

## **Judicial Reform in Albania**

In 2016, Albania adopted a set of legal reforms. The goal of these reforms was to create a sufficiently honest and trust-worthy judiciary, that would meet European Union (EU) standards. A central focus of these reforms was a new vetting process, which would enable the Albanian government to review the qualifications and honesty of sitting judges. This paper offers a brief overview of Albania's legal reforms, with a focus on the effect of the vetting process.

### ***I. History of Albania's Legal Reform***

Following a series of student protests in December 1990, Albania appointed a new, joint government comprised of several political forces, named the Stability Government.<sup>1</sup> Faced with the Constitution of 1976, which still heavily reflected the previous Communist government, the Stability Government opted to temporarily adopt a package of amendments to the Constitution, with the future aim of replacing it in its entirety.<sup>2</sup> The Constitution of 1976 made little mention of the courts. It tasked the courts with the administration of justice and granted the People's Assembly the power to appoint the Supreme Court.<sup>3</sup> Between 1991 and 1993 the constitution was extensively amended. It outlined the levels of courts within the judiciary, forbade the creation of extra courts, and provided for the creation of a constitutional court.<sup>4</sup> The amended constitution also codified the process of appointment and removal of judges of various levels.

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<sup>1</sup> Ilda Jeha and Ylli Cabiri, *Evolution of the Albanian Constitution*, 6 ACAD. J. OF INTERDISC. STUD. 31, 32 (2017).

<sup>2</sup> *Id.*

<sup>3</sup> THE CONSTITUTION OF THE PEOPLE'S SOCIALIST REPUBLIC OF ALBANIA Dec. 28, 1976, art. 101; art. 67.

<sup>4</sup> LAW ON THE MAJOR CONSTITUTIONAL PROVISIONS THE PEOPLE'S ASSEMBLY OF THE REPUBLIC OF ALBANIA [Amendment] May 21, 1991, chpt. IIIa art 5; chpt. IIIa art 17.

In 1993 Albania attempted to adopt a new constitution, but this attempt was rejected in a referendum.<sup>5</sup> It was not until 1998 that Albania successfully adopted a new constitution via a referendum.<sup>6</sup> This constitution defined Albania as a parliamentary republic and was amended and revised several times through 2020.<sup>7</sup>

Under the current constitution, the Constitutional Court consists of nine members, three of whom are chosen by the president, three of whom are elected by the People’s Assembly (“the Assembly”), and three of whom are elected by the High Court.<sup>8</sup> Candidates to the Constitutional Court must be vetted by the Judicial Appointments Council.<sup>9</sup> Judges to the High Court are appointed by the president, to nine-year terms and are also vetted before their appointment.<sup>10</sup> The parliament selects six judges and five jurists who are not judges to the Judicial High Council.<sup>11</sup> This Council appoints and manages other judges not provided for in the constitution.<sup>12</sup>

### **Impetus for the Legal Reform**

In 2014, Albania was granted candidate status in the European Union.<sup>13</sup> However, “politicisation and limited accountability, the high level of corruption, insufficient resources and backlog [in the judiciary]” jeopardized Albania’s chances of becoming an official

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<sup>5</sup> Jaha & Cabiri, *supra* note 1, at 33. Evolution 33.

<sup>6</sup> *Id.*

<sup>7</sup> THE CONSTITUTION OF THE REPUBLIC OF ALBANIA [rev. 2020] Nov. 28, 1998, art. 1 ([https://www.legislationline.org/download/id/9669/file/ALB\\_constituion.pdf](https://www.legislationline.org/download/id/9669/file/ALB_constituion.pdf)).

<sup>8</sup> *Id.* at art. 125.

<sup>9</sup> *Id.* at art. 149/d(1)

<sup>10</sup> *Id.* at art. 136 (1-2), art. 135(4)

<sup>11</sup> *Id.* at art. 147(3)

<sup>12</sup> *Id.* at art. 147/a

<sup>13</sup> Georgi Gotev, EU Gives Albania Ultimatum Over Judicial Reform, EURACTIV (July 19, 2016), <https://www.euractiv.com/section/enlargement/news/eu-gives-albania-ultimatum-over-judicial-reform/>.

member of the EU.<sup>14</sup> In order to pursue accession talks, the EU required significant reforms to the Albanian Judiciary, with a particular focus on combatting corruption and organized crime.<sup>15</sup> In response to this requirement by the EU, in 2014 Albania convened a special to prepare proposal related to judicial reform.<sup>16</sup> In 2015, the special committed proposed a package of judicial system reforms, which were adopted in 2016..<sup>17</sup>

The reform package envisioned a comprehensive reform to the Albanian Judiciary including any constitutional or legislative amendment needed to implement the new vision for the judiciary.<sup>18</sup> The reforms involved two main components: creation of new judicial institutions, and a reassessment of the entire current judiciary.<sup>19</sup> The reassessment was to take the form of a “vetting” process, wherein sitting judges would be evaluated by an independent panel to determine their suitability for their current position. While the reform package came with several other provisions, the vetting process has proven to be the most salient as it was the first step taken in reforming Albania’s judicial system.

Although The Law on Transitional Re-evaluation of Judges and Prosecutors (“Vetting Law”) was first passed in 2016, with a five-year mandate starting in 2017, in 2022 the Albanian Parliament voted to extend the mandate of the Vetting Law by two years.<sup>20</sup>

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<sup>14</sup> European Parliament resolution of 30 April 2015 on the 2014 Progress Report on Albania (2014/2951(RSP)), [https://www.europarl.europa.eu/doceo/document/TA-8-2015-0181\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2015-0181_EN.html).

<sup>15</sup> *Id.*

<sup>16</sup> Andi Dobrushki, How Albania Is Reforming Its Troubled Justice, OPEN SOCIETY FOUNDATIONS (Feb. 11, 2016), <https://www.opensocietyfoundations.org/voices/how-albania-reforming-its-troubled-justice-system>.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Denitsa Dimitrova, *Judicial Reform and Process of Vetting In Albania — Between and Effective Project and an Unsuccessful Experiment*, 11 KSI TRANSACTIONS ON KNOWLEDGE SOC'Y 18, 18 (2018).

<sup>20</sup> Alice Taylor, Albanian Parliament Votes to Extend judicial Reform, EURACTIV (Feb. 10, 2022), [https://www.euractiv.com/section/politics/short\\_news/albanian-parliament-votes-to-extend-judicial-reform/](https://www.euractiv.com/section/politics/short_news/albanian-parliament-votes-to-extend-judicial-reform/).

## The Vetting Process

The Vetting Law was part of the package of reforms adopted by the Albanian Parliament. The Vetting Law provides details about the structure and logistics of the vetting process, and a series of 2016 constitutional amendments supplement the process by providing details regarding the selection of related commissions and bodies.

The vetting process involves an investigation into the assets, background, and professional proficiency of the judges.<sup>21</sup> This investigation would be conducted at first instance by the Independent Qualifications Commission (“IQC”) and any appeal of the IQC’s decision would be reviewed by the Independent Appeals Commission (“IAC”).<sup>22</sup> Both levels of investigation and hearing are monitored by the International Monitoring Body (“IMB”), composed of judges and prosecutors from various EU countries.<sup>23</sup> The international observers do not play an active role, but are there to observe and support the investigator bodies. Under the 2016 amendments to the constitution, the IQC is composed of four panels, each with three members.<sup>24</sup> Each member of the IQC and the IAC is selected by the president, with the appointment process monitored by the IMB, who will assess candidates and submit their recommendations to the president.<sup>25</sup> While the IMB’s role is primarily to observe and support the vetting process led by the IQC, it can also file findings and opinions on issues,

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<sup>21</sup> Law on the Transitional Re-Evaluation of Judges and Prosecutors, 2016 (LAW no.84/2016), chpt. 1 art. 4.

<sup>22</sup> *Id.* at chpt. 2 art.5.

<sup>23</sup> Bardha Maxhuni, Umberto Cucchi, *An Analysis of the Vetting Process in Albania*, GROUP FOR LEGAL POLITICAL STUDIES (No. 01/2017) 3 (2017), <https://www.legalpoliticalstudies.org/wp-content/uploads/2017/06/Policy-Analysis-An-Analysis-of-the-Vetting-Process-in-Albania.pdf>.

<sup>24</sup> THE CONSTITUTION OF THE REPUBLIC OF ALBANIA [rev. 2020], *supra* note 7 at art. C.

<sup>25</sup> *Id.* at art. C(6)–(7)

contribute to the background investigations into judges, and provide the IQC and the IAC with evidence obtained by foreign entities.<sup>26</sup> The vetting process is also open to individuals, who are empowered to submit evidence of corruption related to a particular judge.<sup>27</sup> Any such individuals are protected by Albanian whistleblower protection laws.<sup>28</sup>

### **Public Perceptions of the Judiciary and Popular Support for Reforms**

Prior to the adoption of the reforms, there was low public trust in the courts. According to a 2016 survey, citizens' public trust in the courts decreased from 29% in 2014, to 28% in 2015. Trust in the High Courts, in particular, decreased from 37% to 32% over the same time period.<sup>29</sup> This information demonstrates a public belief that the judiciary required some sort of change.

Contention regarding the adoption of the reform measures did emerge within the Albanian Parliament. Although the parliament ultimately unanimously approved the adoption of the judicial reforms, including the adoption of the Vetting law, when the reforms were first proposed they faced resistance from the ruling party and from opposition parties, with some taking issue with the presence of the IMB in the vetting process and its implications for Albania's sovereignty.<sup>30</sup> The opposition parties also feared that the vetting process could be hijacked by political interests and be used as a tool to remove less favored judges.<sup>31</sup> The

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<sup>26</sup> Ina Xhepa, *The Vetting of Judges and Prosecutors: an Albanian Experience*, HEINRICH-BÖLL-STIFTUNG (Aug. 1, 2018), <https://ba.boell.org/en/2018/08/01/vetting-judges-and-prosecutors-albanian-experience>. e

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Corruption in Albania Perception and Experience*, Institute for Development Research and Alternatives 18 (2016), [https://www.idrainstitute.org/files/Corruption%20In%20Albania%202016\\_EN.pdf](https://www.idrainstitute.org/files/Corruption%20In%20Albania%202016_EN.pdf).

<sup>30</sup> Dimitrova, *supra* note 19, at 18; Gotev, *supra* note 13.

<sup>31</sup> Fatjona Mejdini, *Albania MPs Back Vetting Judges and Prosecutors*, BALKAN INSIGHT (Aug. 31, 2016), <https://balkaninsight.com/2016/08/31/albania-passes-the-draft-that-vets-judges-and-prosecutors-08-31-2016/>.

proposal to extend the mandate of the Vetting Law after 2022 was also passed by the Albanian Parliament, but was also a point of debate as some members of parliament viewed the implementation of the vetting process as a failure.<sup>32</sup> The vetting process has also been resisted by some of the judges who it was designed to vet. As of 2019, over 100 of the 800 sitting Albanian judges opted to resign, rather than be subjected to the vetting process.<sup>33</sup>

There has been much more unanimous international support for the vetting process, with both the United States and the European Union supporting the initial Vetting Law and the 2022 extension.<sup>34</sup> The EU's continued support for the Albanian vetting process is particularly striking because in 2021 the EU advised Kosovo against adopting an identical judicial vetting process, citing that "such reforms might lead to too many dismissals and dysfunctional courts and prosecution offices".<sup>35</sup>

## **Implementation of the Vetting Process**

The implementation of the vetting process has been controversial. Under the original 2016 Vetting Law, the Albanian Parliament granted a five-year mandate to vet all 800 of the country's judges. The IQC, the investigatory body of first instance, only has a total of twelve members. The evidentiary collection process for investigations proved to be fairly

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<sup>32</sup> Bledar Qalliu, Albanian Parliament to Vote on Extending Mandate of Judicial Vetting Bodies, EXIT NEWS (Oct. 02, 2022), <https://exit.al/en/2022/02/10/albanian-parliament-to-vote-on-extending-mandate-of-judicial-vetting-bodies/>.

<sup>33</sup> Filip Lukić, Vetting Process In Albania – the Marching Failure, EUROPEAN WESTERN BALKANS (Nov. 13, 2019), <https://europeanwesternbalkans.com/2019/11/13/vetting-process-in-albania-the-marching-failure/>.

<sup>34</sup> Joint press statement of the EU Delegation to Albania and the U.S. Embassy in Tirana, DELEGATION OF THE EUROPEAN UNION TO ALBANIA (Aug. 02, 2022) [https://eeas.europa.eu/delegations/albania/110678/joint-press-statement-eu-delegation-albania-and-us-embassy-tirana\\_en](https://eeas.europa.eu/delegations/albania/110678/joint-press-statement-eu-delegation-albania-and-us-embassy-tirana_en); Foreign Assistance Fact Sheet: Albania, UNITED STATES DEPARTMENT OF STATE (Jun. 2021), [https://www.state.gov/wp-content/uploads/2021/08/Albania\\_FY-2020-Country-Assistance-Fact-Sheet.pdf](https://www.state.gov/wp-content/uploads/2021/08/Albania_FY-2020-Country-Assistance-Fact-Sheet.pdf).

<sup>35</sup> Barbara Halla, Kosovo to Proceed with Judicial Vetting Despite EU Objection, EURACTIV (Jan. 6, 2022), [https://www.euractiv.com/section/politics/short\\_news/kosovo-to-proceed-with-judicial-vetting-despite-eu-objection/](https://www.euractiv.com/section/politics/short_news/kosovo-to-proceed-with-judicial-vetting-despite-eu-objection/).

protracted, as the IQC would solicit evidence from the High Inspectorate of the Declaration and Audit of Assets and Conflict of Interest (“HIDAACI”), and the Classified Information Security Directory (“CISD”), who would in turn collect evidence related to the property of the judge under investigation by requesting data from several state institutions.<sup>36</sup> The IMB would provide any relevant evidence from foreign bodies.<sup>37</sup> The IQC would also have to assess any allegations of corruption submitted by individuals.<sup>38</sup> All this information would be processed by the IQC and compared against the self-declaration forms submitted by the judges.<sup>39</sup> This complicated process took much longer than anticipated. By February 2022, near the end of the five-year mandate of the Vetting Law, fewer than 60% of judges had been vetted.<sup>40</sup> The European Commission for Democracy Through Law (“The Venice Commission”) estimates that by the end of the first Vetting Law mandate, there will still be 300 open cases before the IQC.<sup>41</sup> That the vetting process is proceeding at a pace of just two per week suggests that Albania might require an extension of the Vetting Laws mandate even beyond the current two-year extension.<sup>42</sup> In the midst of the delay, opposition parties have accused the sitting prime minister of using the vetting process as an anti-democratic “hunting” weapon that has weakened Albania’s judicial system.<sup>43</sup>

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<sup>36</sup> Dimitrova, *supra* note 19 at 19; Maxhuni and Cucchi, *supra* note 23 at 3.

<sup>37</sup> Xhepa, *supra* note 26.

<sup>38</sup> *Id.*

<sup>39</sup> Dimitrova, *supra* note 19 at 19

<sup>40</sup> Taylor, *supra* note 20.

<sup>41</sup> EUROPEAN COMM’N FOR DEMOCRACY THROUGH L. (VENICE COMM’N), On the Extension of the Term of Office of the Transitional Bodies In Charge of the Re-Evaluation of Judges And Prosecutors (Opinion no. 1068/2021), COUNCIL OF EUROPE (Dec. 14, 2021), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2021\)053-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)053-e).

<sup>42</sup> Taylor, *supra* note 20.

<sup>43</sup> Kristi Ceta, Berisha-Salinji Debate over Extension of Vetting Mandates, ALBANIAN DAILY NEWS (Feb. 10, 2022), <https://albaniandailynews.com/news/berisha-salinji-debate-over-extension-of-vetting-mandates>; Albanian Parliament Approves Extension of Justice Vetting Structures, Amid Falling Support for the Milestone Justice Reform, TIRANAECHO (Feb. 11, 2022), <http://www.tiranaecho.com/albania/albanian-parliament-approves-extension-of-justice-vetting-structures-amid-falling-g-support-for-the-milestone-justice-reform/>.

The vetting process has resulted in the removal of several judges. About 60% of the vetted judges were either removed, or voluntarily resigned.<sup>44</sup> Unfortunately, the pace of new appointments has not kept up with the high rate of removals, thereby creating a shortage of judges. Before a judge is appointed, their assets, backgrounds, and qualifications are investigated, similar to the vetting process.<sup>45</sup> In the case of the Constitutional Courts, this investigation is carried out by the Judicial Appointments Council (“JAC”).<sup>46</sup> The numerous vacancies created by the vetting process paralyzed both the Constitutional and High Courts. Through the vetting process, five of the nine Constitutional Court Justices were found unfit for office and removed.<sup>47</sup> This, in addition to the three justices who resigned, and the one justice whose mandate ended, Albania was faced with a virtually vacant Constitutional Court.<sup>48</sup> The High Court, as a result of the vetting process, also had only one sitting judge out of the nineteen available seats.<sup>49</sup> The appointment process that was to fill the vacancies created by the vetting process was itself disrupted because it relied on the participation of sitting judges. With only one sitting judge, the High Court could not elect its three constitutional judges as provided for in the constitution.<sup>50</sup> The JAC played a role in both the appointment of inferior judges and the preselection of candidates to be appointed to the Constitutional court by the president and the Assembly.<sup>51</sup> However, the JAC was unable to fulfil its mandate because many of the judges that comprised the JAC were also removed

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<sup>44</sup> EUROPEAN COMM’N FOR DEMOCRACY THROUGH L. (VENICE COMM’N), *supra* note 41, at 8.

<sup>45</sup> THE CONSTITUTION OF THE REPUBLIC OF ALBANIA [rev. 2020], *supra* note 7 at art. 136/a.

<sup>46</sup> *Id.* at 149/d.

<sup>47</sup> EUROPEAN COMM’N FOR DEMOCRACY THROUGH L. (VENICE COMM’N), On the Appointment of Judges to the Constitutional Court (Opinion No. 978/2020), COUNCIL OF EUROPE 8 (June 19, 2020), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)010-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)010-e).

<sup>48</sup> *Id.*

<sup>49</sup> EUROPEAN COMM’N FOR DEMOCRACY THROUGH L. (VENICE COMM’N), *supra* note 47, at 8.

<sup>50</sup> *Id.*

<sup>51</sup> THE CONSTITUTION OF THE REPUBLIC OF ALBANIA [rev. 2020], *supra* note 7 at art. 125.

through the vetting process.<sup>52</sup> It was not until March 2020, after the JAC relaxed its requirements, that the president could swear in three new High Court judges.<sup>53</sup>

The Vetting Process's impact on the number of available judges directly led to an increase in the backlog of cases.<sup>54</sup> In 2015, before the institution of the vetting process, the Albanian High Court had 11,357 backlogged cases.<sup>55</sup> By 2018, this number had nearly tripled to 28,863.<sup>56</sup> As of 2021, there were 36,961 pending cases before the High Court.<sup>57</sup> Journalists found that it would take over twelve years for the High Court to review its current backlog of cases at its current pace.<sup>58</sup> The situation has become so untenable that in 2020, USAID signed an agreement with Albania to provide technical support to help manage the case backlog.<sup>59</sup>

### **Public Perceptions of the Efficacy of the reforms**

The slowing of the judicial process in Albania is a significant obstacle to the proper administration of justice in Albania. Albanians' trust in the vetting process and judicial institutions has fallen as a result of the interruptions to the administration of justice created by the Vetting Process.<sup>60</sup> In 2018 and 2019, two citizens sued Albania in the

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<sup>52</sup> EUROPEAN COMM'N FOR DEMOCRACY THROUGH L. (VENICE COMM'N), *supra* note 47, at 8.

<sup>53</sup> *Id.*

<sup>54</sup> Judicial Institutions Point at Vetting as Culprit for Court Vacancies and Backlog, EXIT NEWS (Dec. 12, 2021), <https://exit.al/en/2021/12/30/judicial-institutions-point-at-vetting-as-culprit-for-court-vacancies/>.

<sup>55</sup> High Court: 3 Judges and 28,863 Open Cases, EXIT NEWS (Jan. 09, 2019), <https://exit.al/en/2019/01/09/high-court-3-judges-and-288863-open-cases/>.

<sup>56</sup> *Id.*

<sup>57</sup> 12 Years to Review High Court Backlog at Current Pace, EXIT NEWS (Mar. 03, 2021), <https://exit.al/en/2021/03/02/12-years-to-review-high-court-backlog-at-current-pace/>.

<sup>58</sup> *Id.*

<sup>59</sup> USAID to Assist Albanian Court with 35,000 Pending Cases, EURONEWS ALBANIA (Apr. 30, 2020), <https://euronews.al/en/albania/2020/04/30/usaaid-to-assist-albanian-courts-with-35-000-cases-backlog/>.

<sup>60</sup> Taylor, *supra* note 20.

European Court of Human Rights, claiming that the delays in their cases were so significant as to amount to a violation of a fair and public hearing “within a reasonable time.”<sup>61</sup>

## **Conclusion**

Albania’s experience with the vetting process demonstrates the need to have backup systems and procedures when undertaking an extensive reform of a country’s judicial system. The vetting process went to the heart of the judicial system: the individual judges that comprise the system. However, removing them affected other processes within the judicial system—primarily the constitutionally mandated judicial appointment mechanisms—and thereby crippled the judicial system.

The vetting of judges may, as in the case of Albania, result in the removal of numerous judges. A vetting process that seeks to reevaluate all the judges in a country and replace those found unfit, requires a gradual, phased implementation so the system can continue to function as it undergoes reform.

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<sup>61</sup> Strasbourg Court Rules against Albania over ‘Unreasonable Length’ of Court Proceedings, EXIT NEWS (Oct. 12, 2021), <https://exit.al/en/2021/10/12/strasbourg-court-rules-against-albania-over-unreasonable-length-of-court-proceedings/>.