-26.

95 IDM, *Opinion Poll 2022: Trust in Governance,* 10 edition, IDM, 2023, p 27.

tion, 390 judges/prosecutors out of 693 judges/prosecutors who been vetted are out of the judiciary system. This number is higher compared with judges/prosecutors confirmed in office. Consequently, dismissal or resignation affected negatively the judiciary system.

In addition to the vetting process, the 2016 Judicial Reform had other objectives such as: i) increasing court efficiency, ii) the quality of justice delivery, and iii) increasing access to justice.[96] To address these issues, it was necessary to reshuffle the judiciary administration system, which was considered ineffective. New judiciary bodies were expected to be composed of magistrates with high integrity who had passed the vetting process. Thus, judicial reform required the establishment of new judicial governing bodies parallel to the vetting process.

As new judicial bodies were to be composed of members who passed the vetting process, a priority list of candidates was compiled. The vetting process adopted a top-down approach, starting first with the Constitutional Court and High Court judges. The results of the vetting process were surprising. Only one judge from the Constitutional Court and one judge from the High Court passed the vetting successfully. Other judges either were dismissed as not complying with vetting criteria or opted to leave duty due to retirement time and the end of their legal mandate.[97]

Such dismissal or resignation of judges seriously affected the operation of the judicial system because the other institutions responsible for the governance of the judiciary system and the appointment of new judges were not established yet.[98] For these reasons, the Constitutional Court and the High Court were not functional for about 2 years.[99] The last vacancy in the Constitutional Court was filled in December 2022.

As the vetting process began with delay and did not have the expected results, it directly impacted the establishment of judicial bodies. The High Judicial Council and the High Prosecutorial Justice were constituted at the end of 2018 (about 20 months late) as two new institutions dealing with the governance of judges and prosecutors.[100] Also, during 2016 – 2017, the Justice Appointment Council, which is an independent institution responsible for assessing the judges in the Constitutional Court and for the candidates of the High Inspector of Justice,

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96 Group of High-Level Experts, *Strategy on Justice System Reform*, *op. cit.,* note 47, pp. 10-20.

97 Commission, *Albania 2018 Progress Report*, SWD(2018) 151 final, pp. 18-19.

98 The High Judicial Council held its first meeting on 20 December 2018. Whereas the KLP held the first meeting on 19 December 2018.

99 Vacancies were filled in 2022.

100 For an overview on these two institutions see Law 115/2016. "On Governance Institutions of the Justice system" [2016] OJ 231as amended by Law 47/2019 [2019] OJ 113.

was not functional as the majority of the members were dismissed by the vetting process.[101] Such delay affected the establishment of another institution, the High Inspector of Justice. In January 2020, the Chairman of High Inspector of Justice was elected and only after some months was it partially filled with inspectors and supporting staff.[102] Currently, the High Inspector of Justice body is not fully functional due to shortages in the staff of inspectors coming from the judiciary.[103]

The vacancies created by the vetting process undermined the principle of access to justice as the judges' workloads and backlogs increased considerably. According to the 2022 Annual Report, 70 percent of Courts (25 out of 38) have operated with a reduced capacity of judges. Whereas at the national level, 56 percent of judges were effectively in the office.[104] Based on the WR indicator, the workload for a judge was as follow: i) an average of 2,880 cases for a judge in High Court; [105] ii) an average of 3 952 cases for a judge in Court of Appeal (administrative jurisdiction);[106] iii) an average of 981 cases for a judge in Court of Appeal (general jurisdiction) whereas for Court of Appeal in Tirana the average is 2 142 for a judge; [107] and iv) an average of 776 for a judge in the Court of First Instance.[108] This high workload undermines the quality.

The judicial vacancies due to the vetting process have increased the accumulated backlog. Before the 2016 Judicial reform, in 2014, the backlog was 12 000 cases in administrative courts and at the High Court and 30 600 cases in first-instance and appeal courts.[109] In 2019, the High Court had 28 657 cases, which increased to 36 060 in 2021. As of December 2023, the number of backlog cases in the High Court is 23 811. In the Courts of Appeal (general jurisdiction), the backlog was 28 140 cases until December 2022 (24% more compared to 2021). [110] Whereas

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101 Artan Hoxha *et al.*, *Monitorimi i Zbatimit të Reformës në Drejtësi*, OSFA 2019, p. 11.

102 Parliament of Albania Decision No 2/2020 [2020], [https://ild.al/en/high-inspector-of-justice/], Accessed 11 April 2024.

103 ILD, *Stafi Yn*, 2024, [https://ild.al/sq/zyra-e-inspektorit-te-larte-te-drejtesise/stafi-yne/], Accessed 11 April 2024. There are still 6 vacancies.

104 Këshilli i Lartë Gjyqësor, *Raport mbi Gjendjen e Sistemit Gjyqësor dhe Veprimtarinë e Këshillit të Lartë Gjyqësor për Vitin 2022*, 2023, [https://klgj.al/wp-content/uploads/2023/07/RAPORT-VJETOR-2022-shkarko.pdf], Accessed 11 April 2024, p. 9.

105 *Ibid*, p. 58.

106 *Ibid*, p. 79.

107 *Ibid*, p. 73.

108 *Ibid*, p. 85.

109 Commission, *Albania 2015 Progress Report*, SWD(2015) 213 final, p. 15.

110 Këshilli i Lartë Gjyqësor, *op. cit.*, note 105, p. 76.

in the Courts of Appeal (administrative jurisdiction), the backlog was 21 166 cases until December 2022 (15% more compared to 2021).[111] In the court of first instance, the backlog is 40,866 cases for general jurisdiction[112] and 7354 cases in administrative jurisdiction.[113]

Such accumulated backlog has a significant impact on the clearance rate and capacity of judges to process cases in due time as the average number of cases per judge remains high. According to the 2023 High Judicial Council Annual Report, the average number of cases per judge has been increased from 536 in 2021 to 561 in 2022.[114]

Another problem relates to filling vacancies. To increase the quality and integrity, the judiciary reform provided the possibility to fill the vacancies by increasing the quotas at the School of Magistrate. Before the judiciary reform, the maximum number of quotas for judges and prosecutors was less than 25 for both positions.[115] The number increased to 46 in 2018 and 96 in 2023. In the 2023-2024 academic year, only 66 magistrates were registered out of 96 places in total.[116] While the School of Magistrate increased the admission quotas, still there are a lot of vacancies in Court of First Instance and Court of Appeal. The main problem remains filling Court of Appeal vacancies which requires professional experience. It remains to be seen to what extent the increase of admission quotas will affect the.

6. CONCLUSION

To conclude, undoubtedly, the EU enlargement policy is considered the most effective policy in promoting democracy, the rule of law, and its values. Learning to the cases of Romania, Bulgaria and Croatia, the EU approach on promoting the rule of law reforms in Western Balkan countries became a priority. In contrast to previous accession, in the case of the Western Balkan countries, the Chapters 23 and 24 were considered opened in the beginning.

As a result of the Europeanization effect, in 2016, Albanian parliament adopted a profound judicial reform. The principal objective was to restore public trust in judiciary system by fighting high level of corruption among the magistrates and

111 *Ibid*, p. 81.

112 *Ibid*, p. 90.

113 *Ibid*, p. 98.

114 *Ibid*, p. 9.

115 School of Magistrates, *Graduates through years*, [https://www.magjistratura.edu.al/sq/te-diplomuar-nder-vite], Accessed 11 April 2024.

116 Commission, *Albania 2023 Progress Report*, *op, cit.,* note 63, p. 22. The vacancies were not filled due to lack of candidates to obtain minimum points.

increasing the independence, transparency and efficiency. To achieve these objectives, the first measure establishment of two institutions, the Independent Qualification Commission and the Appeal Chamber, to vet all judges, prosecutors, and legal advisers. In addition, the 2016 judicial reform consisted in other measures such as: i) consolidation of the status of the magistrates, professional training, career advancement, accountability, and discipline; ii) establishment of separate structures to investigate and deal specifically with corruption and organized crime; and iii) establishment of new judicial governance bodies.

By analysing only the vetting process, the paper showed a dilemma between EU legal standards enshrined in the reform and implementing standards in practice. While the EU transformative power was very effective to induce judicial reform in Albania, its implementation was hampered by political polarisation which affected the institutional set-up, effectiveness, independence, and the fight against corruption.

In the case of vetting process, institutions became functional with around 2 years of delay. The Independent Qualification Commission member lacked a high professional experience to vet the magistrates. For same facts in two different cases, different decisions were taken. Moreover, the vetting process paralysed the judiciary system. Around 56 percent of the magistrates are dismissed or resigned. Due to vacancies created, the backlog of the cases has been increased tremendously. Consequently, the average number of cases per judge to be adjudicated is very high. Also, the average length of a case to be adjudicated at the appeal court was 893 days in 2022 and 5 820 days for a criminal case at the Tirana Appeal Court.[117] This length undermines Article 6 of the European Convention on Human Rights which stipulates that "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law." In conclusion, despite great expectation from the judicial reform, the vetting process in Albania is far away as "success model" due to the way how it was implemented.

REFERENCES

BOOKS AND ARTICLES

1. Ågh, A., *Europeanization of Policy Making in East Central Europe: The Hungarian Approach to EU Accession,* Journal of European Public Policy, Vol. 6, No. 5, 1999, pp. 839–854
2. Anastasakis, O., *The EU's Political Conditionality in the Western Balkans: Towards a more Pragmatic Approach*, Southeast European and Black Sea Studies, 2008
3. Anastasakis, O., *The Europeanization of the Balkans* The Brown Journal of World, Vol. XII, Issue 1, 2005, pp. 77-88

[117] Commission, *Albania 2023 Progress Report*, *op, cit.,* note 63, p. 23.

4. Anastasakis, O.; Bechev, D. *EU Conditionality in South East Europe: Bringing Commitment to the Process*, St. Antony's College University of Oxford, 2003
5. Appicciafuoco, L., *The Promotion of the Rule of Law in the Western Balkans: The European Union's Role,* German Law Journal, Vol. 11 No. 08, pp. 744-758
6. Artan Hoxha *et al.*, *Monitorimi i Zbatimit të Reformës në Drejtësi*, OSFA 2019
7. Bobek, M.; Kosar, D., *Global Solutions, Local Damages: A Critical Study in Judicial Councils in Central and Eastern Europe*, German Law Journal, Vol. 15, Issue 7, 2014, pp. 1275-1276
8. Bradford, A., *The Brussels Effect: How the European Union Rules the World*, Oxford University Press
9. Börzel, A T. *When Europeanization Hits Limited Statehood: The Western Balkans as a Test Case for the Transformative Power of Europe,* KGF Working Paper Series, 2011 [http://userpage.fu-berlin.de/kfgeu/kfgwp/wpseries/WorkingPaperKFG_30.pdf], Accessed 1 April 2024
10. Carothers, T., (ed.), *Promoting the Rule of Law Abroad: In search of Knowledge*. Carnegie Endowment for International Peace, 2006
11. Cowles, MG, *et al.*, *Transforming Europe: Europeanization and Domestic Change*, Cornell University Press, Cornell, 2001
12. Cremona, M., *The Union as a Global Actor: Roles, Models and Identity*, CMLR, Vol 41, pp. 553-573
13. Fagan, A.; Indraneel, S., *Judicial Independence in the Western Balkans: Is the EU's 'New Approach' Changing Judicial Practices?*, MAXCAP Working Paper No. 11
14. Grabbe, H., *The EU's Transformative Power: Europeanization through Conditionality in Central and Eastern Europe*, Palgrave, 2006
15. GRECO (Group of States against Corruption), *Corruption prevention in respect of members of Parliament, judges and prosecutors: Evaluation Report Albania*, 4th Evaluation Round, Greco Eval IV Rep, 2013
16. Hoxhaj, A., *The Rule of Law Initiative Toward the Western Balkans*, Hague Journal on the Rule of Law, Vol. 13, 2021
17. IDM, *Opinion Poll 2022: Trust in Governance,* 10 edition, IDM, 2023
18. Kmezić, M., (ed.), *Europeanization by Rule of Law Implementation in the Western Balkans*, Institute for Democracy SOCIETAS CIVILIS, Skopje, 2014
19. Kmezić, M., *EU Rule of Law Promotion: Judiciary Reform in the Western Balkans,* Routledge, 2017
20. Kmezić, M., *Europeanization by Rule of Law Implementation in South East Europe'* in: Kmezić, M., (ed.), Europeanization by Rule of Law Implementation in the Western Balkans, Institute for Democracy SOCIETAS CIVILIS Skopje, 2014
21. Kmezić, M., *Literature Review on Europeanization and Rule of Law*" in: Kmezić, M., (ed.), Europeanization by Rule of Law Implementation in the Western Balkans, Institute for Democracy SOCIETAS CIVILIS Skopje, 2014
22. Knezović, S. (2009), EU's Conditionality Mechanism in South-East Europe – Lessons Learned and Challenges for the Future. European Perspectives – Journal on European Perspectives of the Western Balkans 93

23. Kochenov, D., *Behind the Copenhagen Facade. The Meaning and Structure of the Copenhagen Political Criterion of Democracy and the Rule of Law*, European Integration online Papers, Vol. 8, Issue 10, 2004
24. Kubicek JP., *International Norms, the European Union, and Democratization: Tentative Theory and Evidence*, in: Paul J Kubicek, JP., (ed.), *The European Union and Democratization*, Routledge, 2003
25. Ladrech, R., *Europeanization of Domestic Politics and Institutions: The Case of France*, Journal of Common Market Studies, Vol. 32, No. 1, 1994
26. Lippert, B., *et al.*, *Europeanization of the CEE Executives: EU Membership Negotiations as a Shaping Power*, Journal of European Public Policy, Vol. 8, No. 6, 2001, pp. 980–1012
27. Merkuri, E., *Organet e sistemit të drejtësisë: Monitorimi i Zbatimit të Reformës në Drejtësi I*, OSFA, 2020
28. Mungiu-Pippidi, A., *The EU as a Transformation Agent. Lessons Learned from governance reforms in East Central Europe*, Hertie School of Governance, Working Papers 33:22, 2008
29. Papadimitriou, D.; Phinnemore, D., *Europeanization, Conditionality and Domestic Change: The Twinning Exercise and Administrative Reform in Romania*, JCMS: Journal of Common Market Studies, Vol. 42, Issue 3 pp. 619-639
30. Petrov, P.; Kalinichenko, P., *The Europeanization of Third Country Judiciaries through the Application of the EU Acquis: The Cases of Russia and Ukraine*, The International and Comparative Law Quarterly, Vol. 60, No. 2, 2011, pp. 325-353
31. Preshova, D., Damjanovski, I., Nechev, Z., *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*, CLEER Papers, 2017/1
32. Radaelli, CM., *The Europeanization of Public Policy*, in: Featherstone, K.; Radaelli, CM. (eds.) The Politics of Europeanization, OUP, 2003
33. Risse, T.; Cowles MG.; Caporaso, J., *Europeanization and Domestic Change: Introduction,* in: Cowles, *et al.*, (eds.), Transforming Europe: Europeanization and Domestic Change, Cornell, Cornell University Press, 2001
34. Schimmelfenning, F., *International Socializaton in the New Europe: Acton in a Rational Institutional Environment*, European Journal of International Relations, Vol., 6, Issue 1, 2000, pp. 109-139
35. Schimmelfenning, F.; Sedelmeier, U., (eds.), *The Europeanization of Central and Eastern Europe*, Cornell, Cornell University Press, 2005
36. SELDI, *Corruption in the Western Balkans 2019: Trends and Policy Options*, SELDI Policy Brief No. 9, December 2019
37. SELDI, *Western Balkans 2020: State-Capture Risks and Policy Reforms*, SELDI, 2020
38. Skara, S., *The Bumpy Road of EULEX as an Exporter of Rule of Law in Kosovo,* Academicus – International Scientific Journal [2017] No. 16
39. Sotiropoulos, A D., *Southern European Public Bureaucracies in Comparative Perspective*, West European Politics, Vol. 27, Issue 3, 2004, pp. 405-422

ECHR

1. *Judgment, Besnik Cani v. Albania* (2022) Application no. 37474/20
2. *Judgment, Thanza v Albania* (2023) Application no. 41047/19

EU LEGISLATION, SOFT LAWS AND COURT DECISIONS

1. Treaty establishing the European Coal and Steel Community (ECSC Treaty) [1951] OJ Special edition
2. Treaty establishing the European Economic Community (EEC Treaty) [1957] OJ Special edition
3. Consolidated Version of the Treaty on European Union [1997] OJ C 340/145
4. Treaty on European Union (TEU Consolidated version 2016) [2016] OJ C 202/1
5. Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget [202] OJ L 433 1/1
6. Regulation 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget [2020] OJ L 433 1/1
7. Judgement of 23 April 1986, *Les Verts v Parliament*, C-294/83, ECLI:EU:C:1986:166
8. Commission, *Enlargement Strategy and Main Challenges 2011-2012*, COM(2011) 666 final
9. Commission, *A New Framework to Strengthen Rule for Law*, COM(2014) 158 final
10. Commission, *Albania 2014 Progress Report*, SWD(2014) 304 final.
11. Commission, *Albania 2015 Progress Report*, SWD(2015) 213 final
12. Commission, *A Credible Enlargement Perspective for and enhanced EU engagement with the Western Balkans*, (Communication) COM(2018) 65 final
13. Commission, *Albania 2018 Progress Report*, SWD(2018) 151 final
14. Commission, *Albania 2020 Progress Report*, SWD(2020) 354 final
15. Commission, *Albania 2023 Progress Report*, SWD(2022) 332 final

LIST OF NATIONAL REGULATIONS, ACTS AND COURT DECISIONS

1. Law 8417/1998 *The Constitution of the Republic of Albania* [1998] OJ 28
2. Law 84/2016 On the transitional re-evaluation of judges and prosecutors in the Republic of Albania [2016] OJ 180
3. Law 115/2016 "On Governance Institutions of the Justice system" [2016] OJ 231as amended by Law 47/2019 [2019] OJ 113
4. Ligji 16/2022 Për një ndryshim në ligjin nr. 8417, datë 21.10.1998, "Kushtetuta e Republikës së Shqipërisë", të ndryshuar [2022] FZ 37
5. Judgment of 18 January 2017, Constitution Court Decision No 2/2017

WEBSITE REFERENCES

1. Commission, *Chapters of the Acquis*, [https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/conditions-membership/chapters-acquis_en], Accessed 31 March 2024
2. Commission, *Commission outlines next steps for EU enlargement*, (Press Release) [https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_12_1087/IP_12_1087_EN.pdf], Accessed 1 April 2024
3. Decision of 9 December 2021, Appeal Chamber, [https://kpa.al/wp-content/uploads/2021/12/Vendim-JD-5_2021_Luan_Daci_anonimizuar-1.pdf], Accessed 11 April 2024
4. European Council, *Conclusion of the Presidency*, SN 180 / 1 / 93 Rev 1, 21 – 22 June 1993, [http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/72921.pdf], pt 7A (iii), Accessed 1 April 2024
5. European Council, *Santa Maria da Feira European Council 19 and 20 June 2000: Conclusions of the Presidency*, [https://www.europarl.europa.eu/summits/fei2_en.htm#an1], Annex 1, Appendix 3B, Accessed 1 April 2024
6. European Union External Action, *EU Missions and Operations*, [https://www.eeas.europa.eu/eeas/eu-missions-and-operations_en], Accessed 1 April 2024
7. GHLE (Group of High-Level Experts), *Analysis of the Justice System in Albania: Document open for evaluation, comments and proposals,* 2015, https://euralius.eu/images/Justice-Reform/Analysis-of-the-Justice-System-in-Albania.pdf], Accessed 15 March 2024
8. Group of High-Level Experts, *Strategy on Justice System Reform*, 2015, [https://euralius.eu/images/Justice-Reform/Strategy-on-Justice-System-Reform_24-07-2015.pdf], Accessed 15 March 2024
9. ILD, *Stafi Yn*, 2024, [https://ild.al/sq/zyra-e-inspektorit-te-larte-te-drejtesise/stafi-yne/], Accessed 11 April 2024
10. Karaj, V., *Ekspertët rezerva për cilësinë e vetingut, progresin dhe standardet*, 2018, [https://www.reporter.al/2018/11/28/ekspertet-rezerva-per-cilesine-e-vetingut-progresin-dhe-standardet/], Accessed 11 April 2024
11. Këshilli i Lartë Gjyqësor, *Raport mbi Gjendjen e Sistemit Gjyqësor dhe Veprimtarinë e Këshillit të Lartë Gjyqësor për Vitin 2022*, 2023, [https://klgj.al/wp-content/uploads/2023/07/RAPORT-VJETOR-2022-shkarko.pdf], Accessed 11 April 2024
12. Komiteti Shqiptar i Helsinkit, *Mbi Vendimarrjen e Institucioneve të rivlerësimit Kalimtar (Vetingu): Janar – Dhjetor 2019,* 2020, [https://ahc.org.al/wp-content/uploads/2020/10/Raport-Studimor_Vendimmarrja-e-Organeve-te-vettingut_2019.pdf], Accessed 11 April 2024
13. Komiteti Shqiptar i Helsinkit, *Raport Përmbledhës i Gjetjeve dhe Rekomandimeve Kryesore: Monitorimi i Procesit të Vettingut të Gjyqtarëve dhe Prokurorëve,* [2018] [https://ahc.org.al/wp-content/uploads/2018/06/Draft-Raport-Monitorimi-i-procesit-te-vettingut.pdf], Accessed 11 April 2024

14. Parliament of Albania Decision No 2/2020 [2020] [https://ild.al/en/high-inspector-of-justice/], Accessed 11 April 2024
15. RCC, *H60_1 How much trust do you have in judicial institutions (e.g. courts)?*, [https://www.rcc.int/balkanbarometer/inc/get_indic.php?id=68&cat_id=2], Accessed 11 April 2024
16. Reporter.al, *Vetingu*, [2024], [https://reporter.al/vetingu/], Accessed 11 April 2024
17. School of Magistrates, *Graduates through years*, [https://www.magjistratura.edu.al/sq/te-diplomuar-nder-vite], Accessed 11 April 2024
18. Skendaj, E., *et al.*, *Proçesi i Vetingut në kuadër të detyrimeve të Integrimit në Bashkimin* Evropian, 2022, [https://ahc.org.al/wp-content/uploads/2022/05/Final_Policy-Paper-1-_-Vetting-Process.pdf], Accessed 11 April 2024
19. Vendim Nr. 82/2017 Për Miratimin e Listës në Bllok të Kandidatëve të Zgjedhur në Institucionet e Rivlerësimit, sipas Ligjit Nr. 84/2016 "Për Rivlerësimin Kalimtar të Gjyqtarëve dhe Prokurorëve në Republikën e Shqipërisë" [https://kpk.al/wp-content/uploads/2018/04/vendim-nr-82-dt-17-6-2017-1.pdf], Accessed 11 April 2024
20. Venice Commission, *Albania: Draft Amicus Curiae Brief for the Constitutional Court*, 2016, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2016)040-e], Accessed 15 March 2024
21. Venice Commission, *Compilation of Venice Commission Opinions and Reports Concerning Vetting of Judges and Prosecutors,* 2022, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2022)051-e], Accessed 12 April 2024
22. Venice Commission, *Interim Opinion on the Draft Constitutional Amendments on the Judiciary of Albania*, 2015 [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)045-e], Accessed 15 March 2024
23. Venice Commission, *Joint opinion by the Venice Commission and the Directorate of Human Rights of the Directorate General of Human Rights and the Rule of Law on the Law on the Judiciary and the Status of Judges and amendments to the Law on the High Council of Justice of Ukraine*, 2015, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)007-e], Accessed 15 March 2024