

GOOD GOVERNANCE OF NEW JUSTICE INSTITUTIONS IN ALBANIA



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POLICY STUDY
NOVEMBER 2021



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By

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Keywords: *Justice Reform, good governance, EU Enlargement, Albania*

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This policy study is prepared in the framework of the project "*Preparing and Supporting Albania for the EU Accession Process – ALBE*", implemented by Cooperation and Development Institute (CDI). This project is supported by the Dutch Embassy in Tirana.

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LIST OF ACRONYMS

CSJS	Cross-Sector Justice Strategy
DoPA	Department of Public Administration
HCJ	High Council of Justice
HIJ	High Inspector of Justice
HJC	High Judicial Council
HPC	High Prosecutorial Council
IPA III	Instrument for Pre-Accession Assistance
JAC	Justice Appointment Council
NBI	National Bureau of Investigation
NJS	New Justice Structures
OAJB	Office of the Administration of Justice Budget
OPDAT	Office of Overseas Prosecutorial Development, Assistance and Training
SEE6	Six South-East European countries
SPAK	Special Anti-Corruption Structure

Abstract

The outcomes of Justice Reform in Albania until now can be resumed in two main components: i) the ongoing vetting process and, ii) the establishment and operationalization of new justice institutions. Under international monitoring, the new institutions have been designed and set up to resist capture, are manned by vetted individuals, and are structurally independent from interest groups.

After securing their legitimacy vis a vis the expectancies of the Albanian citizen and of EU partners, and completing the phase of set up, the next objective is to establish good governance mechanisms, implement solid internal processes, and deliver the expected outcomes. Faulty functioning of the new justice structures will damage both the legitimacy of the whole reform as well as the quality of their deliverables.

Having amended more than 1/3rd of its Constitution, Albania finds itself as a Reform Frontrunner when compared with other SEE6 EU candidate countries. As a consequence, an important part of the EU foreign policy instruments of political dialogue, conditionality and assistance applied to the Balkan country must be re-oriented and redesigned to focus on the good governance and resilience of new justice institutions. Moreover, the lessons learned during design and implementation of the Albanian justice reform can be applied in other sectors as well as in the other Balkan countries.

Context and methodology

Since 2018, Cooperation and Development Institute under the framework of MATRA programme has been implementing ALBE initiative.¹ In the first phase we have focused on the reforms in Albania and how they interact with Enlargement. Using the justice reform as a case study, we observed that after cutting the ties with politics, the justice reform brought to the fore the way the new institutions operate and deliver. Our main findings unveiled the importance of the planning phase, the agency of political actors during the design and set up phase, and the systemic importance of the local resources – human and financial - with regard to the resilience of the process and of newly established institutions.

Mustering the will of Albanian political elites to make the necessary constitutional changes and adopt the consecutive normative framework was the pre-condition for the initiation of the vetting process and the setup of new justice structures (NJS). These developments put Albania in the position of a Reform Frontrunner where without formally opening the negotiations with EU, the country completed the political moves necessary for the reform to proceed. The establishment phase of NJS and the challenges that they faced provided firsthand information on the do's and don'ts that would latter condition their functioning, sustainability and resilience. It is in this process that we decided to focus in and to promote as best example in our second policy paper. We chose the appreciative inquiry methodology to overcome the huge complexity of the problem-solving approach, and to build up on the core strength of the justice reform in Albania.

On top of bypassing the practical limitations of the problem solving when dealing with unknown unknowns, the appreciative inquiry can also be used to build up on the pragmatic solutions found for unexpected situations and ad-hoc remedies and compromises that were adopted in the Albanian case and that helped overcome the challenges posed by the political interventions, shift of focus towards the vetting, the sequential triggering mechanism, availability of local resources, etc.

Among different core strengths that we identified was the ability of new institutions to adapt and develop in non-optimal conditions. We noticed their ability to operate and deliver while still in the set-up phase, the role of the head of the institution in steering the new structure, the importance of values based on which the institution functions, the role of communication with citizen, and the systemic importance of transparency and accountability, etc. Those findings support the idea of valorization of the local structure core strengths as a goal of Enlargement instruments earmarked to support the SEE6 reforms.

With time as the decision-making competencies moved from political bodies to the newly established institutions, the challenges shifted from the protection from the political interference to the establishment and functioning of good governance mechanism. The next goal would be for those institutions to maintain their independence, complete the set-up phase, establish good governance mechanisms and reach the optimal delivery goals.

In the current policy study, we will focus on certain components of the good governance and internal processes of the NJS. After almost three years of functioning, it is time to look inside the institutions, observe their daily challenges and assess the ways they've overcome them, or not. Apparently routine imperfections affecting finances, human resources, internal procedures, communication or transparency of new institutions, if left untreated can clog the functioning of the new structures and undo the achievements of reforms.

Five years after its inception, justice reform in Albania is progressing in its goal of cleaning up the system from captured and highly inefficient institutions, and of corrupt and incompetent judges and prosecutors. Notwithstanding the many criticisms on the slow pace or on the unproved allegations of capture, today's justice institutions and its occupants cannot be compared with what existed only five years ago. From this point of

¹ ALBE is an initiative of CDI aiming to monitor, support and explain the reforms engaged in Albania on its way to EU, with focussed on Justice reform and regional cooperation. ALBE is supported by the Dutch Embassy in Tirana through MATRA programme.

view and in a large measure, although still in the consolidation phase the new justice institutions mark a significant step towards the expectancies of reform promoters and finally of the Albanian citizen. Their establishment and operationalization are a significant step towards responding to citizens' concerns and building on their contribution and support.

In our policy study, we have evidenced two main intermediary outcomes of the justice reform: i) first, the establishment and operationalization of the new justice institutions and ii) second, a steady increase of the deliveries of those newly set up institutions. These initial outcomes resonate with the initial expectancies and the interests of the Albanian citizen and with the European values. From this angle, we can state that the justice reform has acquired basic elements of output legitimacy.

However, the hard-won legitimacy of new institutions with regard to their independence, professionalism and quality of delivery cannot be sustainable or resilient if the new structures do not establish internal processes and mechanisms that are efficient, accountable, transparent, and that protect the institution from corruption and/or incompetence. Insufficient resources, defective internal processes and non-optimal governance mechanisms can quickly delegitimize the new institutions on both elements of input and output legitimacy.

On the other side, the identification and promoting of best cases identified during the internal processes and good governance practice of new justice institutions, contributes to the communication strategy of the whole justice reform dynamic. Since its beginning, the reform had to face the actors that wanted it to fail, the vested interest that wanted to control it, or its own imperfections during conception, design or implementation. Unfortunately, this dynamic has also largely shaped the communication around it by focusing on unrealistic expectancies and focus on problems. Underlying on what works and bringing out core strengths changes also the image of the whole reform endeavor and injects it with positive energy.

Finally, knowing what works in the Balkans and how, actively contributes to the efficiency of the Enlargement strategy and directly affects the impact of the IPA III. It brings in a new optic on locally adapted solutions that can be applied in other sectors and / or in other SEE6 countries during planning and implementing of reforms. The justice reform in Albania set up a configuration in SEE6 where Enlargement needs to adapt to the local reforming dynamics and context. This implies assuring the non-reversibility of achievements reached in their input legitimacy (as illustrated in the justice reform by the vetting results and the setup of institutional framework) and in output legitimacy (as materialized in the consolidation of the NJS, and in improving the quality and amount of their deliverables).

The goal of this policy study is to identify elements of good governance that contribute to the resilience and sustainability of new justice reform structures in Albania. We have not used specific metrics or good governance designated indicators against which to measure the performance of the new justice institutions. Instead, we have focused on the internal processes that assure institutional efficiency, accountability and transparency. We have selected as indicators of good health of the new institutions the political will, financial resources, human resources, and internal rules of procedure. In this approach we have been based on and further developed the concept of throughput legitimacy as developed by Vivien A. Schmidt from Boston University.² We continue to use the appreciative inquiry approach as specified in the previous ALBE papers to single out and promote elements of the core strength of justice reform.

This publication follows the previous studies on ["EU Enlargement in SEE6 and Country Reforms: The Justice Reform in Albania as a Case Study"](#) and ["Securing the Resilience of Justice Sector Reform in Albania"](#). The methodology is based mainly on desk research, consultation of yearly and other reports published by the new justice institutions, governmental reports, EU progress reports, legislative framework, and on interviews with staff of new justice structures. We want to underline the availability of the representatives of those structures

² Vivien A. Schmidt from Boston University in her paper 'Democracy and Legitimacy in the European Union Revisited – Input, Output and Throughput, Political Studies 2013 VOL 61, 2–22, Political Studies Association.

for interviews and for the frank, open and constructive exchange that we had during the whole project. List of interviewees for this policy paper is in Annex 1.

I. Vision, values and political will

A clear strategic vision grounded in Albania's amended constitution and European values, underpins the policy documents and the strategies of the new justice institutions. Each of the new established institutions is part of a complex institutional framework that is bringing to life a new judicial system that is independent, professional, efficient, accountable and with integrity.

The Constitutional changes of 2016 approved in the Albanian Parliament with the totality of the votes underline the political will across political spectrum. This commitment has been "operationalized" initially through the Cross-Sector Justice Strategy 2017-2020³ (CSJS) - an umbrella strategy that covers all the priorities of the justice system and operates across all the new justice institutions.

Drafted by the Ministry of Justice in cooperation with all justice institutions and assisted by international partners, the CSJS embodies the vision and objectives of the justice reform. For example, the mission of the CSJS 2017-2020 was the: "Successful implementation of reforms in the justice sector, in order to ensure an effective, efficient, independent and transparent justice system in line with the European best practices."⁴

A new CSJS has been drafted for the period 2021-2025. The vision of the new draft Strategy 2021-2025 stresses that the justice system institutions should work together to achieve a justice system that is "independent, accountable, accessible, transparent and efficient, to protect the fundamental rights of citizens and that serves to the society according to the European standards."⁵

This overarching vision of the Justice reform has been reflected further down in the design and set up of the new justice institutions. When drafting their own strategic documents, they have embedded the justice reform vision into their own publicly stated institutional vision, mission and / or values⁶ so reflecting the Cross Sector Justice Strategy. Other values upon which the new justice institutions base their work such as impartiality, professionalism, accountability and integrity, as well as reference to the citizen as final beneficiaries of Justice reform, are clearly stipulated in the founding documents of the new justice structures.

³ Approved by Council of Ministers Decision no 773, datë 2.11.2016 "For the approval of the Cross-cutting Justice Strategy 2017-2020, official Journal no.278, pg.27847 and its action plan".

⁴ Ibid, pg. 27858.

⁵ See Draft Cross Sector Justice Strategy 2021-2025, accessed at: <https://drejtesia.gov.al/wp-content/uploads/2021/02/Draft-Strategjia-Nd%C3%ABrsektoriale-Dreit%C3%ABsis%C3%AB-2021-2025-p%C3%ABr-konsultim.pdf>, pg. 18.

⁶ From the new justice institutions, the ones they have adopted a strategic framework are the HJC, the HPC, the HJI and the School of Magistrates. See : the HJC Decision no. 126, date 19.07.2019 " On the adoption of the strategic plan of the HJC for the judicial system in the Republic of Albania 2019-2020), accessed: <http://klgj.al/plani-strategjik-versioni-anglisht/>; HPC decision no. 317, date 29.12.2020, "On the adoption of the Strategic Plan for the HPC 2021-2024"; HJI, order no. 106, date 01.12.2020 "On the adoption of the strategic plan and the action plan for the Office of the HJI 2020-2022" accessed at: <https://ild.al/sq/strategji/>; School of Magistrates Decision No.17, date 29.06.2017 " On the adoption of the new Strategy of the School of Magistrates 2017-2020" and Decision No. 1, date 29.1.2019 " On the adoption of the mid-term Strategy of the Magistrates School 2019-2023" accessed at: [https://magjistratura.edu.al/sq/strategjia-afatmesme](https://magjistratura.edu.al/sq/strategjia-afatmesme;);

Box 1. From Cross-Sector Justice Strategy to the New Justice Institutions

- CSJS 2017-2020 vision: *"Successful implementation of reforms in the justice sector, in order to ensure an effective, efficient, independent and transparent justice system in line with the European best practices."*
- High Judicial Council vision: *"Justice in Albania will be achieved when all citizens will have confidence that they will be treated fairly and equally by law, by an independent, ethical and efficient judicial system."*
- High Inspector of Justice vision: *"The justice system must be independent of any kind of influence, impartial in its functioning, responsible, accountable, with high moral and professional integrity at all its structural levels, efficient and professional, reliable, transparent and accessible to the public, as well as cooperative at the institutional level."*
- School of Magistrates vision: *"The vision of the School of Magistrates is the preparation, sustainable and professional development of magistrates, but also of other important actors of the justice system in the Republic of Albania, such as state lawyers, legal assistants, legal advisers and chancellors of courts and prosecutors, with high ethical integrity in order to work towards restoring society's trust in justice and improving the legal culture."*

The echoing of the vision, mission and values from the CSJS by the individual strategies of the justice institutions is a legal obligation stemming from statutory laws⁷ and result of cooperation between the respective institutions and the Ministry of Justice. The new institutions have been careful to respect the legal provisions and to settle a consultative modus operandi during the drafting of their respective good governance framework.⁸

Moreover, the new justice institutions' strategies are in line with the broader strategic framework and national policy documents such as National Strategy for Development and Integration, National Strategy for Public Administration or Cross Sector Strategy Against Corruption,⁹ to mention only a few.

For most of new justice institutions, their vision and/or mission is publicly accessible in their individual websites. In the webpage of the High Judicial Council, we can find the vision, the mission and their core values. In the websites of SPAK and NBI, of the vetting bodies and of the Justice Appointment Council only the mission is published. The vision and mission of High Inspector of Justice Office are included in its Strategy, document which is publicly available in the website. Although those statements of vision, mission, goals or scope of operation need to be better drafted, they resonate with the justice reform vision and mission as stated in the CSJS.

⁷ Article 71(5), 81(1), 169, 180, Law no. 115/2016 "On the Governing Institutions of the Justice system".

⁸ This cooperation between the Ministry of Justice and the new justice institutions to draft their respective strategic planning was also pointed out even in strategic documents. For example, in the Strategic Planning of the HJC we read that "The High Judicial Council would like to express special thanks to the Minister of Justice and her team, with whom we have worked in close consultation to ensure that the Strategic Plan of the Council is in full compliance with the Cross-cutting Strategy and other priorities of the Ministry. This work represents a level of cooperation between the Judiciary and the Ministry that has never been seen before, and guarantees that every aspect of the justice system in Albania will act in defense of the highest interests of the Albanian people." Strategic Planning of the HJC 2019-2021, pg. 2.

⁹ Strategic Planning for High Justice Inspector covers the period 2020-2022, pg.10.

II. Good Governance

The measurement and evaluation of the performance of the new justice institution is a complex process that can be viewed from different angles and various methodological frameworks. Many qualitative monitoring reports conducted by independent, serious and prestigious Think Tanks and NGOs in Albania have analyzed the performance of the new justice institutions vis a vis their legal obligations and set tasks. The aim of this policy study is to view the processes from inside the newly established institutions, and to observe how they get organized and use the resources put at their disposal in order to produce high quality deliverables. We will look into the features of internal processes through the lens of efficacy, accountability and transparency as evidenced by the state of affairs of their financial, human, material, administrative and regulatory resources.¹⁰

II.1. Budget

The new design of the justice framework aimed to give more independence to the justice system, by not only creating new independent institutions to govern the judiciary, but also by granting them more power to self-regulate their own operational, regulatory and budgetary aspects. In terms of financial independence, the new justice institutions are responsible now to draft and implement their own budget,¹¹ as per the sequence below:

- the drafting of the budget is initiated by the new justice institutions which then;
- have to negotiate it with the executive (Ministry of Finance), and;
- present it to the Parliamentary Committee for Legislative Issues, Public Administration and Human Rights;
- finally, budget is approved by the Parliament, as part of the integrated Mid Term Budget Plan.¹²

The process of budget drafting within the new justice institution is done by internal specific committees or departments, assisted by the financial and legal staff of the institution. For example, the budget of the High Judicial Council (HJC) is drafted by the Strategic Planning, Administration and Budget Committee. This Committee is chaired by the Head of the HJC, consists of 3 members of the HJC (2 lay members and 1 judge, and a substitute member) and is assisted by the administrative staff.

Similarly, the High Prosecutorial Council (HPC) has a permanent commission in charge of budget, i.e., the Commission of Budget and Strategic Planning. It is led by the Chair of the HPC and is composed by one prosecutor and another lay member.¹³ In the case of the HJC and HPC the Commissions responsible to draft and monitor the budget are provided by law. For the other independent institutions, the budget drafting and monitoring is done by a specific department / group of specialists, part of the administrative structure of the institution.

¹⁰ Delorme, P., and O. Chatelain. "The Role and Use of Performance Measurement Indicators." *European Commission* (2011): 1-62.8.

¹¹ Article 19 of the Law No. 84/2016 "On the transitional re-evaluation of judges and prosecutors in the Republic of Albania, Article 95, 96 188, 197, 245, 248 of Law "On the Status of Judges and Prosecutors in the Republic of Albania", No96/2016, date 16.10.2016, Official Journal No. 208, pg: 22235 (hereinafter as the "Law on Status").

¹² *Ibid.* The only in the case of the HJI the law provides that the budget proposal is submitted directly to the Council of Ministers (Article 197 of the Law on the Status of Judges and Prosecutors). With regards to the JAC there is not any specific provision on the procedure of drafting and implementing the budget and since this is an add hoc institution the Law provides that it will be supported by the budget and administrative capacities of the High Court (article 219(3) of the Law on Status of Judges and Prosecutors). On the 2020 year budget see further Law no 88/2019 "On the 2020 state budget" as ammended, accessed at: <http://www.financa.gov.al/buxheti-2020/>.

¹³ High Prosecutorial Council Annual Report 2019, adopted with Decision no. 98, date 24.04.2020 (referred hereinafter as "HPC Annual Report 2019), pg. 15.

There are cases such as in the Justice Appointment Council (JAC), which as an ad hoc institution does not have a specific structure of its own to draft and monitor the budget implementation but has to rely on the structure of the High Court. To properly monitor the implementation of the budget the JAC had to hire an external audit expert.

Having the independence to draft own budget is one thing, being able to draft and spend it is another. The new justice institutions have faced different challenges in both the stage of drafting and implementing the budget.

For the drafting phase, the new justice institutions did not have any previous history of expenses and resources on which to base their initially budgetary calculations. Except for the HJC, which had a predecessor (i.e., the High Council of Justice), and of SPAK which replaced the Prosecution Office for Serious Crimes, all the other justice institutions were created ab initio and did not have any basis, or historical methodological references from which to start calculating their budgetary needs.

Moreover, even with regard to the HJC and SPAK, one should not underestimate the challenges resulting from the increased scope and depth of the new tasks. The HJC had more competencies and a larger field of activity than its predecessor, therefore a fresh new budgetary planning process was undertaken to cover all new responsibilities.

On the other hand, SPAK was conceived as independent from the General Prosecutor Office. But although there were prosecutors or administrative staff from the previous Prosecutor Office for Serious Crimes that were employed in SPAK, one cannot assume that this translated into an immediate transfer of the know-how on budget administration. First, SPAK had a different field of competences as compared with the Prosecution Office of the Serious Crimes. Moreover, as the accounting and financial support to the former Prosecution Office for Serious crimes was previously centralized into the General prosecutor's office, following the justice reform SPAK had to create its own unit.

The new justice institutions seem to have overcome the challenge of drafting the first yearly budget from the interviews with their representatives, it appears clearly that although capacity building on budget planning and implementation is still needed, the financial officers of the new justice institutions feel much more confident about the processes of calculating their financial needs, executing and monitoring budget implementation.

An analysis of the parliamentary approval phase shows that the financial needs of the new justice institutions have been higher than the state budget estimates. The first institutions to face this gap between their planned budgetary needs and the actual budget allocated by the Government were the vetting institutions, as they were the first new justice institutions established in 2017. In the Parliamentary Committee on Legal Affairs, Public Administration and Human Rights there have been strong debates on their budget. On one side the vetting bodies demanded an addition of the salary mass by 200%, while the Parliament on the other hand proposed a reduction by 1/3 of the proposed salaries¹⁴ and a reduction by 40% of the staff (110 staff approved out of 185 requested).¹⁵

Apart from the Independent Qualification Commission (which partially agreed with the budget reduction provided that they could propose further changes for the next year budget),¹⁶ the other two vetting bodies, respectively the Appellate Chamber and the Public Commissioner publicly opposed the budget adopted by

¹⁴ <https://www.gazetatema.net/2017/09/25/vettingu-shkurtohen-pagat-ps-voton-per-me-pak-njerez-dhe-fonde-tahiri-del-kunder-mazhorances/> See also minutes of the Commission for Legal Issues, Public Administration and Human Rights 19.09.2017 and 20.09.2017.

¹⁵ Minutes of the Albanian Parliament, Commission for Legal Issues, Public Administration and Human Rights, date 25.09.2017 accessed at <https://www.parlament.al/Files/Procesverbale/Procesverbal-dat--25.09.2017.pdf>.

¹⁶ In fact, the IQC one year later requested to the Parliament an increase of staff and budget: <http://www.balkanweb.com/site/vettingu-kpk-kerkon-shtim-personeli-dhe-rritje-pagash-ja-shkresa-drejtuar-kuvendit/>

the Parliament.¹⁷ However, less than one month later the Government changed its position and amended the budgets of the vetting institutions by increasing the salaries of the vetting bodies by 50%.¹⁸

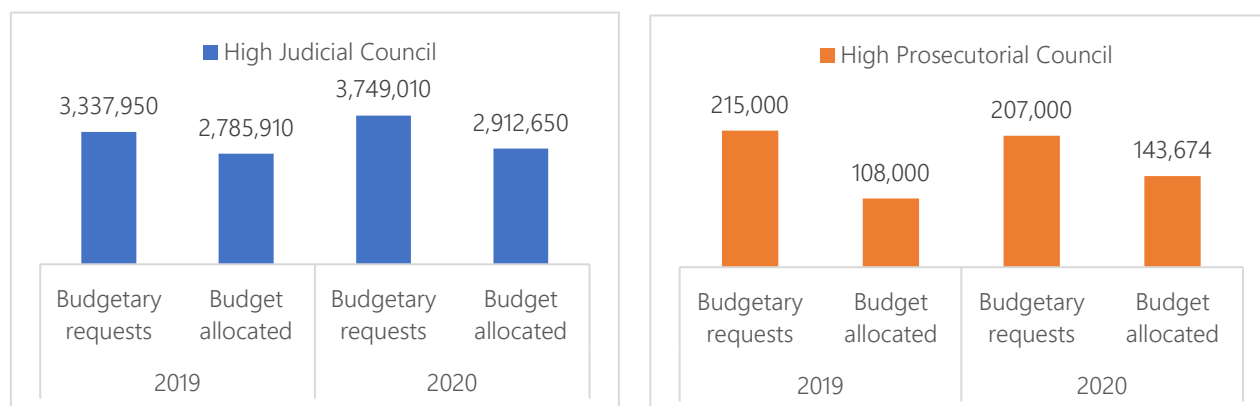
The gap between the planned financial needs and allocated state budget has been subject of continuous debate for other new justice institutions as well. The Parliamentary Committee minutes show that the budgetary requests of the new justice institutions are higher than the budget allocated by the government. This gap is constantly emphasized also in the yearly reports of the new justice institutions.

Table 1. Budget request vs. budget allocation of HJC and HPC (in ALL)

	2019		2020	
	Budgetary requests	Budget allocated	Budgetary requests	Budget allocated
High Judicial Council	3,337,950	2,785,910	3,749,010	2,908,150
High Prosecutorial Council	215,000	108,000	207,000	143,674

For example, in its 2020 yearly Report, the HJC states that: *"The approved budgetary funds are not sufficient to guarantee the financial activities of the HJC and the courts... These funds are about 260 million ALL lower than the budgetary requests of the HJC, or 12% lower than the funds requested"*.¹⁹

Graph 1. Budget request vs. budget allocation of HJC and HPC (in ALL)



¹⁷ Natasha Mulaj, Chair of the Appellate Chamber at the Parliamentary Committee announced that *" if you will reduce our structure you are undermining the work of the Appellate Chamber. We are not asking for luxury, but for a functioning structure. We do not approve your reduction and we as a college did not even asked for an opinion about our salaries"* <https://www.parlament.al/Files/Procesverbale/Procesverbal-dat--25.09.2017.pdf> ; <http://www.balkanweb.com/debat-tekligjet-per-vettingun-kuvendi-shkurton-strukturen-pd-kunder-tahiri-bojkoton-votimin/>.

See further: <http://www.scan-tv.com/ps-jo-rroga-10-mije-dollare-per-komisioneret-e-vetting-ut-ulim-shpenzimet/>; <https://www.gazetatema.net/2017/09/25/vettingu-shkurtohen-pagat-ps-voton-per-me-pak-njerez-dhe-fonde-tahiri-del-kunder-mazhorances/> .

¹⁸ Decision of the Council of Ministers no. 574, date 9.10.2017.

¹⁹ HJC Annual Report 2020, adopted with decision no 176 date 29.04.2021, pg. 23 (referred hereinafter the HJC Report 2020), pg:162, 164.

HJ also underlines the insufficiency of its allocated funds stating that there is a need to have a proper budget to fulfill its constitutional function and avoid any negative impact in the process of meeting the set of indicators.²⁰ HPC raises the concern that the allocated funds are 35%²¹ lower than its budgetary needs. Moreover, HPC alleges about a clash of methodologies used for calculating the budgetary needs of the institutions. In its yearly report it states that “[HPC] costing methodology is more accurate, since it is based on the costing activities of HPC in the 2019 budget as well as the other demanding and emerging activities for the upcoming years.”²²

All the interviewed representatives of the new justice institutions stated that they requested more funds for investments in infrastructure (capital investments) to improve the office infrastructure and IT / electronic hardware, on top of request for more support staff and training.

Nevertheless, the government has regularly, if belatedly, increased the allocated budget for new justice institutions. This appears in different Council of Ministers decisions or other normative acts amending the state budget.²³ As a result the budget for the new justice institutions has shown an increasing trend during the three years of justice reform implementation, despite the different challenges created by natural disasters as the 2019 earthquake and Covid-19 pandemic.

Table 2. Budget of Justice Reform Structures 2019–2021 (in ALL)

Budget	2019	2020	2021
High Judicial Council	2,785,910	2,912,650	3,448,700
High Prosecutorial Council	108,000	143,674	164,150
SPAK	-	327,175	500,330
High Inspector of Justice	-	43,050	260,150
Justice Appointments Council	13, 229 ²⁴	14,000 ²⁵	-
Independent Qualification Commission	200,823	190,350	235,850
Appeal Chamber	141,000	131,000	157,150
Public Commissioners Institution	74,262	67,050	74,350
School of Magistrates	178,805	190,150	305,650
Total	3,488,800	4,019,099	5,146,330

²⁰ Report of the High Justice Inspector for the period February- July 2020, pg.16.

²¹ HPC asked in 2019 for a budget of 205 million ALL and a staff of 75 employees, while the Parliament has allocated in fact a yearly budget of 108 million ALL and a staff of 65 employees. The same applies for 2020-2022, where the budget requirements of the HPC for 2020 were 207 million ALL and number of 83 employees, while the Parliament provided a budget ceiling in the amount of 152 million ALL, 35% lower than requested, and a number of 65 employees.

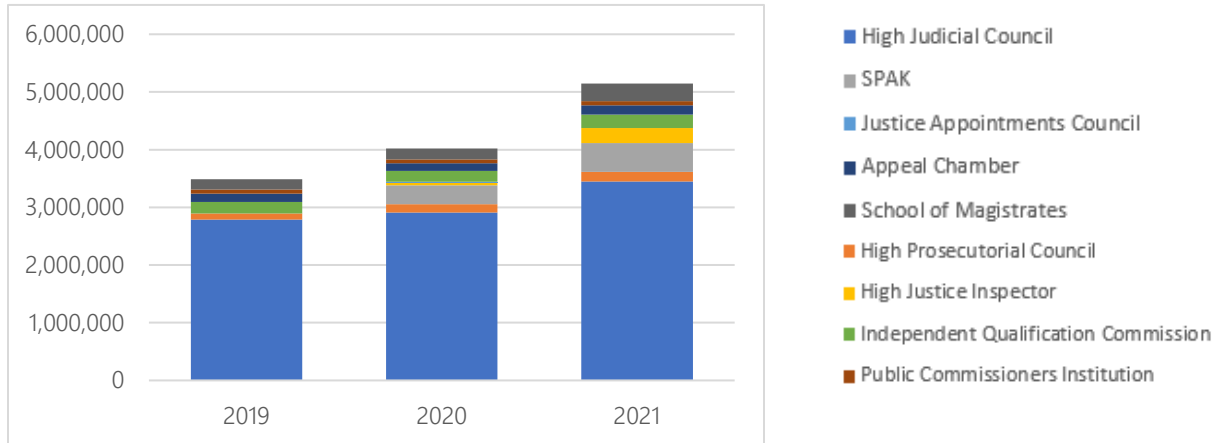
²² HPC Annual Report 2019:17.

²³ See: Decision of the Council of Ministers no.574, date 9.10.2017; Normative Act no. 28, date 02.07.2020 “On some changes on Law no. 88/2019 On the 2020-year budget”.

²⁴ Council of Ministers Decision No.298, 10.5.2019 “For an additional fund from the reserve funds of the State Budget for the Justice system 2019”, provided for a remuneration of the members of the JAC and its supportive staff assigned by the High Court a fund of 9,929,904 ALL and a fund of 3,300,000 ALL for remuneration of external experts and other operational expenses.

²⁵ Council of Ministers Decision No. 890, 21.10.2020 “For an additional Fund to the 2020 State Budget for the High Court” provided for a fund of 12,200,000 ALL, for the remuneration of the members of the JAC and of support staff assigned to it by the High Court and fund of 1,800,000 ALL, for the remuneration of experts and other operating expenses of the JAC.

Graph 2. Budget evolution of Justice Reform Structures 2019 – 2021 (in ALL)



With regards to the **budget implementation**, the first year was reported as the most challenging. Some justice institutions after their set up did not have a proper budget, because they were established or started working after the approval of state budget for that fiscal year. For example, the High Judicial Council had to operate with the budget of its predecessor i.e., High Council of Justice. Clearly this budget was not appropriate since it was foreseen for the previous institutional outset, not reflecting the further changes such as the doubling of magistrates' emoluments, or the establishment of the new HJC.

The new vetting bodies employees received their first salaries with some delay since these institutions were established in June 2017²⁶ but their budget was submitted to Parliament in September 2017.²⁷ The Justice Appointment Council could receive the increase in the budget reflecting the remuneration of JAC members and the staff of the High Court employed only after five months after the JAC started working in 2019.²⁸

There were some good examples of institutional synergy and cooperation in overcoming those challenges. For example, the salaries of the High Prosecutorial Council were initially paid by the budget of the General Prosecutor's Office. Until the accommodation of the HPC at the Pole of Justice, the staff of the HPC has been hosted at the General Prosecutor Office and in the Tirana Prosecutor Office. The funds for the construction and renovation of SPAK premises were channeled through the budget the Ministry of Interior.²⁹ The High Inspector of Justice was temporarily hosted at the High Judicial Council premises until he was moved to the premises of former Ministry of Integration.

But the new justice institutions encountered difficulties to fully spend the allocated budget in their first years of establishment, mostly due to hindering factors outside their competence starting with the absence of physical premises. For example, from data provided in the 2018–2019 Yearly Reports on the High Prosecutorial Council activity, it appears that only 38% of the allocated budget was used in 2019. According to the HPC, this was due to the difficulties in staff recruitment, and also to the lack of proper and dedicated premises.

²⁶ Decision of the Parliament, 17 June 2017 No.82/2017 "On the Approval *En-block* of the List of Selected Candidates for the Re-evaluation Institutions, according to Law no. 84/2016.

²⁷ Minutes of the Albanian Parliament, Commission for Legal Issues, Public Administration and Human Rights, date 19.09.2017 and 25.09.2017 accessed at <https://www.parlament.al/Files/Procesverbale/Procesverbal-dat---19.09.2017.pdf> and <https://www.parlament.al/Files/Procesverbale/Procesverbal-dat---25.09.2017.pdf>.

²⁸ Council of Ministers Decision No.298, 10.5.2019 "For an additional fund from the reserve funds of the State Budget for the Justice system 2019".

²⁹ SPAK Annual Report 2020, pg.35, accessed at: <https://spak.al/wp-content/uploads/2021/04/Raporti-2020-perfundimtarr.pdf>.

The operational expenses of the High Inspector of Justice in the first year were realized in the amount 72.9%. This is explained because the procedures of the public procurement were unlocked only in the last four months of 2020, after the HIJ could get into the dedicated premises of former Ministry of Integration and the process of staff recruitment could restart.³⁰

Interviews corroborate those arguments as the main causes of the low rates of disbursements. All the new justice institutions representatives argued that the lack of premises conditioned the later start of the recruitment process. Then the staff recruitment process in itself, took different months to be completed since the employees, having the civil servant status, had to go through different filters of selection and scrutiny. Additionally, the earthquake of 2019 and the Covid19 pandemic affected the implementation of the budget, by causing the suspension of the public procurement processes and staff recruitment. After the initial problems were dealt with, we notice during 2020 an improvement in terms of budget utilization.³¹

Table 3. Allocated vs. Implemented budget of New Justice Structures in 2020 (in ALL)

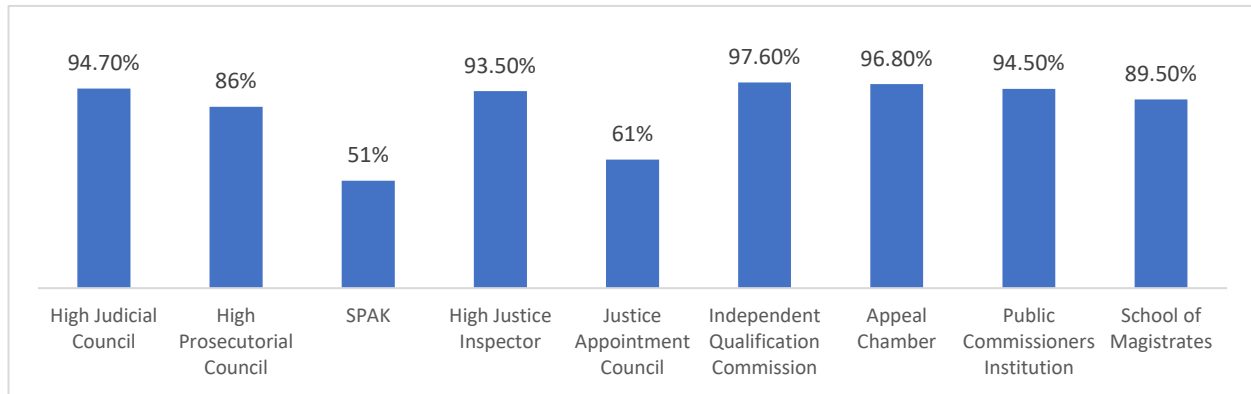
	Allocated budget 2020	Implemented budget 2020	%
High Judicial Council	2,912,650	2,758,839	94.70%
High Prosecutorial Council	143,674	123,668	86%
SPAK	327,175	167,052	51%
High Inspector of Justice	43,050	40,235	93.50%
Justice Appointment Council	14,000	8,627.52732	61%
Independent Qualification Commission	190,350	185,864	97.60%
Appeal Chamber	131,150	126,915	96.80%
Public Commissioners Institution	67,050	63,837	94.50%
School of Magistrates	190,150	170,215	89.50%

³⁰ High Judicial Council Annual Report 2020, adopted with decision no. 176 date 29.04.2021, pg. 23 (referred hereinafter the HCJ Report 2020).

³¹ The budget for salaries and social insurances were used at the level of 79%, since 54 full time employees out of 65 planned were hired this year. On the other hand, the budget for investment was planned 17 mln ALL for 2020 and was realized at the around 97%, despite the pandemic restrictions 2020:12; Namely in April 2020 the Ministry of Economy and Finance decided to reduce the funds by 14 million ALL. However, in July 2020, due to the increase of the number of staff approved by the Parliament, 10 million ALL was added to the budget.

³² During 2020, the JAC has spent 857,0236 ALL on remuneration of JAC members and staff, and 572,921 ALL on operational expenses, in total 8,627,527 out of 1,400,000 ALL allocated.

Graph 3. Allocated budget vs. Implemented of New Justice Structures in 2020 (in percentage)



SPAK was an institution with a very low spending rate for 2020. From the SPAK 2020 Annual Report and the conducted interviews it appears that the slow recruitment pace is the main culprit. First, the SPAK organizational structure during 2020 did not have the number of prosecutors planned by HPC: SPAK had 13 prosecutors out of 15 provided. Second, SPAK investigation unit, the National Bureau of Investigation was far from complete during 2020 and its recruitment process is still ongoing. Third, SPAK also had problems in the recruitment of its administrative staff. The process of recruiting investigative and administrative staff at the SPAK must follow a specific and very detailed legal procedure aimed at selecting persons under a list of severe criteria in order to best ensure the integrity of the institution.

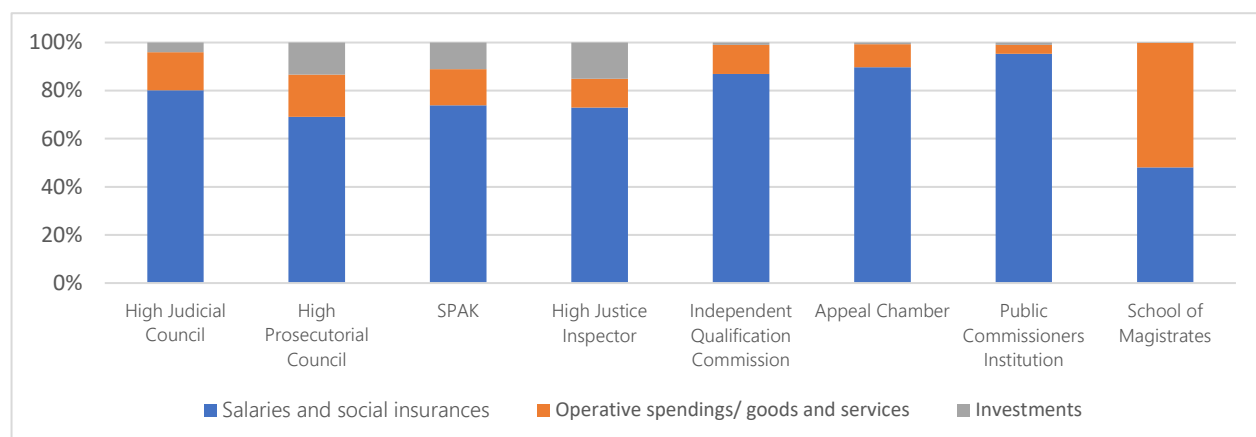
Apart of the selection filters and scrutiny for the civil servant employees, every staff member of SPAK has to go through the vetting process, including the cleaning service employees or the chauffeurs. Even the building of the SPAK premise itself had to go through a security clearance procedure. Moreover, the public procurement for SPAK intelligence and surveillance equipment is specific when compared with other justice institutions. As a direct consequence of this design, the processes were prolonged in order to meet the legal requirements. And lastly the COVID 19 pandemic delayed and/or froze for a significant length of time all the above processes causing further delays.

The impact of human resource under-spending on the overall budget is quite significant, because the major part of budget of the new justice institutions goes for staff salaries and related social insurance costs. While normal for the established structures, in the new institutions these ratios reveal a low attention of planners to office infrastructure and digitalization investment. For example, the funds for salaries and social insurances for the HJC in 2019 make up around 79% of the total budget. The HPC has underlined the *"needs of this institution require additional financial resources for investments, equipment, information technology, training, but also qualitative goods and services, which increase the quality and efficiency of the work of the institution."*

The High Inspector of Justice expenses for salaries, insurance and operating expenses make up around 93% of the total budget. The total budget for the HIJ for 2020 is 100.2 million ALL, where current expenses (salaries, insurance and operating expenses) being ALL 93.2 million which leaves capital expenditures (investments and equipment) covered with only 7 million ALL. The justice institution which has the highest share for investment compared to others is SPAK; in the 2020 budget the salaries make up only 70% of the entire SPAK budget, goods and service constitute 18% of the budget, while capital expenditure tops 6%.³³

³³ SPAK Annual Report 2020, cit. supra, pg.30.

Graph 4. Budget composition of New Justice Structures - 2020



The new justice institutions have covered a significant part of their equipment and IT hardware needs through foreign assistance support. For example, in 2019 OPDAT mission has granted HPC printers, scanner, UPS server, laptops, etc.³⁴ EURALIUS has paid the licensing of Microsoft platform for both High Judicial Council and High Prosecutorial Council enabling their online meetings during the pandemic. Still the new justice institutions need more funds for the investment and digitalization processes, as well as tailor-made capacity building support.

Table 4. Budget of New Justice Structures in 2020 (in ALL)

	Implemented budget 2020	Salaries and social insurances	Operative spending / goods and services	Investments
High Judicial Council	2,758,839	2,209,560	437,264	112,014
High Prosecutorial Council	123,668	85,446	21,751	16,471
SPAK	167,052	123,553	25,023	18,475
High Inspector of Justice	40,235	29,376	4,798	6,061
Independent Qualification Commission	185,864	161,675	22,355	1,834
Appeal Chamber	126,915	113,940	12,121	854
Public Commissioners Institution	63,387	60,397	2,411	579
School of Magistrates	170,215	81,752	88,098	366

³⁴ Report of the High Justice Inspector towards the Albanian Parliament for the period 01.02.2020- 31.12.2020, pg: 24, referred hereinafter as HJI Report 2020.

II.2. Human resources, infrastructure and equipment

Drafting their organogram and successfully managing the staff recruitment, training and inception process was the next challenge for newly established justice institutions. To overcome planning lacunae and speed up the process, in many cases and notwithstanding their professional profile, the heads of the new justice institutions were often heavily involved in designing the organograms. Under time pressure, sometimes they even took the initiative to draft themselves the complete organizational structure in order to be able to start the work immediately. We have presented the adopted organograms of High Judicial Council (HJC), High Inspector of Justice (HIJ), Appeal Chamber and Chancellor at Annex 2.

For example, the organizational structure of High Judicial Council was initially approved as based on the proposal of the Council chairwoman, because the committee in charge for preparing it was not established yet. Subsequently, upon the establishment of the Committee on Strategic Planning and Budget Administration this act was amended and later on, the Council twice reviewed it before adopting its final version.³⁵

Established on 1st of February 2020,³⁶ the Office of the High Inspector of Justice within the very first week of work adopted a temporary structure of the institution (with 40 employees) based on a plan personally drafted by the head of the institution. Based on this structure, job descriptions were prepared and 27 vacancies were announced seven calendar days later on 08.02.2020.

The initiative to adopt a functional structure as soon as possible as a precondition to start working was also observed in other justice institutions. We assess it as a positive example of an engaged leadership taking their responsibility and progress with the agenda of the institution. The new justice institutions have been assisted by the Department of Public Administration and the Ministry of Finance to draft their initial organic structure.³⁷

To attract professionals and qualified employees, the staff of the new justice institutions was granted civil servant status. But the process of filling the vacancies was all but simple. The recruitment was lengthy even for institutions such as HJC or SPAK who hired staff also through the procedure of transfer from their predecessor institutions.

For example, in the first 6 months the High Judicial Council focused on filling its administrative staff positions with employees transferred from the former High Council of Justice (HCJ) and from the Office of the Administration of Justice Budget (OAJB).³⁸ The absorption of the existing employees of the former HCJ and OAJB was seen as an opportunity to speed up the recruitment by absorbing *"all employees of the two previous institutions taking advantage of their several years of experience in the field of financial management of courts or other issues of administration of the judicial system, in accordance with the legislation in force."* To conduct the procedure of transfer and merger of the staff of the two institutions, a Restructuring Commission was set up.

³⁵ See decision of HJC no. 44, 12.03.2019 "On a change in decision no. 12, date 18.01.2019 "On the approval of the organizational structure of the administration of the High Judicial Council", as well as with decision no. 80, date 30.05. 2019 "On a change in decision no. 12, dated 18.01.2019, "On the approval of the organizational structure of the administration of the HJC" amended.

³⁶ The HIJ, is a new constitutional and legal institution, which was constituted on 01.02.2020 after the election of Mr. Artur Metani as High Inspector of Justice, with decision no. 2/2020, dated 20.01.2020 of the Parliament of the Republic of Albania". HJI Report February - July 2020:3.

³⁷ See for example the Head of the Independent Qualification Commission statement in the Commission for Legal Issues, Public Administration and Human Rights: Minutes of meeting 19.09.2017 cit. supra, pg. 38.

³⁸ The law itself provided that "Within 6 months from the establishment of the High Judicial Council, the Council evaluates the fulfillment of the formal criteria of the employees of High Council of Justice and OAJB for the position they hold..." Article 278 of the Law on Status of Judges and Prosecutors.

The process of restructuring, of drafting the job descriptions, and the evaluation of all new employees (civil servants and administrative employees of the HCJ and OAJB) took place in the period June - July 2019. The activity of the High Judicial Council administration started on July 1, 2019.³⁹ The transfer phase was complemented with recruitments of civil servants and other administration employees outside HCJ and OAJB. In total, from the approval of the structure until March 2020, 24 people were recruited as new staff for the HJC. Currently, the HJC has 108 employees out of 125 foreseen in the adopted organizational chart.

The process of completing the administrative structure and making the HPC fully functional in terms of human resources was not an easy task, neither. Although the HPC was established in December 2018, its internal structure was only approved in March 2019.⁴⁰ The filling of available positions was the next challenge.

Box 2. Force majeure multiplied by 2

Natural disasters like the earthquake of 26 November 2019, as well as the COVID19 pandemic caused delays in the process of staff recruitment, procurements, and on securing proper premises and office equipment for the new justice institutions. The national disasters like the earthquake and the reconstruction plan, or the anti-covid measures, have also impacted the limitations in financial allocations.

The 2020 HIJ annual report mention that: *"The performance of the activity of the HIJ Office has slowed down due to the lack of necessary facilities for the exercise of work, the limited financial budget made available, as well as human resources. As a result of the global pandemic COVID-19, during this period it has not been possible to provide the necessary infrastructure for exercising the activity of this institution, and the procedures for recruiting civil servants, non-magistrate or magistrate inspectors have been suspended. Currently, the Councils have commanded only two magistrates at the Office of the High Inspector of Justice, and there is a lack of interest on the part of the magistrates to be commanded at the Office of the High Inspector of Justice. At the same time, the suspension of the activity of courts and other state institutions, has affected the creation of delays or inactions in the exercise of their duties."*

While the HPC had to go through a rigorous process of selection and follow all the rules and procedures for recruitment of staff as defined by the civil service status, two additional factors made the recruitment process more difficult. The first, one was the lack of physical premises. The HPC could not move forward with the process of recruitment of staff when there was no physical space to accommodate them. As previously mentioned, the HPC was temporarily hosted to the General Prosecutor Office and Tirana Prosecutorial Office.⁴¹

Regarding the administration and back-office functions, by the end of 2019 HPC recruited 32 employees,⁴² while for the period January - December 2020 there were 6 more vacancies. Meanwhile, the institution had not

³⁹ Starting from July 2019, the human resources management of the HJC and the judiciary is carried out by the Department of Human Resources and Administrative Services with two responsible Sectors (i) Sector of Human Resources and Training of Magistrates and (ii) Sector of Human Resources and Administration Training.

⁴⁰ Decision of the High Prosecutorial Council no 36, date 06.03.2019.

⁴¹ High Prosecutorial Council Annual Report 2020, adopted with decision no. 150, date 27.04.2021, pg. 32, referred hereinafter as the "HPC Annual Report 2020).

⁴² HPC Annual Report 2019, cit. supra, pg.19.

recruited yet neither its Human Resources and Financial Director, nor the Councilor for Ethics.⁴³ As stated in the last report of HPC, the number of employees until December 2020 was of 54 having civil status and 3 having temporary contracts.

For the front-office functions HPC operated with two prosecutors less, as a direct result of the vetting process. The Covid 19 restrictions impaired the process of selection of two other prosecutors as by law they should be selected by a meeting *in persona* of circa 300 prosecutors called by the General Prosecutor.

Moreover, many qualified candidates hesitated to apply for some new structures – this phenomenon was evident especially for the High Inspector of Justice and SPAK. For example, in the call opened by the HIJ for magistrates-inspectors from the rank of judges, although the call was opened twice during 2020 (in 26.02.2020 and 05.10.2020) no candidate applied for any of the six opened positions. The same reluctance to apply was also observed during the applications for SPAK. During 2020, the HJI operated with only one magistrate. The interviews conducted suggest that the reasons explaining this reluctance could be the very high-level criteria, or the vetting process of the judges considered by the potential applicants to be very intrusive.

Table 5. Staff recruited vs. Staff approved

	Number of Staff as approved	Number of Staff actually recruited
High Prosecutorial Council	65	54
SPAK	100	72
High Inspector of Justice	93	53
Justice Appointments Council	N/A	23 ⁴⁴
Independent Qualification Commission	69	65
Appeal Chamber	47 ⁴⁵	47
Public Commissioners Institution	32 ⁴⁶	32
High Judicial Council	40 ⁴⁷	38

⁴³ HPC Annual Report 2020:21.

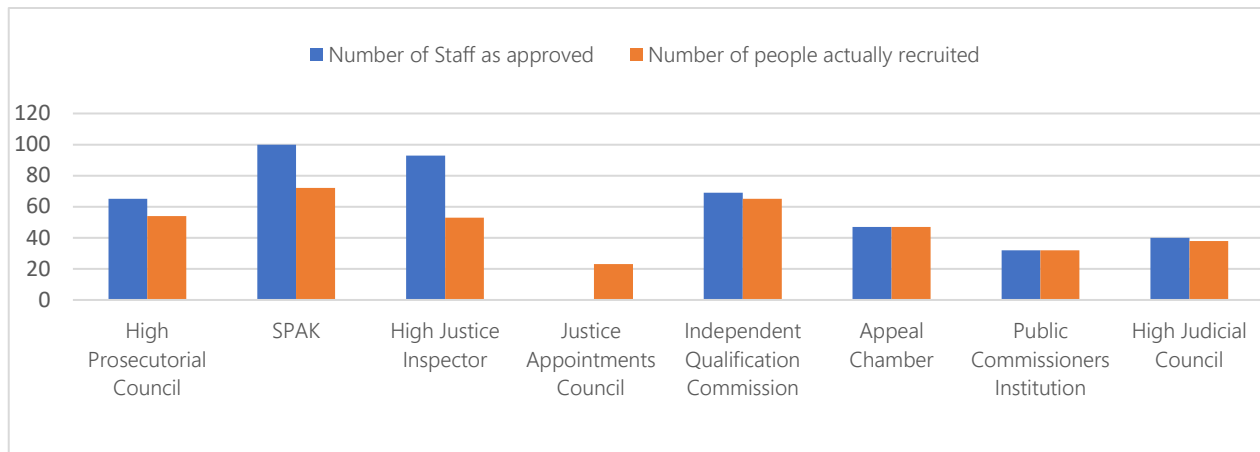
⁴⁴ The Justice Appointment Council has 9 members and 4 substituent members. The JAC is an ad hoc institution and according to article 219(3) of the Law 115/2016 "Governing Institutions of the Justice System", it is the High Court which provides the necessary organizational, administrative, and financial support for the realization of the functions and duties of JAC. Each year the head of the JAC submits to High Court a request for administrative staff. For 2020, the JAC administrative staff was 14 (4 advisors, 6 secretaries, 1 IT, 1 media advisor, 1 financial officer, 1 postman).

⁴⁵ Includes 43 employees as provided by in the organic structure of the institution, adopted by the Parliament with decision no. 101, dated 04.10.2018, and the addition of 4 employees with temporary contract.

⁴⁶ Includes 30 employees as provided in institution organic structure of the, adopted by the Parliament with decision no.102/2018 and 2 employees with temporary contract.

⁴⁷ Referred to the Pedagogical Council (14) and the administrative staff (26).

Graph 5. Staff recruited vs. Staff approved



II.3. Self-regulation and first deliverables

This section will not analyze how the new justice institutions accomplished or not their constitutional tasks in terms of input or output legitimacy as explained previously, but rather focus on some general assessments on the nature of internal problems impacting the institutional outcomes, including elements of leadership and productivity. We will highlight some of the actions that new justice institutions have taken in the process of “manufacturing” their products/services and completing their tasks. The focus will be on selected output indicators as the result of specific actions taken by the institutions, achieved in a certain period of time, i.e., the products or services generated⁴⁸ as expressed by the number of decisions taken.

The justice reform package put the new justice institutions in charge of drafting a list of bylaws that they should adopt once established. However, the number and scope of bylaws enacted by the new justice institutions went beyond this list. In most of the processes it was observed a tendency of adopting regulatory acts necessary for setting the criteria and internal procedures before enacting important decisions, thus trying to vest the process of decision-making with legitimacy and transparency.

The initial decisions of all the new justice institutions were of normative nature, focusing on the establishment of the rules of procedures, of internal regulations, of legal standards for the evaluation of candidates, etc. The goal was to settle clear and professional standards for the internal functioning of their own institution, and base the processes on merit and integrity.

One of the novelties of the justice reform is that the body that will self-govern the judiciary i.e., HJC, shall not work anymore on an ad hoc basis, but it will be a permanent institution. As a consequence, since its establishment the HJC operated on the basis of standing committees with decision-making power. Also, a good working practice is that in addition to the standing committees established by law, the HJC has on its own initiative set up several other temporary commissions in order to fulfill its duties, such as the Commission for reviewing the requests coming from the vetting bodies for the evaluation of the judges, etc. The same good practice of establishing temporary commissions is observed also in HPC and HIJ.

On top of coming into existence and setting up their own functioning, some of the new justice institutions were also “originators” of other justice institutions. In this regard, the new justice institutions adopted and / or approved constitutive decisions for the establishment of other institutions, such as the High Judicial Council

⁴⁸ Based on Delorme, P., and O. Chatelain. “The Role and Use of Performance Measurement Indicators.” *European Commission* (2011): 1-62: 8.

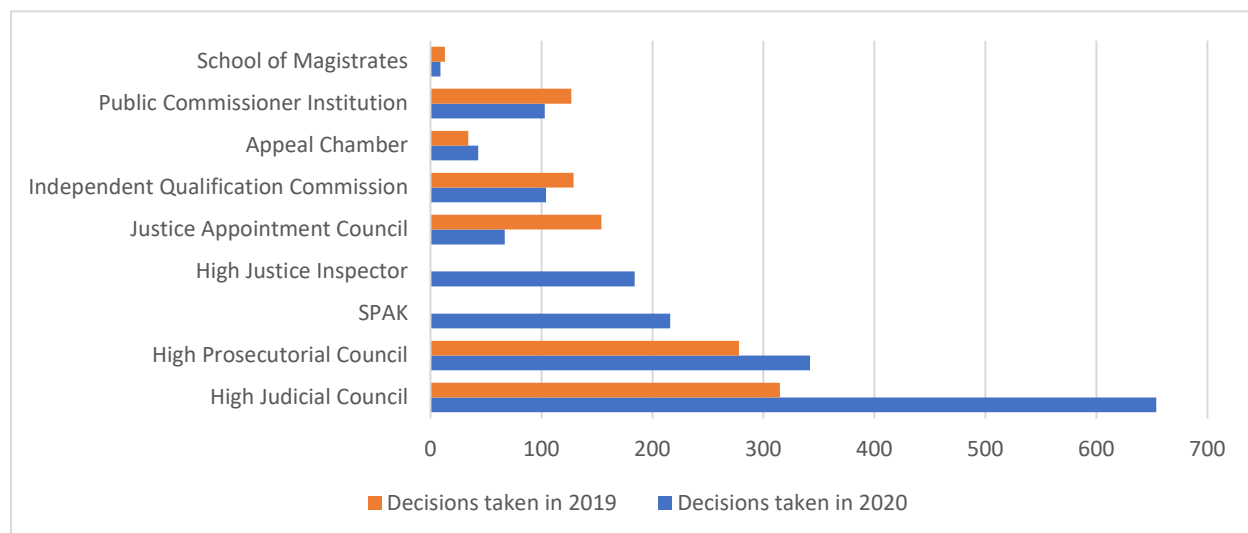
for the High Court and the Special Court Against Corruption and Organized Crime; the High Prosecutorial Council for SPAK and for the Director of NBI; the Appointment of the High Inspector of Justice and for Constitutional Court etc. It is very important to underline that those “infant” institutions, while still in their inception period, did decide through their bylaws and the specific methodologies that were approved by their specific - standing committees, the very first standards for the set-up phase of important key players of the new justice system.

The political and public pressure to deliver immediate results (or “catch the big fish”), forced the new justice institutions to find and implement pragmatic solutions. The newly established structures responsible for the governing of the justice system (HJC and HPC) had to take pro-active measures to address the negative impact of the vetting process or the withdrawal of judges and prosecutors from the system. Some positive examples of leadership evidenced in this regard are represented by the adoption of the regulation on the promotion of judges and prosecutors, the regulation on the appointment of presidents of courts, the regulation on transfer of judges and prosecutors, etc.

During this period, the HJC, HPC, HIJ and the School of Magistrates did adopt their own strategic planning documents. One can easily observe that the strategic planning of the new justice institutions covers a shorter⁴⁹ timeframe as compared with the validity period of the Cross Sector Justice Strategy that provides their policy and legal reference.

The explanation given by the new governing justice institutions was that the situation created by the justice reform, especially with the vetting process and the high number of judges and prosecutors being dismissed, dictated the need for fast and immediate interventions, which consequently affected the planning process. This means that the new justice institutions when drafting their own strategic documents have pragmatically prioritized the actual needs of the justice system and their own resilience. The institutions strategies did not tend to achieve just the quality and quantity standards - both elements of conventional good governance panoply - but emphasized practical solutions to reduce the systemic vulnerability and strengthen the institutional capacity to respond and adapt.⁵⁰

Graph 6. Number of decisions adopted by Justice reform institutions in 2019 and in 2020



⁴⁹ For example, the Strategic Planning for HJC is 2019-2020, the Strategic Planning for HIJ is for 2020-2022.

⁵⁰ Pisano, Umberto. "Resilience and Sustainable Development: Theory of resilience, systems thinking." *European Sustainable Development Network (ESDN)* 26 (2012):21.

The new justice institutions inherited a very large block of unresolved problems/deficiencies from the previous justice system that compounded with the lack of proper premises, of trained and vetted staff and other organization issues. For example, HIJ inherited 897 cases from other institutions, and SPAK inherited 204 cases from the First Instance Serious Crime Prosecution.

Table 6. Number of decisions adopted by Justice Reform Structures in 2019 and 2020

Institution	Decisions taken in 2019	Decisions taken in 2020
High Judicial Council	315	654
High Prosecutorial Council	278	342
SPAK	-	216 ⁵¹
High Inspector of Justice	-	184 ⁵²
Justice Appointment Council	154	67
Independent Qualification Commission	129	104
Appeal Chamber	34	43
Public Commissioner Institution	127	103
School of Magistrates	13 ⁵³	9 ⁵⁴

From the number of decisions produced in 2019 and in 2020, one can observe that the new justice institutions have been active in performing their constitutional and legal tasks, which is reflected by the high number of decisions taken.

Moreover, very often the legacy of the previous institution was laced with liabilities. For example, processes such as the ethical and professional evaluation of judges; the appointment of magistrates; and the transfer, disciplinary action, promotion and transfer of judges, which were not completed by the former High Council of Justice in years, had to be dealt with and closed by the High Judicial Council.

So, the newly established High Judicial Council, in addition to the tasks given by law, which in terms of scope were wider than those of the High Council of Justice, had to complete and realize in time the uncompleted (and sometimes risky) job of its predecessor, inheriting a "legacy of liabilities". In some cases, the legal liability would be very close to the time limit and would automatically be applicable and convert into a financial liability.

⁵¹ During 2020, SPAK has investigated 588 criminal proceedings, but the above figure refers to the number of completed investigations. During 2020 SPAK has completed 216 criminal proceedings with 534 persons under investigation, from which 70 criminal proceedings were submitted for trial (260 criminal defendants), 28 criminal proceedings were dismissed, 100 criminal proceedings have been transferred to the respective Judicial Districts Prosecutors Office and 18 criminal proceedings investigation were suspended.

⁵² During 2020, the High Inspector of Justice, after the initial review has taken 142 archiving decisions, 42 decisions for deeper verification, 8 decision to open investigation, 4 decisions to bring 4 magistrates (3 judges and 1 prosecutor) before the HJC and HPC for disciplinary proceeding, and 118 regulatory and administrative acts.

⁵³ Refers to the number of decisions adopted by the Steering Council of the Magistrate School in 2019.

⁵⁴ Refers to the number of decisions adopted by the Steering Council of the Magistrate School in 2020.

As a result, 10 magistrates who did win lawsuits against the former OAJB, which now is formally part of the structure of the HJC, caused serious financial effects for the HJC for an amount of approximately 14 million ALL. This is another non-foreseen scenario of the non-timely appointment of new magistrates.

Table 7. Compliance and internal regulations state of affairs in Justice Reform institutions

	HJC	HPC	SPAK	NBI	HIJ	JAC	IQC	CA	PCI	SoM
Strategy	√	√			√					√
Internal Regulation				√	√	√	√	√	√	√
Code of Ethics	√			√	√		√			
Regulation on Conflict of Interests	√				√		√		√	√
Regulation on Whistleblowers protection	√				√					
Regulation on Media			√ ⁵⁵	√			√	√	√	
Regulation on data protection							√	√	√	
Regulation for the evaluation of the staff/ councilors							√			
Regulation on archives and documentation								√		
Regulation for the disciplinary proceedings of staff members						√	√			
Regulation Anti-Covid 19 measures	√							√	√	√

Currently, almost all the new justice institutions have completed the drafting and enacting of their internal regulations, including rules on the authority and procedures for treatment of inquiries and petitions, the prevention of conflict of interests, on whistleblower unit, the code of ethics and on treatment of petitions and on inquiries.

The NBI and HIJ have also adopted the Code of Ethics for their employees. HIJ has also reported the adoption of a Conflict-of-Interest Regulation. Each of the justice institutions has published in their website the procedures on how citizens can make a petition or inquiry. The HJC has approved a standard form for information request at its website.⁵⁶

However, while regularly criticized on the media, it is evident that the new justice institutions not only completed their own institutional good governance framework and mechanisms, but – even under the COVID-19 pandemic restrictions - also kept a sustained pace in delivering the expected outputs.

⁵⁵ There is a joint practice between the Head of SPAK and NBI regarding the communication with the media.

⁵⁶ <http://klgj.al/wp-content/uploads/2020/02/kerkese-transparence.pdf>

Box 3. A positive example: High Inspector of Justice

- To gain time, HIJ at its own initiative requested from HJC, HPC, General Prosecution, and from the Ministry of Justice all the disciplinary proceeding files deposited in these institutions. In total, the HIJ received 897 complaints, where 757 were imported by the HJC as overdue complaints and 140 complaints were registered by other institutions (HPC, General Prosecutor's Office, Ministry of Justice, President of the Republic, SPAK, General Directorate of Prisons, courts, municipalities, etc.)
- High Inspector of Justice drafted and approved by laws regulating the administration, the procedure and protocols of categorization and determination of the manner of handling complaints carried by the former High Council of Justice and the High Judicial Council on the basis of a priority order;
- Almost 60% of the disciplinary proceedings before the HJC are initiated *ex officio*, while 40% have been started upon a third-party request.

Lastly, since the new justice system is designed to function in a cascade mechanism where the work of the justice institutions is interlinked and codependent through a sequential triggering logic, their establishment, proper functioning and decision-making depends from and feeds into other justice institutions. For example:

- while the magistrate's members of HJC, HPC, HIJ⁵⁷ and JAC should pass the vetting process, there were cases where the Vetting bodies have dismissed members of HPC or JAC from office, thus directly impacting the available human resources.
- The High Judicial Council can promote magistrates to the High Court and to Special Court Against Corruption and Organized Crime only after they have passed the vetting process. The HPC can promote to SPAK and to the position of the General Prosecutor only those prosecutors who have passed the vetting process. Members of the Constitutional Court that come from the ranks of judiciary, as well as the High Inspector of Justice, if he/she comes from the pool of judges or prosecutors, should be as well vetted. This has created a bottleneck effect in the filling of vacancies of these important institutions.
- both the HPC and HJC are responsible for the vetting of the new magistrates entering the Magistrate School;
- Moreover, all the above processes of evaluation of candidates require information produced from non-justice state institutions such as the High Inspectorate of Declaration and Audit of Assets and Conflict of Interests, Property Agency, Commercial Banks, etc. For the purposes of this report, the chair of HPC informed that there are 32 institutions in total that should provide information to HPC for a certain case.;
- However, both the HJC and HPC have specific commissions that help the vetting bodies in the evaluation of judges and prosecutors;
- both the HJC and HPC Chairs are part of the Magistrate School Board and actively take part in the drafting of curricula.

Again, while during the planning stage the cascade system looks good, when it comes to the complexity of situations in real life this cascade system applied to the Justice Reform has not been always up to the task.

⁵⁷ Article 282(1) and 282(4) provides that when the candidate for High Justice Inspector is a magistrate from the rank of judges or prosecutors, he/she should pass a vetting process.

II.4. Accountability and transparency

On top of its independence, the justice reform approved in 2016 had as its main goals also the accountability and transparency. There are different provisions in different laws of the Justice Reform Package that impose and require more accountability and transparency from the judiciary and the new justice institution.

However, accountability and transparency are now not only legal obligations imposed by law, but two very important values that are expected to be embedded in the governance of the new institutions. There is a high expectation that the new justice institutions will settle a different model of governance based on these values.

In this section, we would like to highlight some of examples of accountability and transparency shown by the new justice institutions, but without attempting to qualitatively or quantitatively measure how the new justice institutions have reflected these principles in their decision-making process. As emphasized also in the introduction of this policy study, we are using the positive inquiry methodology to identify the good example and lessons learned from the new justice institution, but without having yet a metric or index to measure their performance.

II.4.1. Accountability

According to the legislative provisions in power, the judicial system institutions have the obligation to report at least once a year on their activity before the Parliament. Having into consideration the fact that progress in the justice reform is one of the preconditions for the opening of the EU negotiations, as well as the high pressure from the public to have concrete results from the justice reform, the Parliament has called the new justice institutions more than once a year to report on their activities.

Moreover, the Parliament has prepared each time specific resolutions containing specific tasks assigned to the new justice institutions, and followed up on the completion of these tasks in the next reporting phase. All the new justice institutions have been cooperative with the Parliament as well as with other state bodies like the Ministry of Justice or the Ministry for Europe and Foreign Affairs, by sending regular reports.

Box 4. Reporting and Accountability

Only during 2020, the Office of High Inspector of Justice has prepared a total of 22 (twenty-two) reports, namely: 12 for the Ministry of Justice, 4 for Ministry for Europe and Foreign Affairs and 3 for the Parliament.

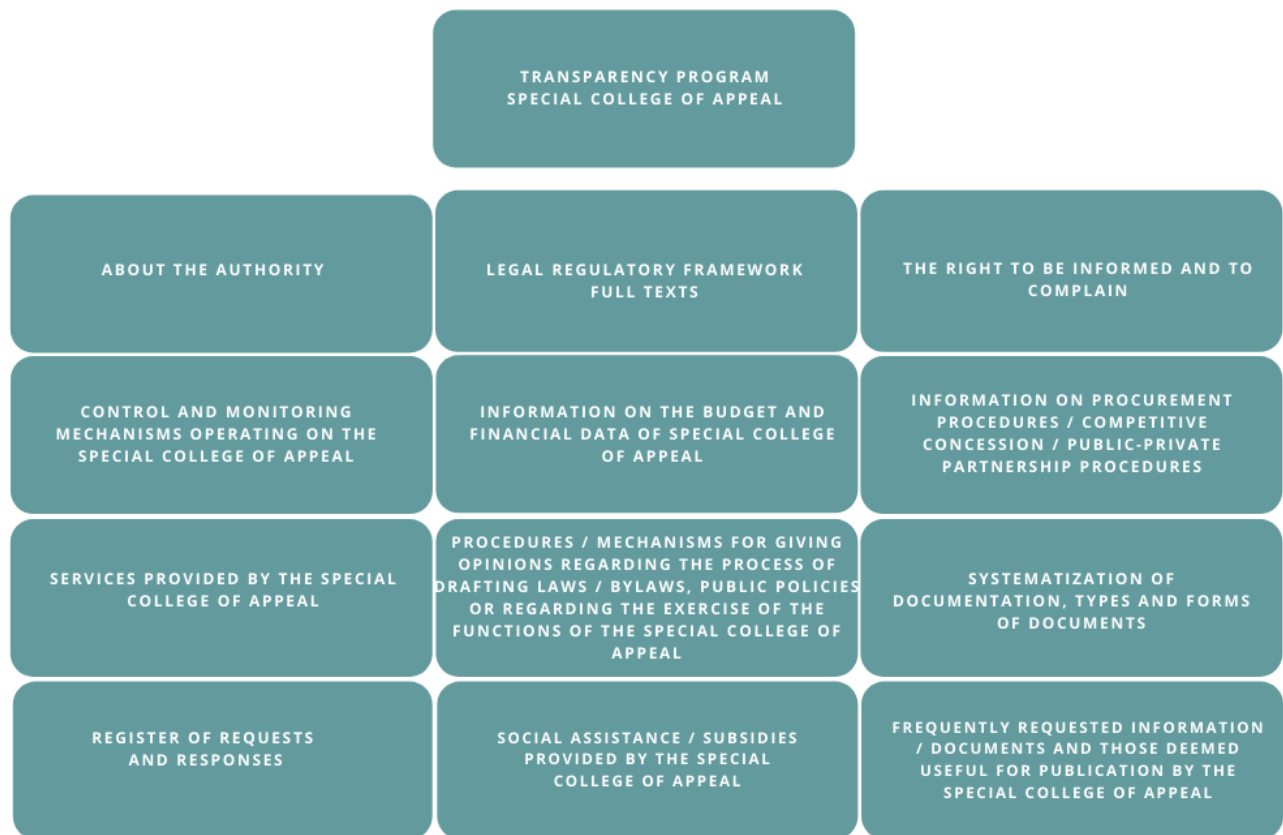
As mentioned previously, the justice institutions are independent in drafting their own bylaws that regulate the administration and the exercise of their own competences. However, these bylaws might be sometimes in conflict with specific legal provisions drafted by the legislator. This brings in the need for a good cooperation between the judiciary and the executive. It also requires an open-minded executive branch, as well as the parliamentary support to amend the initial provisions of the justice reform framework, and to adjust it to meet the requirements and needs of justice institutions.

In fact, the new justice institutions following their inception period have evidenced some controversies and problems of the initial design of the justice reform and asked for a revision package. Round tables with the Ministry of Justice and other international partners have enabled the correction of identified problems and the drafting of the necessary amendments. In this regard, the velocity of the executive and of the legislative branches to respond to the needs of the justice institutions is an indicator of the political will (or its lack thereof) towards the functioning of these institutions.

II.4.2. Transparency

The transition towards the new justice institutions was confusing for citizens, who despite the explanatory videos, institutions websites and media coverage on the new institutions, were still not able to distinguish who was doing what. For example, after the creation of the High Prosecutorial Council, hundreds of petitions from citizens alleging malpractice from certain prosecutors were deposited to the HPC, even though it was the High Inspector of Justice who was responsible for initiating a disciplinary procedure against prosecutors (and this body was not established yet). The Commission of Discipline within the HPC has archived and assessed around 280 petitions from citizens, dismissed 170 as not eligible and forwarded the other requests to the General Prosecutor Office⁵⁸, which had the competence of investigation for disciplinary charges during the transitional phase until the establishment of the High Inspector of Justice.⁵⁹

Figure 1. Structure of the transparency programme of the Special College of Appeal



⁵⁸ HPC Annual Report 2019:19, 20.

⁵⁹ The Law 96/2016, article 160 and 172 provided that in the transitory phase till the establishment of the High Inspector of Justice Office, it was the General Prosecutor Office who would gather and investigates petitions against prosecutors.

Apart from the Justice Appointment Council, all the new justice institutions have their own website.⁶⁰ In there, besides their functions, activities and notifications they also have a “transparency program” section, and an electronic register of requests for information in compliance with the “Law of Public Information” and other respective provisions in their governing laws.

Following the obligation set by the Law on the Governing Institutions of the Justice System, both the HJC and the HPC, regularly publish online at their website the minutes of their plenary sessions in audio format, and also have appointed a special coordinator to deal with the requests of public information.

However, the quest for more transparency and accountability is an ongoing effort. Despite the positive measures taken towards more transparency, still the new justice institutions seem to have difficulties. For example, although the HPC and HJC have the obligation to publish within 24 hours the minutes of their plenary meetings, they have not always abided to this standard. Think tanks and specialized civil society organizations have continuously stressed the need for more transparency from the public institutions and have case-by-case criticized the new justice institutions for non-transparent processes.

To improve their throughput legitimacy, the new justice institutions have taken some pro-active measures by increasing their transparency and citizens participation in their processes. For example, the HJC has:

- adopted a Strategic Plan for Communication with the Justice System⁶¹, as well as a Regulation of Communication of the HJC with the Media⁶², and,
- published in the website a template for information request and a manual for attending online meetings during Covid19.

HPC has drafted its Strategy with the aim to improve the communication with the public and the inter-institutional communication.⁶³ Moreover, the HPC Chair has conducted a communication tour in almost all the prosecutors’ offices in the country to inform them upon the procedures of the HPC and its activities.

Some other positive initiatives that improve the communication with the public are the trimestral reporting and the monthly newsletter of the High Inspector of Justice; the interactive websites with video, charts and pop ups used in the webpage of the High Inspector of Justice or of the Public Commissioner; or the budget reporting and public procurement register published in the website of some of the vetting bodies.

In addition, the HJC and HIJ are active in the social media platforms owning accounts respectively in Facebook⁶⁴ and Twitter⁶⁵. We appreciate these initiatives and would encourage the usage of faster and easier form of communication with the public. The disclosure of information is necessary, but not sufficient to improve the transparency. Disclosure should be complemented with information that is reliable, accessible, of good quality and timely, so as to be effective and understandable for the citizen.⁶⁶

⁶⁰ Justice Appointment Council reflects its activity in a specific section in the website of the High Court: http://www.gjykataelarte.gov.al/web/Keshilli_i_Emerimeve_ne_Drejtesi_11_1.php

⁶¹ Decision of the HJC no. 590, date 26.11.2020 accessed at <http://klgj.al/wp-content/uploads/2020/12/PLANI-STRATEGJIK-I-KOMUNIKIMIT-P%C3%8BR-SISTEMIN-GJYQ%C3%8BSOR.pdf>

⁶² Decision of the HJC no. 592, date 26.11.2020 accessed at <http://klgj.al/wp-content/uploads/2020/12/RREGULLORE-P%C3%8BR-KOMUNIKIMIN-E-K%C3%8BSHILLIT-T%C3%8B-LART%C3%8B-GJYQ%C3%8BSOR-ME-MEDIAN.pdf>

⁶³ High Judicial Council Annual Report 2018, adopted with decision no. Nr.69, date 03.05.2019, pg. 34.

⁶⁴ <https://www.facebook.com/KeshilliLarteGjyqesor>

⁶⁵ https://twitter.com/ILD_Albania

⁶⁶ see Zúñiga, Nieves. *Does more transparency improve accountability?*. Transparency International., 2018. <https://www.jstor.org/stable/pdf/resrep20498.pdf>

Conclusions

The justice reform aimed to improve the legitimacy of the Albanian justice system. It did so, by increasing the independence of the new justice institutions and so responding to the concern of citizens about the rampant corruption of judges and prosecutors. It also dealt with the effectiveness of the judicial system by improving its structure and expected outcomes. The final legitimacy component targeted by the reform is the overhaul of the internal processes and of good governance procedures of the restructured institutions or of those set up *ex nihilo*.

This policy study focuses on the last component – the efficacy, accountability and transparency of the NJS governance processes or their throughput legitimacy. Benefiting from a hindsight of three years, we focused on elements that contribute to the efficiency, accountability and transparency components of good governance – budget, human resources, internal procedures, and transparency.

Today, the new justice institutions are responsible for drafting their budget and planning of their budgetary structure and ceiling. But this was not an easy exercise for them. Apart of the High Judicial Council, which has a predecessor institution (the High Council of Justice), the other institutions were created *ex novo* and all encountered difficulties in the budgetary planning.

To respond to emerging needs and financial requests of the new justice institutions the Government has generally followed the increasing budgetary requests, as reflected in the process of budget negotiations and often in the revision of state budget. The financing amounts allocated to new institutions have been on the rise, notwithstanding the natural disasters and challenges in the public spending occurred during 2019-2020. Nevertheless, the funds allocated to the new justice institutions are below their budgetary needs and requests.

The data from the budget implementation for 2020 show that the new justice institutions could not fully implement the budget allocated by the government. The lack of full implementation was linked with environmental and external factors such as lack of proper premises and office spaces, long processes of staff recruitment, suspension of recruitment due to Covid-19, etc.

Looking to the budget structure, we notice that a major part of the budget of new justice institutions has been devoted to salaries and social insurances and only a small percentage to capital investments.

The staff of the new justice institutions possess the civil servant status and although the process of their recruitment is not organized by DoPA, the procedure is still lengthy, bureaucratic and goes through different filters. This prolongs the time for staff recruitment and as a consequence all vacancies in the justice institutions were filled 4 months - 1 year after their establishment.

The process of recruitment in SPAK was even longer, due to the fact that each of the employees had to go through a vetting procedure. Recruitment was delayed also because of hesitation of potential candidates to apply. Often a call had to be launched different times.

Despite the initial limitations affecting the organizational structure and budgetary needs, the lack of previously-existing practices, the incumbent liability “heritage” from previous judicial structures, the lack of regulatory bylaws, and Covid-19 pandemic, the new justice institutions showed resilience. No staff absenteeism or other resistance has been noticed. We have found sufficient of evidence of a staff actively engaged in the completion of their tasks and duties as reflected amongst other in the number of decisions taken year after year.

The Strategies adopted by the new justice institutions cover a period of 2 to 3 years and tend to respond to the emerging and changing needs of the judicial system, especially to mitigate the effects of the vetting process.

The new justice institutions have worked in improving their transparency and communication with the public.

There is an increased accountability of the new justice institutions towards the legislative, as evidenced by the number of reporting to the Parliament.

Most of the new justice institutions have drafted their own code of ethics, regulation on conflict of interests, regulation on whistleblowers, regulation on media communication etc. However, this process must be completed for all new structures.

There has been an intensive involvement of the institution's leadership in the drafting of the organizational charts, and other administrative and regulatory task. To overcome the set-up limitations and perform their tasks in an accountable and transparent way, the new justice institutions have created thematic commissions (many of them ad hoc), on top of the standard permanent commissions provided in the legal framework.

The justice reform in Albania has created a new situation on the ground where the EU instruments of political dialogue, conditionality and assistance must be re-oriented and re-designed to focus on the good governance and resilience of new justice institutions. Lessons learned in Albanian justice reform can be applied in other sectors, as well as in other SEE6 countries.

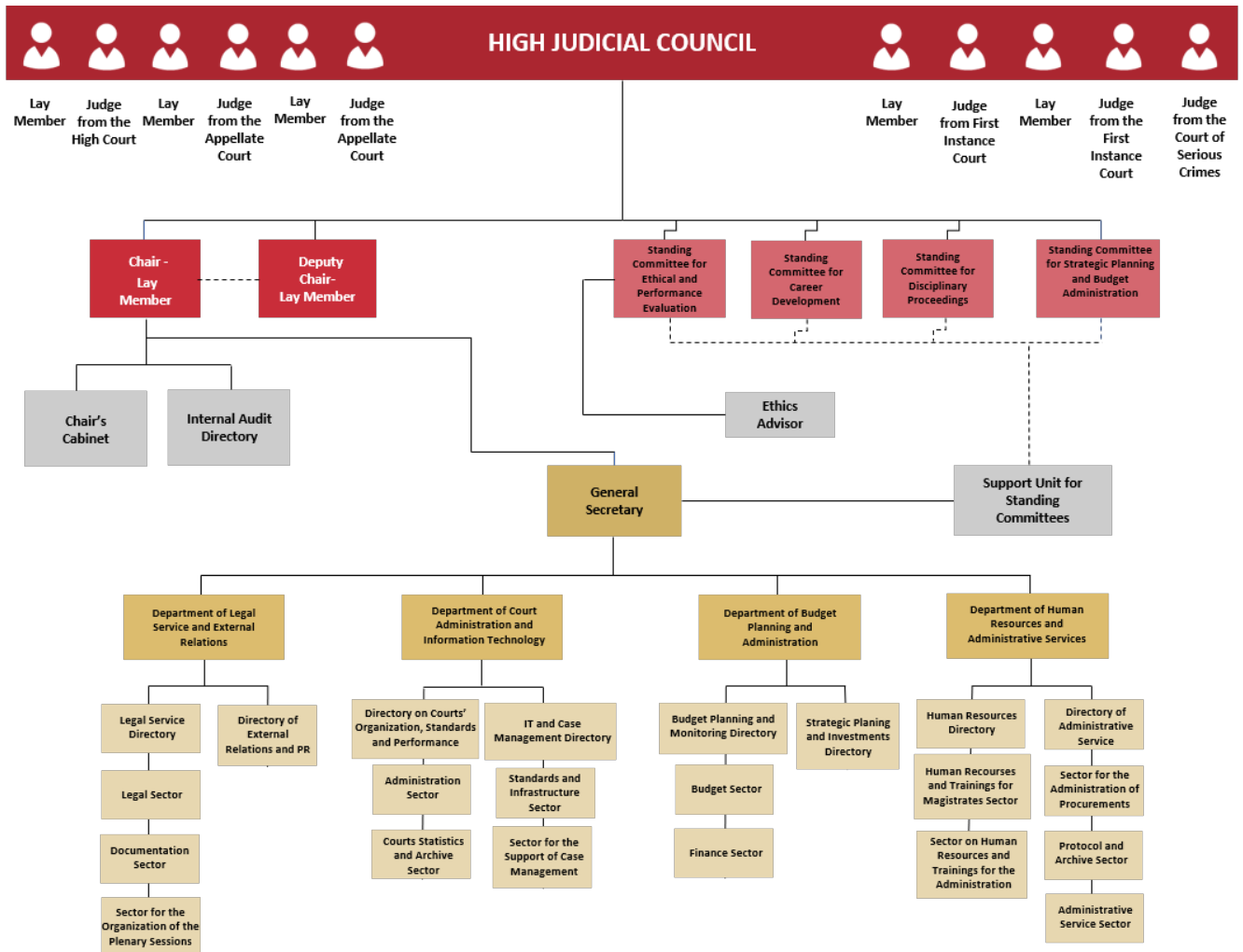
In conclusion, the justice reform in Albania is a jump in the right direction. After achieving a notable reduction of the political influence on the judiciary, and the elimination of many highly corrupt judges and prosecutors, the brand-new justice institutions are completing their set-up phase. The next challenge is to support those structures with the necessary resources – financial, human resources and with unwavering political backing - in order to create a *cordon sanitaire* around them. Those infant institutions represent one of the cornerstones of deep-cutting structural democratic reforms in the whole SEE6 supported by EU. They are also the key instrument in delivering and measuring the progress in the Fundamentals cluster. For those reasons they should not be allowed to fail.

Annex 1. List of New Justice Institutions interviewed

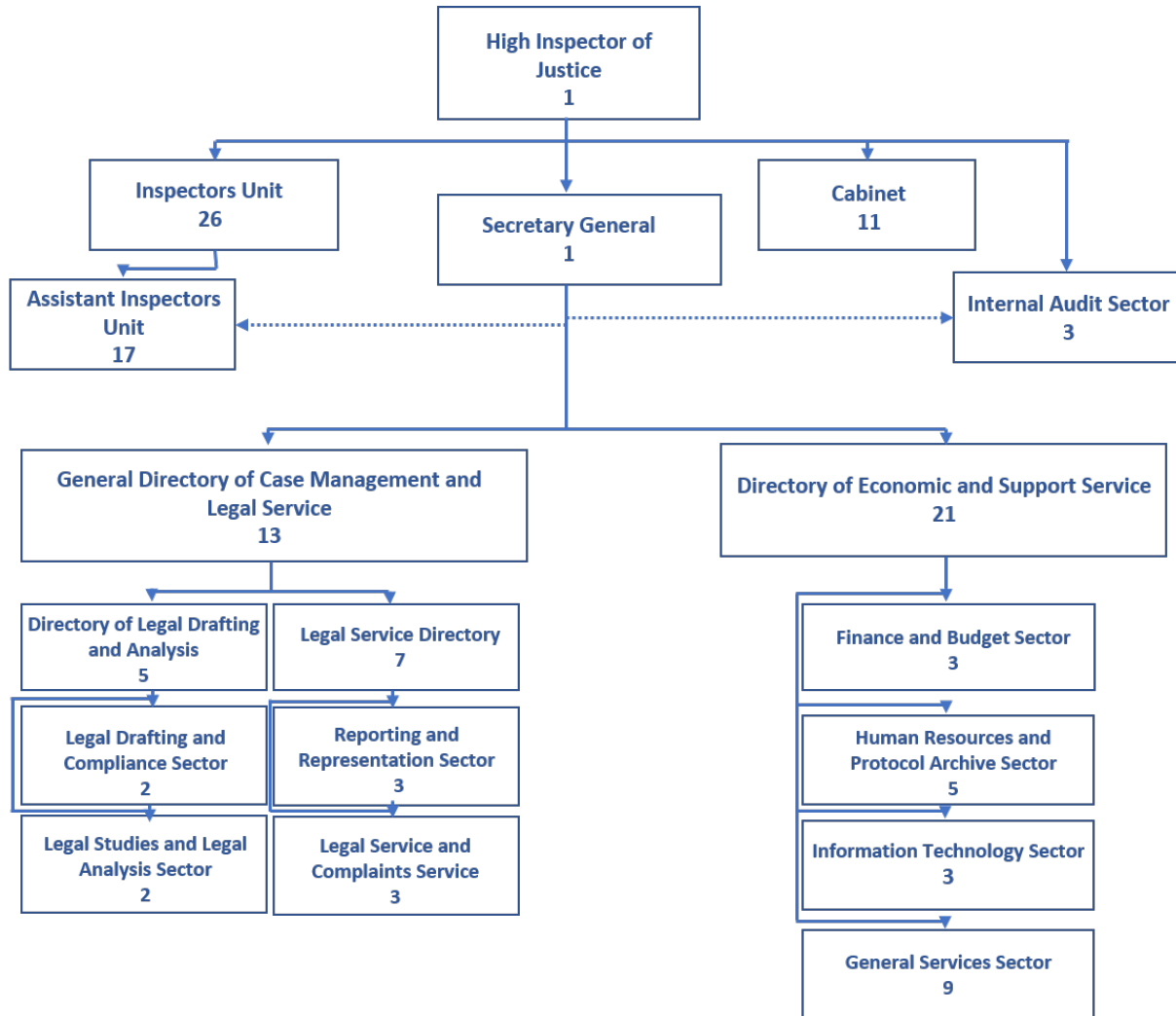
- High Prosecutorial Council of Albania (HPC)
- High Judicial Council (HJC)
- Justice Appointments Council (JAC)
- High Inspector of Justice (HIJ)
- Special Structure against Corruption and Organized Crime (SPAK)

Annex 2. Organizational Structure of selected Newly established Justice Institutions

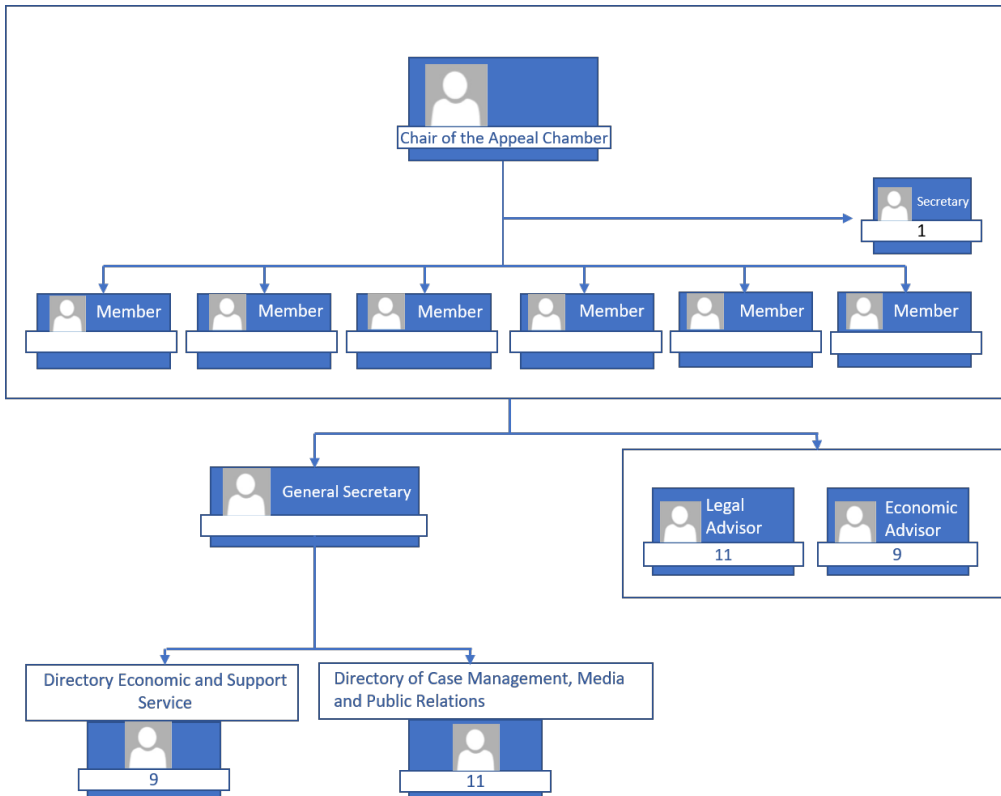
Annex 2.1. Organizational Structure of the High Judicial Council



Annex 2.2. Organizational Structure of the High Inspector of Justice



Annex 2.3. Organizational Structure of the Appeal Chamber





GOOD GOVERNANCE OF NEW JUSTICE INSTITUTIONS IN ALBANIA

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Tirana, November 2021

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