Parliamentary Document
Project
Group of High Level Experts

EXPLANATORY NOTE ON CONSTITUTIONAL AMENDMENTS

Introduction

The Assembly of Albania has established an *Ad Hoc* Parliamentary Committee[1] to analyse the current situation in the justice system, set out the objectives of the justice reform and propose the necessary constitutional and legal amendments for meeting these objectives. In more concrete terms, the scope of activity of the Committee shall encompass:

- Analysing the current situation of organisation and functioning of the justice system, to the effect of pointing out the sets of problems and needs for improvement, in cooperation with the Ministry of Justice and by way of an all-inclusive discussion with the justice system, local and international experts, other interested entities and the public opinion.
- Drafting a strategic document for the objectives of the justice system reform, based on the analysis of the current situation of the organisation and functioning of the justice system;
- Proposal for the approval of a comprehensive package of the necessary draft-laws for reforming legislation, regulating the organisation and functioning of the justice system institutions, including the constitutional ones, drafted with the contribution and support of the justice system institutions, local and international experts, other interested entities and the public opinion.

To the effect of accomplishing the tasks referred to above, a Senior Level Experts Group (SLEG) has been set up attached to the parliamentary committee. SLEG is assisted by a technical secretariat. These structures were entrusted the task of preparing an analysis of the situation that the justice system currently is and the causes having brought about this situation. Upon the completion of the analysis phase, SLEG prepared another document (Strategy of Justice Reform), wherein the objectives of the reform and concrete solutions to the problems identified in the analysis were suggested. These materials, being currently approved by the *Ad Hoc* Parliamentary Committee, have served as a basis for drafting this concept paper, whereon the opinion of Venice Commission (VC) is being requested. Specifically, VC is requested to issue an opinion whether the solutions proposed in this concept paper are in compliance with the best European practices and standards in their respective fields.

[1] Decision no 96/2014 of the Albanian Parliament.

Background

The Constitution of RA was approved in 1998. Since the date of approval it has been amended three times. The first amendment occurred in 2007 in order to extend the term in office for the local government bodies. The second amendment, which is more significant, occurred in 2008, to the effect of changing the way of election of the President of the Republic, the procedure for the vote of confidence of the government and the office mandate of the Prosecutor General. The third amendment occurred in 2012 to weaken the immunity of the senior state officials against the criminal prosecution.

In the 17-year period of its application, the Constitution has generally managed to ensure the functioning of a democratic state in Albania, although failures have not been missing. Thus, for instance, the 98' Constitution did not manage to isolate to the extent and appropriate fashion the independent institutions against the impact of the political majorities. The Constitution did not manage to ensure a true and effective supervision of the Parliament over the Government. However, it is clear for all the stakeholders and observers of the political and institutional life in Albania that the most significant failure of the 98' Constitution was its inability to establish an independent, accountable and efficient justice system. The Analytical Document of the Justice System, currently approved by the Ad Hoc Committee for justice reform, has identified exhaustively the justice system problems in all the aspects (independence, accountability and efficiency). Regarding the causes having brought about these problems, the Analytical Document has identified as such the lack of quality and coherence of the constitutional and legal regulations (specifically following the 2008 amendments), high level of corruption among the ranks of judges and prosecutors, low professional level of judges and prosecutors, lack of efficient mechanisms of control over them, lack of clear division of powers among the bodies governing the justice system, disproportional impact of politics on justice etc.

The recurrent efforts of different governments to address these problems (and the reasons underlying them) have failed, because the proposed legal interventions have been fragmentary and in any case did not affect respective constitutional regulation. SLEG has stated unequivocally that the situation that the justice system in Albania is in calls for fundamental constitutional changes, because the current Constitution lacks some essential mechanisms and procedures, which will make it possible to guarantee the independence, accountability and efficiency of the justice system.

Problems in the justice system

The Analytical Document of Justice Reform exhaustively identified the problems affecting the justice system in Albania. On this basis, the Justice Reform Strategy sets objectives and proposes concrete solutions. In this concept paper, only those ideas and problems are being treated, proposals of which relate to the provisions of the Constitution. As for the problems, they are summarized as follows:

1. Under the Constitution of Albania, the President of the Republic is an institution that stands outside the traditional powers. Taking advantage of his position above the parties, the

Constitution has vested the President with core competencies in the field of justice. More specifically, abiding by the principle of separation and balancing of powers, the Constitution vests the President with the power to appoint members of the Constitutional Court, High Court and the Prosecutor General with the consent of Parliament. Likewise, the President appoints the ordinary judges and prosecutors. The purpose of these formulas being made use of by the Constitution for the appointment of justice functionaries is that the President (being above the parties) has to guarantee the effective protection of the justice system against the interference of partisan institutions. The Analytical Document of the Justice System has concluded that after the change of the fashion of election of the President in 2008 (now the Constitution allows the selection of the President by an ordinary parliamentary majority[2]) the President, being politically biased (or at least can be as such), cannot carry out this important function. The Analytical Document concludes that the eventuality of political partiality of the President (as a result of changing the way of his election) makes improbable the application of the current formula for the appointment of judges of the Constitutional Court, High Court and the Prosecutor General (see above) and guaranteeing the independence of the justice system. In fact, the practical implementation of this formula has been hampered considerably thus bringing about delays in the appointments, exceeding the terms of tenure of judges whose mandate has ended or they have resigned, conflicts about the procedures and criteria applied by the President in the selection of candidates, and the politicization of the appointment process as a whole.

2. As to the Constitutional Court (CC), the Analytical Document of the Justice System has identified some important issues concerning its organization and functioning. The first problem has to do with the failure of the formula for appointing the CC members (see above). One consequence of this failure is the extension of the mandate of the constitutional judges beyond the period provided for by the Constitution. The second problem (or group of problems) has to do with the politicization of the composition of the CC and the poor quality of its decisions. The Analytical Document concludes that these problems are caused by the lack of accurate professional criteria in the selection and appointment of CC members. The third problem identified by the analytical document has to do with lack of correct procedures for the resignation of a CC judge and the lack of a clear distinction between the reasons for the end of mandate and dismissal of a CC member. Another problem is the recurrent deadlock in the decision-making of the CC, because of the conflict of interest of its members who overwhelmingly come from other judicial instances where they have previously participated in the adjudication of cases. This has led to the violation of an individual's right to a fair hearing by way of denying him (the individual) a final decision. Finally, the Analytical Document concludes that under the current regulation of the Constitution, the scope for complaints of individuals before the CC is very limited, thus making the adjudication before the CC an ineffective tool for having their problems solved.

[2] Opinion of the Venice Commission, Ad-CDL (2008) 033, "On Amendments to the Constitution of the Republic of Albania", approved by the Assembly on 21 April 2008, under which: Article 5 having amended Article 87 of the Constitution provides for the election of President of the Republic. The most important change is that while the majority of 3/5 of all members of Parliament was required in five rounds of voting, currently an absolute majority vote is sufficient in the fourth and fifth voting. Hence, maintaining the balance, this change is welcome. While the election of the President should actually be based on the consensus of the main political forces, there comes a moment that a decision should be taken and the principle of majority should be allowed to prevail (par.13).

3. Regarding the High Court (HC), the Analytical Document of the Justice System has identified some important issues concerning its organization and functioning. The first problem has to do with the failure of formula for the appointment of High Court members (see above). Consequently, HC is currently working with an incomplete organogram (only 17 out of 19 members provided for by law are on duty). Likewise, HC members continue to remain in office, despite the expiry of the period provided for by the Constitution. Another problem is the low level of professionalism and independence of the High Court, as a whole. The Analytical Document emphasizes that this problem is caused by a lack of accurate professional criteria in the selection and appointment of members of the High Court. The third group of problems identified by the Analytical Document in connection with HC has to do with low efficiency in trial. The most evident demonstrations of the lack of efficiency in the work of the High Court are: (i) unreasonable delays in the adjudication of cases, (ii) the systematic encroachment by the High Court of its competence to review, by often acting as a court of fact, (iii) inadequacy of initial jurisdiction of the High Court in adjudicating the criminal charges against senior state officials; (iv) rendering unjustified decision in camera, at variance with the practice of the ECHR and the CC; (v) frequent changes of unifying decisions; (vi) low quality in the reasoning of decisions; and (vii) lack of consistency in the case-law. The fourth group of problems identified by the Analytical Document regarding the High Court deals with the complete absence of accountability mechanisms for judges of the High Court. Although it is the top of the judicial pyramid, HC is not, in organizational terms, part of it (the judiciary), since it is subject to a separate system of appointment, operation, promotion and removal from office of judges. Finally, another set of problems have emerged as a result of the creation of special administrative courts in 2012. More specifically, the law on administrative courts has created special administrative courts of first instance and second instance (appellate). Despite the creation of a specialized administrative chamber at HC, the administrative matters at the High Court are usually adjudicated by penal and civil judges, who do not have the specialization required to judge these matters, because under the law on the High Court, all the judges of the High Court may be included in the adjudication of the entire matters. This has become a cause for the lack of coherence in the administrative case law of the High Court. Another problem, falling under this group, is the fact that for the adjudication of administrative cases the Administrative Chamber of the High Court refers to two (2) procedural laws: (i) the law on administrative courts and (ii) of the Code of Civil Procedure. This has become a cause for uncertainty about the applicable law in certain cases, thus undermining the coherence of jurisprudence and bringing about the extension of administrative proceedings beyond the three-month period, foreseen by the law. Finally (remaining with this group of problems), the Analytical Document highlights the fact that while the administrative judges of first instance and the appeal should be tested in an exam in order to get specialized, the judges of the Administrative Chamber of the High Court are not required to obtain any specialization and nor obliged to pass this administrative law test.

4. Regarding the prosecution system, the Analytical Document has identified some important issues as follows: (i) the politicization of the process of selection and appointment of the Prosecutor General (PG) due to the failure of the constitutional formula for his appointment (see above). Besides the failure of the constitutional formula concerning the appointment, the politicization of the appointment process of PG was caused by the lack of

detailed criteria and selection procedures, which are not provided either in the Constitution or in law; (ii) lack of independence of prosecutors in the investigation, as a result of over-centralization of the system and of undue powers of higher prosecutors and the PG, particularly over the investigations conducted by lower prosecutors. The Analytical Document concludes that the combination of politicization of PG (as a result of the method of election) with his exaggerated powers concerning the investigations of the lower prosecutors may be an explanation for the failure of the investigation into the corruption of senior officials; (iii) the absence of a functional career system within the prosecution system which should build on an efficient system of evaluation of professional skills and ethical qualities. Consequently, the appointment and promotion of prosecutors is not done on a professional basis and clearly defined criteria. The role of the Prosecution Council in this process is negligible, since the entire powers in the field of career of prosecutors are concentrated in the hands of the PG; (iv) uncertainty in hierarchical, material and territorial organization of the prosecutor's office, as well as the relations prosecutor's office - judicial police, which caused lack of efficiency in the work of the prosecution, lack of proactive investigations and unjustified termination of criminal investigations etc.

5. As to the High Council of Justice (HCJ), the Analytical Document of the Justice System has identified several important issues related to its organization and functioning as follows: *First*, the Analytical Document notes that the HCJ has shown an evident corporatist spirit in its operation. The most evident instances of the demonstration of corporatism in the work of the HCJ have been the promotion of HCJ members, while serving on the council and the formation of groups and alliances within the Council is often an obstacle to punish certain judges. SLEG concludes that the current composition of the HCJ where 10 of its 15 members come from the judiciary paves the way for corporatism[3]. *Second*, it is highlighted that the current constitutional and legal framework does not provide for any criteria for selection of members of the HCJ appointed by the Assembly and no accountability mechanism for the HCJ members in general is in place. This has a direct impact on the quality of the work of the High Council of Justice. *Third*, it is highlighted that HCJ is not fully guaranteed in its independence since the members appointed by Parliament are voted by a simple majority of the latter (a simple majority of 36 MPs is sufficient for the appointment of a HCJ member) thus creating the possibility of undue influence of the respective political majority on the elected members. *Fourth*, HCJ is not being managed effectively. As pertinent reasons, the following have been identified (i) chairing of HCJ by the President of the Republic having brought about practical anomalies in the functioning of the Council (SLEG is of the opinion that the HCJ membership of the President and the latter chairing the HCJ do not fit well with the constitutional standing of the President as a stakeholder exercising his powers outside the 3 traditional powers) and (ii) the power of the President to nominate the Deputy Chairman of HCJ (who is the Executive Director of the HCJ) which has brought about the failure to make the appointment of Deputy Chairman since 1 year, due to the inaction of the President. *Fifth*, the Analytical Document noted that the powers of the High Council of Justice in the management (governance) of the judicial power are not sufficient to allow for the Council to

[3] HCJ currently consists of the President of the Republic, the President of the High Court, the Minister of Justice (these 3 members are *ex officio*), 3 members elected by Parliament and 9 judges of all levels elected by the National Judicial Conference.

develop comprehensive policies and strategies of sustainable governance of the judiciary. Some of the most important responsibilities in the governance of the judiciary (e.g., application of judicial ethics, the initial training of magistrates, the system of case management, keeping statistical data and public reporting, budgeting, implementation and auditing of budget, strategic planning, management of judicial administration, etc.) have not been entrusted to the HCJ, as the main governing body of the judiciary. Likewise, the Analytical Document noted that the assignment of the governance responsibilities among different actors is not always clear. The most striking overlap of responsibilities is between the HCJ and the MoJ, in connection with the inspection of the courts, complaints against judges and disciplinary proceedings against judges. *Sixth*, SLEG considers the membership of the Minister of Justice (MoJ) with the HCJ problematic and unacceptable, regarding his exclusive power to initiate disciplinary proceedings against judges. *Seventh*, despite the will of the constitution-maker, HCJ in practice is not functioning as a real collegial body, since the members of the Council (except Vice Chairman) do not serve full time. Consequently, their involvement in the affairs of the Council is reduced to casting the vote during the plenary session of the HCJ[4]. In the current structure of HCJ, commissions as internal structures with decision-making powers in various fields of activity of the council are missing. *Finally*, the Analytical Document notes that the lack of responsibilities (competencies) for issues related to the status of judges of the High Court does not guarantee the accountability of the latter and do not avoid political influence in the process of their appointment.

Objectives aimed at to be achieved by the justice reform

Reframing the powers of the President in connection with the justice system

The constitutional amendments of 2008 changed the way of electing the President by enabling him to be politically biased (see above). On the other hand, its core competencies in connection with the justice system remained unchanged (see above). The Draft Strategy of Justice Reform concludes that as long as the formula of electing the President remains unchanged, it is necessary to overhaul his powers in relation to the justice system by adjusting the formula of his election to his powers and relations with the judicial authorities and prosecution office[5]. More specifically, the strategy of justice reform proposes to maintain the actual formula of electing the President and to reduce his constitutional powers associated with the justice system as follows:

(i) to appoint formally the members of the High Court and High Administrative Court, upon the concrete proposals coming from High Judicial Council after conducting a transparent selection process based on clearly defined and measurable criteria. SLEG is of the opinion that such a formula responds better to position of the President in the institutional configuration that has resulted from the 2008 constitutional amendments. SLEG also thinks

[4] HCJ members do not take active part in preparing the files and draft decisions.
[5] SLEG considers that it is natural that a President elected based on consensus exercise more responsibilities in relation to the judiciary, as compared to a president elected unilaterally.

that this formula is able to significantly reduce the political influence in the process of appointing the members of the High Courts and increase their professional quality.
(ii) To have exclusive competence for the appointment of three (3) out of nine (9) members of the Constitutional Court (6 other members are proposed to be nominated and appointed by parliament and judiciary) at the end of a transparent selection process and based on objective criteria. SLEG is of the opinion that this formula responds better to the constitutional position of President and avoids clashes with the parliament in the process of appointing CC members. In general, these new formulas are evaluated by SLEG as appropriate to ensure the proper functioning and efficiency of the institutions of the justice system and to avoid political conflict in the process of appointments.

Regarding the overhauling of the powers of the President in relation to the justice authorities, a different formula of electing the head of state has also been identified. Under this view, the new role of the President will be better guaranteed with an election formula of wide consensus (formula with 2/3 or 3/5). Experts supporting the selection formula of wide consensus argue that, in this way the guarantees of independence and efficiency increase, resulting from the substantial role of the President on appointments to the CC and HC. Likewise, changing the formula to the qualified majority, increases active legitimacy of the President of the Republic as a symbol of unity of the people who stands above political parties. Moreover, civic confidence to the President as a neutral constitutional institution is higher, but also his profile as a guarantor of constitutionality takes more legitimacy for all other powers that are not related to the justice system.

In the final variant, there was supported the stance, according to which, the overhauling of the role of the President in relation to the new constitutional powers related to the justice system does not dictate the change of the formula of his election. The role of President is reduced compared with the previous constitutional powers he had, therefore there is no need to change the formula of his election. While maintaining the current formula of electing the President, the situations arising from the failure to reach political consensus that can lead the country to new elections with financial and administrative costs are avoided.

Independence and effectiveness of the High Court

Against the backdrop of the problems and shortcomings identified in the Analytical Document of the Justice System for the High Court (see above), SLEG proposes the following:

(i) Repealing the constitutional provision vesting the High Court with original jurisdiction to adjudicate criminal charges against senior state officials;[6]

(ii) Clearly defining in the Constitution the jurisdiction of the High Court as a court of third instance, examining complaints only on points of law interpretation (no matters of fact) from the lower courts;

[6] This approach is consistent with the opinion of the Venice Commission (document CDL-AD (2014) 016), "On amendments to the Code of Criminal Procedure and the Code of Civil Procedure," which has also recommended that HC should have its original jurisdiction removed.

(iii) Establishing a High Administrative Court with jurisdiction separated from the High Court for Civil and Criminal Matters[7] as the second and last instance in the trial of administrative cases;

(iv) Providing for a procedure to resolve disputes between the ordinary and administrative courts regarding their jurisdiction (subject matter jurisdiction);

(v) Restructuring the system of administrative courts, providing for the High Administrative Court to be the second and the last instance in the system, having initial and review jurisdiction in specific cases provided for by law; [8]

(vi) HC to be transformed into a career court and be fully integrated into the judicial system. This means that the High Judicial Council (HJC) be vested with all the powers necessary to verify the criteria, assessment and nomination of candidates for members of the High Court. It is proposed that the HJC decisions for nominating candidates for members of the High Court to be adopted by qualified majority within the Council[9]. Subsequently, the candidates nominated by the HJC shall be decreed by the President following a formal evaluation of them (i.e., only in relation to meeting the criteria and abiding by the selection procedure). Then the law should provide that in case of rejection of candidates, the President should ground his decision. While in case of inaction of the President within a specified period, the candidate proposed by the HJC shall be considered elected;

(vii) A number of the HC members (no more than 20%) has to come from the ranks of law academics, advocacy and other legal professions in order to make possible the combination of professional experiences at the High Court. The representation of each of the aforementioned groups of professionals of law at the High Court must be based on a percentage defined by law. The law should also provide for the criteria to be met by a candidate for HC member (be it a candidate from the judiciary, or a candidate who is not from the judiciary) [10]. SLEG considers that this model of selection and appointment of judges of the High Court minimizes the politicization of the process of appointing members of the High Court by way of keeping parliament out this process and limiting the discretion of the President. On the other hand, the latter continues to play the role of control from outside the judicial system by ensuring a balance in the appointment of members of the High Court;

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[7] Albanian administrative adjudication system is a mixed system. The administrative adjudication in Albania starts with the administrative court of first instance and administrative appeal (as in Germany, France, Italy) and ends at the High Court that adjudicates also criminal civil, and administrative matters (same as in the British system, or Scandinavian countries).

[8] SLEG is of the opinion that a separate administrative jurisdiction will enable the accelerated and specialized adjudication of administrative matters. The complete separation of the administrative jurisdiction is justified due to some features of the adjudication of administrative matters such as the transfer of the burden of proof to the administrative bodies, the active role of the judge, the possibility that the court issue an administrative act etc. This intervention will also lead to reduction of current HC work load by at least 30%.

[9] Although this regulation is thought to be done at a second stage in the law.

[10] According to the model of appointing the HC judges from outside the system, which is being applied in different countries, the proposing power is vested with bodies outside the judiciary belonging to areas where they come from. The origin of these members may be from the fields of law (lawyers, notaries), or from academic field, but their appointment may need the consent / approval of the HCJ (Italy).

(viii) Clear and objective criteria have to be provided for, focused on professional merits[11] to be met by candidates for members of the High Court. As such can be: a) the experience as a lawyer and professional experience and as a judge, prosecutor, advocate, university professor, a lawyer in senior positions in public administration (at least 15 years). Having academic titles may be considered as an advantage; [12] b) high moral and professional integrity (though this criterion is not objective); c) clean criminal record; d) being subject to no effective disciplinary measures; e) not being member of the leading forums of political parties, etc. Also, in order to create guarantees and resilience in decision-making, it is proposed that the mandate of the High Court judges to be longer in time (12 years);

(x) Selection and appointment of the Chairman of the High Court must be made by the members of the High Court, unlike the current arrangement under which the appointment is made upon the proposal of the President and with the consent of parliament. SLEG considers that this model reduces the possibility of political influence or of other nature, and strengthens the collegiality by giving judges a significant role in the management of the High Court. It is proposed that the mandate of the Chairman be limited in time (5 years) without the right of re-election in order to enable management of the HC by way of rotation;

There was also a minority opinion of the experts, who support the variant of appointment of members of the High Court and the High Administrative Court only by the High Judicial Council, without the involvement of the President in the appointment process. Their opinion is based on the opinion of the Venice Commission, according to which "in any case, it is not appropriate for the President to take part in the appointment of judges" [17.] However, the version presented above prevailed within the SLEG.

Independence, impartiality and transparency of HJC

Given the phenomena and problems identified by the Analytical Document for HJC, SLEG proposes a comprehensive overhaul of the Council as follows:

(i) It is proposed that the name of the HCJ name be change into "The High Judicial Council" or "HJC" reflecting the true nature of this body as institution only of the judiciary governance;

(ii) The number of members reduced to 11 (as out of 15 currently). Of these, 6 are judges in order to guarantee independence and self-governance of the judiciary.[13] It is proposed that

[11] Opinion of the Venice Commission CDL (2011) 065 on the Law of Turkish CC: It is important to note that the selection of judges should be based on objective criteria previously set out by law or by the competent authorities and those (criteria) should focus mainly on merits.

[12] See also CDL-AD (2006) 006, Opinion on Two Draft Laws amending Law No. 47/1992 on the organization and functioning of the Constitutional Court of Romania, § 17 "*It is very welcome that CC consists not only of career judges and prosecutors but also of lawyers and professors of law. Such a composition has a positive effect on the decisions of the court. The Venice Commission is of the opinion that the CC should be open to candidates from all branches as long as the proper legal qualification is guaranteed*." Also the Opinion of the Venice Commission CDL (2011) 065 on the law of Turkish CC.

[13] See comments of the Venice Commission no. 403/2006, dated 26.10.2007, which refer in its report on judicial appointments (*CDL-AD (2007) 028).*

judge members be appointed by the general meetings of fellow judges of the same level, according to the proportion below: 1 (one) member by the general meeting of judges of the High Court and High Administrative Court; 2 (two) members by the general meeting of judges of the Courts of Appeal; and three (3) members by the general meeting of judges of the Court of First Instance[14]. SLEG considers that this way of electing judge members abides by the principle of proportionality, because it involves all levels of the judiciary and creates a fair balance between judge members and lay members.[15] It is proposed that 5 of the HJC lay members be appointed by the Assembly with a qualified majority of 3/5 of all members, on the basis of proposals coming from the legal profession (1 member), academic field (2 members from the law faculty full-time university readers), the School of Magistrates (1 member from internal or external professors, provided that he/she is not a judge), civil society (1 member) and the opinion of the Justice Appointment Council. In case of failure to reach the required majority of the Assembly in the first voting, it is proposed that the proposing structures represent other candidates. If the Assembly does not reach the required majority for the second time it is proposed that the nominees proposed and ranked above by the Appointments Council[16] be considered appointed. SLEG thinks that this type of composition avoids the management and governance of the judiciary only by judges, while enhancing the quality, impartiality and trust of citizens in the administration of justice.[17] While the qualified majority for the appointment of members elected by the Parliament is instrumental to the de-politicization of the HJC and is in compliance with the approach recommended by the Venice Commission[18].

(iii) It is proposed that HJC members perform their duties on full time basis, in order to ensure efficiency and abidance by the collegiality of this body, to avoid potential conflicts of interest and to ensure the accountability of members in the exercise of their functions. This

[14] This proposed solution means that the National Judicial Conference will be abolished.

[15] The Venice Commission stated that: at least half of the members must be judges (...) a substantial portion of the members must be judges (CDL-AD (2007) 028, Report on judicial appointments, §§19, 20 and CDL-AD (2014) 008, Opinion on the draft of the High Council of Justice and Prosecutorial Council of Bosnia and Herzegovina §§27, 28 CDL-INF (1998) 009, Opinion on amendments to the law on major Constitutional provisions of the Republic §§9-12 of Albania). Between judge members should have a balanced representation of judges of courts of different levels, and this principle should be stated (CDL-AD (2012) 024, Opinion on the constitutional amendments related to the judiciary in Montenegro §23 as and CDL-AD (2011) 010, Opinion on the constitutional amendments in Montenegro §39).

[16] The establishment of a justice Appointments Council was also proposed. See hereunder for more details.

[17] According to the Venice Commission, not only judges, but "users of the judicial system" such as lawyers, representatives of civil and academic circles should have a seat on the National Judicial Council, since uniformity can lead to easy analysis of themselves and to absence of public responsibility in understanding the external needs and requirements (Summary of Opinion and Reports of the Venice Commission about the courts and judges, paragraph 4.2.2, p 77). It is advisable to judicial councils to include members who are not representatives of the judiciary itself. However, such members should preferably be appointed by the legislative rather than the executive (Summary of Opinion and Reports of the Venice Commission about the courts and judges, paragraph 4.3., P 85).

[18] CDL-AD (2002) 015, Opinion on the draft amendments to the law of the judicial system in Bulgaria § 5. According to the Venice Commission, it should be ensured that the opposition also have an impact on the composition of the Council. One possibility would be to require two-thirds or three-quarters for the election of members by the Parliament (...) but, at the same time procedural safeguards must be taken against the dangers of stalemate (Summary of Opinions and Reports of the Venice Commission about courts and judges, paragraph 4.3, p 85).

implies that the mandate of judge members be suspended, while serving at HJC and be calculated for purposes of seniority. At the end of the period of service at HJC, the judge member must return to his previous position[19]. The lay member, who before his appointment to the HJC worked on full time basis in the public sector, at the end of the period of service in HJC should also return to the previous position;

(iv) The President of the Republic be no longer a member of the High Judicial Council, in order to guarantee the independence of the HJC and avoiding political influence[20]. As for the Minister of Justice, given the important role of MJ in the functioning of the judiciary, it is proposed that the MJ be a non-voting member. It is also proposed that MJ do not have the exclusive right to initiate disciplinary proceedings against judges;

(v) The Chairman of the High Council of Justice be appointed by the Council from among the members elected by the Assembly with 2/3 of the votes of the members of the High Judicial Council. SLEG thinks this is a balanced solution and ensures the support of the members themselves for the election of the Chairman of the High Judicial Council; [21]

(vi) The HJC, as the government of the judiciary, which currently is responsible for the appointment of judges of first instance and appeal, the assessment, transfer and promotion of judges of first instance and appeal; the discipline of judges of first instance and appeal, including review of complaints and inspection of activities of judges, [22] is proposed to have the same power over the members of the High Court and High Administrative Court. The only difference will be with regard to the appointment of members of the High Court (HC) and High Administrative Court, for which the HJC will have the authority to propose the candidates (see above). SLEG believes that such a solution guarantees independence of the judiciary and enhances the responsibility of HJC for all matters relating to the status of judges, what is in accordance with international standards[23] and coincides with the opinion of the Venice Commission in the Memorandum of February 2014.[24]

(vii) The HJC be entrusted new responsibilities for the administration of the judicial case management system, maintaining the statistical system of the judiciary, the relations of the judiciary with the public and media, court administration management, reporting to the public and Parliament, administration of physical and security infrastructure, and performance measurement of courts which currently is being assumed by MoJ;

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[19] It is proposed that the return to their previous position for judge members be written in the Constitution.

[20] In Opinion No. 10/2007, CCJE recommends that "prospective members of the Judicial Council, whether or not judges, they should not be active politicians, members of parliament, the executive or the administration. This means that neither the Head of State if he / she is the head of government, nor any minister can be a member of the Council of the Judiciary

[21] According to the Venice Commission, the election of the Chairman by the Council, by the lay members, entails a balance between the necessary independence of the Chairman and the need to avoid the possible corporatist tendency within the Council (CDL-AD (2007) 028, Report on judicial appointments, § 35)

[22] Inspection and review of claims made by the HCJ, as well as by the MoJ

[23] The Venice Commission supports the opinion that a judicial council should have a decisive influence on the appointment and promotion of judges and disciplinary measures against them (CDL-AD (2007) 028, Report on judicial appointments, §§24, 25) ; See also Overview of Opinions and Reports of the Venice Commission on Courts and Judges, paragraph 3.3, page 73

[24] CDL (2014)021

(viii) Responsibilities for the judicial budget to be transferred to the HJC[25]. This solution avoids the involvement of the executive (MoJ) with the control of every detail of the operational budget of the courts, ensures compliance with international standards, and allows a more comprehensive approach to the development of judicial budget policies. SLEG has judged that as an institution governing the judiciary, it is self-evident that the High Judicial Council has to deal with issues of budgetary policies of the judiciary;

(ix) The responsibilities for strategic planning be transferred over to the HJC[26];

(x) The HJC shall operate through three (3) permanent commissions[27]: Disciplinary Commission, Career Assessment Commission and Management Commission. The Commissions should have full-fledged decision-making powers in their relevant areas. Appeals against the decisions of the commissions may be considered at the plenary meeting of the High Judicial Council. These commissions, according to the issues due to review, will be supported by specialized support staff. SLEG thinks that this solution will contribute to raising the efficiency of the HJC in the exercise of its powers;

(xi) HJC shall not have the powers of investigating into the disciplinary violations and the complaints against judges. It is also proposed that the powers of the HJC to inspect courts shall be abolished. To this effect it is proposed to establish an independent inspectorate (High Justice Inspectorate) which shall be responsible for investigating the disciplinary violations and complaints against judges at all levels, members of the High Prosecutorial Council and Prosecutor General. The Inspectorate shall also be responsible for the initiation of disciplinary proceedings against functionaries mentioned above and for inspecting the courts and prosecution offices. The disciplinary proceedings initiated by the High Justice Inspectorate against judges shall be examined and decided by the High Judicial Council. The disciplinary proceedings initiated by the Inspectorate against prosecutors shall be examined and decided by the High Prosecutorial Council. While the disciplinary proceedings instituted against the members of both councils (HJC and HPC) as well as against the Prosecutor General shall be examined and decided by a special disciplinary tribunal (High Justice Tribunal). It is proposed that the High Justice Inspectorate be composed of 5 members (3 judges and 2 prosecutors) appointed by the Assembly by three fifth of the entire members, from among the candidates selected and ranked by the High Judicial Council and High Prosecutorial Council. It is proposed that Inspectors shall have the status of a High Court judge and a term of nine years, without the possibility to renew the mandate for a second term. On the other hand, it is proposed that, in order to complete the cycle of checks and balances, the Minister of Justice be the body responsible for the investigation of the disciplinary violations and for instituting the disciplinary proceedings against inspectors before the Disciplinary Tribunal. It is deemed that the accomplishment of inspection by an independent body is necessary since it separates the inspection from the decision-making process for imposing the disciplinary measure. While the appointment of inspectors by the Assembly with three fifth of the members of all the members from the list of candidates

[25] Eventually, a special commission within HCJ.
[26] Eventually, a special commission within HCJ.
[27] This amendament will not be done in the Constitution but in the law.

selected and ranked by the HJC and HPC shall be instrumental to depoliticizing the process of appointment and guaranteeing the quality of the composition of the Inspectorate. Besides improving the disciplinary system, the establishment of an Independent Inspectorate is expected to improve the implementation of the code of judicial ethics which is currently the responsibility of a non-functional body like the National Judicial Conference (NJC).

(xii) Establish the Justice Disciplinary Tribunal, which will be responsible for reviewing cases of disciplinary violations and taking disciplinary measures for members of the High Judicial Council, the High Prosecutorial Council, Independent Inspectorate, Independent Qualification Commission and the Prosecutor General, as well as examining complaints against disciplinary measures imposed on judges and prosecutors by the High Judicial Council and High Prosecutorial Council. It is deemed that this new institution will affect the strengthening of the accountability of the governing institutions of the justice system. It is proposed that the Disciplinary Tribunal consists of 9 *ex officio* members who are: the Chairman of the Constitutional Court, the Chairman of the High Court, the Chairman of the High Administrative Court, Prosecutor General, Minister of Justice, the Chairman of the National Chamber of Advocacy, the most senior member of the Constitutional Court and the most senior member of the High Court and the High Administrative Court.

(xiii) Establish a Justice Appointments Council, which is responsible for verifying the fulfillment of legal requirements and professional and moral criteria of candidates for members of the High Judicial Council, candidates for members of the High Prosecutorial Council, Prosecutor General and of candidates for members of the Constitutional Court. It is proposed that in the exercise of his responsibilities, the Justice Appointments Council shall review and rank based on merit the candidates proposed by the proposing institutions, and shall advise the Assembly and the President in making appointments. It is deemed that this proposed regulation will positively affect the de-politicization of the process of appointments to high positions in the judiciary by reducing the discretion of the appointing political bodies and enhancing quality in the composition of the institutions governing the justice system.

(xiv) Finally, given that the proposed reform will affect the most fundamental aspects of the organization and functioning of the HJC (number of members, the composition, the chairmanship of the body, powers, full time membership, way of appointment and dismissal of members etc.), SLEG proposes the adoption of certain transitional provisions which would have the effect of early termination of the mandates of the HJC members and regulation of the legal situation that will be created after the entry into force of the proposed constitutional changes.

There has been another view of some experts that the responsibilities for the administration (with the exception of management of the judicial administration that will be charged on the HJC) remain with the Minister of Justice (MJ)[28], provided that for the decision-making on these matters, the MJ shall take the preliminary opinion of the HJC. These responsibilities shall be regulated in a legal level, without having to be provided for in the Constitution. According to them, the MJ has already a consolidated tradition in performing those functions and he is in a better position to lobby for the necessary budgetary support for the exercise of

[28] Provided that decisions on these issues the MJ takes the opinion of the HJC.

these responsibilities. However, in this case the threat of political interference of the Executive in matters of judicial administration still remains.

Role and mission of the Prosecutor's Office

Prosecution system under the current Constitution[29] is situated on the border between the executive and the judicial power. As such, it appears with typical executive powers, as well as with typical judicial powers. This has also led to double functional dependency of prosecutor's office by the court and the executive. This hybrid model has become a cause for the unclear position of the prosecutor's office in the framework of division and balance of powers and it has caused overlapping of powers of control over the prosecutor's office and the lack of its (control) effectiveness.

To address this situation and problems and shortcomings that have emerged in the work of the prosecutor's office in the years since the entry into force of the Constitution (see above), SLEG has developed some important proposals as follows:

(i) The status of the prosecutor's office, as an independent prosecution body (independent of the three traditional powers), is to be provided for in the Constitution and include functional independence as well as the organizational one;

(ii) High Prosecutorial Council (HPC) be reconceived as an independent constitutional body with full and exclusive powers in the field of the status of prosecutors (recruitment, appointment, transfer, re-appointment and discipline of prosecutors). Also, it is proposed that the HPC constitutionally be given powers to nominate the candidate for Prosecutor General (PG). SLEG thinks that the division of powers of the PG with the HPC would affect the growth of internal independence of prosecutors in relation to more senior prosecutors and the external independence of the institution[30];

(iii) Establish an Independent Inspectorate vested with the competence of investigation of disciplinary violations and complaints against prosecutors at all levels, initiation of disciplinary proceedings against them and the inspection of offices of the Prosecutor's Office (see above). SLEG considers that this intervention will enable the functioning of the system of accountability in the prosecutor's office, which until now has been almost non-existent;

(iv) Provision of a partial functional decentralization within the prosecution system in order to guarantee internal independence of prosecutors against senior prosecutors. SLEG finds

[29] *Under Article 148 of the Constitution "The prosecutor's office exercises criminal prosecution and represents the accusation in court on behalf of the state. The prosecutor's office exercises other duties prescribed by law. Prosecutors are organized and operate at the judicial system as a centralized body. In the exercise of their powers, the prosecutors are subject to the Constitution and laws.*"

1. CDL-AD (2014) 008, Opinion on the draft law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, §§24 and 41,42]

that the partial functional decentralization of the prosecutor's office does not jeopardize the functioning of the body, because the (functional decentralization) is thought to be accompanied by the necessary changes to the criminal procedural legislation that shall give the court a role in the development of criminal investigation (preliminary investigation judge to be distinguished from the judge who adjudicates the case on the merits). In this way, the court shall conduct the functional control of the prosecutors, which so far was carried out by senior prosecutors. However, the most senior prosecutors will retain some small functional surveillance powers on lower prosecutors;

(v) Provision of a complete decentralization of the prosecution system in the administrative aspect in accordance with the instances of the prosecutor's office (first instance, appeal and General Prosecutor's Office);

(vi) Provision of the minimum / basic criteria in the Constitution that the candidate for PG must meet in order to guarantee the quality of the candidates, transparency in selecting them and strengthening public confidence in the integrity and professionalism of the candidacy;

(vii) Regarding the procedure of appointment of PG, it is proposed that he is appointed by a qualified majority (3/5) upon the proposal of the HPC for a term of 9 years, without the right of reappointment. The procedure for the selection and appointment of the Prosecutor General shall be determined by law.

(viii) Regarding investigation of the cases related to corruption and organized crime, a special and consistent structure of the prosecutor's office and investigations shall be established (Special Structure of Anti-Corruption and the National Bureau of Investigation);

(ix) Finally, given that the proposed reform, if approved, will bring about a comprehensive structural and functional redesigning of the prosecution system, the powers of the PG, the method of his selection and appointment, the length of constitutional mandate, the procedure for his dismissal, elevation of the Prosecutorial Council at constitutional level and complete structuring of its powers for the appointment, career, promotion and discipline of prosecutors, different from the current constitutional and legal arrangements, SLEG believes that it is required to adopt transitional constitutional provisions for the early termination of the mandate of the PG.

Among the group of experts there has been an alternative attitude designed to conceive the Prosecutor's Office as part of the judiciary. There were suggestions that the Minister of Justice should have a role in this model, which should not be of a procedural nature, but of the organizational one, including coordination and cooperation with the PG, as in this way it ensures access of the government to effectively implement criminal policy[31]. Furthermore, in terms of full administrative decentralization, the Prosecutor's Office will need a governance structure and this role can be fulfilled by the Minister of Justice. Also, it was proposed the inclusion of the preliminary investigations judge in the system (other than the judge who

[31]CDL-AD (2015) 003, *Opinion Përfundimtar mbi projekt-ligjin e rishikuar për Prokurorinë Publike të Malit të Zi, §§ 65, 113* " Ministria e Drejtësisë nuk duhet të ketë funksionin e kontrollit të përditshëm të prokurorisë edhe pse një input në çështje të përgjithshme të politikave do të ishte e arsyeshme."

adjudicates the merits of the case), who will control the interaction between the procedural subject that carries out the investigation with the one that conducts criminal proceedings.

The immunity of judges

According to the Constitution of the Republic of Albania, judges of all levels enjoy immunity either in the form of *unaccountability (non liability*) for consequences that may result from the exercise of duty by them, or in the form of *immunity* (*inviolability*) of some aspects / phases of criminal proceedings. The second aspect of immunity of judges (inviolability) was significantly limited as a result of the constitutional amendments of 2012 that lifted protection from criminal preliminary investigation (or initiation of criminal proceedings)[32]. As a result of this important amendment, the prosecutor's office can now file a criminal charge against a judge at any level and carry out preliminary investigations freely. Other forms of inviolability (interim protection from arrest, personal search and house control) remained in force. Based on Articles 126, 137 (2) and (4) of the Constitution, the ordinary judges, judges of the High Court and judges of the Constitutional Court cannot be arrested or deprived of liberty in any form or exercise personal search or house control against them without the authorization of the High Council of Justice (for judges of first instance and appeal), or the Constitutional Court (for judges of the High Court and the Constitutional Court).

From the analysis carried out in the framework of the Reform in Justice System, it has resulted that despite the change of the Constitution in 2012, by which the criminal prosecution immunity of judges was lifted (preliminary investigation), the special protection that was reserved for judges is still great. Protection from personal search and house control in particular is an unjustified barrier in the process of gathering evidence. In fact, the number of investigations and criminal penalties against judges remain very low despite the limitation of immunity in 2012. Moreover, the Criminal Procedure Code makes a contradictory arrangement of procedures followed for the arrest or detention of a judge, or for the exercise of personal search or his residence search. As a result of this contradictory arrangement, the authorization of the HCJ to arrest or search a judge is also required when the court has already authorized such action. Furthermore, it seems that the wording of Article 126 of the Constitution creates a situation of conflict of interest in the cases when the CC must give its consent for the arrest, personal search and house control of one of its members. Despite these facts, SLEG proposes the necessary constitutional amendments be made for a complete lifting of immunity (inviolability) of judges at all levels.

Disciplinary liability of judges / prosecutors

The Analytical Document of the Justice System comes to the conclusion that the constitutional and legal framework in Albania does not make a complete and coherent

[32] Other smaller changes include expanding the application of the clause *in flagrance (flagrant delicto*) (possibility to arrest / detain an official with immunity if caught during or immediately after the commission of a crime) by referring *to any type of crime except serious crimes* and the obligation of the Assembly to decide on the prosecutor's office request for authorization to proceed with open voting.

adjustment of disciplinary liability of judges and prosecutors. So, the disciplinary system for ordinary judges is defective in terms of inspections. The adjustments made to the latter (inspections) by the laws on the HCJ and the MoJ are confusing. As a result, there are uncertainties about the nature of various types of inspections and verification of complaints, the goals that they follow, the use of their findings, etc. Furthermore, the responsibility for conducting inspections on courts and judges is fully overlapped between the HCJ and the MJ. Another problem affecting the disciplinary regime of ordinary judges is the fact that the MJ has the exclusive right to initiate disciplinary proceedings against judges. On the other hand, the inspection of prosecutors is the responsibility of the MJ. This arrangement has proven to be not functional in practice. While for members of the CC and the HC there is no proper system of discipline and accountability. This is true even for members of the High Council of Justice. They can be dismissed by the Assembly only through an *impeachment* procedure.
Given the above, SLEG considers that the Constitution should stipulate in general terms that:

(i) All judges and prosecutors should be subject to a regime of accountability and discipline. Furthermore, particular laws should explicitly provide concrete disciplinary violations, specify the procedures of the disciplinary process, specify the procedures of cooperation between disciplinary bodies and other bodies such as HIDAA, tax authorities, money laundering authorities, etc., to provide unequivocally that the judges / prosecutors who features unexplained wealth growth or standard of living has the burden of proof in the disciplinary process, and when the judges / prosecutors who fail to justify their wealth can be dismissed.

(ii) Establish an Independent Inspectorate, which shall have the authority to investigate disciplinary cases of judges and prosecutors at all levels and request initiation of disciplinary proceedings against them. This means the creation of a single inspection structure for all judges, except the judges of the CC. The Independent Inspectorate shall also be responsible for investigating complaints against judges, prosecutors and members of the HJC, the HPC, Independent Qualification Commission and complaints against the PG. It must have the right to initiate disciplinary proceedings against judges before the High Judicial Council, against prosecutors before the High Prosecutorial Council, against members of these two councils and the PG before a Special Disciplinary Tribunal (See above). This would facilitate the overcoming of institutional conflict of powers between the MJ and the HCJ about the inspection process and the initiation of disciplinary proceedings, it would concentrate the power of inspection in one hand and would make it possible to use the limited human resources more effectively, etc. This would also allow the adoption of a comprehensive legal framework for the investigation/inspection, which is in accordance with European standards.

(iii) The Independent Inspectorate be composed of judges and prosecutors with experience, former well known judges and prosecutors or jurists with long professional experience and high integrity. Clear criteria will be established by law. Inspectors shall have the status of a High Court judge and a nine-year term (see above). Their election will be made by the Assembly ~~e~~ by qualified majority to avoid politicization of the process and increase the reliability of the inspectors. Clear procedural requirements shall be determined by law.

(iv) Establish a competent body for the inspection and initiation of disciplinary proceedings against inspectors before the Justice Disciplinary Tribunal. While, the inspection and verification of complaints about judges and prosecutors at all levels, as well as to members of the HJC and the HPC and the PG and Independent Qualification Commission, will be done in every case by the Independent Inspectorate, the decisions whether to establish or not disciplinary measures will be taken respectively by the HJC for judges, the HPC for prosecutors and by a special tribunal (High Disciplinary Tribunal) for members of the HJC, the HPC and for the PG.

(v) The High Disciplinary Tribunal shall consist of the Chairman of the Constitutional Court, the Chairman of the High Court, the Chairman of the High Administrative Court, Prosecutor General, Minister of Justice, the Chairman of the National Chamber of Advocacy, the most senior member of the Constitutional Court and the most senior member of the High Court and the High Administrative Court (see above). It is proposed that appeals against decisions of Tribunal will be made before the Constitutional Court.

(vi) For members of the CC there shall be provided specific disciplinary procedures, leaving to the CC itself the right to proceedings against its members, according to a detailed procedure provided for in the organic law of the CC. In all cases, the only disciplinary measure to be applied to members of the CC is the dismissal from duty.

Efficiency and independence of the CC

The process of appointing constitutional judges, according to the constitutional provisions is the joint competency of the President and the Assembly and it goes in two stages: the first stage of selection of candidates by the President and the second stage of the approval of the candidates by the Assembly. This process has years that it does not function properly. Practical implementation of the President-Assembly institutional cooperation has proved insufficient. A President who, because of the election formula comes from the parliamentary majority, but also the minimum *quorum* required by the Constitution for the approval of the candidacy chosen by the President, to appoint a constitutional judge, does not offer sufficient guarantees in terms of respect for the independence, impartiality and quality in composition of the Constitutional Court, in the second phase of the appointment process. Likewise, the chairman of the CC is elected by the same procedure for a period of 3 years with the right of re-election.

From the analysis of constitutional provisions presented in the analytical document regarding the activity of the CC, the process of appointment / election of candidates for constitutional judges does not result efficient, because there are no clear criteria for candidates, the transparency in selection and their proposal to the Assembly is missing and there is no transparency in the (dis) approval by the Assembly. As a result of the inefficient process of appointment, the judges regularly stay in office beyond the mandate because of failure in filling the vacancies in time.

Adjustments to the process of resignation of a judge are lacking, who is obliged to remain in office several years beyond the constitutional mandate, as long as the successor judge is not

appointed. Also, there is no distinction between the causes of the end of the mandate and dismissal, which creates uncertainty about the consequences of each of them. Clear constitutional provisions related to disciplinary liability for constitutional judges are lacking. Also, the reformulation of issues related to the jurisdiction of the CC and the entities that put it in motion is necessary, in order to make the appeal before it be effective. For all these reasons, as stated in several decisions of the ECHR, the CC is found not to be fully effective in protecting human rights and freedoms. These shortcomings observed have led to the lack of quality and efficiency in its decisions. Despite those problems identified by the Analytical Document of the Justice System, and in line with the objectives of reform in the Constitutional Court articulated in the strategy of reform in the justice system, GENL has made the following proposals:

(i) Members of the CC shall be appointed according to the following formula: 3 members by the President, three by the Assembly and three from the judiciary, respectively by the joint meeting of the HC and the HAC. This imposes the representation of several branches of power.[33] So, for instance, as candidacies from the judiciary will be only judges, the President and the Assembly must choose at least 2 members of other professions (lawyers, prosecutors, professors of law or from the academic world, etc.). For the judiciary, as well as for the Assembly, it is recommended to be applied the approval by qualified majority of all members, following a transparent process through an Appointments Council *(ad hoc commission)*, which will be applied even for the candidacies selected by the President. This Council shall make the ranking of candidates, according to scientific criteria laid down in the organic law. Rejected candidates may address the CC, if they claim that the selection process is not respected by appointing bodies. This election formula ensures the participation of several bodies and stakeholders in the process, as each body has essential authority unshared with others, which guarantees the non-blocking of the process by creating the possibility of exchanging the experiences of members of the CC. Also, this process is not significantly dominated by politics, and it enables balancing.

(ii) Provision of the most objective criteria for selecting the members of the CC. They must be provided mainly in the Constitution, but also in law and they should be focused mostly on merits.[34] The required criteria that the candidates must meet should mainly be: experience as a jurist (at least 15 years); professional education: judges, prosecutors, lawyers, university professors, jurists who have worked in senior positions in public administration or advisors in the Constitutional Court. The identified candidates alongside their activity must have a kinship with academic life (not necessarily have scientific titles, but it can be a preferential

[33] Referring to opinion CDL-AD (2009) 024 [33] of the Venice Commission regarding the appointment of constitutional judges in Ukraine, the Commission has welcomed the displacement of exclusive competence of the appointment by the President to a mixed system which ensures the selection of judges from three main branches of the power, as this system has more democratic legitimacy. In contrast, the rejection of this system and going to a combination of appointment by the President with the approval of the Parliament is not welcomed. Such formula of election is in Italy and Ukraine

[34] Opinion of the Venice Commission CDL (2011) 065 on the Law of the CC of Turkey: *"It ought to be stressed, that the selection of judges must be based on objective criteria preestablished by law or by the competent authorities and should primarily focus on merits."* "(it is important to note that the selection of judges should be based on objective criteria pre-established by law or by the competent authorities and those (criteria) should focus mainly on the merits.

criterion), be well known for their engagement in the field of human rights or areas related to constitutional right (e.g. administrative law, constitutional law and European law, etc.).[35] Candidates must be of high moral and professional integrity and not to have been members of steering forums of political parties. The whole process of appointment should be characterized by transparency and publicity (which have been missing until now), since these elements contribute to the quality of constitutional justice and also in the perception and in strengthening public confidence in the independence of the constitutional judges and therefore in the legitimacy of the guarantor of the Constitution. To ensure the timely appointment of new members, the law shall charge The Chairman of the CC with the task to inform notifies the appointing bodies 6 months before the end of term.[36] The law shall specify even the obligation for the publication in the Official Journal or in the media, by specifying the body which has the task of filling the vacancy.[37] The proposed candidates must appear within a period which should not be shorter than 30 days from publication of the call for applications. Attached to the appointing bodies functions the Appointments Council, which shall make the ranking of the candidates according to their qualifications. The proposed candidacies must be accompanied by a summary to justify the candidacy. The list of selected candidates respects the ratio of 1: 2 or 1: 3, ie for each vacancy 2-3 candidates and it is accompanied by a report explaining the reasons for the selection and distinct criteria in relation to others. Once the hearing sessions with the candidates are held, they pass to the collegial bodies for voting, who in any case vote secretly and without debate. Setting clear deadlines will enable a timely completion of vacancies in the CC, which currently does not happen.

(iii) The term of members of the CC becomes 12 years(from 9 years that it is currently) in order to create more security for the independence of the members of the CC and stability in decision making, due to the particularity of the constitutional adjudication.

(iv) Election of the Chairman of the CC will be made by the members of the CC, because it guarantees the independence from the appointing bodies and increases the accountability of the members of the CC to regulate their own internal affairs. The mandate of the Chairman shall be four years without the right to reappointment, in order to ensure rotation in the running of the CC. His selection procedures are provided for in the organic law of the CC.

(v) Provision of accurate procedures for granting and accepting the resignation of the CC judge, which are missing currently. It shall be provided that The judge submits the resignation in writing to the Chairman of the Court, who notifies the relevant appointing authority in order to take measures for the appointment of a successor judge within a certain

[35] See also CDL-AD(2006)006, Opinion on two draft laws amending Law No. 47/1992 on the organization and functioning of the Constitutional Court of Romania, § 17 *"It is very welcome that the CC consists not only of career judges and prosecutors but also by lawyers and professors of law. Such a composition has a positive effect on the decisions of the court. The Venice Commission is of the opinion that the CC should be open to candidates of all branches as long as the proper legal qualification is guaranteed*. "Also the Opinion of the Venice Commission CDL (2011) 065 on the CC law of Turkey.

[36] In cases such as Moldova, the Chairman of the CC notifies the appointing body (the Parliament, Government and the High Council of Magistrates) within 3 days from the date of declaration of the vacancy, seeking the appointment of a new judge.

[37] The organic laws of Croatia (Article 6), Slovenia (Article 12), Romania on the CC.

legal deadline from the date of submission of the request for resignation. If after the expiry of 3 months from the date of submission of the application, the successor has not been appointed by the appointing authority, the mandate of the resigned judge ends.[38] It is also needed to accurately provide for in the Constitution cases of termination of the mandate of the CC for cases such as: the expiry of the tenure or attainment of a maximum age; resignation; death[39].

(vi) Expand the jurisdiction of the CC in order to protect more effectively the rights of the individual. Actually, the individual complaint to the CC is not an effective tool in terms of the Constitution, the ECHR and relevant practice of the ECHR. Therefore, it is suggested to clarify the jurisdiction of the Constitutional Court regarding: (a) the review of the constitutionality of individual acts of central bodies in the last instance, aiming to distinguish them from the review of legality by administrative courts;[40] (b) the review of jurisdictional, substantial and functional disputes over between the High Court and the High Administrative Court that is to be established, as well as between the Constitutional Court and the High Administrative Court, as the most appropriate body to end these disputes and enable the establishment of a legal security in the jurisprudence of these higher courts; (ç) expand the individual constitutional appeal, which must be reformulated for a greater protection of individuals against the public power (*the German model-Verfassungsbeschwerde*), as appreciated by the opinion of the Venice Commission.[41] One of the changes that the Constitution of 1998 brought was the restriction of the right of individuals to address the CC. From the ability of individuals to challenge acts of judicial and public authorities that restrict their rights and fundamental freedoms, was passed to the right to a due judicial process, which, also due to the definition, but also because of the practice of the CC, is already limited only to procedural violations, not including the breach of material rights.[42] The CC is constantly criticized by the ECHR that in some cases it does not meet the criteria of an effective legal tool for Albanian citizens.[43] The idea to reformulate article 131 / f of the Constitution is supported in order to make the CC an effective and protective tool of all the constitutional rights of individuals in order to be completely in accordance with its role.[44] Also there will be a re-dimensioning of the subjects that may initiate a constitutional trial.

Anti-corruption measures

As stated above, the Albanian prosecutor's office is organized in a deeply hierarchical and centralized manner, with lower prosecutors subject to orders and instructions of the higher

[38] Article 20 pg.1 / 2 law on the Constitutional Court of Serbia.
[39] Law on the Constitutional Court of Romania
[40] Article 144 of the Constitution of Austria.
[41] Summary of opinions and reports of the Venice Commission on Constitutional Justice, para. 5.2, page 19.
[42] See also the opinion of the Venice Commission on constitutional changes in Ukraine, CDL-AD (2013) 034, § 11 CDL-AD (2010) 039 Study on Individual Access to Constitutional Justice, Adopted by the Venice Commission at 17-18 December 2010
[43] See decisions of the ECHR against Albania: *Qufaj; Shkalla; Gjonbocari* etc.
[44] Countries that have expanded the individual constitutional appeal (Verfassungsbeschwerde) are: Austria, Croatia, Armenia, Czech Republic, Montenegro (with recent constitutional changes), Slovenia, Germany, Latvia, Malta, Poland.

ones. Functioning of the Prosecutor's Office under the principle of hierarchy, for years, has caused adverse effects in its operations, with an impact on the respect of legality, protection of rights and freedoms of the individual and proceeding according to principles of fairness and transparency in decision making. The independence of prosecutors in relation to the hierarchical leader is practically limited by turning them into implementers of the orders of superiors.[45] The Department for Investigation of Economic Crime, Corruption and Organized Crime in the General Prosecutor's Office is responsible for investigating and prosecuting in the first instance the cases of corruption involving the President, Prime Minister, government members, MPs and judges of the High Court and the Constitutional Court[46]. However, despite the transfer of powers to investigate and prosecute corruption involving "senior officials" to the Serious Crimes Prosecutor's Office, corruption cases involving top officials of the state (President, Prime Minister, Ministers, MPs and judges of the High Court and Constitutional Court) are not investigated because the jurisdiction for offenses involving those officials under the Constitution (Article 141) belongs to the High Court. This arrangement is problematic for two reasons. Firstly, because it excludes top officials from the application of preventive seizure under anti-mafia law. Secondly, because it means that the High Court judges decide on cases involving politicians who have nominated and appointed them. Another obstacle until now has been the particular protection from the immunity those officials enjoy under the current constitution. For this reason, it was suggested:

(i) Establishment of a decentralized Prosecutor's Office, which will have a structure with powers that can independently investigate organized crime and corruption. To this end, constitutional changes are required so that the right of the prosecutor of a lower level be clarified to continue prosecution if the case is dismissed by the higher prosecutor. This is the minimum requirement to fight judicial corruption.

(ii) Establishment of the Special Structure of Anti-Corruption within the Prosecutor's Office will bring more efficiency in the fight against corruption[47]. This unit will be responsible for the prosecution of judges, prosecutors and senior officials, provided for by the law. The cases investigated by this structure will be tried by special courts for corruption cases, according to the law. Provision of this structure in the constitution with its powers and independent from the Prosecutor General will make it possible to ensure its well-functioning without encountering obstacles that may come as a result of frequent changes of legislation. Also, the provision in the Constitution shows the priority that Albania gives to the fight against corruption as one of the main criteria for its accession to the EU.

[45] See above the findings and problems on the prosecution.

[46] All criminal cases involving those officers under the Constitution (Article 141) are reserved for the High Court

[47] The so far consulted models are the USKOK Croatia and Romania with the DNA model. The model that is supported more in discussions with expert groups is the Romanian model for the establishment of a National Anti-Corruption Prosecution. However, this model provides for a High Council of Magistrates with two separate chambers for the judiciary and prosecution. In this way, the Albanian version will be a "hybrid" variant, as after the the SLEG discussions the establishment of a High Council with two chambers has received little support, said differently aProsecutor's office within the judiciary

(iii) Prosecutors of the Special Structure of Anti-Corruption shall be appointed by the High Prosecutorial Council from among prosecutors with no less than 10 years of experience as prosecutors, not previously convicted by a court decision, with high moral integrity. Before appointment to this task, they complete the statement of assets and conflicts of interest, and are subject to periodic financial and telecommunications audits, which lies to them and their close family members[48].

(iv) Prosecutors of the Special Structure of Anti-Corruption will be independent not only from the Prosecutor General but also from each other (when they should investigate against their colleagues), so no organizational or structural dependency of any kind or of any other nature that prevent them from fulfilling the function they have. The forecast of a 10-year mandate for the prosecutors of this structure is thought as reasonable period for their sustainability in office but also for the investigation of more difficult cases because of their complex nature. Benefits and other guarantees because of the duty may be provided by law. Even these prosecutors, despite having no organizational dependency, they are subject to disciplinary responsibility, under the law.

(v) This structure will be assisted in its functions by the National Bureau of Investigation, which will conduct investigations under the direction of prosecutors of the Special Structure of Anti-Corruption of the Prosecutor's Office. The National Bureau of Investigation is required to have a clear line of dependency and also a clear jurisdiction to guarantee the well-functioning of the entire special structure of anti-corruption.

On the process of re-evaluating judges and prosecutors

Albania intends to undertake a large-scale effort to reform the judiciary. One of the measures that it intends has to do with an overhaul in the system of all judges and prosecutors in order to reduce the influence of organized crime, politicians and corruption, as well as to assess their qualifications.

I. The legal framework of the Venice Commission

Various efforts have been made even in other countries to subject judges and prosecutors to a qualification assessment. Recent examples include Kosovo, Serbia and Ukraine. Reappointment process in Kosovo was a *sui generis* procedure incorporated into the declaration of independence and the Constitution of 2008 and consequently it can be less applicable to an existing democracy like in Albania. The process of re-appointment in 2009 in Serbia received criticism from the Venice Commission, as every decision on the non-appointment of all judges or prosecutors was equal to the removal from office and, as such, there must be individual guarantees[49]. Moreover, the Constitutional Court of Serbia in 2012

[48] Due to the restriction of privacy, it is necessary to provide for it in the constitution.

[49] . See Opinion on the draft laws on judges and organization of courts in the Republic of Serbia, the Venice Commission's Opinion no. 464/2007 §61 (March 19, 2008) Document No. CDL-AD (2008) 007 and preliminary opinion on the draft decisions of the High Judicial Council and State Prosecutorial Council on the Implementation of the Law on Amendments to the Law on Judges and the Prosecution in Serbia, the Venice Commission's Opinion no. §9 606/2010 (20 June 2011), Document no. CDL-AD (2011) 015

found that since it was a non-differentiated body that took decisions of first instance and appeal, this combined body deprived judges and prosecutors of their right to a fair trial[50].
Recent decisions of the Venice Commission for assessment of qualification processes and lustration for Ukraine provide the necessary details about this kind of process[51]. The transitional process for conducting assessments of qualification for judges and prosecutors presented by Ukraine was considered to be inappropriate, but as concept it was not rejected. Opinions expressed some basic concepts that must be followed by an assessment of qualification for judges and prosecutors.

The joint opinion made clear that an assessment of qualification for incumbent judges must be "wholly as a specific case and be made under more rigorous safeguards to protect those judges who are eligible to exercise their duty." [52]

In fact, Albania is in a very specific situation. Albania is a candidate country for the European Union, but it has a pronounced distrust in its judicial and prosecution system and with indicators of a judiciary and prosecution system unable to self-regulate at all levels. With an unprecedented convergence of political will on judicial reform and substantial international support, this is a moment in history that the Albanian justice system can undergo a deep and comprehensive reform. However, it is clear that such a reform can be ignored - fully or partially - without a thorough assessment of the people who make up the system. Albania does not doubt that very special circumstances exist which justify these measures and believes that the proposal provides sufficient rigorous guarantees to protect the rights of incumbent judges and prosecutors.

II. Re-evaluation of judges and prosecutors in Albania

Some of the main reasons for undertaking this deep reform in the justice system is the high degree of corruption in Albania, the low quality of work and failure of the existing mechanisms to control judges and prosecutors in cases of violations of law while on duty. The existence and the level of corruption in the judiciary is no more a matter of perception in Albania. Not only the public[53] confirms the high level of corruption, but also the judges already accept that the justice system is not free from external influences[54]. A recent survey of Albania's judges found that 25% of those judges themselves admit that their system is corrupt, while 57% of judges admitted that the judicial system was not free, or partly free

[50] The CC of Serbia, Decision nr. VII-U-534/2011.
[51] See Joint Opinion of the Venice Commission and the Directorate for Human Rights (DHR) of the Directorate General for Human Rights and Rule of Law (DG) of the Council of Europe Convention on the Law on the Judicial System and Status of Judges and Changes in Law the High Council of Justice of Ukraine, the Venice Commission's Opinion no. §§71-81 801/2015 (23 March 2015), Document no. CDL-AD (2015) 007 and the basic principles set out in the Final Opinion on the Law on Clean Government (Law on lustration) of Ukraine, the Venice Commission's Opinion no. 788/2014 (19 June 2015), Document no. CDL-AD (2015) 012
[52] The Joint Opinion of the Venice Commission no. §74 801/2015
[53] *Corruption in Albania, Perception and Experience*, Institute for Development Research and Alternatives, Pg. 22-24 (2009).
[54] *Survey of Albanian Judges*, Center for Transparency and Freedom of Information (2012). In the 2013 Transparency International Global Corruption Barometer, the judiciary was listed as the most corrupt institution in Albania.

from political influence.[55] Further, the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest reviewed the declaration of all 399 judges, High Court judges and Constitutional Court judges. Based only on their declarations, 73% of Albanian judges have declared family assets of over 14 million ALL (or about 100000 Euro). Of that figure, 35% of those declared assets of over 35 million ALL (or about 250000 Euro. Some have declared millions. It should be noted that in the 2014 CEPEJ evaluation of Albania, net annual judicial salaries range from only 5.747 Euro to 12 030 Euro[56]. State Department Report on Human Rights 2013 describes the Albanian justice system as inefficient and subject to political pressures, fraud and corruption[57]. Commissioner for Human Rights of the Council of Europe, Nils Muiznieks, in the report of 2014, stated that in Albania "the high level of corruption in the justice system seriously impedes the functioning of justice and reduces public confidence in justice and the rule of law". Freedom House Report of 2014 also describes the Albanian justice as a system that suffers from chronic corruption, political interference and political career in the judiciary [58].

One of the measures to be taken with a view to amending the grave situation in the justice sector is:

(i) Establishing a system of comprehensive reevaluation of judges and prosecutors in order to reduce the impact of organized crime, politics and other corruptive elements in the delivery of justice, but also increase the professional quality of judges and prosecutors. Concrete mechanisms are projected to reach a positive and real outcome from this reevaluation process. It is intended that the evaluation system is based on a strong system of declaration of assets, including the establishment of a court and an anti-corruption unit of the Prosecutor's Office and an inquiry service for this purpose.

(ii) A special commission will be establish in order to conduct the reevaluation within a reasonable period of time. This special and temporary commission with clearly defined powers and functions will implement an important elements of this reform, enabling multi-dimensional scanning of every judge and prosecutor.

(iii) The reevaluation process will include comprehensive control of judges and prosecutors in three important elements: the assets of judges and prosecutors, detection or identification of their links to organized crime and ultimately evaluation of the work done and their professional skills. If the final outcome of the three tests results negative or insufficient, the Commission will come up with a decision that varies from the obligation of a judge or prosecutor for education at the School of Magistrates for a year - if professional skills are insufficient - until removal from office. The three-folded examination of judges and prosecutors intends not only the separation ones and for all of elements related to crime but also the incompetent ones who have benefited the workplace on the basis of political connections or financial corruption. The current evaluation system, which is more a self-

[55] Survey of Albanian Judges, Center for Transparency and Freedom of Information (2012).
[56] Report on European Judicial Systems, Edition 2014 (2012 data): Efficiency and Quality of Justice," pp. 301 and 309, CEPEJ (2014).
[57] *Human Rights Report, Albania* United States Department of State, Pg. 1, 7 (2013).
[58] *Nations in Transit*, Freedom House, Pp. 49, 59 (2014).

defensive than a self-regulation system for these elements has failed in the identification and expulsion from the system of those judges and prosecutors. For this reason, the professional evaluation of judges and prosecutors appears to be a necessity through a special and comprehensive that takes into account the experience and specialty of each judge and prosecutor.

(iv) An Independent Commission of Qualification shall be established that will include evaluation of all judges and prosecutors, regardless of the level and jurisdiction. It will have a limited mandate starting from January 1, 2016 until December 31, 2019. Committee members will be lawyers who have long experience (at least 15 years) as judges, prosecutors, lawyers and law professors as well as enjoy high reputation. They will have the status of a member of the High Court. The Commission will consist of first instance and that of appeal. Details of the its functioning will be provided by law. This process will be conducted by local structures under strict international supervision, in order to increase the reliability of the process. The presence of international observers shall also be provided, who will have access to the files of judges / prosecutors and shall supervise the entire decision-making process, will assist the process and will provide any kind of assistance that will be necessary for the commission. In order to ensure the process but also reduce the possibility of corruption within the Commission, its members will have a special treatment for themselves and their family. They will also be guaranteed special protection from the state.

Transitory Provisions

Going through the effort of providing a solution to the problems identified by the Justice System Analytical Document and further to the objectives outlined by the Justice Reform Strategy, the proposed reform in the justice system implicates various aspects of the organisation and functioning of the existing constitutional institutions of the justice system. The constitutional amendments proposed by the SLEG expand actually on the Constitutional Court, High Court, High Council of Justice, Prosecution Office and all the other stakeholders involved in the governance of the judiciary. On the other hand, the proposed amendments shall, as long as they are approved, establish new institutions of the governance of the judiciary. Such institutions are the High Justice Inspectorate, High Disciplinary Tribunal and the Justice Appointments Council. Third, the proposed amendments affect a reshuffling of the powers among the various justice institutions. Thus, many of the powers assumed currently by the Minister of Justice are proposed to be vested to the High Judicial Council. It is further proposed that the High Judicial Council and the Minister of Justice do not assume any responsibility in investigating into the disciplinary violations and complaints against judges and neither in inspecting the courts, with such powers being assigned to an independent inspectorate. It is finally proposed that the standing of some existing institutions be strengthened (for instance, High Prosecutorial Council), while further institutions be abolished (such as the National Judicial Conference). Against such essential and massive amendments being proposed, it is necessary to evaluate whether it is possible for the existing institutions to continue with their activity by way of simply approving some transitory provisions; or they should be reframed through the termination of the mandate of the serving

functionaries, thus paving the way to the constitution of new institutions. In making such an assessment, SLEG has naturally leaned, to the extent possible, towards preserving the mandate of the existing institutions. Further to this assessment, SLEG has reached the following conclusions:

Constitutional Court – SLEG is aware that the mandate of the Constitutional Court can be interrupted just under very specific circumstances. The main amendments proposed for CC encompass its composition, way of appointment of members, time of stay in office, list of entities entitled to take recourse to the CC and the remit of powers of the court. These are, certainly, meaningful changes amending the profile of CC. However, SLEG shares the opinion that the role and source of legitimacy of CC has not sufficiently been changed to justify the interruption of the mandate of the existing court, thus constituting a new court. It is deemed that a detailed transitory provision regulating the renewal of the CC, in response to new circumstances, shall be sufficient for the CC to assume the new tasks and the new way of functioning efficiently.

High Court – SLEG is aware that the mandate of the High Court can be interrupted just under very specific circumstances. The proposed amendments actually change essentially the profile and the role of the High Court. The main amendments encompass: (i) proposal to separate the administrative jurisdiction of the HC, consequently, abolishing the Administrative Chamber of the High Court, establishing the High Administrative Court (HAC), thus significantly reducing the workload of the existing judges at HC; (ii) transforming the HC into a pure career court. This means that the High Judicial Council shall expand its authority over the HC and HAC members, same as for other judges (for instance, the performance of these courts shall be evaluated by HJC, the latter due to impose disciplinary measures on the HC and HAC members etc.); (iii) changing the way of appointment of the HC and HAC members, thus transforming the legitimacy from entirely political to judicial, in an effort to do away with the direct political impacts and recognising to the HJC an essential role in the process; (iv) providing for more objective criteria building on professional merits regarding the selection of candidates for HC and HAC members, who shall be subject to a strict control regarding their professional skills through a couple of filters; (v) changing the time of stay in office for the HC and HAC members from 9 to 12 years, which is to occasion the presence of judges with various mandate in the court; (vi) reframing the constitutional powers of the High Court, which is to transform it into a mere court of law, concentrated on the unification of judicial practice (which might dictate the need for changing the professional profile of the existing members, but also renaming this court as court of cassation); (vii) abolishing the initial jurisdiction of HC for adjudicating the criminal cases against the senior state functionaries, etc. It is clear that these are essential changes, creating a high court of an entirely different physiognomy, dimension but also a new name. Considering the range and depth of the proposed changes for the HC (which, referring to the problems identified in the Justice System Analytical Document and to the objectives of the reform specified in the Justice Reform Strategy, has not been capable of contributing to healing the justice system), as well as being aware of the critical importance of observing the mandate of judges, as the highest guarantee for their independence, SLEG

did not manage to come up with a common approach in terms of interrupting the HC mandate or is continuation. Finally, being conditioned by this string hesitation within the SLEG, the continuation of the mandate of HC has remained unchanged, thus including just a transitory provision for the establishment of a HAC within 3 months since the entry into effect of amendments. However, referring to the strong reservations of some SLEG members regarding this approach, we suggest that the Parliament ask the Venice Commission for an opinion on the other option; thus, whether, due to such interventions with the Constitution, which provide another dimension to the High Court, in terms of powers, composition, functioning, procedure in appointment and dismissal etc., an early interruption of the mandate of the HC members could be deemed legitimised and in compliance with the international standards.

High Council of Justice – SLEG is aware that the mandate of the High Council of Justice (HCJ) can be interrupted only under very specific circumstances. The proposed amendments regarding HCJ bring about an essential change to the role and legitimacy of HCJ. The most important changes encompass: (i) changing the number of members, from 15 to 11, as well as the procedure for their election; (ii) composition of the body by way of changing the relationship between the judge and lay members, and the profile of the lay members; (iii) abolishing *ex officio* the three most senior functionaries from the membership with this body (President of the Republic, Chairman of the High Court, Minister of Justice); (iv) assumption of chairmanship of this body by one of the lay members, thus depriving the President of the Republic of this entitlement; (v) abolishing the constitutional function of the Deputy Chairman of the High Council of Justice; (vi) extensive expansion of the powers being proposed, due to include all the aspects of the administration of the judiciary (even the proposal for the budget administration) and the strategic planning; (vii) going over from the part time to full time membership, thus boosting the efficiency and collegiality of the HJC; (viii) providing for a pure accountability system for HJC members; (ix) way of appointing and dismissing the members; (x) assuming the responsibilities on public reporting and to the assembly on the issues of the judiciary, and (xi) changing the name of the body from HCJ to HJC. Referring to the depth and range of the proposed changes for the HCJ (which are, as such, dictated by the problems identified in the Justice System analytical Document and the objectives of the reform specified in the Justice Reform Strategy, SLEG proposes the approval of some transitory provisions which shall bring about the consequence of the early termination of the mandates of the HCJ members and the regulation of the legal situation which will ensue the entry into effect of the proposed constitutional amendments.

Prosecutor General – SLEG is aware that the mandate of the Prosecutor General (PG) may be interrupted only under very specific circumstances. However, referring to the fact that the reform being proposed for the prosecutorial system and specifically for the PG shall, as long as it is approved, bring about a comprehensive, structural and functional reframing of the prosecutorial system, powers of PG, way of his selection and appointment, duration of the constitutional mandate of PG, procedures for his dismissal, amending the professional requirements and criteria (including a higher education level, which is consistent with the position's focus on High Court arguments and issuing written guidance) which should be met

by the candidates for PG, upgrading the Prosecutorial Council to the constitutional level and the comprehensive structuring of its powers (of the Council) regarding the appointment, career, promotion and disciplining the prosecutors, differing from the current legal and constitutional regulation, changing the hierarchical relationship within the prosecutorial system and separation of a part of the current portfolio of PG with the establishment of the specific anti-corruption structure, SLEG is of the opinion that it is necessary to provide for transitory constitutional provisions for the early termination of the PG mandate.

AD HOC PARLIAMENTARY COMMITTEE ON JUSTICE SYSTEM REFORM

GROUP OF HIGH LEVEL EXPERTS