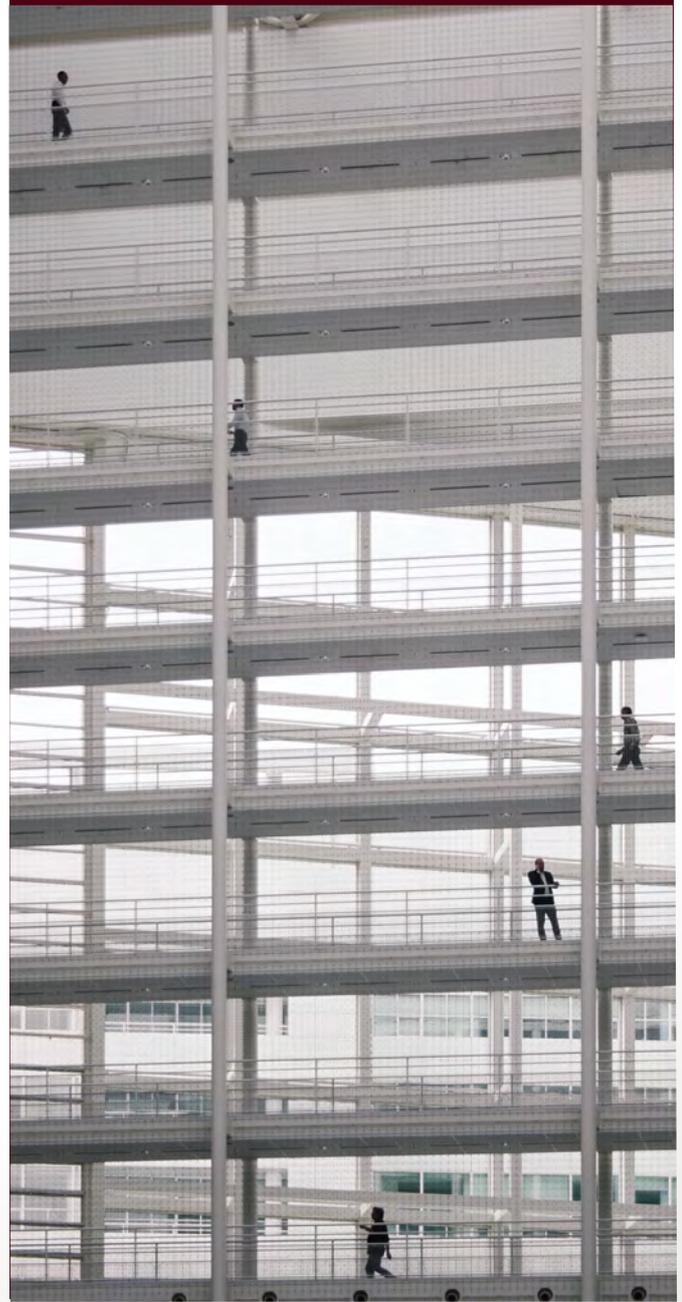


MONITORING REPORT

on the progress of the process
for the establishment of a
**Special Structure against
Corruption and Organized
Crime and Special Courts
Against Corruption
and Organized Crime**

November 2018



Monitoring Report

on the progress of the process
for the establishment of a Special Structure
against Corruption and Organized Crime and
Special Courts Against Corruption and Organized Crime

November 2018



Qendra
për Studimin
e Demokracisë
dhe Qeverisjes

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List of Abbreviations

NBI	National Bureau of Investigation
DNIB	Director of the National Investigation Bureau
DSPO	Director of the Special Prosecution Office
DSCI	Directorate for Safeguarding Classified Information EURALIUS Project "Consolidation of the Justice System in Albania"
PCI	Public Commissioners Institution
HJI	High Justice Inspector
HIDAACI	High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest
SCC	Serious Crimes Court
ACOC Courts	Courts Against Corruption and Organized Crime
JAC	Justice Appointment Council
HJC	High Judicial Council
HPC	High Prosecutorial Council
SAC	Specialized Appeal Chamber
IQC/Commission	Independent Qualification Commission
SCVABC	Special Commission for the Verification of Assets and Background of Candidates
SPM	Special Prosecutors Meeting
IMO	International Monitoring Operation
OPDAT	Office of Overseas Prosecutorial Development Assistance and Training
JPO	Judicial Police Officers
SCPO	Serious Crimes Prosecution Office
SPO	Special Prosecution Office
SPAK	Special Structure against Corruption and Organized Crime

I. Executive Summary

The justice system reform is one of the deepest and most comprehensive reforms undertaken in Albania during the recent years, which aims to address issues on the investigation of corruption and organized crime, identified as one of the major obstacles to further economic and social development of the country and membership in the European Union.

One of the main components of this reform is the establishment of institutions to fight corruption and organized crime. These institutions consist of the First Instance Court against Corruption and Organized Crime and the Court of Appeals against Corruption and Organized Crime and the Special Anti Corruption and Organized Crime Structure (SPAK).

The structure of SPAK will be composed of two components: The Special Prosecution Office and the National Bureau of Investigation. The mission of the Special Prosecution is to prosecute and represent the indictment in all three levels of the judiciary (First Instance Court against Corruption and Organized Crime, the Court of Appeals against Corruption and Organized Crime, and the Supreme Court). The National Investigation Bureau, which operates under the sole authority of the Special Prosecution Office, will be a specialized structure of the Judicial Police, which will investigate criminal offences falling under the criminal jurisdiction of this Prosecution Office.

Although the establishment of such institutions for the fight against corruption and organized crime is one of the most significant components of the justice reform, the processes

have encountered obstacles, thus failing to meet the timelines provided for by law on their establishment and functioning. According to law on the organisation and

functioning of the institutions on the fight against corruption and organized crime, within 300 days of its entry into force, specifically by the end of August 2017, it was provided that the Special Prosecution Office had initiated the exercise of the criminal prosecution functions through the automatic transfer of cases from the Serious Crimes Prosecution Office.

Such timeline not only has not been met, but apparently the process will last even longer, as the establishment of SPAK is expected to be a cascade process, which will begin only upon the appointment of the Director of the Special Prosecution Office (DSPO).

To ensure its independence from any political influence or otherwise, the establishment of high standards of security, the provision of adequate human, financial, technical and logistical capacities of the Courts against Corruption and Organized Crime (both levels) and SPAK, any process on security and professional skills, election, appointment, dismissal, control, supervision, etc., the legislation provides for the combination of the activity of a wide range of institutional stakeholders, timelines and procedures that inevitably overlook or overcome them.

Consequently, since the appointment of the DSPO, it will take several other months (minimum six to twelve months) to complete the establishment of the structure according to the respective legal provisions, as it includes other steps such as the call for applications,

verification of the security conditions and professional skills, interviewing and recruiting, training, etc.

On the other hand, the package of constitutional amendments provides that the Courts against Corruption and Organized Crime and SPAK derive from the reformation of the judicial bodies, which firstly provides for the transitional re-evaluation of all judges and prosecutors, and secondly, the reorganization of the governing bodies of the justice reform through the establishment of the High Judicial Council, the High Prosecutorial Council, the High Justice Inspector and the Justice Appointments Council.

Therefore, the establishment of the Courts against Corruption and Organized Crime and SPAK is primarily conditioned by the progress and development of the process of the re-evaluation of judges and prosecutors and the establishment of justice system governing bodies.

Up to this stage of the proceedings, although over one year has passed from the legal timelines set, the re-evaluation of judges and prosecutors, which will constitute the High Judicial Council and the High Prosecutorial Council in charge for appointing the future judges of the Courts against Corruption and Organized Crime and Special Prosecutors, cannot yet be considered as completed. Their appointment only marks the beginning of the process of the establishment of the Courts against Corruption and Organized Crime and SPAK, as pursuant to the legal provisions and as noted above, the completion of such process will require for several other months.

Delays in the establishment of these institutions and the difficulty to follow up and understanding the technical aspects of the

process risk to undermine the wide support of the citizens to the justice reform. On the other hand, the technicality of the processes and the difficulties encountered in their understanding and active follow-up may lead to additional indifference and lack of confidence by the public and, consequently, it may jeopardise the public requirements to transparency and accountability with regards to these processes.

Such delays caused, and all the pressure imposed by the the public and the international stakeholders to accelerate the processes, may lead to failure to strictly implement the legal requirements such as those requirements provided to ensure the meritocracy and integrity of the employees to be recruited at the Special Prosecution Office and the National Investigation Bureau. The very technical nature of such processes and procedures makes such deviations not easily identifiable.

This monitoring report outlines a detailed description of the legal processes for the establishment of the Court against Corruption and Organized Crime and SPAK, as well as an assessment of the current state of art of such processes and relevant challenges encountered.

The report aims to improve public information on such processes, to encourage and promote well-informed discussion and participation of citizens, and to advocate and support the institutions responsible for the establishment of the Court against Corruption and Organized Crime and SPAK.

II. Introduction

Over the last two decades, Albania has faced high levels of corruption and, in particular, corruption in high management levels, which is still considered as one of the most concerning issues in the country. Its impact on the justice system has caused the judicial system to show deep deficiencies and lack of independence and impartiality, widespread corruption among judges and judicial administration, lack of professionalism, efficiency, integrity, responsibility, accountability, transparency as well as deep lack of the public confidence in the justice system, factors which have been continuously identified in a number of important international reports.

Freedom House defines the judicial system in Albania as a sector with high levels of corruption and low levels of efficiency, issues that have not marked any improvement over the last 6-7 years.¹ While Transparency International in its the regional analysis for Eastern European countries identifies very low and unsustainable progress in the fight against corruption and stresses the need for further

progress in the country's anti-corruption efforts.² The impact of political ties, high-level corruption and links to organized crime have been identified as the main causes of the justice system's situation,³ transforming it into a corruption mechanism showing unreal evidence and data⁴ and affecting not only democracy and governance, but also other very important sectors, including the economic development and foreign investments.⁵

Despite all the efforts shown over the years in terms of improving the legal framework and existing anti-corruption strategies,⁶ the outcomes in terms of improving the independence and proficiency of the entire judicial system would deteriorate, leading to paralysis and malfunction of the entire system and beyond, which would be accepted not only by high-level international stakeholders present in Albania,⁷ but also by politicians in the country, turning the need to intervene in the system into an emergency.⁸

As a consequence of the emerged situation, the need for intervention and reform of the justice system supported by the citizens themselves⁹ was considered of high priority by

1. Freedom House: Nations in Transit (2018). <https://freedomhouse.org/report/nations-transit/2018/albania>

2. Transparency International: Regional Analysis of Eastern Europe and Central Asia 2017 (Part II).

https://www.transparency.org/news/feature/europe_and_central_asia_more_civil_engagement_needed_part_ii

3. BTI 2018: Albania Country Report. http://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2018/pdf/BTI_2018_Albania.pdf

4. Besar Likmeta. The Integrity Gap: Albania's Appeals Court Judges Asset Disclosures Raise Red Flags. BIRN Tirana, 17 June 2016.

<http://www.balkaninsight.com/en/article/the-integrity-gap-albania-s-appeals-court-judges-asset-disclosures-raise-red-flags-06-16-2016>

Leonard Bakillari. Albanian Judges' Wealth Escapes Scrutiny. BIRN Tirana, 1 May 2015. <http://www.balkaninsight.com/en/article/albanian-judges-suspicious-wealth-escapes-scrutiny>

5. US Department of State: Investment Climate Statements for 2018.

<https://www.state.gov/e/eb/rls/othr/ics/investmentclimatestatements/index.htm?year=2018&dliid=281551#wrapper>

6. Regional Anti-Corruption Initiative. Legislation – Albania Anti Corruption Institutional Framework. <http://rai-see.org/legislation-albania-anti-corruption-institutional-framework/>

7. Armand Mero. "Justice, 4 years and no improvement" (Interview of Joaquin Urias, Head of Mission EURALIUS III). May 26, 2014.

<https://www.zeriamerikes.com/a/drejtisi-shqiperi-reforma-urias/1922763.html>. Corruption and Human Rights: Opinion of the Head of the OSCE Presence, Ambassador Bernd Borchardt. <https://www.osce.org/sq/albania/288166?download=true>

8. Aleksandra Bogdani. Albanian Justice System Slammed as Totally Corrupt. BIRN Tirana, 09 June 2015 <http://www.balkaninsight.com/en/article/judges-in-albania-pays-up-to-300-000-for-their-positions-report-says>

the European Union in its European agenda of the country and as the principal condition¹⁰ for opening negotiation process in 2019.¹¹

As a response to these concerns, in November 2014, the Albanian Assembly established the Special Parliamentary Commission on the Justice System Reform,¹² consisting of a group of senior experts, external consultants and a technical secretariat. The main objectives of the Commission were as follows:

- 1) conduct of a detailed and comprehensive analysis of system functioning by identifying existing problems and needs;
- 2) setting of the objectives through the drafting of a strategic document; and
- 3) provision of proposals for the respective constitutional and legal amendments, having an impact on the implementation of the reform.

Despite the country's political disagreements, all three of these objectives were finalized by September 2015, and were reflected in the Analytical Document¹³, the Strategic Document¹⁴ and the Action Plan¹⁵, as well as the necessary draft law package,¹⁶ which were adopted by the Commission. The amendments were supported by key international stakeholders who were part of the process, such

as Venice Commission, who considering the critical state of the system and the need for urgent interventions, provided the relevant recommendations.¹⁷ During March

2016, the Venice Commission approved the final opinion on the revised text of the draft constitutional amendments¹⁸ and only after a series of national and international expert talks (EURALIUS and OPDAT) and the suggestions of the members, in June 2016 the Commission approved the text of the constitutional project. In July 22, 2016, the Assembly of the Republic of Albania unanimously adopted the package of constitutional amendments by 140 votes in favour, by Law no. 76/2016¹⁹ paving the way to the implementation of one of the country's most radical and important reforms over the last two decades.

The package of constitutional amendments provides for a series of comprehensive amendments to almost all aspects of the justice system, but in particular it intends to establish a specialized anti-corruption investigation and judgement structure based on successful best practices of countries in the region.²⁰

Specifically, such constitutional amendments provide for the establishment of a

9 IDRA: Reforma në Drejtësi: Njohuritë, Mbështetja dhe Pritshmëritë e Publikut. OSFA April 11, 2016. <http://www.osfa.al/publikime/idra-reforma-ne-drejtësi-sondazhi-i-opinionit-publik>

10 Georgi Gotev. EU gives Albania ultimatum over judicial reform. EURACTIV.com. July 19, 2016 <https://www.euractiv.com/section/enlargement/news/eu-gives-albania-ultimatum-over-judicial-reform/>

11 Albanian parliament passes judiciary reform key to EU accession. EURACTIV.com with Reuters. July 22, 2016

<https://www.euractiv.com/section/enlargement/news/albania-parliament-passes-judiciary-reform-key-to-eu-accession/>

12 Decision of the Assembly no. 96/2014, dated 27.11.2014. On the establishment of the Special Parliamentary Commission on the Reform in the Justice System.

http://www.qbz.gov.al/botime/fletore_zyrtare/2014/PDF-2014/189-2014.pdf

13 Analysis of the Justice System in Albania (June 2015). http://www.reformanedrejtësi.al/sites/default/files/dokumenti_shqip.pdf

14 Strategy of the Justice System Reform (July 24, 2015). http://www.reformanedrejtësi.al/sites/default/files/draft_strategjia_versioni_shqip.pdf

15 Strategic Document and Action Plan. <http://www.reformanedrejtësi.al/dokumenti-strategjik-dhe-plani-i-veprimt>

16 <http://www.reformanedrejtësi.al/dokumentacioni/projektligje>

15 Venice Commission: Opinion on Draft Constitutional Amendments to the Judiciary (December 18-19, 2015)

[http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)045-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)045-e)

16 Venice Commission: Draft Final Opinion on the Revised Constitutional Review for the Judiciary (March 11-12, 2016).

<http://www.euralius.eu/old/images/pdf/Opiniononi-perfundmtar-per-projekt-ndryshimet-e-rishikuara-kushtetuese-per-gjyqesorin-ne-Shqiperi.pdf>

17 Law No. 76/2016, dated 22.7.2016. On some additions and amendments to Law no. 8417, dated 21.10.1998, "Constitution of the Republic of Albania", as amended. http://www.qbz.gov.al/botime/fletore_zyrtare/2016/PDF-2016/138-2016.pdf

18 Strategy of the Justice System Reform, page 43-44. http://www.reformanedrejtësi.al/sites/default/files/draft_strategjia_versioni_shqip.pdf

Special Court for the adjudication of criminal offences against organized crime and corruption,²¹ as well as all criminal offences committed by high level officials or former officials,²² reflecting the need to establish a specialized and ad-hoc anti-corruption structure. The aforementioned amendments also provide for the establishment of two other constitutional institutions, namely, the Special Prosecution Office and the Special Investigation Unit named as The National Investigation Bureau²³ on the criminal prosecution and investigating criminal offences of corruption, organized crime and criminal cases.²⁴

Sanctioning by the Constitution of the establishment of the Special Anti-Corruption and Organized Crime Structure (SPAK) highlights the guarantee, importance and continuity of these bodies in further exercising their activity, leading to the reorganization of the current Serious Crimes Court and Prosecution Office. In June 2018, the conclusions of the Council of Europe also highlighted the importance of the establishment of these institutions²⁵, whereas the role of the United States of America and the European Union will not only be limited to the finalization of their establishment, as they will both assist for a period of

2 years in the further development of anti-corruption institutions, in particular the National Bureau of Investigation.²⁶

The process of establishing and exercising the powers of the Courts against Corruption and Organized Crime and SPAK is considered an interrelated process, which will be accomplished by way of harmonized implementation of other respective laws part of the constitutional amendment package, such as the process of the transitional re-evaluation of all judges and prosecutors, considered as a very important and fundamental process²⁷ and the reorganization of the existing bodies or establishment of new governing bodies of the justice system.

21 Article 135, paragraph 2, Constitution of the Republic of Albania, amended by Law 76/2016, dated 22/07/2016 (hereinafter : Constitution of Albania)

22 Assesseees included in the category of high level officials are provided for in the Article 135(2) of the Constitution.

23 Article 148(4) and 148(dh), Constitution of Albania

24 Article 135(2), Constitution of Albania

25 Decisions of the Council on Enlargement, Stabilization and Association Process (26 June 2018). https://eeas.europa.eu/delegations/albania/47498/konkluzionet-e-k%C3%ABshillit-mbi-zgjerimin-dhe-procesin-e-stabilizimit-dhe-asociimit-si%C3%A7-u_sq

26 Article 57(9), Law no. 95/2016 "On the organisation and functioning of institutions fighting corruption and organised crime" (hereinafter: Law on SPAK) 27 Article 179(b), paragraph 1, therein

III. Establishment of the Special Courts and SPAK

This process reviews and analyses the processes and procedures for the establishment of the Special Courts and the SPAK. Pursuant to the Law “On the organisation and functioning of institutions fighting corruption and organised crime” (hereinafter: Law on SPAK),²⁸ these structures should have been established on August 31st, 2017. As the timelines were not met accordingly pursuant to the legal provisions, this analysis aims to provide an overview of the organizational processes and powers of the institutions in charge, with a view to understand why the expected legal timelines were not met and to enable the drafting of a deadline schedule for the establishment of these structures.

Approved for the implementation of constitutional amendments for the establishment of a court and prosecutor dedicated specifically to the investigation, criminal prosecution and adjudication of corruption, organized crime and all criminal offences committed by high level officials,²⁹ Law on SPAK is the main law that regulates the organization and functioning of the Special Anti-Corruption Structure (SPAK), consisting of the Special Prosecution Office (SPO) and the National Bureau of Investigation (NBI).

Law on SPAK specifically provides for the organization, composition, scope of activity and powers of the Anti-Corruption and Organized Crime Courts (ACOC Courts), SPO, NBI, and their constituent structures, criteria, rules and recruitment and training procedures, security rules and integrity and background assessment of officials at all levels, coordination with other law enforcement and governmental structures, and the latter's obligations towards SPAK.

However, the establishment and functioning of the ACOC Courts and SPAK, are also interconnected with a number of other laws, which makes these processes too complex and interdependent (Picture 1). Consequently, the gaps or partial compliance with these laws have affected and could further affect the process of establishing such structures.

²⁸ Law No. 95/2016, Law on SPAK

²⁹ Articles 135, 148, 148/dh, Constitution of Albania



Picture 1. Legal framework on the regulation and functioning of institutions in the fight against corruption and organised crime

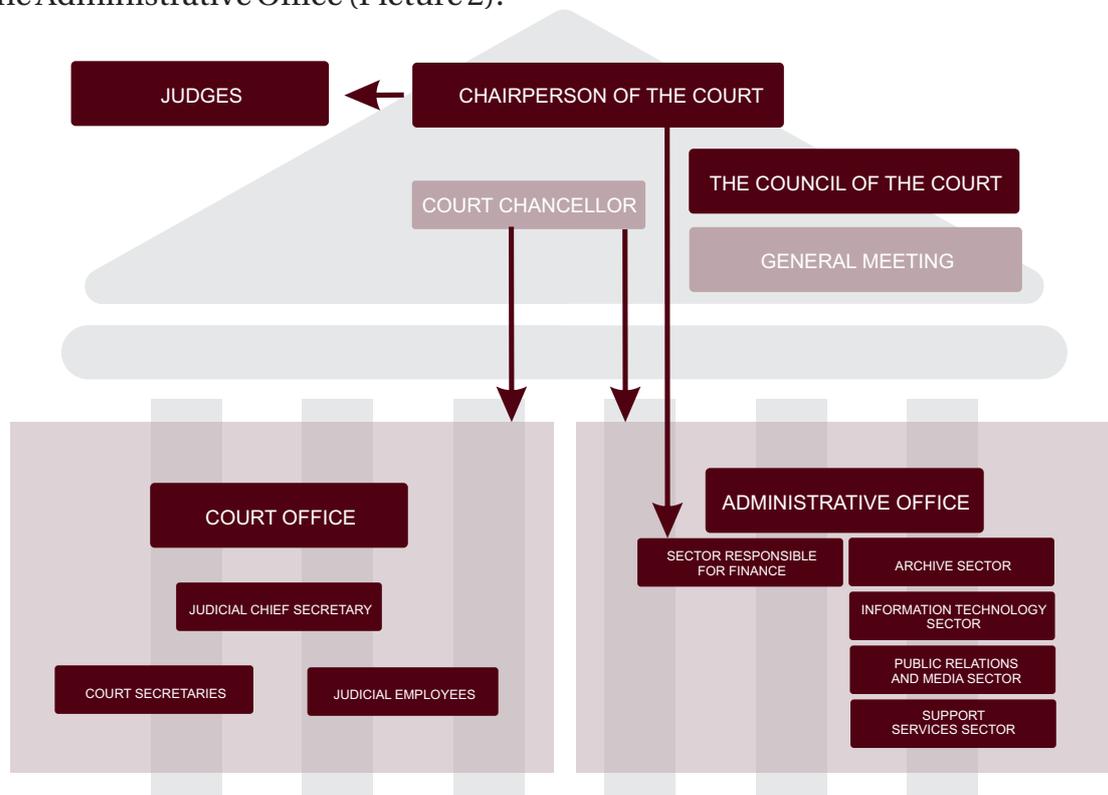
Below, a detailed overview of the organization, powers, recruitment, security rules, integrity and independence of the ACOC Court and SPAK is provided, which helps to explain the stage of art of each process, their pace and progress and time when their completion is expected.

To facilitate the analysis and help to better understand the organizational processes and powers of the relevant structures and bodies subject to these processes, this document makes extensive use of pictures, graphics, and tables.

III.1. Organisation and composition

III.1.1. ACOC Courts

The Special Court for the adjudication of criminal Offences of Corruption and Organized Crime is organized on two levels: first instance and appeal. ACOC First Instance Special Court is composed of at least 16 judges, and the Appeal Court is composed of at least 11 judges.³⁰ Each of the courts has its own structure, consisting of the Chairperson, the Court Chancellor, the Court Office, the Administrative Office (Picture 2).³¹



Picture 2. Structure of Special Courts

The Chairperson represents the court in relations with third parties, participates in the organization, management and control of the judicial administration, pursuant to legal provisions of this law and is a second level authorizing officer for budget management system and the administration of the judicial budget. The Chancellor is the highest ranking administrative officer of the judicial administration, whose powers include the management of the court office and the administrative office.³²

³⁰ Article 11, Law no. 98/2016 “On the organization of judicial power in the Republic of Albania” (Hereinafter referred to as: Law on Judicial Power)

³¹ Articles 9, 12, 14, Law no. 109/2013 “On the judicial administration in the Republic of Albania” (Hereinafter referred to as: Law on judicial administration)

³² Articles 9-14, therein.

III.1.2. SPAK

The Special Prosecution Office and the National Bureau of Investigation, as provided for in the Constitution namely the Independent Investigation Unit,³³ constitute the Special Structure of Anti-Corruption and Organized Crime, or otherwise referred to as SPAK.

The Special Prosecution Office is composed of its Director and Special Prosecutors, the Special Prosecutors Meeting (SPM), the Special Prosecutor's Chancellor and the administration, which is composed of five sectors.

The minimum number of special prosecutors under the Constitution is ten.³⁴ However, this number is not mandatory and the High Prosecution Council (HPC), if it deems it reasonable, may appoint special prosecutors on this number.

The Special Prosecutors Meeting is a collegial body, which is composed by the body of special prosecutors.³⁵

The Special Prosecutor's Chancellor is the highest ranking official of the Special Prosecution Office, in charge of supervising the activity of administrative personnel, work premises, files, archive, supportive services and financial accounting of the Prosecution Office. The Chancellor responds directly to the Director of the Special Prosecution Office (DSPO).³⁶ Under direct responsibility of the Chancellor shall be the administration,

which is composed of 6 sectors:

Documentation Sector; Expertise Sector; Financial Investigation Sector; International Cooperation and Interconnection of Joint Investigation Sector; Sector for assistance to special entities; and Media Relations Coordinator.³⁷

The National Bureau of Investigation represents a special body, which carries out investigations only for the Special Prosecution Office. The NBI is run by its Director and is composed of the following: Deputy Director, investigators, judicial police services and administration. In addition to the director and deputy director, the NBI's organizational structure of the administration and the number of investigators and judicial police officers shall be governed by the Director of NBI and the Director of the SPO.

SPAK will also have in place an ad-hoc structure composed of 2 officers, who are appointed by lot for a six-month term and who will be responsible for the periodic monitoring of telecommunications among chairpersons, judges, court employees, executives, prosecutors, SPO employees, the director, deputy director, investigators, judicial police officers and other employees of the NBI.³⁸ The organization of SPAK and structural subordination are described in Picture 3.

³³ Articles 148 and 148(dh), Constitution of Albania

³⁴ Therein

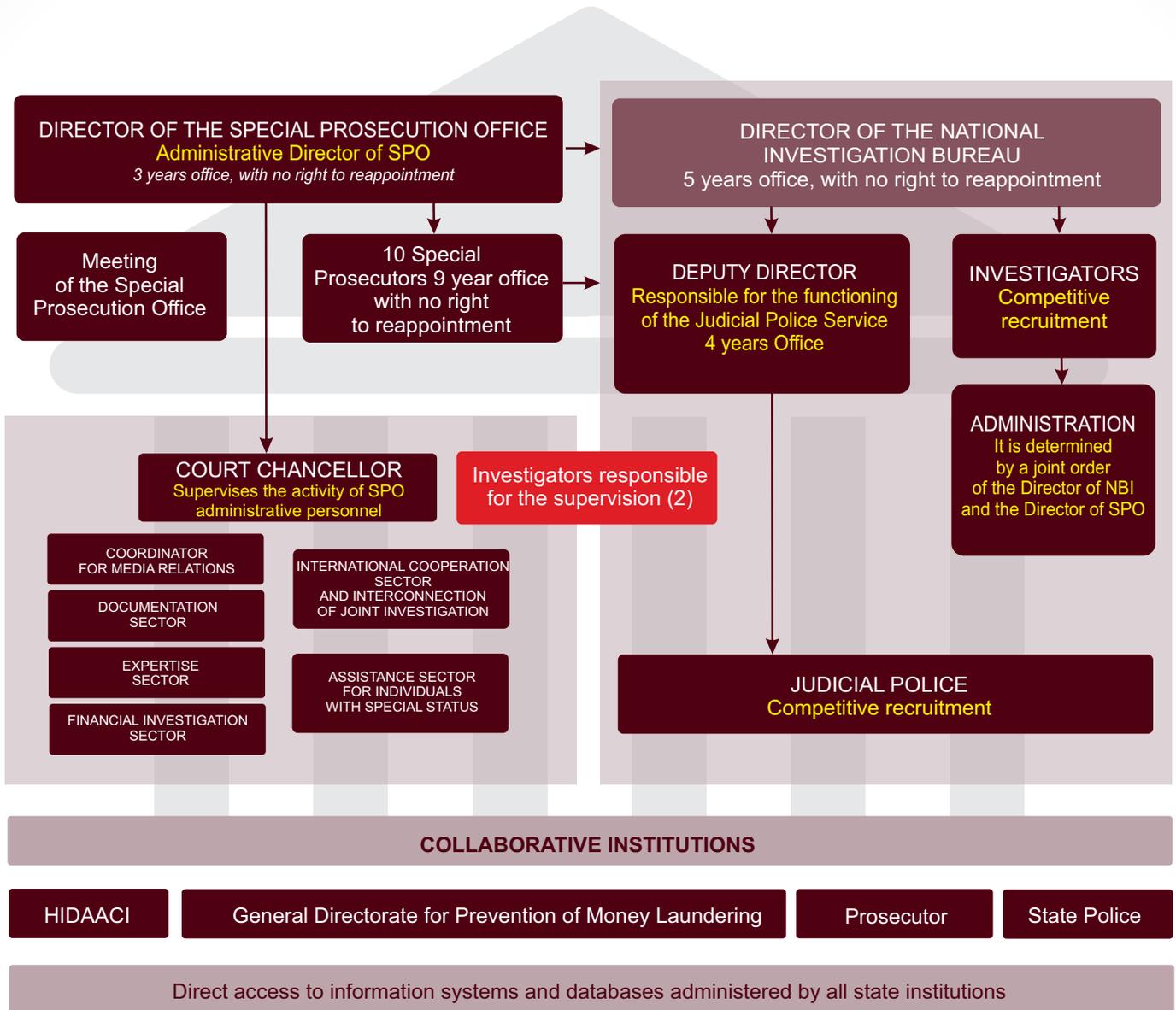
³⁵ Article 16, Law on SPAK

³⁶ Article 18, Law on SPAK

³⁷ Article 17, Law on SPAK

³⁸ Article 42, Law on SPAK

STRUCTURE OF SPAK



Picture 3. Structure of Organization and Functioning of SPAK

III.2. Scope of Activity and Powers

Based on the constitutional provisions, ACOC Courts and SPAK shall be in charge for the investigation and prosecution of the criminal offences related to corruption and organized crime, as provided for in Article 75(a) of the Code of Criminal Procedure.³⁹

ACOC Courts and SPAK apply their own powers in the exercise of their functions, which also relate to the seizure and confiscation of assets created through organized crime and corruption activities, or in the implementation of defence programs for witnesses or justice collaborators.⁴⁰

ACOC Courts and SPAK are located in Tirana; however, their criminal jurisdiction covers the entire territory of the Republic of Albania.⁴¹ NBI is also located in Tirana; however, it shall be authorized to establish temporary or permanent offices outside Tirana to comply with its scope of activity.⁴²

In order for the ACOC Courts and SPAK to initiate their investigative and adjudicative activities in accordance with the legislation, their respective structures should be established. On the other hand, the establishment of certain segments of the ACOC Courts and SPAK are of high importance, as they pave the way to other ongoing processes of establishing administrative structures.

Thus, the Councils of the ACOC Courts (first instance and appeal courts) and the General Meeting are vested with powers and must comply with the legal timelines deriving from the exercise of their activity, from which the progress of the process of establishing the court administrative structures depends.⁴³ The Council of the Court shall be in charge for the approval of the structure and organisation of the court administration, job descriptions for all categories of judicial civil servants and court employees, confirmation of employees in office with the First Instance Court and the Serious Crimes Appeal Court, etc.⁴⁴

One of the judges of the ACOC Courts shall also be a member of the Special Commission composed of two prosecutors of the Special Prosecution Office, who for a transitional period of two years will carry out the assets and background verification of the candidate applying for the positions of Director of the NBI, judicial civil servants in the Special Courts, administrative personnel in the Special Prosecution Office, and such verification will also involve their family members and relatives.⁴⁵

The Special Prosecution Office has the power to prosecute and represent the charge on behalf of the state before the ACOC Courts for the same criminal offences as provided in Article 75(a).

39 Article 135, Constitution of Albania Article 10, Law on SPAK

Pursuant to Article 75(a) of the Code of Criminal Procedure, the powers of the Court against Corruption and Organised Crime include: criminal offences provided for in articles 244, 244, 245, 245(1), 257, 258, 259, 259(a), 260, 312, 319, 319(a), 319(b), 319(c), 319(ç), 319(d), 319(dh) and 319(e); any criminal offence committed by a structured criminal group, criminal organization, terrorist organization and armed gang; criminal charges against the President of the Republic, Speaker of the Assembly, Prime Minister, Member of the Council of Ministers, Judge of the Constitutional Court and the High Court, General Prosecutor, High Justice Inspector, Mayor, member of the parliament, deputy minister, member of the High Judicial Council and High Prosecutorial Council, and directors of independent and central institutions provided for in the Constitution or by law; criminal charges against former officials, in case the offence was committed during the exercise of duty.

40 Article 9, Law on SPAK

41 Articles 9, 10, Law on SPAK. Article 11, Law on Judicial Power

42 Article 10, Law on SPAK

43 Articles 38-40, Law on Judicial Power

44 Articles 38, 86, therein.

45 Article 57, Law on SPAK

Of the Criminal Procedure Code.⁴⁶ The criminal jurisdiction on investigation and criminal prosecution covers the whole territory of the Republic of Albania.⁴⁷

The Director of the Special Prosecution is responsible for the organization of the Special Prosecutors Meeting, which has the power to draw up guidelines for the SPO and NBI.⁴⁸ However, the rules and normative acts issued by the DSPO may only take effect after their approval by the voting majority in the SPM.

The prosecutors of the Special Prosecution shall have the power to run and control the investigators and the services of NBI Judicial Police.⁴⁹ The SPO Chancellor shall be in charge of supervising the activity of the administrative personnel, work premises, files, archive, supportive services and financial accounting of the Prosecution Office. The SPO investigative and administrative activity is conditioned by the administration.

The Documentation Sector files, processes and administers all SPO documentation and it needs to be established since the very first steps. Also, due to the great public interest on the establishment of SPAK and further on the progress of the investigative processes, the Media Relations Coordinator is a function which should be fulfilled in the very first steps of establishing SPAK.

The Expertise Sector, which consists of experts of advanced educational background in their field and at least five years of experience, shall be of crucial importance to specialized investigations. Due to the very specific nature of the financial and economic nature of organized crime and corruption as well as their transnational nature, the Financial Investigation Sector and the Sector for International Cooperation shall be indispensable at the outset of the establishment of SPAK.

Assistance Sector for Individuals with Special Status will focus on providing assistance to persons, witnesses or victims of crime and may not be so prioritized at the outset of SPAK, as the functions it will perform shall mostly result from the further investigation activity of the institution.

NBI is a specialised structure at the Judicial police which investigates criminal offences under Criminal jurisdiction of the Special Prosecution.⁵⁰ Given the fact that NBI is an independent body from other Police structures, is entitled to the necessary flexibility to establish offices in order to carry out specific investigations to facilitate its information gathering and investigation roles.

46 Article 4, Law on SPAK

47 Article 10, Law on SPAK

48 Article 17, Law on SPAK

49 Article 5, Law on SPAK

50 Article 4, Law on SPAK

III.2.1. Recruiting

Due to the diversity of levels and professions of officials involved in the ACOC Courts and SPAK, their recruitment is provided in several laws.⁵¹ Pursuant to legal

Articles, but mainly on SPAK Law, it results that the principles of recruiting are, safety, meritocracy, transparency and integrity.

Judges of ACOC Courts are appointed by the High Judicial Council (HJC).⁵² The mandate of the Chairperson is three years, eligible for reappointment only once.⁵³ Chairpersons of Special courts are elected by the General Meeting of the Court for a three year mandate without the right of re-election.

Chancellors of Special Courts are appointed by HJC.⁵⁵ HJC published and announces the open competition for vacancies in the civil judicial service and start-up procedures for promotion and parallel transfer.

Admission of other judicial civil servants is also done through open competition. The competition is carried out in two phases: a preliminary verification of whether candidates meet the general and specific criteria published in the notice and then assessment of the candidates. Preliminary verification is performed by the Chancellor, whereas the assessment of the candidates is carried out by the Admission Committee within the court.⁵⁷ HJC is in charge to approve the rules for the preliminary assessment, its establishment, composition and powers of the Admission Committee, as well as the assessment procedure.⁵⁸

ACOC Court Judges may be dismissed from office by two-thirds of the members of the HJC.⁵⁹ The HJC is also responsible for taking disciplinary measures against the Chancellor and

Legal assistants.⁶⁰ Special Prosecutors and the Director of Special Prosecution Office (DSPO) are appointed and dismissed from office only by decision of the High Prosecution Council (HPC). The office term of the Chairperson of the Special Prosecution Office shall be three years with no right to reappointment.⁶¹ The office term of special prosecutors shall be nine years with no right of reappointment.⁶²

The Special Prosecution Chancellor is also appointed by the HPC. After the procedure of parallel transfer and promotion, the listed candidates for the position of the chancellor, as

46 - Law No. 115/2016 "On the judiciary governing bodies" (Hereinafter referred to as: Law on judicial bodies) Law on SPAK

Law No. 97/2016 "On the organization and functioning of the Prosecution Office in the Republic of Albania" (Hereinafter referred to as: Law on prosecution office) Law on judicial administration

Law No. 8677, dated 02.11.2000 "On the organisation and functioning of the judicial police"

Law No. 96/2016 "On the status of judges and prosecutors in the Republic of Albania" (Hereinafter referred to as: Law on judges and prosecutors) Law No.

84/2016 "On the transitional re-evaluation of judges and prosecutors in the Republic of Albania" (Hereinafter referred to as: Law on re-evaluation)

47 Article 135, Constitution of Albania

48 Article 52, Law on judges and prosecutors 54 Article 51, Therein

55 Article 90, Law on judicial bodies

56 Article 51, Law on judges and prosecutors 57 Article 54, Law on judicial power

58 Article 54, therein

59 Article 135, Constitution of Albania

60 Article 90, Law on judicial bodies

61 Article 52, Law on judges and prosecutors

62 Article 61, Therein

published by the School of Magistrates, file an application to the HPC. The HPC shall elect the Chancellor, taking into account the ranking on the candidate list, the specific educational background or experience of the candidate or the overall years of professional experience.⁶³

Staff recruitment for the Special Prosecution Units is carried out through an open application process, which provides for minimum qualifications for the position and number of vacancies as well as application notice.

The application notice shall be published on the official website of the institution at least two weeks prior to the expiry of the applications deadline and shall specify the final deadline for applications, which shall be not less than two weeks following the date of publication, relevant information on the required documentation, the application filing procedure, the applicants' evaluation section, as well as information on the Assessment Commission and its composition.⁶⁴

The Director of NBI (DNIB) shall be responsible for its operation. DNIB shall be elected through an open and transparent competition process based on the provisions specified above. The Commission composed of DSPO and two special prosecutors who have more years of working experience as prosecutors propose to HPC one candidate for Director of NBI.⁶⁵ HPC appoints DNIB for a five year mandate with the right to reappointment. The DNIB may be dismissed from office only by a HPC decision if it terminates its mandate, resigns, reaches the retirement age or commits a criminal offence, serious violations or if given data arise that are in contradiction with the defined criteria for the appointment.⁶⁶

The deputy director of the NBI is selected for a four-year mandate from the list of investigators and appointed by DNIB, who should obtain the consent of the Director of the Special Prosecution Office (DSPO) in order to be appointed to this function.⁶⁷ The deputy director of NBI has specific competence the performance and functioning of judicial police services and can only be dismissed from office by decision of the HPC for committing a criminal offence, grave violation of law or discipline in the performance of duties and if given data arise that are in contradiction with the defined criteria for the appointment.⁶⁸

NBI investigators are recruited through the open competition process and cognitive testing, behavioural and logical reasoning tests and physical ability testing. However, they are appointed by the DNIB only after they have completed the relevant training and have successfully passed the testing of the necessary professional skills.⁶⁹

DNIB, deputy director and investigators of NBI should meet the criteria set out in the law in order to be appointed.⁷⁰ DNIB should have at least five years' experience in matters pertaining to criminal offences in the field of corruption, organized crime or Serious crimes and if he/she

63 Article 79, Law on Prosecution Office

64 Article 7, Law on SPAK

65 Article 33, Law on SPAK

66 Article 33, 35, Law on SPAK

67 Article 33, 36, Law on SPAK

68 Article 36, Law on SPAK

69 Article 37, 38, Law on SPAK

70 Article 34, 38, Law on SPAK

comes from the structures of the State Police, he must have held at least 3 years at the rank of "Commissar", "Chief Commissar", "Leader" or "First Leader".⁷¹ Investigators, and consequently, the Deputy Director of NBI must have more than one year of work experience in law enforcement field or other areas, but provided that the experience is related to the purpose of the NBI.⁷²

After determining the necessary number of vacant positions for Judicial Police officers, NBI recruits through competition Judicial Police Officers (JPO) for a five to seven year mandate to the NBI.⁷³ In addition to investigators and JPOs, the NBI recruits other employees according to the structure and procedures jointly approved with the DSPO.⁷⁴ The leaders of the sectors of NBI are selected from the ranks of investigators and appointed by DNIB.⁷⁵

III.2.2. Security and Integrity

Candidates for Judges and judicial civil servants in the ACOC Courts as well as their close family members, prior to their appointment, shall be subject to the verification of their assets and their background checks and shall consent to periodic reviews of their financial accounts and personal telecommunications, in accordance with the law.⁷⁶ Verification for judges and prosecutors shall be conducted by the Independent Qualification Commission, which shall be in this position for five years.

In order to be admitted to the ACOC Courts, Special Prosecution and NBI, the employees of these structures, including the Director and the Deputy Director, are subject to verification of security.⁷⁷ Security conditions provide for the verification of asset and background, consent to periodic reviews of their and of close family members of their financial accounts and personal telecommunications, in accordance with the law.

For the verification of security it is established the Special Commission for the Verification of Assets and Background of Candidates (SCVABC), which for the initial two-year period shall consist of a judge of the ACOC courts and two prosecutors of the Special Prosecution Office selected by lots procedure.⁷⁸

After the verification of security candidates for DNIB and NBI investigators must result not to have been convicted or previously found guilty of criminal offences, not having taken disciplinary measures of "dismissal" or any other disciplinary measure which are in effect at the time of the run, have not been and will not be a collaborator, informer or agent of any intelligent service, and shall be subject to polygraph testing.⁷⁹

63 Article 34, Law on SPAK

64 Article 38, Law on SPAK

65 Article 39, 40, Law on SPAK

66 Article 31, 41, Law on SPAK

67 Article 33, Law on SPAK

68 Article 135, Constitution of Albania

69 Article 57, Law on SPAK

70 Therein

71 Article 34, 38, Law on SPAK

The verification of security is a process that will be carried out not only prior to any recruitment but also in the course of exercising the respective function for each level of ACOC Court and SPAK officials. Therefore, employees at all levels at ACOC Courts and SPAK shall consent waiver of their right to privacy in telecommunications and financial accounts for themselves and their immediate family members.⁸⁰ In addition to personnel safety, the ACOC Courts and SPAK shall also provide special security measures for their facilities according to the rules and procedures established by the Council of Ministers.⁸¹

III.2.3. Coordination with other structures

Although ACOC Courts and SPAK provide for all the necessary means and independence to accomplish their mission and tasks, cooperation with other structures will be inevitable and highly necessary, especially during the first steps of their activity.

The institutions with which they will need to establish cooperation, in particular SPAK, include the Ministry of Finance, State Police, Prosecution Office, State Intelligence Service, General Directorate for the Prevention of Money Laundering, Directorate for Safeguarding Classified Information, High Inspectorate of Declaration and Audit of Assets and Conflicts of Interest, Central Bank of Albania, Supreme State Audit, as well as other institutions. The relationships established with these institutions will need to be standardized through specific acts, which will be part of the process of the ACOC Courts and SPAK establishment.

IV. Steps and timelines for the establishment of SPAK

The Law on SPAK, adopted on 6 October 2016, provides for a period of 300 days for the establishment of the ACOC Courts and SPAK. However, the package of constitutional amendments provided that ACOC Courts and SPAK would be an outcome of the justice system reformation, which provides for:

- Transitional re-evaluation of all judges and prosecutors to dismiss from office those who do not meet the criteria to continue exercising their existing functions or to be confirmed within the newly-established justice bodies i.e. ACOC Courts and SPAK.⁸²

- The reorganisation of the justice system governing bodies through the establishment of the High Judicial Council, High Prosecutorial Council, High Justice Inspector and Justice Appointments Council, and redefinition of the powers, accountability, organization and way of election, appointment and dismissal of members of these bodies.⁸³

80 Article 48, 49, Law on SPAK

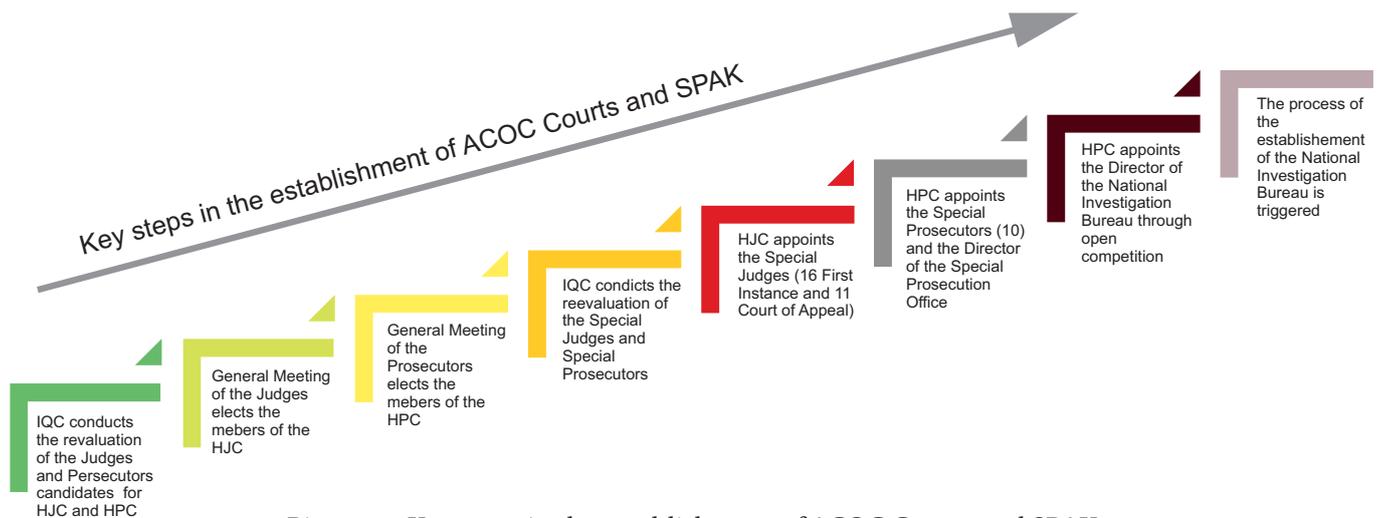
81 Article 46, Law on SPAK

82 Law on Re-evaluation

83 Law on judicial bodies

Therefore, the establishment of the ACOC Courts and SPAK is conditioned by the progress and development of the process of the re-evaluation of judges and prosecutors and the establishment of justice system governing bodies.

The key steps interlinking these processes are indicated in the picture below (Picture 4)



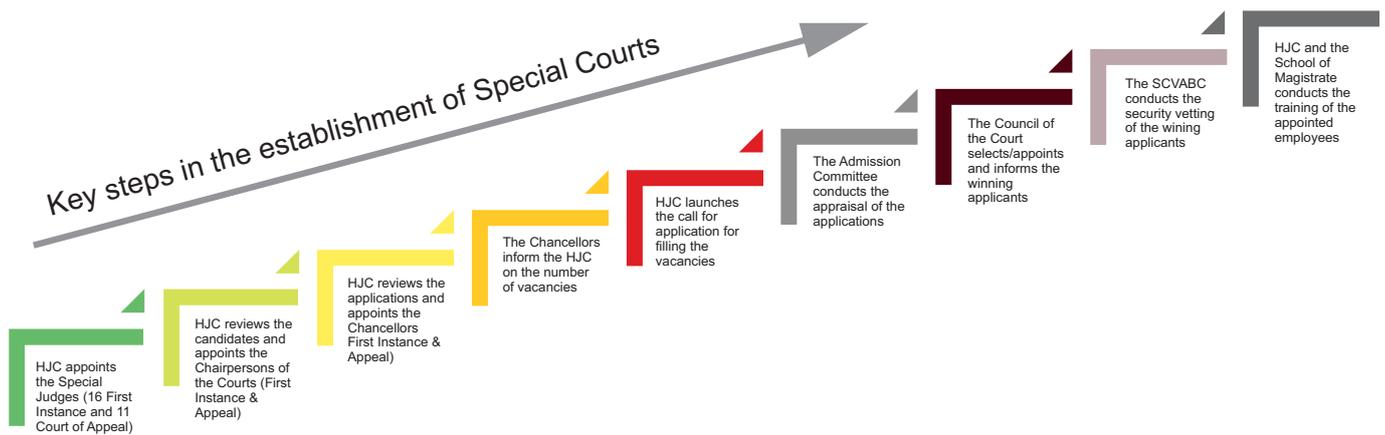
Picture 4. Key steps in the establishment of ACOC Courts and SPAK

Due to the mission of ACOC Courts and SPAK, namely the fight against corruption and organized crime, and due to the spread of these phenomena both in society and within the law enforcement and judicial institutions, the combination of open and transparent processes and the security guarantee are complex and complicated procedures in order to avoid penetration to these structures of corruption and organized crime.

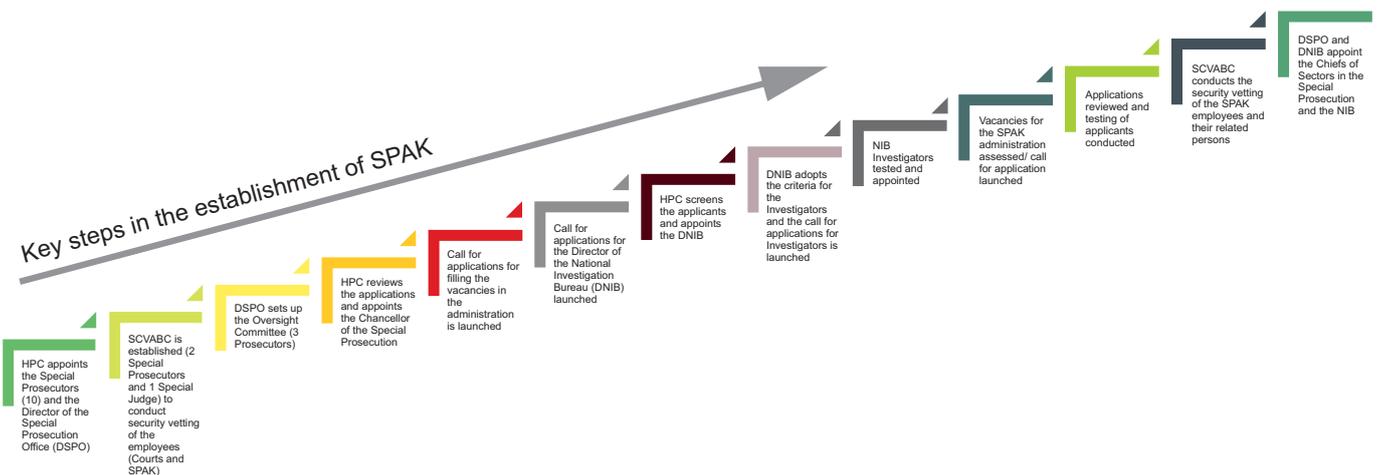
Serving this purpose, the process of establishing the ACOC Courts and SPAK is envisaged in the form of a cascade, meaning that only the officials who have undergone the re-evaluation process may be members of the new structures and only those structures have the power to make decisions for the following processes and procedures. On the other hand, this makes any subsequent process conditional on the implementation of the previous process, and if the previous process is hampered or delayed, this is reflected in the progress of all the ongoing processes.

Pictures 5 and 6 below illustrate the key steps in the process of establishment of ACOC Courts and SPAK.

Picture 5. Key steps in the establishment of ACOC Courts



Picture 6. Key steps in the establishment of SPAK



As it is shown in the above pictures herein, the first step to pave the way to the establishment of ACOC Courts and SPAK, is specifically the appointment of judges to the ACOC Courts and prosecutors to the Special Prosecution.

According to the timelines provided for in the three laws adopted within the framework of the justice reform, in the arch of about two months (August 30 - November 3, 2016), it was provided that the establishment of the ACOC Courts and SPAK would be accomplished within August 2017 (Table 1).

	August (2016)	September	October	November	December	January (2017)	February	March	April	May	June	July	August
Establishment of re-valuation bodies													
Commencement of re-valuation process													
Establishment of the High Judicial Council (HJC)													
Establishment of the High Prosecution Council (HPC)													
Establishment of the Special Courts and SPAK													

Table 1: The expected progress of the institutions establishment pursuant to the adopted legislation in compliance with the constitutional amendments ⁸⁴

V. Cur non SPAK? ⁸⁵

Although they have been and remain among the most welcomed institutions from the public as a tool to address the issue of corruption in the country, the ACOC Courts and SPAK continue to be not yet established.

On the other hand, successive statements have been made by high level domestic and foreign officials who have stated that the functioning of the SPAC shall begin immediately after the establishment of the institutions of the High Judicial Council and the High Prosecutorial Council and that this will occur within 2018. ⁸⁶

⁸³ Law on re-evaluation Law on SPAK
Law on judicial bodies

⁸⁵ Why we do not have SPAK

⁸⁶ ABCnews. "Ministrja Gjonaj për ngritjen e SPAK: Jemi në pritje të komisionit të Vettingut". 16/02/2018 <http://abcnews.al/ministrja-gjonaj-per-ngritjen-e-spak-jemi-ne-pritje-te-komisionit-te-vettingut/>.

Belinda Ruçaj "Gjonaj: SPAK do të ngrihet menjëherë pas Vettingut". Oranews, 21/12/2017. <http://www.oranews.tv/article/institucionet-e-drejtise-se-re-gjonaj-spak-do-te-ngrihet-menjehere-pas-vettingut>

This section introduces a description of the re-evaluation process of the candidates running for the new justice bodies and the establishment of the HJC and HPC, as preconditions for the establishment of ACOC Courts and SPAK.

V.1. Re-evaluation Process

The transitional re-evaluation process of around 800 judges and prosecutors in the country is considered as one of the main goals and measures undertaken in the framework of the reform. This process is intended not only to serve to the implementation of the reform not only through the confirmation or non-assignment of the assessees provided for in the Constitution,⁸⁷ who do not meet the criteria to continue the exercise of their existing functions but at the same time due to the interconnection of processes, but also to serve for the establishment of new justice bodies, the ACOC Courts and SPAK. Therefore, Law no. 84/2016 "On the Provisional Reassessment of Judges and Prosecutors in the Republic of Albania" specifies as a priority the re-evaluation of the members of the Constitutional Court, the Supreme Court and the General Prosecutor as well as all candidates for new justice bodies.⁸⁸

The implementation of the re-evaluation process expects for a different judgement from the one developed by the ordinary courts by providing for the establishment of three structures responsible for the implementation of the process, which are: 1) Independent Qualification Commission (IQC), 2) Specialized Appeal Chamber (SAC) and 3) Public Commissioners.⁸⁹

The procedure for the election of the members of the three institutions starts immediately after the re-evaluation law comes into force. Members of the three institutions are voted by the Assembly of Albania upon completion of the application procedures and those conducted by verification and selection ad hoc committees, as well as in consultation with the International Monitoring Mission (IMM).⁹⁰ The IMM has only one consultative and monitoring role not entitled to decision-making, which, as stated by high level mission representatives, belongs to local structures.⁹¹

A Legal Service Unit functions at the Commission and Appeal Chamber,⁹² consisting of legal and economic consultants. The unit carries out advisory and supportive activities in the decision-making process. The re-evaluation process shall be carried out in three components: asset assessment, background assessment, and proficiency assessment.⁹³

87. Article 179/b, Constitution of Albania

88. Article 4(4), Law on re-evaluation

89. Article 5, Law on re-evaluation

90. Articles 6-11, Law on re-evaluation

91. Faxnew.al "THREE phases of the Vetting and official initiation, speech of the Head of IMO", 16.07.2017 <https://www.faxweb.al/tre-fazat-e-vetingut-dhe-kur-nis-zyrtarisht-flet-kryesuesja-e-omn-se/>

92. Article 4(1), Law on re-evaluation

V.1.1. Asset assessment

Judges and prosecutors subject to re-evaluation as well as other related persons are obliged to complete and submit a declaration of assets and all documents certifying the authenticity of the declaration and legacy for the generation source of such asset to the High Inspectorate of Declaration and Audit of Assets and Conflicts of Interest (HIDAACI) within 30 days from the date of entry into force of the law on re-evaluation.⁹⁴

HIDAACI based on the assets declarations, conducts a complete control procedure of the assets of the assessees, which is also conducted on the spouse, cohabitant, adult children, as well as any other person mentioned in the family certificate no later than 180 days from the filing date of the asset declaration and submits a detailed report on the issues that may or may not result in the declared assets.⁹⁵

V.1.2. Background assessment

The background assessment is intended to verify whether the subject has had inadequate contacts with inappropriate persons involved in organized crime.

All re-evaluation assessees must fill in the statement of the background assessment within 30 days from the entry into force of the law.⁹⁶ The Directorate for Safeguarding Classified Information (DSCI) immediately initiates the procedure for background assessment and verifies whether the re-evaluation assessee has any inadequate contacts with inappropriate persons involved in organized crime or with suspected persons of organized crime and submits a report no later than 100 days from the date of establishment of the working group in charge for verifying the statement for the background assessment.⁹⁷

V.1.3. Proficiency Assessment

This criterion relates to assessing the professional and ethical skills of the re-evaluation assessee for the last three years, based on the decisions given and assessments received by the respective bodies. Assesseees subject to re-evaluation shall fill in a proficiency self-evaluation form within 30 days from the date of entry into force of the law.⁹⁸

94 Article 31(1), Law on re-evaluation

95 Article 33(4-5), Law on re-evaluation

96 Article 35(1), Law on re-evaluation

97 Article 39, Law on re-evaluation

98 Article 41(1), Law on re-evaluation

The body that conducts the assessment after the completion of the control procedures and no later than 90 days from the date of filing the professional self-evaluation form, drafts a detailed and reasoned report, which is submitted to the Independent Qualification Commission

Only after reviewing all of the above mentioned reports, the Commission makes decisions on assessee subjects based on one or more of the criteria, the overall assessment of the three criteria, or the thorough evaluation of the procedures.⁹⁹ At the conclusion of the process, the Commission may decide on re-evaluation entities: a) confirmation on duty; b) suspension from duty for a period of one year and the obligation to attend the training program, according to the curricula approved by the School of Magistrates; c) dismissal from office.¹⁰⁰

Legal deadlines of Law no. 84/2016 "On the Transitional Re-evaluation of Judges and Prosecutors in the Republic of Albania"	October (2016)	November	December	January (2017)	February	March	April	May
Entry into force of Lay No. 84/2016 "On the transitional re-evaluation of judges and prosecutors in the republic of albania"	October 8							
Election of members in the re-evaluation institutions								
The re-evaluation process based on three components								
Asset assessment:								
The assessee completes the asset declaration and sends it to the HIDAACI.								
HIDAACI carries out a complete control procedure								
Background assessment:								
The assessee completes the background declaration and sends it to the DSCI.								
DSCI immediately initiates a control procedure								
Proficiency Assessment:								
The assessee completes the professional self-evaluation form and sends it to the proficiency assessment body.								
The relevant body at the conclusion of the review of the legal documents compiled by the assessment subject prepares and submits a detailed and reasoned report to the commission.								
Adoption of sublegal acts								
DCM on the necessary measures for the offices of the re-evaluation institutions and the necessary working conditions.								
The meeting of the members of the Commission, the meeting of judges and the meeting of public commissioners are obligated to adopt the rules for the activity of the respective re-evaluation institutions.								

Table 2: Legal timelines for the election of the re-evaluation institutions' members and the procedures necessary for the initiation of the re-evaluation process

In the meantime, although the High Judicial Council and the High Prosecutorial Council will be the two main bodies for appointing judges to the ACOC Courts and prosecutors of the

99 Article 4(2), Law on re-evaluation

100 Article 58(1), Law on re-evaluation

Special Prosecution part of SPAK as mentioned above, none of these candidates can qualify for their relevant positions without first fulfilling the security condition. Although Law on SPAK provides for the establishment of a Special Commission for the Verification of Assets and Background of Candidates, during this transitional phase such verification will be carried out by the Independent Qualification Commission, which, in addition to the re-evaluation of judges and prosecutors candidates in both key judiciary and prosecutorial governance bodies, HJC and HPC, a process that ended in November, will also play a key role in controlling the property and the image of candidates for judges at the KCKO Courts and Prosecutors at the Special Prosecution Office, as well as their immediate family members. The latter shall imply their spouse, children over the age of 18 and any person related to blood or marriage, who resides for longer than 120 days a year in the same place of residence. This legal provision highlights the role of the Commission even after the establishment of the High Judicial Council and High Prosecutorial Council, and brings to the attention the fact that the final appointment of judges and prosecutors to be part of the anti-corruption and organized crime institutions shall not be considered as completed only with the establishment of the new justice system bodies, including the HJC and HPC, responsible for appointing these candidates.

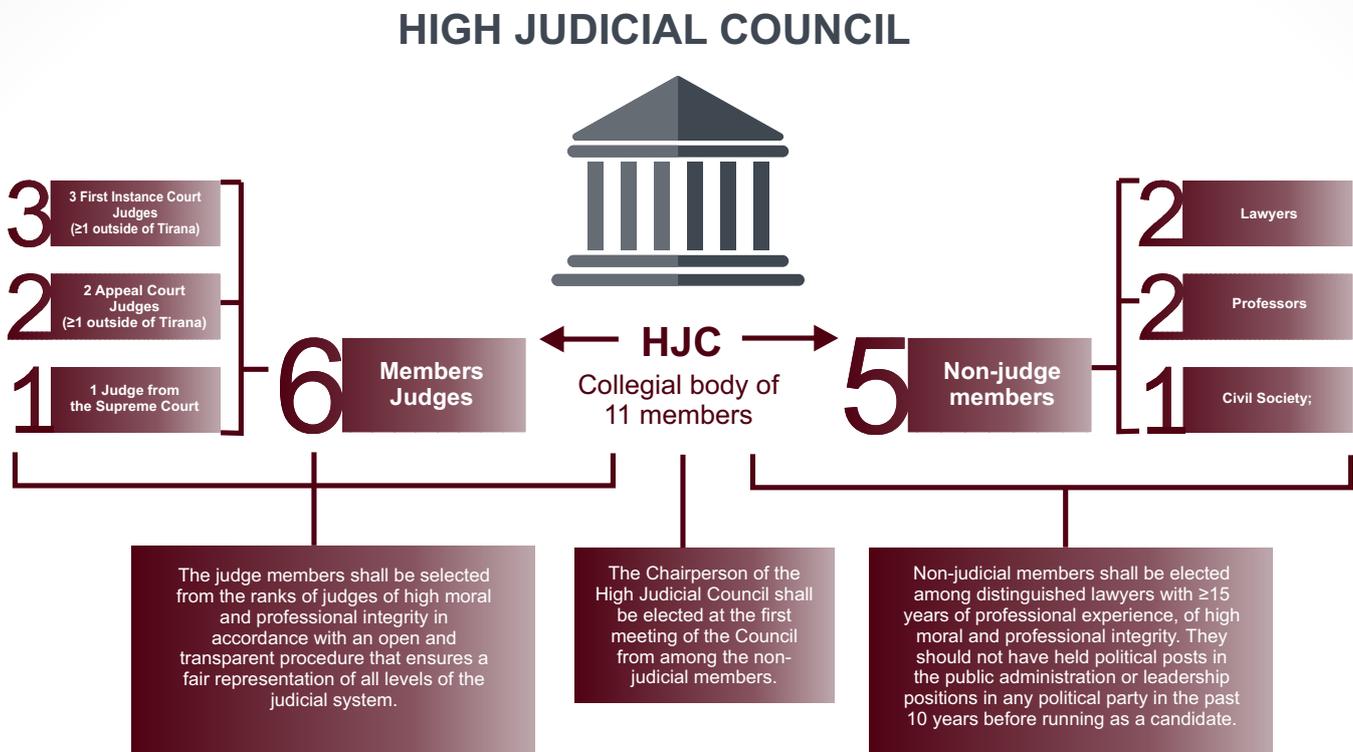
V.2. Organisation and functioning of the High Judicial Council

The High Judicial Council shall be the most important governing body of the judicial system and will consist of 11 members. Six of the members will be judges and will be elected by the General Meeting of Judges. To ensure representation of all levels of the judiciary, judges running for the HJC will be elected based on a report which includes:

- * 3 judges form the First Instance Court of whom at least 1 judge from a First Instance Court outside Tirana district jurisdiction;
- * 2 judges form the Court of Appeal of whom at least 1 judge from a Court of Appeal outside Tirana district jurisdiction;
- * 1 judge from the Supreme Court.

Considering the significant role of this body in the future administration of the judicial system, which also includes the election of judges to ACOC Courts, the criteria used for the application of such candidate judges provide for high essential professional and ethical background.¹⁰¹

101 Neni 7/2, Ligji për organet e drejtësisë



Picture 7. Composition of the High Judicial Council

Meanwhile, the other five members of the High Judicial Council shall be non-judicial members, who despite being elected by the Assembly of Albania (2/3), are proposed amongst ranks of lawyers, corps of professors of law faculties and the School of Magistrates, as well as from the civil society. For each category of members, the law specifies explicitly and in detail the specific (*ad-hoc*) bodies and criteria to be met by applicants, ranging from the organization of the call to the verification of compliance with the legal criteria, appeals, quorum, call for meeting, the voting process, the counting votes, and the appeal against the decisions of the selection body.¹⁰² Making reference to the case of the judicial members, the selection criteria of non-judicial members provide for considerable professional experience and other criteria on ethics and their integrity.

The importance of the establishment of a High Judicial Council is not only related to the need and functions that this body shall play in the judicial system, but in particular to the powers it shall exercise in appointing judges to the ACOC Courts.

Therefore, the establishment of the HJC, which is expected to be completed upon the

¹⁰² Articles 19-58, Law on judicial bodies

election of the last member from the relevant institution,¹⁰³ was regarded as a priority. The constitutional amendments and the law on the judiciary governing bodies itself provided for the completion of this process in April 2017 and not later, which means that April marks the election of the last candidate member for the High Judicial Council. It was considered that the process of re-evaluation should be prioritized for all judicial candidates prior to their selection and confirmation by the General Meeting of Judges. Although this process is mandatory and encompasses all judges in the Republic of Albania, the re-evaluation of candidates for judges at the High Judicial Council was provided to be developed with priority by the Independent Qualification Commission within 3 months from the date of expression of interest and the documentation filed by the judges and approximately 6 months after the entry into force of the law on re-evaluation.

<i>Election of judicial and non-judicial members of the High Judicial Council (HJC)</i>	August (2016)	September	October	November	December	January (2017)	February	March	April	May	June
The entry into force of constitutional changes with Law 76/2016	August 11										
The entry into force of the Law 84/2016 "On the Transitional Re-evaluation of Judges and Prosecutors in the Republic of Albania"			October 8								
Entry into force of Law Nr 115/2016 "On the judiciary governing bodies"					December, 16						
Interested Judges submit the request to the Independent Qualification Commission											
Interested Judges submit to the Chairperson of the High Court the relevant documentation											
The Chairperson of the High Court verifies the fulfilment of legal criteria											
The Independent Qualification Commission makes the re-evaluation of judges who candidate after the submission of the expression of interest and documentation											
The Independent Qualification Commission shall forward to the Chairperson of the High Court the list of names of Candidates for Judge who successfully passed the re-evaluation procedure.											
After receiving the list from the Independent Qualification Commission, the Chairperson of the High Court summons the General Meeting of Judges.											
The procedure for electing judicial members of the HJC is completed											
The process for electing non-judicial members of the HJC is completed											

Table 3: Election of judicial and non-judicial members of the High Judicial Council

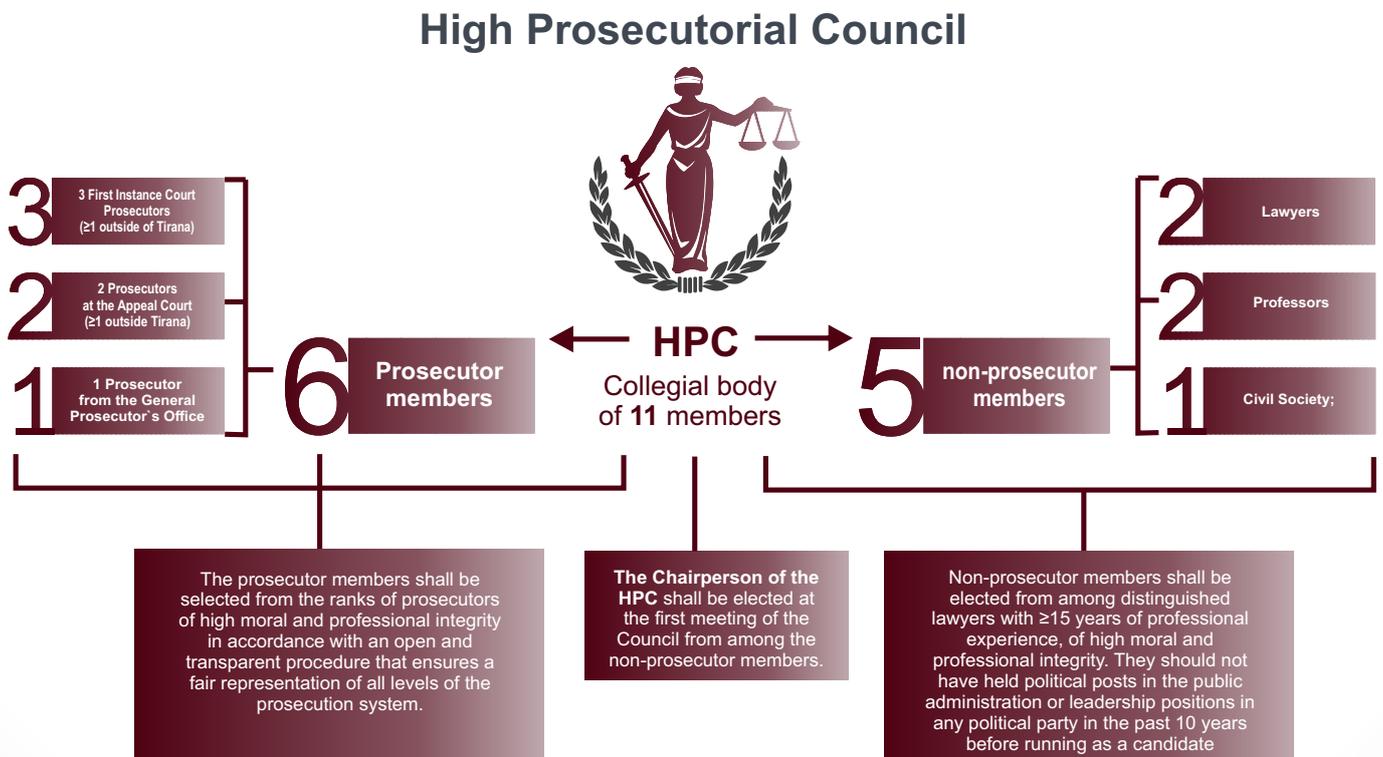
103 Article 277(2), Law on judicial bodies

V.3. Organisation and functioning of the High Prosecutorial Council

High Prosecutorial Council will be the highest governing body of the prosecution office and will basically have the same structure with that of the High Judicial Council, consisting of 11 members, of whom six prosecutors and five non-prosecutor members. Prosecutor members of the High Prosecutorial Council are elected in the General Prosecutor's Meeting including:

- * 3 prosecutors of first instance courts of whom at least 1 prosecutor from a prosecution office at a first instance court outside Tirana district jurisdiction;
- * 2 first instance court prosecutors and at least 1 prosecutor from a prosecution office at a first instance court outside of Tirana district jurisdiction;
- * 1 of the prosecutors is elected form the General Prosecutor`s Office

Prosecutor members are also elected based on the criteria of professional experience, integrity and ethics.¹⁰⁴



Picture 8. Composition of the High Prosecutorial Council

104 Article 105(2), Law on judicial bodies

The process of electing non-prosecutor members consists of the same procedures in terms of timelines and criteria, which also apply to High Judicial Council non-judge members. Under this procedure, 5 non-prosecutor members are elected by the Assembly of Albania (2/3) and are proposed among ranks of lawyers, the corps of professors of law faculties and the School of Magistrates from civil society, in accordance with the selection criteria set out in the law.¹⁰⁵

Similar to the High Judicial Council, the establishment of the High Prosecutorial Council shall play an important role in the election of prosecutor members to the Special Prosecution Office.

Accordingly, the law provides for the same legal timelines for the establishment of the High Prosecutorial Council, which is expected to be completed in 8 months following the entry into force of the constitutional amendments (August 11, 2016), the day when the last member is elected by the competent authorities.¹⁰⁷ For the election of non-prosecutor members, the law provides for the development of a process, which is expected to be completed in 4 months following the entry into force¹⁰⁸ For prosecutor candidates to the High Prosecutorial Council, the re-evaluation process shall be carried out with priority.

<i>Election of prosecutor and non-prosecutor members of the High Prosecutorial Council (HPC)</i>	August (2016)	September	October	November	December	January (2017)	February	March	April	May	June
The entry into force of constitutional changes with Law 76/2016	August 11										
The entry into force of Law 84/2016 "On the Transitional Re-evaluation of Judges and Prosecutors in the Republic of Albania"			October 8								
Entry into force of Law Nr 115/2016 "On the judiciary governing bodies"					December, 16						
Interested Prosecutors submit the request to the Independent Qualification Commission											
Interested Prosecutors submit to the General Prosecutor the relevant documentation											
The General Prosecutor verifies the fulfilment of legal criteria											
The Independent Qualification Commission makes the re-evaluation of prosecutors who candidate after the submission of the expression of interest and documentation											
The Independent Qualification Commission shall forward to the General Prosecutor the list of names of Candidates for prosecutor who successfully passed the re-evaluation procedure.											
After receiving the list from the Independent Qualification Commission, the General Prosecutor summons the General Meeting of Prosecutors.											
The procedure for electing prosecutor members of the HPC is completed											
The process for electing non-prosecutor members of the HPC is completed											

Table 4: Election of prosecutor and non-prosecutor members of the High Prosecutorial Council

105 Article 117-156, therein

106 Article 179(5), Constitution of Albania

107 Article 277(2), Law on judicial bodies

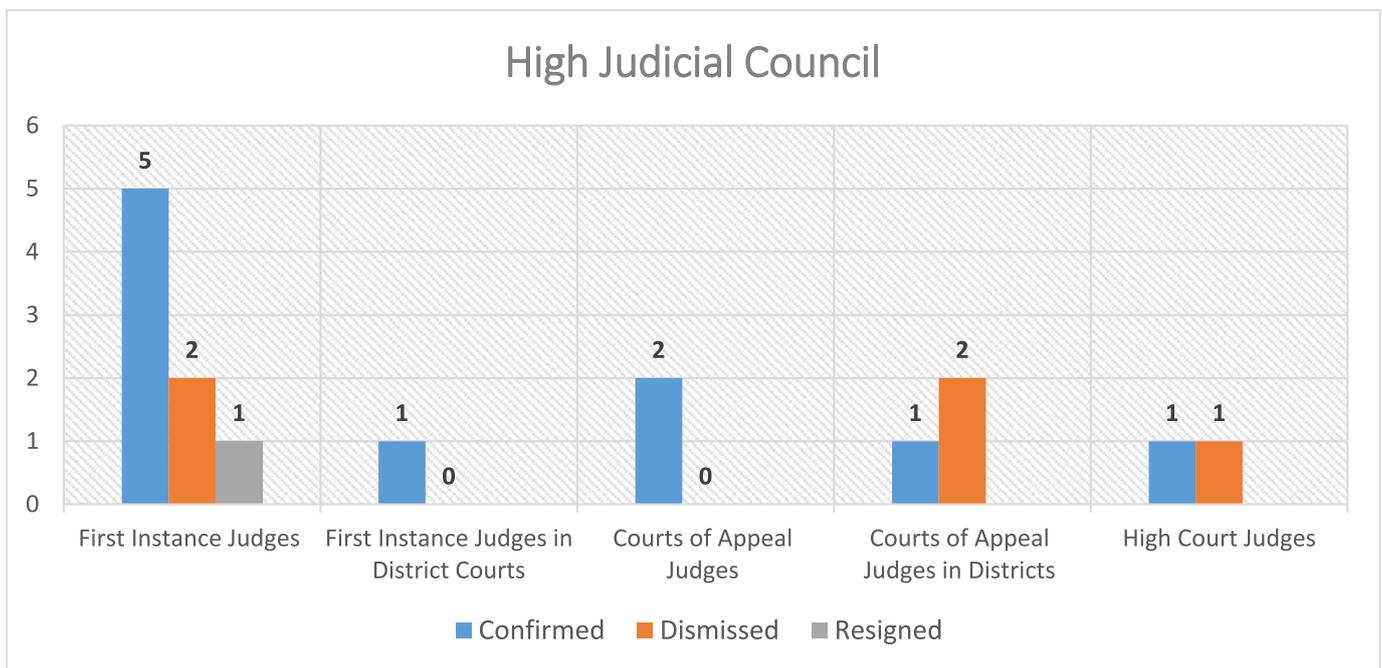
108 Article 279(8), Therein

VI. Problems identified and impact on the election progress of the candidate members of HJC and HPC

Although these two bodies were expected to be established within April 2017, the High Judicial Council and the High Prosecutorial Council are not yet established. Although the election of non-judicial and non-prosecutor members was completed in February 2018, the re-evaluation process for 35 members of the High Judicial Council and the High Prosecutorial Council was finalized on November 23, 2018.¹⁰⁹

14 judge candidates initially applied to the High Judicial Council, out of whom 9 first instance court judges (1 from the First Instance Court of Kurbin); 3 judges from court of appeal (1 of them from the Durrës District Court of Appeal) and 2 judges from the Supreme Court.

Meanwhile, a total of 18 candidates applied for the High Prosecutorial Council, of whom 12 first instance court Prosecutors (5 of whom from District Prosecution Offices); 3 prosecutors from the Court of Appeal (2 of whom from district prosecution offices of courts of appeal) and 3 prosecutors from the General Prosecutor's Office.

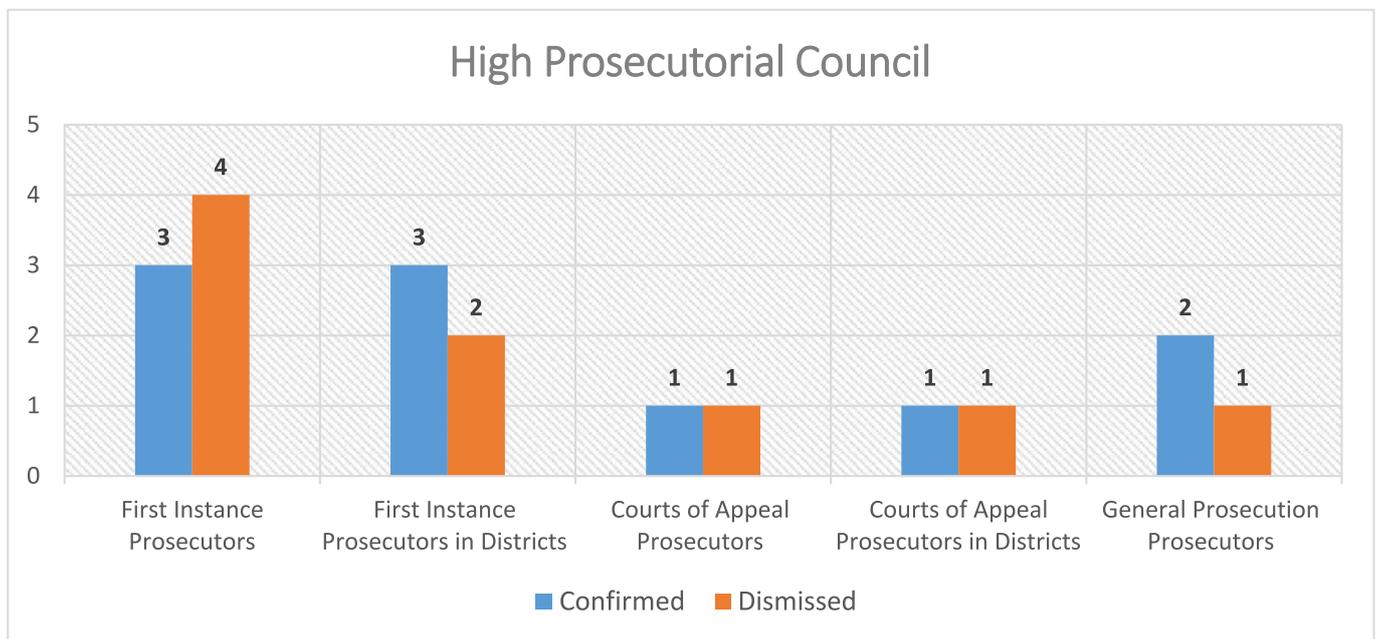


Graphic 1. Evaluation results of judges, who have undergone through the re-evaluation process

¹⁰⁹ <http://kpk.al/2017/12/12/njofim/>

A series of obstacles affected the slow progress of such processes and caused failure to duly and timely establish the main governing bodies of the judicial system, which have significant powers in appointing members of the anti-corruption and organized crime institutions. These issues show that at the first stage the impossibility for the correct and timely implementation of all the constitutional and legal amendments envisaged within the reform of the Albanian Justice System.

The beginning of the re-evaluation process further highlighted these concerns, also considering the eight-month assessment time for the priority list assessee entities. In addition to the abnormalities in the failure of the most important institutions in the justice system, such as in the case of the High Court, the Constitutional Court and recently the Justice Appointments Council, the re-evaluation process shows inaccuracies, which are evident in the way of developing the process and the expectancies in the whole cycle of reform in the justice system, to the establishment of key institutions against corruption and organized crime. The normal course of this process would show the same issues even without the occurrence of such technical and political delays, which were clearly identified since the very beginning of the process.¹¹⁰



Graphic 2. Evaluation results of prosecutors, who have undergone through the re-evaluation process

¹¹⁰ <https://pd.al/2016/10/vetingu-ne-kushtetuese-edi-rama-shkeli-konsensusin-dhe-parimet-themelore-te-se-drejtes/>
<https://www.reporter.al/inagurohet-godina-institucionet-e-vetingut-nisin-zyrtarisht-punen/>

VI.1. Failure to comply and lack of coordination in the implementation of legal and administrative timelines of supporting bodies

The interconnection of the processes provided within the framework of the justice system reform and compliance with the legal and constitutional timelines for their implementation requires specific detailed coordination for each of the steps undertaken to precede the effective implementation of institution establishment provided for under the justice system reform. In particular, the transition re-evaluation process of all assessees is a complex process, which involves implementing a number of legal procedures and obtaining information from a considerable number of institutions. Failure to comply with these legal and administrative timelines hampers not only the process management but also affects its indefinite postponement.

As described herein, the re-evaluation process based on the criteria of asset assessment, background assessment, and proficiency assessment is envisaged to be developed in accordance with two main moments: 1) filling in the relevant statements by the assessees 30 days after the entry into force of the law (7 October 2016) and 2) completion and carrying out the control procedure by the respective institutions based on these statements. The implementation and completion of these two steps is very important for the Independent Qualification Commission, which only after obtaining and reviewing the detailed and reasoned reports,¹¹¹ decides upon confirmation or non-assignment in duty of the assessee subject of re-evaluation.

As far as the asset assessment criteria is concerned, the law provides for longer timelines for the control procedure, which completion is expected in May 2017,¹¹² thus, overcoming the set timelines set for the establishment of the High Judicial Council and the High Prosecutorial Council provided to be established within 8 months of the entry into force of the constitutional amendments (August 11, 2016) and approximately 6 months following the entry into force of the law on re-evaluation. Failure to establish compliance among these processes, while the latter are interrelated, reveals the wrong and unenforceable legal framework since the very beginning of the conception and drafting phase.

Currently these procedures have required the necessary time, which does not comply with the legal provisions. In the Annual Report 2017, the High Inspectorate for Declaration and Audit of Assets and Conflicts of Interest (HIDAACI) specified the time needed for conducting the control procedure and submitting detailed reports only to the assessee subjects of the priority list, a process which according to the legal projections lasted about 6 months ending in October 2017. In the meantime, after one year, in October 2018, HIDAACI stated that it has completed the

¹¹¹ Article 33(5), Law on re-evaluation

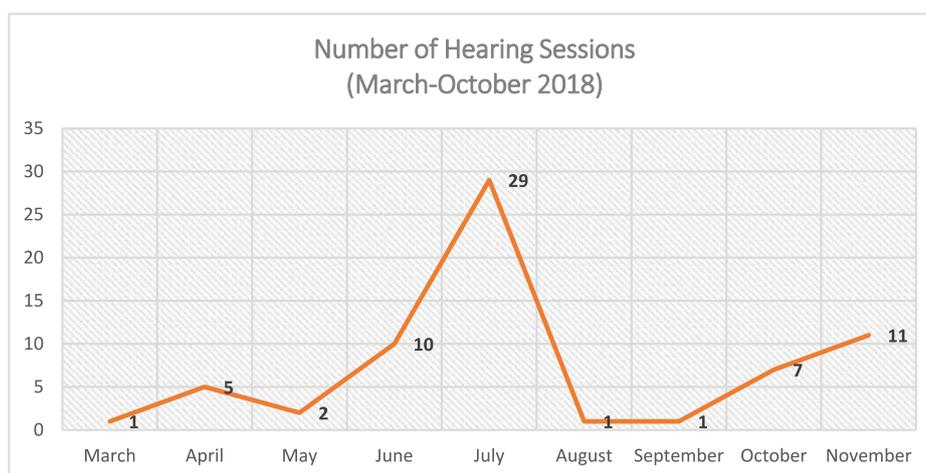
¹¹² Article 33(4), Therein

¹¹³ Annual Report of the Inspector General of the High Inspectorate of Declaration and Audit of Assets and Conflicts of Interest for 2017
<http://www.hidaa.gov.al/raporti-vjetor-2017-ildkpkj/>

property verification process for half of the judges and prosecutors in the country, in total 4 reasoned reports along with the complete supporting documentation, including the period from October 2017.¹¹⁴ As evidenced, the process of administration, evaluation, processing and control represent a complex process not only as regards the large volume of data received (about 1 million and 200 thousand pages) and their processing needs, but in particular the process of information management.¹¹⁵

VI.2. Lack of timelines set for the progress of the re-evaluation process

Although the law on re-evaluation provides for the immediate initiation of this process for assessees concerned, 116 no specific and detailed timeline is provided within which the re-evaluation process is to be completed, including its initiation, the conduct of hearing sessions and decision-making by the Independent Qualification Commission. Despite the references made by law for the development of a duly organized and regular process pursuant to the provisions of the Code of Administrative Procedure and the Code of Civil Procedure, the lack of clear and detailed timelines nor only related to the extension of the process, but also to decision-making, leads to the review of the cases and resetting of the relevant timelines as per the discretion of the re-evaluation bodies. Moreover, similar issues would be reviewed and completed in different unpredictable timelines.



Graphic 4. The number of calls for non-judge and non-prosecutor members running for HJC and HPC

113 <http://pamfleti.net/mbi-1-milion-faqe-me-informacion-behen-gati-dosjet-e-nxehta-per-410-gjyqtare-e-prokurore/>

114 Therein

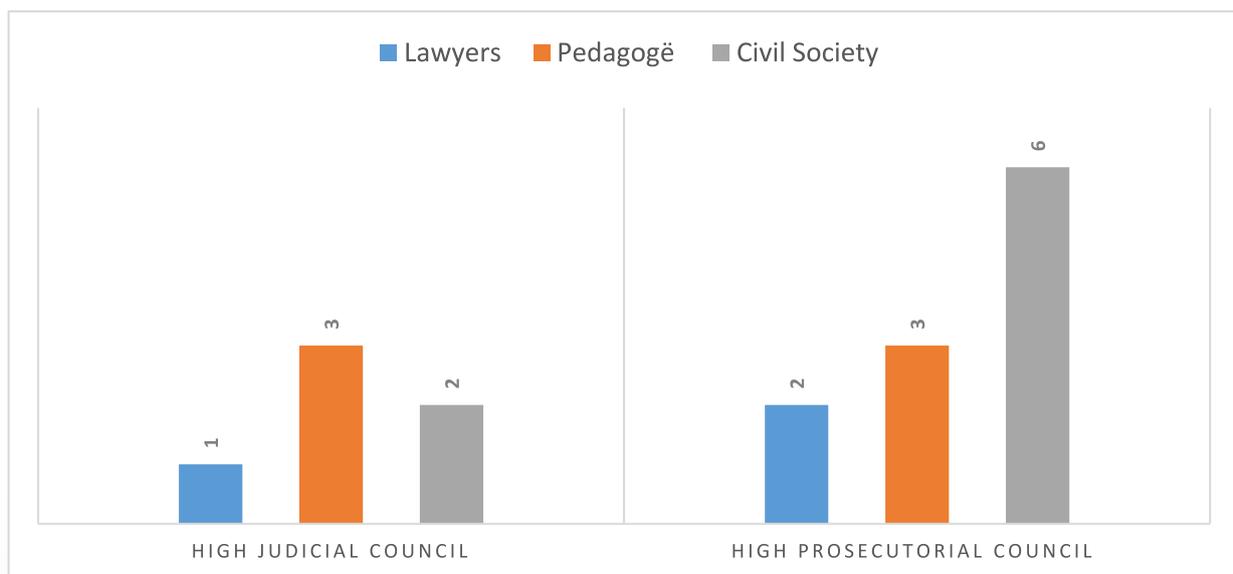
115 Article 4(3), Law on re-evaluation

116 Number of hearings to date October 31, 2018

The lack of relevant specified timelines caused the current slow pace of the re-evaluation process, which has not been dynamic and has marked considerable delays. Such slow pace caused the extension of procedures and failure to complete the assessment for the 57 priority assesseees. Nevertheless with the resumption of the Commission's work in September it was provided to speed up the pace of hearings by bringing the re-evaluation process to completion for the candidates of the High Judicial Council and the High Prosecutorial Council, their development progress has been low in contrast with the previous months, and the works calendar has been partly published.

VI.3. Lack of projections in cases of failure to complete the number of candidates and failure to meet the criteria

Although the law on justice system bodies provides for specific criteria for candidates applying for members of the High Judicial Council and the High Prosecutorial Council, the failure to meet of these criteria due to infeasibility has affected the qualification of the members of these institutions. Explicitly, the call for non-judicial members of the High Judicial Council has been re-announced three times meanwhile the call for non-prosecutor members of the High Prosecutorial Council has been re-announced up to 6 times. Failure to meet the legal condition by candidate members has resulted in considerable extension of the procedures and timelines.



Graphic 4. The number of calls for non-judge and non-prosecutor members running for HJC and HPC

Also controversy is the fact that the Independent Qualification Commission so far decided on the criteria for dismissal of the assesseees from office. Notwithstanding the fact that the competition for members in the new organs provides highly high qualification criteria, most of the dismissals of current judges and prosecutors are based solely on the asset criteria, without taking into consideration the criteria of proficiency assessment.

At the same time, the lack of anticipation of the continuation of the process if the number of eligible candidates or prosecutors is not met has resulted in a problematic and blocking situation with regard to institutional capacity building and postponement of the process. Although candidates running for the High Judicial Council body passed the re-evaluation, the process has been delayed due to the lack of confirmation of the adequate number of judges in the courts of appeal outside Tirana district jurisdiction. The Supreme Court republished the call for this position,¹¹⁸ but because of the expiry of the deadline no application of any candidate was received, giving rise to a situation of successive postponements, which also received substantial share of attention of international stakeholders, such as the US Embassy in Albania, which made a public call for judges to apply for membership in the HJC. The reiteration of the call took place again after the expiry of the legal timeline¹¹⁹ and on September 6, the Supreme Court published the list of candidates who showed interest to run for HJC membership from courts of appeal outside Tirana district jurisdiction.¹²⁰ However, the following procedures will also take the necessary time as one of the applicant candidates, who was not part of the priority list, will be subject to the re-evaluation process, thus causing the extension of the period for the selection of candidate members to become part of the newly-established bodies of the justice system. These procedures are considered as crucial in the selection of ACOC Court members and key structure in the fight against corruption and organized crime SPAK.

In the meantime, the establishment of the High Prosecutorial Council was delayed as a result of a similar situation. Due to the failure to confirm the first stage candidates, the call for prosecutors at the Appeal Courts Prosecution was reiterated twice by the General Prosecutor's Office.¹²¹ Meanwhile, only at the end of October was finished the completion of the position for the Appeal Prosecutors.

113 http://www.gjykataelarte.gov.al/web/Rishpallje_e_thirrjes_per_paraqitjen_e_shprehjes_se_interesit_nga_gjyqtaret_e_gjykatave_te_apelit_jashte_Tiranes_per_pozicionin_e_anetarit_te_5317_1.php

114 http://www.gjykataelarte.gov.al/web/Rishpallje_e_thirrjes_per_paraqitjen_e_shprehjes_se_interesit_nga_gjyqtaret_e_gjykatave_te_apelit_jashte_Tiranes_per_pozicionin_e_anetarit_te_5317_1.php

115 http://www.gjykataelarte.gov.al/web/Kandidatet_qe_kane_paraqitur_interesin_per_ne_KLGI_nga_gjykatat_e_apeleve_jashte_Tiranes_5333_1.php

121 http://www.pp.gov.al/web/Rezultatet_e_Kerkimit_237_1.php?search=larte+i+prokurorise#.W8BvpnszYdU

VI.4. Need to prioritize the assessment of candidates for judges at the ACOC courts and prosecutors in the Special Prosecution Office

Even though the lots procedure of December 2017,¹²² which selected 57 assessees of the priority list, was drafted to anticipate the establishment of the justice system bodies aiming to accelerate the initiation of the ACOC Courts and SPAK establishment, finalisation of the such asseses re-evaluation has not yet been completed. Nevertheless only 3 assessees have been subject to re-evaluation, the Independent Qualification Commission has continued over the past months with the review of the assessees listed in the following lots procedure.

The current progress of the re-evaluation process is important, as besides the justice institutional capacity building, and anti-corruption and organized crime institutions, it will also serve as a practice for the development of a similar process provided for members of the ACOC and SPAK. Judges and prosecutors, who will apply to the ACOC Court and Special Prosecution Office, including their relatives, shall undergo preliminary asset assessment, background assessment, a process that is carried out by the Independent Qualification Commission.¹²³ In addition to the applicant candidates, the law provides for the confirmation of existing judges and prosecutors in the Serious Crimes Court and Serious Crimes Prosecution if the latter and their close relatives give consent to the periodic review of their financial accounts and personal telecommunications.¹²⁴ In this way, SCC judges and SCPC prosecutors shall be the first potential candidates for key bodies against corruption and organized crime. Their appointment shall be made by the High Judicial Council and the High Prosecutorial Council upon completion of asset assessment and background assessment for them and their immediate family members.

Considering the same need for the timely establishment of anti-corruption bodies and the duration of the process for priority list candidates, the need to anticipate the initiation of the re-evaluation process of judges candidates at the ACOC Courts and prosecutor candidates at the Special Prosecution Office, as well as their family members, would be substantial not only to avoid potential delays, but also to bring about the rapid establishment of these structures. The inclusion of these candidates for re-evaluation is due to the two last lots procedure carried out in May¹²⁵ and September 2018.¹²⁶

¹²² <http://kpk.al/2017/12/12/njoftim/>

¹²³ Article 57, Law on SPAK

¹²⁴ Article 162(2); 163(2), Law on judges and prosecutors

¹²⁵ <http://kpk.al/2018/05/16/njoftim-15/>

¹²⁶ <http://kpk.al/2018/09/18/njoftim-59/>

Independent Qualification Commission (IQC)		Special Courts	
		Current Judges of Serious Crimes Court	Judicial candidates
	→	Special Prosecution Office	
	→	Current Prosecutors of Serious Crimes Prosecution	Prosecutor candidates

Table 5: Potential candidates for judges and prosecutors in ACOC Courts and Special Prosecution

125. <http://kpk.al/2018/05/16/njoftim-15/>

126. <http://kpk.al/2018/09/18/njoftim-59/>

VII. Conclusions

Despite the fact that more than a year has passed since the time anticipated for the establishment of the Anti-Corruption and Organized Crime Courts and SPAK, this process has not yet started. As a result of the complex and interrelated nature of the justice system reform, the foregoing processes have not yet been completed, which would create the right grounds for initiating legal procedures for the establishment of the institutions against corruption and organized crime. The pace of the work of the Independent Qualification Commission and as a consequence the long-lasting period of the re-evaluation process for the candidates to the High Judicial Council and the High Prosecutorial Council has caused undue delays in the establishment of these institutions, responsible for the appointment of judges to the ACOC Courts and prosecutors to the Special Prosecution Office.

Therefore, the process of setting clear and detailed deadlines for the development of the re-evaluation process is crucial, because the lack of this component leads to unsustainable of the hearing sessions due to time gaps in between. Determining certain specific time frames necessary for the development of a due legal process, particularly in reference to the re-evaluation process, would also provide a proficient and administrative calendar for the activity and decision-making process of the Commission.

Given the fact that the role of the Independent Qualification Commission remains equally important in the re-evaluation of candidates for judges and prosecutors in ACOC Courts and Special Prosecution, potential candidates for these bodies (Serious Crimes Judges and Prosecutors of Serious Crimes Prosecution), as well as in the case of candidates for the HJC and the HPC, it is deemed as necessary to be considered as a priority in the re-evaluation process. Their appointment to these structures is not limited to the appointment process by the HJC or the HPC, as this process first requires their qualification by the Independent Qualification Commission. In consideration of the current issues of the process development, drafting of a list with potential candidates for these positions would precede the process by avoiding possible delays and consecutive postponements of legal timelines. Potential candidates for the anti-corruption institutions are listed in the last two lots procedure and if their re-evaluation is to be carried out in reference to the list of lots, the process can take an unpredicted and long time.

In order to better sensitize the public and all stakeholders, further progress of these processes shall be an important part of the ongoing monitoring, as the results of the re-evaluations of the remaining assesseees shall be decisive for the normal development of the process and the avoidance of further delays. In the meantime, due to their interrelated nature, the immediate results of the re-evaluation process will be crucial to the progress of the ACOC Courts and SPAK establishment.

In this context, the tables drawn up within this first monitoring report, specifically Tables 6, 7 and 8, which have been drawn including all the information and steps necessary for the

establishment of the ACOC Courts and SPAK serve to follow-up the ongoing progress of all processes related to their establishment by simultaneously serving and indicating comprehensive, inclusive and comparative information on the progress of the ACOC Courts and SPAK

<i>The progress of the election of judicial and non-judicial members of the High Judicial Council (HJC) and prosecutor and non-prosecutor members of the High Prosecutorial Council (HPC)</i>	August (2016)	September	October	November	December	January (2017)	February	March	April	May	June	July	August	September	October	November	December	January (2018)	February	March	April	May	June	July	August	September	October	November	December
The entry into force of constitutional changes with Law 76/2016	August 11																												
The entry into force of Law 84/2016 “On the Transitional Re-evaluation of Judges and Prosecutors in the Republic of Albania”			October 8			January 19																							
The entry into force of Law 115/2016, “On the judiciary governing bodies”					December, 16																								
Interested judges and prosecutors submit a request to the Independent Qualification Commission																													
Interested Judges/Prosecutors submit to the Chairperson of the High Court/ General Prosecutor the relevant documentation																													
The Chairperson of the High Court/ General Prosecutor verifies the fulfilment of legal criteria						January 25																							
The Independent Qualification Commission makes the re-evaluation of the judges/ prosecutors that are candidates after the submission of the expression of interest and documentation																													
The Independent Qualification Commission shall forward to the Chairperson of the High Court/ General Prosecutor the list with the names of the candidates for judges/ prosecutors, who have successfully passed the re-evaluation procedure.																													
After receiving the list by the Independent Qualification Commission, the Chairperson of the High Court/ General Prosecutor calls for the General Meeting of Judges/ Prosecutors																													
The procedure for electing judicial members of the HJC and prosecutor members of the HPC is completed																													
The process for electing non-judicial members of the HJC and non-prosecutor members of the HPC is completed																													
Special Courts and SPAK																													

Table 6: The legal deadlines and the current progress of the process of selection of HJC and HPC members.

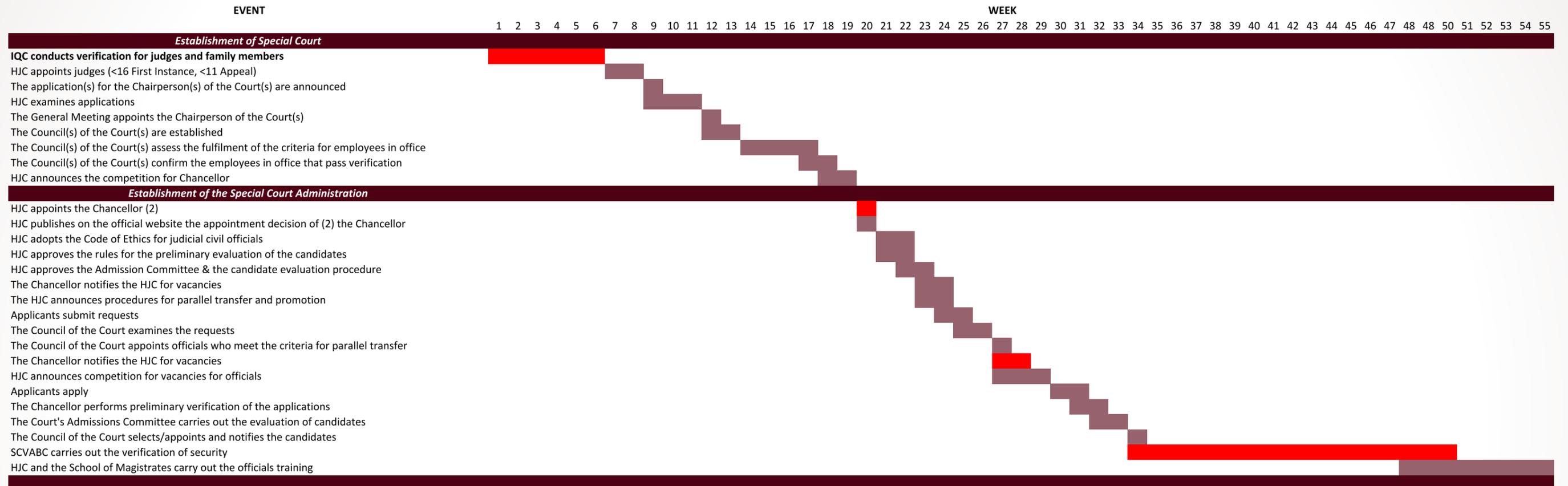


Table 8: Steps and deadlines for the establishment of the Special Anti-Corruption and Organized Crime Structure (SPAK)

Pictures

Picture 1. Legal framework on the regulation and functioning of institutions in the fight against corruption and organised crime

Picture 2. Structure of Special Courts

Picture 3. Structure of Organization and Functioning of SPAK,

Picture 4. Key steps up to the establishment of ACOC Courts and SPAK

Picture 5. Key steps of the establishment of ACOC Courts and SPAK

Picture 6. Key steps of the establishment of SPAK

Picture 7. Composition of the High Judicial Council

Picture 8 Composition of the High Prosecutorial Council

Tables

Table 1: The expected progress of institution establishment pursuant to the adopted legislation in accordance with constitutional amendments

Table 2: Legal timelines for the election of the re-evaluation institutions' members and the procedures necessary for the initiation of the re-evaluation process

Table 3: Election of judicial and non-judicial members of the High Judicial Council Table 4:

Election of prosecutor and non-prosecutor members of the High Prosecutorial Council Table 5:

Potential candidates for judges and prosecutors in ACOC Courts and Special Prosecution Office

Table 6: The legal timelines and the current progress of the process of the election of HJC and HPC members.

Table 7: Steps and timelines for the establishment of Courts against Corruption and Organized Crime (First Instance and Appeal Courts)

Table 8: Steps and timelines for the establishment of the Special Anti-Corruption and Organized Crime Structure (SPAK)

Graphs

Graphic 1. Evaluation results of judges, who have undergone through the re-evaluation process

Graphic 2. Evaluation results of prosecutors, who have undergone through the re-evaluation process

Graphic 3. The progress of the hearing sessions for the re-evaluation of judges and prosecutors

Graphic 4 The number of calls for non-judge and non-prosecutor members running for HJC and HPC



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