

Albania's Challenges to European Aspiration, Bringing the Justice System to Justice

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Abstract

Albania has always aspired to be part of the European family and for this purpose has constantly experienced different challenges. EU has monitored Albanian progress and in each case has provided its recommendations. Since the signature of the Stabilization and Association Agreement, one of the main challenges that Albania had to face was justice reform and fight against corruption and organized crime, which of course were closely related to each other. A great number of international organizations have been present in Albania, providing expertise and support to achieve the integration key priorities among which one of the most important was the justice system. However corruption and incompetence were very spread among prosecutors and judges. Consequently, following the insistence of international actors as well as the increased awareness of local actors, it was concluded that a deep reform in justice was necessary, which would finally clear justice system and would enable it to perform its task of doing justice. As rare as ever, with the unanimous vote of all Albanian parliamentarians, the constitutional changes were approved and additional laws for the reform in justice were adopted too. This legal package initially included asset assessment, a background assessment and a proficiency assessment and then the regulation of the procedure of appointment, disciplinary measures and control during the assignment, and the verification of complaints, for each judge and prosecutor in Albania. This reform is expected to open Albanian road toward EU integration.

Keywords: European Integration, aspiration, key priorities, justice reform, corruption

1. Introduction

From the first democratic elections in 1991, Albania has faced a transition period to change its economy, political system, organization and also its mentality, from a dictatorial regime toward a democratic system, thus it has experienced a great number of difficult challenges in order to achieve its aspirations. Of course, due to its geographical position, the main target was to become part of the European Union. Since many years now, political leaders often have declared that the main aspiration was the integration into EU structures. Also Albanians had and still have the same aspiration, often merely following the politicians and often for their economic reasons, human rights and rule of law and any other democratic principles. On the other side also the European Community has had the scope to involve Albania in the big Euro-Atlantic family. A significant number of requirements, tasks, obligations and targets have been continuously addressed to Albania.

The European Council met in Santa Maria da Feira on 19 and 20 June 2000 and decided that for the Mediterranean Region, where Albania is part of, a Common Strategy of the European Union was necessary. Then, at the Zagreb Summit, held on 24 November 2000, was confirmed that the Stabilization and Association Process was the road that led to the EU membership, which different from regional cooperation agreements policies, it offered better contractual relations with the EU. The Stabilization and Association Process, which was designed in the first year of CARDS program, was firstly recommended for Albania in 2001 and was adopted in October 2002, and in January 2003 the negotiations for a SAA between the EU and Albania were officially launched.

In the Albania Stabilization and Association Report 2003 it was highlighted that despite the efforts of Albanian government, there were still too many fields to be improved in order to become part of that Agreement. More specifically this report outlined the priority areas needing attention in Albania, among which were mentioned:

- Full commitment and determined action by the Government to combat organized crime, with concrete initiatives, properly coordinated with international partners, and tangible results.

- Full implementation of the 2002-2003 anti-corruption plans. Increased institutional capacity to investigate and prosecute corruption. Adoption of effective measures against bribery.
- Increased capacity and improved functioning of the Judiciary and other law enforcement bodies.
- Further progress in enforcement of court rulings. Ensuring the independence of the judicial system. (Albania Stabilization and Association Report 2003)

In the following year the Stabilization and Association Report outlined that Albania was undertaking some initiatives regarding the main key areas however;

- the rule of law in Albania remained deficient;
- Albanian law enforcement entities did not yet guarantee international standards in domestic law enforcement;
- corruption and organized crime continued to be serious threats to the country progress;
- judicial system remained weak;
- professional capacities of judges, prosecutors, judicial police and administrative staff remain limited;

During 2004, in Albania were held five Consultative Task Force meetings, having as main targets the key European priorities such as fighting organized crime, parliamentary elections, human and minority rights, compensation of land, freedom of media, migration, human trafficking victims, education reform etc. As a result, Albania made several improvements on legislation and procedures related with above mentioned issues. (Albania 2005 Progress Report, 9 November 2005).

After EU persistence and government's efforts, the Albania Progress Report 2005 outlined that despite of having a lot of work ahead Albania has made some progress towards meeting European standards. There were some improvements, *inter alia*, in the fight against organized crime and terrorism, adopting a targeted package of laws, in the implementation of the specific action-oriented measures against organized crime, the police intelligence analysis has improved, initial implementing legislation on an agency for the confiscation of assets has been approved, etc. (Albania 2005 Progress Report, 9 November 2005).

After this progress in some key sectors, Albania signed the Stabilization and Association Agreement (SAA) with the EU on 12 June 2006 which provided a framework of mutual commitments on a wide range of political, trade and economic issues. Still the Albanian European aspiration had a lot of "home works" to be delivered on time, a process which continued until April 2009 when the SAA entered into force.

It seemed like the first phase was accomplished and the European aspiration was closer. Having this approach, on 28 April 2009, Albania presented its application for membership of the European Union. Following a request by the Council, the Commission submitted its Opinion on Albania's application in November 2010. In December 2010, the Council endorsed the Commission Opinion's recommendations. In its conclusions, the Council noted that the opening of accession negotiations would be considered by the European Council, in line with the established practice, once the Commission had assessed that the country had achieved the necessary degree of compliance with the membership criteria and, in particular, had met the key priorities set out in the Commission's Opinion. (Albania 2011 Progress Report, 12.10.2011)

It seemed that Albania was not fully meeting the key priorities set by the EU. Some modest progress was made as regarded Parliament proceedings, the development of election process, public administration reform, the government's policies to fight corruption, the issue of incrimination and political party financing, and was reported limited progress in relation to the judicial reform, the professionalism of the judiciary, the evaluation system for judges etc.

During the following two years Albanian government tried to fulfill, somewhere partially and somewhere fully, the priorities set by the EU Commission. In October 2012, the Commission recommended that Albania be granted EU candidate status, subject to completion of key measures in the areas of judicial and public administration reform and revision of the parliamentary rules of procedures. Based on the legal amendments and improvements of several political and legal aspects, on 23 June 2014, under the Greek EU Presidency, the Council of the European Union agreed to grant Albania the candidate

status, which a few days later was endorsed by the European Council. (European Neighborhood Policy And Enlargement Negotiations, 2016).

Referring to Albania Progress Report 2014, the European Commission stated:

Albania has made progress over the past year. Further steps were taken towards the reform of the judiciary. The government has shown political will to act decisively in the prevention and fight against corruption. The legislative framework was strengthened and policy coordination and monitoring at central level improved. The fight against organized crime shows a positive trend in a number of areas, with an intensification of law enforcement activities, notably on drug seizures and drug-related crimes, and on economic crime and trafficking of human beings.

However, many shortcomings remained, in particular in the rule of law field. Much work lies ahead. Fighting corruption and organized crime are significant challenges (Albania 2014 Progress Report, October 2014).

After a long and ongoing perseverance from European Community and after the continuous pressure from EU and from US representatives, Albania was at a decisive moment for its future. Of course as it was mentioned above, one of the European Integration key priorities was the Justice Reform and corruption within the judiciary system.

2. Was Justice Reform Really Necessary in Albania?

Definitely Yes! Reports and surveys, carried out from international and local organizations, revealed that Albanians had no trust in the Justice system. Moreover, judges and prosecutors themselves expressed that corruption and incompetence existed within the system. Lack of professionalism, integrity and accountability, was very spread and thus dysfunction, power abuse, inequality in front of law and lack of transparency were observed in the justice system.

Several factors have had an impact on the aggravated state of our justice system. Among them can be mentioned the widespread phenomenon of corruption. For the sake of the truth, corruption was spread also in other sectors of public administration but of course in the justice system it was much more harmful. In criminal cases corruption led to non-prosecution and non-punishment of criminals who continued their activity being convinced that having some "cash" on hands they could either escape imprisonment or get the minimum possible sentence for that crime. In civil cases, corruption led to assets and properties loss of legitimate owners and gave rise to the concept that "there was no right in front of rich people".

Another important factor was the weak legislation, which was imported from abroad or was adopted according to a non-professional opinion and which brought contradictions between provisions. That contradiction gave the possibility to both prosecutors and judges to use the provision which suited them better for each specific case. As a result, due to incompetence and/or corruption, prosecutors and judges, on similar cases had different decisions.

Justice Reform was very necessary to make radical changes to the legislation and especially to the professional behavior of justice system's actors, their mentality, the procedure of their selection and also the punishments against them. This reform should provide an efficient justice system with European Standards. In this way citizens would be satisfied with the rule of law, fight against corruption and organized crime would be more effective and of course it would fulfill one of the EU key priorities.

Among many declarations and opinions regarding the importance of Justice Reform in Albania, the British Ambassador to Albania, H.E Nicholas Cannon OBE, in his speech during public consultation forum on the judicial reform, outlined: "The European Commission has identified corruption in the judiciary as the No 1 obstacle to progress towards Albanian accession to the European Union. Without judicial reform, the accession process will be blocked indefinitely. There is no way that any Member State, however sympathetic to Albania's European aspirations, could support serious progress on accession with an unreformed judiciary" (Nicholas Cannon OBE speech, 13 July 2015).

On 23 October 2015, MEP Mr. Knut Fleckenstein, rapporteur for Albania in the European Parliament, stated that the adoption of Justice Reform and start of its implementation would open the road to start membership negotiations. "*The judiciary reform is probably the most ambitious and most important reform that Albania has seen during the last 25 years*" (MEP Mr. Knut Fleckenstein, 23 October 2015)

OSCE presence in Albania, regarding the Judicial System in Albania, on 8 June 2015 highlighted "This is a milestone in democratic reform; Corruption is one of the main impediments to progress in Albania; A judicial system for a just society, in which all citizens – from the most vulnerable to the most powerful – are accountable for their actions and can receive justice."(OSCE Presence in Albania, 8 June 2015).

At local level: the Special Parliamentary Commission on Justice Sector Reform, the High Levels Expert Group, in June 2015 analyzed the Albanian Justice System and, *inter alia*, highlighted that based on the general public opinion there were doubts that prosecutors and judges, through bribery were assigned to preferred job positions; judiciary police through bribery destroyed evidences; prosecutors through bribery closed criminal cases and judges who exceeded legal deadlines while waiting for bribery. Another worrying situation was also the low professional level of justice system key actors, resulting from the legal education which did not provide the right level of formation regarding their legal rights and obligations. After this analyze, the unanimous idea of the Albanian political class that the Justice system had serious problems and needed to be reformed gave hope to Albanians. (Komisioni i posaçëm parlamentar për reformën në sistemin e drejtësisë, june 2015).

International actors, on the other side, continued their pressure by highlighting the importance of Justice Reform. They had been present in Albania to enable this reform, providing financial support and high level expertise. Some of the key international actors, being present in Albania through several years, relating also to the Justice Reform and Law enforcement, are mentioned as follows:

- Since 2003, the OSCE Presence in Albania has assisted the Albanian authorities in its justice reform efforts, *inter alia*, by assessing whether court proceedings are in compliance with international fair trial standards.
- There are two programs sponsored by US Department of Justice. OPDAT, the Overseas Prosecutorial Development, Assistance and Training Program, with the main scope to assist the Albanian Government to develop criminal justice and law enforcement structures, with particular emphasis on public corruption, organized crime and human trafficking and ICITAP, International Criminal Investigative Training Assistance Program, which since 1998 has assisted the Albanian Government to develop the capacity to provide professional law enforcement services based on best policing practices, respect for human rights and the rule of law.
- In 2001 Albania joined GRECO, the Group of States against Corruption, established in 1999 by the Council of Europe to monitor States compliance with the organization's anti-corruption standards, being subject to evaluation in the framework of its Evaluation Rounds in April 2002, October 2004 and November 2008.
- The PAMECA projects have started in 2002 and have operated in the framework of the assistance that the EU has given to Albania in the area of law enforcement and security and public order.
- The Instrument for Pre-accession Assistance (IPA) is the means by which the EU supports reforms in the 'enlargement countries' with financial and technical help. The IPA funds build up the capacities of the countries throughout the accession process, resulting in progressive, positive developments in the region, having as a priority sectors, *inter alia*, Rule of law & fundamental rights (Independent, efficient judiciary; helping police fight organized crime; tackling corruption; respecting human rights conventions).
- The Programme: "Increase the efficiency of the Albanian justice system, in line with European standards" under European Commission for the Efficiency of Justice (CEPEJ), which officially started in Albanian with the first visit of CEPEJ experts and members of the Secretariat, on 27 January 2014, had the overall objective to improve the efficiency and the quality of the public service of justice delivered to the Albanian citizens by the court system in accordance with European standards.
- The PHARE programme is one of the three pre-accession instruments financed by the European Union to assist the applicant countries of Central and Eastern Europe in their preparations for joining the European Union. Until 2000, Albania together with Western Balkans countries was beneficiaries of PHARE. However, as of 2001 the CARDS programme (Community Assistance for Reconstruction, Development and Stability in the Balkans) has provided financial assistance to these countries.

- The CARDS programme, (Community Assistance for Reconstruction, Development and Stabilization), is the EU's main instrument of financial assistance to the Western Balkans, including Albania. Created in 2000 and became operative in 2001, it is the main financial instrument of EU's Stabilization and Association process (SAP).

- To consolidate the justice in Albania and to strengthen the transparency, efficiency and the public trust in the Albanian justice system, the EU funded the EURALIUS project, with its missions EURALIUS I (June 2005- November 2007), EURALIUS II 2007-2010, EURALIUS III September 2010 – June 2013. The current EURALIUS IV mission (2014-2017) having as the main objective to assist the Albanian justice institutions to bring their enactment closer to the EU standards.

With the view to harmonize the current national practices with Council of Europe and European standards, the above mentioned organizations/programs, with the presence of international experts, have continuously developed events, meetings, workshops, round tables, seminars, trainings, analysis, reports and recommendations with and for the key actors of Albanian justice system.

Having the support of all the above mentioned international organizations, after 18 months of efforts, with the assistance of EU and U.S. experts, finally all 140 parliamentarians voted unanimously for the judicial reform package, which was considered fundamental to convincing the European Union to launch membership negotiations. In the night between 21 and 22 July 2016 the Parliament approved the constitutional amendments related to the justice reform, which entered into force on 11 August 2016, which would give rise to the adoption of 7 laws to implement the constitutional amendments, which, *inter alia*, represent the implementation of the Vetting Law, known as the temporary re-evaluation of the Albanian judges and prosecutors. This re-evaluation shall include asset assessment, a background assessment and a proficiency assessment and shall be carried out by limiting them some constitutional rights. Subject to this re-evaluation shall be Albanian prosecutors, including the General Prosecutor, judges, including judges of the Constitutional Court and of the High Court and legal advisers of the High Council of Judges, of the Constitutional Court and of the High Court. In any case they will have the burden of proof to verify the source of their assets.

Beside the reorganization of actual institutions, based on the new adopted constitution and laws, some other new institutions, which shall enable the Justice Reform, were established.

- The Independent Qualification Commission shall carry out the re-evaluation of all judges, including judges of the Constitutional Court and High Court, all prosecutors, including the Prosecutor General, the Chief Inspector and the other inspectors of the High Council of Justice shall *ex officio* be re-evaluated. (Constitution of the Republic of Albania).

- The Appeal Chamber, which is organized near Constitutional Court, is the only judicial body that considers appeals against the decisions of the Independent Qualification Commission. (Constitution of the Republic of Albania).

- Special Prosecution Office under which is subordinate the Special Investigation Unit, which are independent from General Prosecutor and shall be competent to adjudicate corruption and organized crime, as well as criminal charges against the President of the Republic, Speaker of the Assembly, Prime minister, the member of the Council of Ministers, the judge of the Constitutional Court and High Court, the Prosecutor General, High Justice Inspector, the Mayor, Deputy of the Assembly, deputy minister, the member of the High Judicial Council and High Prosecutorial Council, and heads of central or independent institutions as defined by the Constitution or by law, as well as charges against former officials as mentioned above. (Constitution of the Republic of Albania).

- Specialized courts shall be competent to adjudicate corruption and organized crime, as well as criminal charges of corruption and organized crime committed by the above mentioned persons. (Constitution of the Republic of Albania).

- High Judicial Council which ensures the independence, accountability and appropriate functionality of the judicial power in the Republic of Albania, appoints, evaluates, promotes and transfers judges of all levels and also decides on disciplinary measures on judges of all levels. (Constitution of the Republic of Albania).

- The High Prosecutorial Council which guarantees the independence, accountability, discipline, status and career of Prosecutors in the Republic of Albania and which appoints, evaluates, promotes and transfers all prosecutors of all levels and also decides on disciplinary measures against them. (Constitution of the Republic of Albania).

- The High Justice Inspector shall be responsible for the verification of complaints, investigation of violations on its own initiative and the initiation of disciplinary proceedings against judges and prosecutors of all levels, members of the High

Judicial Council, High Prosecutorial Council and the Prosecutor General, in accordance with the procedure defined by law. (Constitution of the Republic of Albania).

- The Justice Appointments Council is responsible for verifying the fulfillment of legal requirements and assessment of professional and moral criteria of the candidates for the High Justice Inspector, as well as for the members of the Constitutional Court. (Constitution of the Republic of Albania).

These institutions will be monitored by an International Monitoring Operation, composed by judges and prosecutors selected by different EU member states. According to this procedure, international observers do not hold a decision-making role in the vetting process, holding more of a monitoring and supporting role in the overall process.

Finally Albania opened the way to Justice Reform, which is very important to clean the Justice system once and forever, in order that the system itself can be able to be impartial and professional regarding Albania's wounds, such as corruption and organized crime.

Justice reform was welcomed by many international actors, diplomats and media.

US Ambassador Donald Lu, added in a statement after the package passed: The United States was proud to have supported the drafting and negotiation "*of this strong reform package*". "*Your commitment has made Albania a more just and democratic country*". (U.S. Ambassador Donald Lu, 22 July, 2016)

The OSCE Presence in Albania: "*welcomes the Assembly's adoption today of the set of constitutional amendments aimed at reforming the justice sector. We commend the Assembly for this fundamental achievement, which was supported tangibly by many international experts and diplomats.*" (The OSCE Presence in Albania, 22 July, 2016).

3. Conclusions

In front of its European aspiration Albania, over the years, has faced constant remarks from EU with regard to the justice situation. Often the justice system did not provide justice. Corruption and incompetence within this system has led to an increase of corruption also in other public administration bodies and has significantly increased the level of organized crime in Albania, due to non-prosecution and non-punishment of criminals. As a result, anyone faced to justice had necessarily to think about bribery otherwise would lose his property, while on the other side the one who paid money was not sentenced even if he was guilty or benefited assets not belonging to him (unjustly). Problems were so frequent that the whole system was considered as such, to the point that even those honest and professional judges and prosecutors often became part of unfair accusations.

Consequently, it was necessary to make a re-evaluation of asset assessment, a background assessment and a proficiency assessment among justice ranks, considered as the Vetting process. This re-evaluation would verify corruption and professional ability of each prosecutor and judge. Albanian parliamentarians, convinced on the necessity of this justice reform, by unanimous vote, approved constitutional changes and a supplementary legal package for this reform, which is recommended and approved by international organizations. This reform is considered as one of the most important reforms that Albania has ever undertaken in these 27 years of democracy. Now the system itself can bring the Albanian justice in front of justice.

Taking in consideration that this reform has been a key priority for Albanian integration into EU, now we remain hopeful that this year we will have an unconditional recommendation from European Commission.

In addition, since this reform is based on European principles and standards and it is also approved by European organizations, it may be easily applied in other region countries, which have problems with the justice and that aspire to become part of the big European family.

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