



## Research Article

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# The Effects of Constitutional Changes on the Judiciary System in Albania: The Process of Vetting<sup>1\*</sup>

Evis Garunja

Phd., Aleksandër Moisiu University,  
14, 2001, Rruga Currila, Durrës, Albania

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## Abstract

*The adoption of laws in Albania is often achieved through consensus among legislators, declaring it as the best solution for a certain political or legal situation, which resulted ineffective in many cases. The focus of law improvements was concentrated on control/Vetting, that is, the exclusion from the judicial system of individuals who do not meet one of the three constitutional criteria (wealth, moral integrity, and professionalism). Vetting, control per se, is not a reform of justice, but only one of its constitutive phases. The Albanian Constitution changes aim to restructure the justice institutions to achieve the standards requested for the Albanian EU integration. The paper goes through the different constitutional reforms, focusing on the judicial system changes especially on the recent results of the vetting process in Albania. The questions like: How is the Vetting process affecting judicial standards, how are the new Albanian justice institutions reacting, what is the public opinion on this progress and the benefits of society, are essential to understand how this process was conducted in Albania, its problems and difficulties. The results are explained through underlining different studies, media interventions, and recent political and public statements of involved institutions.*

**Keywords:** Albanian constitution, Vetting, reform, constitutional institutions, judicial standards, judges, prosecutors

## 1. Introduction

After the democratic changes of the 90s, Albania is going through a long political-socio-economic transition, accompanied by many difficulties and problems in all fields. The factors that influenced this long transition refer to the historical context of the Albanian state, from the backwardness of the Ottoman occupation to the non-existent institutional structures, to the conflicting relations State-Citizen, to a backward feudal economy in which prevails the peasant population. The establishment

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<sup>1</sup>Vetting – is an extraordinary assessment and control of the wealth, integrity, and professionalism of judges and prosecutors. The official term used by the Constitution is "Reassessment".

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of an autocratic monarchy, although it attempted to orient policy and legislation on the Italian and French examples, made impossible the radical change. The years of communism abolished the political pluralism and democratic institutions, they developed a planned, centralized, and collectivist economy, created a socialist society based on social and economic equality "as Iris TOPALLI noted in a Mapo article on June 13, 2018, *Democratization of the Albanian Constitution according to the European standards*".

The pluralistic transformations, democratic values and principles, freedom, and respect for human rights, which accompanied developments in Albania, were embodied in Geoffrey Pridham's definition of democratization as:

*"the process of regime changes from totalitarian domination to the establishment of liberal democracy, as a multidimensional process, which includes: the overthrow of the totalitarian regime, liberalization of the pre-transition, democratic transition, democratic consolidation and finally liberal democracy. Democracy within it will contain a variety of aspects of the past that can complicate the process of regime change (Pridham, 2005)".*

The democratization of Albanian society began with the improvement of the constitutional framework, known as the *Principal Constitutional Dispositions (Law no.7491/1991)*. This set of constitutional laws laid the foundations of the democratic state and the state of the law in a parliamentary republic, with the national sovereignty exercised by the Albanian people. This system recognizes and respects human dignity, rights and freedoms, the constitutional order, equality before the law, social justice, and pluralism. The principle of separation of legislative, executive, and judicial power constituted the center of the organization of the state, with the most important organs the People's Assembly and the President of the Republic (Chapter II, point A&B, Law no. 7491/1991), and the Council of Ministers as the most important organ of the state administration (Chapter III). The people exercised their power through their representative bodies as well as through the referendum.

Representative bodies were elected through a free, universal, equal, direct, and secret voting process (art. 1-3).

In a society that is politically divided and fragmented by conflicts between political parties, Albania has taken a long time to implement a consensual constitution. In 1998, the Constitution paved the way for democratic principles and the construction of the democratic and social rule of law to guarantee fundamental rights and freedoms and other national values.

This main document has stood the test of time, due to constitutional guarantees such as the control of the constitutionality of the rules, the supremacy of international acts, the international integration clauses, the direct invocation of the European Convention on Human Rights, the constitutional revision by a qualified majority, the guarantees of human rights not only by national but also international judges, direct execution, etc. (Anastasi, 2013, 63).

## 2. The Constitutional Reforms

The Albanian Constitution was placed at the top of the pyramid of regulatory acts, embodying the principle of the rule of law and legitimizing the constitutional bodies provided therein. The drafters of the Constitution made sure that it guaranteed the opportunity to create lasting public consensus and that it contained the solutions to overcome any kind of public confrontation (Bala (Pajo) 2015, 143).

The absence of a Constitution, of democracy, like the law of the majority, could easily turn it into tyranny. In this spirit, the drafting of the Constitution was intended to provide the strongest possible incentives for the development of society, which since post-communist developments were inefficient, due to its dependence on a weak, incomplete constitutional basis, on supporting not only the supremacy of the Constitution but at the same time providing the necessary self-defense system (Bala (Pajo) 2015, 143).

The Constitutional Court was conceived as the authority with the power to defend, guarantee, and, ultimately, interpret the Constitution, guarantor for the establishment of the rule of law

following the example of the positive experiences of European constitutional courts and beyond. Constitutional justice provides guarantees regarding the hierarchy of sources of law, arbitrates jurisdiction between public authorities, and applies constitutional rules regardless of whether the parties are public authorities or other entities (Traja, 2013, 13-14). The main purpose of constitutional control or constitutional justice in Albania has been and remains the identification, evaluation, and continuous, uninterrupted, and systematic correction of the disruptions of the constitutional balance. This control creates the means to ensure the sustainability of a pluralistic society, which achieves functional and dynamic uniformity and its continuous development (Traja, 2013, 200).

Faced with the lack of political stability, which is reflected in hasty changes and political opportunity, constitutional jurisprudence, for over 20 years, has offered a constant alternative in clarifying the understanding of constitutional norms and alleviating institutional stalemates. The Constitutional Court, under the influence of internal factors, such as the need to clarify the constitutional text and the harmonization of principles and values embodied in it, or, external factors, such as the need for Europeanization / internationalization of constitutional justice, made possible through various interpretations, the transformation of the fundamental law into an "alive" Constitution (Berberi, 2013, 115).

There is no lack of cases in which the holders of power, in the exercise of their functions and competencies, have distorted the content of the constitutional provisions to the point of violating the principle of the separation of powers; when the legislator has passed laws that violate the independence of independent institutions or the principle of legal certainty and human rights through disproportionate interference; when the control function of the Assembly is exercised in violation of the constitutional norms; when the executive has exercised legislative functions even in the absence of a constitutional delegation; when fundamental rights and freedoms have not been respected by the courts, when ordinary jurisdiction has questioned the value of the final decisions of the Constitutional Court, etc.

Regardless of the contribution and role played by the Constitutional Court in mitigating institutional clashes, the Albanian transition has gone through periods of political consciousness and extreme political crises.

This situation influenced the first amendments to the Constitution in 2007 regarding the extension of the mandate of local government representatives from 3 to 4 years (art. 109, c. 1), as well as the procedures for the appointment of members of the Central Electoral Commission. Other changes in 2008 (Law no. 9904/2008) include the reshaping of the electoral system, from a mixed system to a regional proportional system (art. 64), interference in the rules of general elections (art. 65), the reshaping of the competence of the President of the Republic over the institution of the Parliamentary Assembly (art. 67), the modalities for the presentation of the candidate's lists for Parliament members (art. 68), the procedure for the election of the president, the beginning and the end of the presidential mandate (art. 87 and 88), the motion of confidence and no confidence (articles 104 and 105), the ascertainment for the first time of the mandate of the general attorney (article 149, cc. 1 and 4), as well as the repeal of the XII which envisaged the Central Electoral Commission as a constitutional body (Pajo, 2015, 143).

These changes, by the experts of the Venice Commission of the Council of Europe, were considered positive, except for the amendments to art. 104 on the motion of confidence and art. 149 on the Attorney General which, were qualified as backward steps, which violated the independence of these institutions<sup>2</sup>

Another interference that violated the constitutional order was the art. 87 which defines the election of the President of the Republic. This constitutional body was conceived as a neutral body, guarantor of the integrity of the constitutional order, and representative of people unity (Hasani & Cukalovic, 2013, 386). Changing the formula of the President's election from consensual to political,

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<sup>2</sup>CDL-AD (2008)033, *Opinion on the Amendments to the Constitution of the Republic of Albania, adopted by the Venice Commission at its 77th plenary session based on comments by Mr. Sergio Bartole (Member, Italy) Mr. Jeffrey Jowell (Member, United Kingdom) Mr. Oliver Kask (Member, Estonia), 15 December 2008.*

delegitimizes his function, transforming his performance into a constant source of institutional stalemate.

Another controversial issue has been the election of the Supreme Court and the Constitutional Court's members, in terms of the criteria they must meet and the necessary quorum for their election which would avoid any accusation of political affiliation, cause of the political affiliation of the majorities that voted for them. Accusing the supreme judges and in addition, those of the Constitutional Court of political affiliation seriously undermines the judicial system and, consequently, delegitimizes their function.

The 2012 amendments, which changed the constitutional regime of the immunity of MP and judges, were necessary for the context of the fight against corruption and reforms on European integration as Prof. Anastasi noted in a *Java Magazine interview*, on 25 February 25, 2014, "*The Constitution cannot be changed only with politics*".

In assessing the dynamics and the important role of many positive legal and political developments, once again, we must be realistic and recognize that progress in the field of right/law still takes a long time. The Albanian legal system continues to be in transition, influenced by various legal systems, mainly European. It was found that different branches of Albanian law have their source in different legal models, which has led, in some cases, to inconsistencies, repetitions, and inconsistent treatment of the same institution in different laws.

Albanian legislation lacks on a technical point of view: the provisions contradict each other; ambiguity; not harmonized legislation and sometimes inconsistent on the provided principles and terminology, the result shows a non-uniform application of the legislation. Instead of it, the legal solutions must be for the long term.

In the case of Albania, the adoption of laws is often achieved through consensus among the legislators, declaring it as the best solution for a given political or legal situation, but in practice, has not produced a quality legislative result. This consensus lacked a preliminary study, a clear analysis of the social and economic situation of the relationship that is expected to regulate, its evolution, other influencing factors, as well as the legal, social, and economic effects that will follow the implementation of the law. The law is designed to solve problems and not to create new ones.

For this purpose, the selection and correct appointment of judges served as a guarantee for every rule of law. The opposite undermines the efficiency of the judiciary, the public's trust in justice, and questions the commitment of institutions to implement the rule of law. The judicial system has provided shreds of evidence of independence and professionalism at certain times and negative phenomena other times. This also entails a loss of public confidence injustice. The loss of this trust has been attributed to the lack of an objective analysis of the judicial system's shortcomings itself, and also, in some cases, to the unfair attribution to this system of other social factors.

The fact is that the public perception of the judicial system defines it as influenced by the phenomenon of corruption, external influence in the administration of justice, not transparent, ineffective, and inapplicable judicial decisions. In a 2009 survey titled *Corruption in Albania: Perceptions and Experiences, the Institute for Development Research and Alternatives (IDRA, 2009, 22-24)* found that Albanians believed that, courts were most influenced by monetary interests, business ties, personal connections with judges, and political opinions.

In October 2012, the Center for Transparency and Freedom of Information surveyed 58% of judges. The participation of only 58% of the judges in the survey is connected to many reasons: as they did not know about the conduct of this survey, they were not contacted by the center, their answers were missing, or, for subjective reasons such as they did not want to be exposed to the topic of the poll. When asked, if the judicial system is corrupt, 25% of them said yes, while 58% believed that the system was perceived as corrupt. When asked, if the judicial system was not free from

political influence, 50% of the judges participating in the survey responded positively<sup>3</sup>.

These polls have shown that Albanians believe that, the judiciary is one of the three institutions that have the least contribution in the fight against corruption.

According to an evaluation carried out by GRECO (No 4/2014)<sup>4</sup>, the judicial system in Albania was particularly affected by: (i) a low level of public trust; (ii) a weak position compared to other powers; (iii) a lack of control over the selection of Supreme Court judges; (iv) the exclusive competence of the Minister of Justice to initiate disciplinary proceedings against first instance judges and judges of appeal courts; (v) the inactivity of the National Judicial Conference, which affects negatively the selection, career advancement, training, and disciplinary proceedings against judges.

To increase trust in the institutions of justice, Albanian politics undertook a series of constitutional changes that aimed at a radical reform of the judicial system in Albania, unique in its kind, as the guarantor of the constitutional institution's independence, strengthening its healthy part and fulfilling one of the obligations for the European accession of Albania.

According to Fatmir Xhafaj, former president of the Parliamentary Commission for Judicial Reform, «a profound reform of the judicial system would produce a cleansing between judges and prosecutors who are corrupt, incompetent, related or influenced in their decision-making process by the world of crime, the establishment of new institutions that guarantee greater independence of the system, the creation of mechanisms guaranteeing the balance and effective control of the system in the fight against corporatism and corruption. In Albania, the judicial system will be rebuilt from the grounds. Consequently, the radical changes in the Albanian legal system will be linked not only to laws and rules but also to people's hearts and minds<sup>5</sup>».

The amended Constitution provided the creation from the foundations of the new institutions that would complete the Vetting process of the judicial bodies. This process provided the establishment of an independent commission for the appointment of the professionals of justice, according to the requirements already established by the law of Vetting, the Court of Appeal, the Tribunal for disciplinary appeals, for public Commissioners, and the International Operation Monitoring Institution (also known as IMO), which is the international monitoring body of the Vetting process.

The *Vetting (Control) Act* (Law 84/2016) required the establishment of the bodies no later than 145 days after it entered into force. The Council on the Constitutional Nomination (hereafter CCN), according to the Constitution, must be established by August 26, 2016, and the first members would receive their mandate by December 31, 2016. These members would be the first subjects going through the *vetting process/control*, as Mr. Kalaja noted in a Panorama article on May 19, 2017, "*The budget of justice reform*".

The amended Constitution also provided that, the High Council of Justice (hereafter HCJ) replaced the High Council of the Judiciary within 8 months of the entry into force of the constitutional amendments if its judicial and non-judicial members passed successfully the vetting/control process. For the first time, the High Council of the Public Prosecutor (hereafter HCP) was established, within 8 months of the entry into force of the constitutional amendments if the prosecutors and its other non-prosecutors members, had completed the process of *vetting/control*.

Another institution established within six months of the amendments coming into force (for the first time) is the High Inspector of Justice (hereinafter HIJ). The Constitution specified that, until the parliamentary elections of 11 August 2016, the institution would be elected by 2/3 of the Assembly, and then by 3/5 of the Assembly. This clarification in the Constitution was the result of a difficult

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<sup>3</sup>[http://reformanedrejtesi.al/sites/default/files/dokumenti\\_shqip\\_o.pdf](http://reformanedrejtesi.al/sites/default/files/dokumenti_shqip_o.pdf) Accessed November 02, 2019.

<sup>4</sup>Report on the evaluation of Albania n. 4, 24-27 June 2014 GRECO (Group of States against corruption) [http://www.coe.int/t/dghl/monitoring/greco/news/News%2820140627%29Eval4Albania\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/news/News%2820140627%29Eval4Albania_en.asp). Accessed November 02, 2019.

<sup>5</sup>Source: <https://www.parlament.al/Files/Informacione/Revistanr.3.pdf> Accessed October 30, 2019.

agreement of the political parties, to be able to set up a constitutional official with a mandate of nine years (Kalaja, 2017, Panorama Journal).

Another combination was reported by the Constitution on the merger between the Court of First Instance for Serious Crimes with the Court of Appeal for Serious Crimes and in their place the establishment of Special Courts against Organized Crime and Corruption, within two months from the establishment of the HCJ, and the law that will regulate the transfer of the cases in process.

The Prosecutor's Office for Serious Crimes will cease to function when the Special Prosecutor's Office will be established and its judicial competencies will be fixed by law. These constitutional amendments provided that the Special Prosecutor's Office would be established within two months after the establishment of the HCP.

At the same time, the Constitution provided that, the Attorney General would be elected for 2/3 of the Assembly in the parliamentary elections of 11 August 2016. After this period, the institution's authority will be elected from 3/5 of the Assembly. In this way, the Constitution tried to reach an agreement between the political parties to set up a constitutional official with a seven-year mandate<sup>6</sup>.

### 3. The Situation of the Justice Reform

The implementation of justice reform in Albania has gone through challenges. Only after 3 years, was possible to establish the High Judicial Council (HJC) and the High Council of Prosecutors (HCP), essential structures on the transition from the re-evaluation process to new governance institutions of justice in Albania. At its core, justice reform was pursued more as an externally imposed product (with strong encouragement from the EU, US, and Western institutions) than as an internal product (with the support of institutional and political actors)<sup>7</sup>.

The main focus was concentrated on the control or *vetting*<sup>8</sup>, that is, the exclusion from the judicial system of individuals who do not meet one of the three constitutional criteria (wealth, moral integrity, and professionalism), omitting other important aspects of reform, new entrants to the system, the career system, quality improvement in judicial decisions, transparency, independence, and professionalism. *Vetting*, the control in itself, is not a reform of justice, but one of its constitutive phases (ISP, 2018).

After three years of constitutional amendments, Albania shows a judicial system without a Constitutional Court, with a Supreme Court operating with only three members and 31,000 cases to proceed. The Special Prosecutor's Office and the Anti-Corruption Court were not constituted yet, more than 150 magistrates were removed from the judicial system, whose replacement implies another problem, and, with a provisional Attorney General who is holding office for more than a year<sup>9</sup>.

The only established bodies, the High Council of Prosecutors, has any fixed location (building), the High Judicial Council, with incomplete decisions, has vacations to replace, and the Inspectorate of High Justice responsible for disciplinary measures for judges and prosecutors in cases of law violations<sup>10</sup>.

On the other hand, the Commission on Justice Appointment (KED – CJA) continues with the evaluation of the candidates for the Constitutional Court, HCJ, SPAK, and the Attorney General<sup>11</sup>.

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<sup>6</sup>Source: <https://shtetiweb.org/2017/05/20/bilanci-reformes-ne-drejtesi/> Accessed November 02, 2019.

<sup>7</sup>Source: [www.isp.com.al](http://www.isp.com.al). Accessed October 30, 2019.

<sup>8</sup>On the Albanian Constitution, the term of *vetting* is reevaluation.

<sup>9</sup>Source: <https://oranews.tv/article/mosfunkionimi-i-reformes-ne-drejtesi-bilanci-i-tre-viteve>, Accessed October 30, 2019.

<sup>10</sup>Source: <https://shtetiweb.org/2017/05/20/bilanci-reformes-ne-drejtesi/> Accessed October 30, 2019.

<sup>11</sup>Source: <https://oranews.tv/article/mosfunkionimi-i-reformes-ne-drejtesi-bilanci-i-tre-viteve>, Accessed October 30, 2019.

The Albanian Constitution and law have been respected only by internationals since the only constitutional body created under the legal terms is the IMO, the only body not created by the Albanians. The law gives the prerogative of its establishment to the internationals. Any Albanian institution has been established within the deadlines and has not been respected by the Albanians<sup>12</sup>.

The deadlines set out in the Constitution were violated several times, but the establishment and the selection of new candidates for the Special Anti-Corruption and Organized Crime Structure/SPAK, the Constitutional Court, the Supreme Court, and also the Court of First Instance and the Anti-Corruption Court of Appeal, needs more time to be established.

The strong international influence made it possible that the new institutions of the justice system become fully operational.

The High Prosecution Council, after a verification and evaluation process, appointed the Attorney General. The High Inspector of Justice was appointed as an independent institution, focused on the inspection of judges and prosecutors to punish cases of violation of the law.

Constitutional Court became operational, reaching the necessary quorum, after extraordinary challenges. Its judges were appointed, through a process entirely independent of political preferences (according to the Minister of Justice declaration). The 3 judges of the Supreme Court continue to work on reducing the number of pending cases. The High Judicial Council continues with the evaluation process of the candidacies as new members of the Supreme Court.

The justice reform achieved:

1. Were selected 6 members of Constitutional Court;
2. Judicial Appointments Council selected the High Inspector of Justice;
3. The High Judicial Council selection 3 Senior Judges and continues the evaluation of the other 12 Senior Judges candidates;
4. The High Council of Prosecution selected the General Prosecutor and 13 members of the SPAK;
5. The National Bureau of Investigation was set up in July 2020 and was elected the Director by the Special Prosecution and the HJC under the monitoring of the International Mission;
6. The Constitutional Court has a quorum of 7 members, enabling the beginning of the processes and court hearings;
7. The High Court, even with 3 members, continues its activity and till now has processed more than 2100 cases;
8. The High Inspector of Justice has reviewed 180 complaints against judges and prosecutors<sup>13</sup>.

Meanwhile, it is worth mentioning that the problems are still present in the implementation of this reform. Almost 5 years have passed since the beginning of the implementation, and the completion of the Special Courts and SPAK with judges has not been completed yet.

Such a situation has affected the citizens' trust in justice institutions as the number of corruption convictions and organized crime is negligible<sup>14</sup>.

Until last December, the Prosecution and Special Courts registered 40 criminal cases for corruption and 50 criminal cases for organized crime in one year, but the high number of reports of

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<sup>12</sup> Source: <https://shtetiweb.org/2017/05/20/bilanci-reformes-ne-drejtisi/> Accessed October 30, 2019.

<sup>13</sup> Source: <http://ata.gov.al/2021/03/31/reforma-ne-drejtisi-gjonaj-institucionet-e-reja-te-sistemit-te-drejtises-teresisht-funksionale/> Accessed May 30, 2021.

<sup>14</sup> Source: Qendra për Studimin e Demokracisë dhe Qeverisjes (CSDG), Raport Vlerësimi I: Veprimtaria e Prokurorisë së Posaçme dhe Gjykatave të Posaçme për Korrupsionin dhe Krimin e Organizuar 2020, Autorë: Arjan Dyrmishi, Mirsada Hallunaj, Tiranë, Shkurt 2021, (Center for Democratic and Government Studies, Evaluation Report I: The activity of Special Prosecution Office and Special Court against Corruption and Organized Crime 2020, Author: Arjan Dyrmishi, Mirsada Hallunaj, Tirana, February 2021)

corruption was translated into a small percentage of criminal proceedings in the court.

The study, conducted by the Center for Study for the Democracy and Governance (Tirana, February 2021), shows that most corruption cases are allegations against public employees. But, their sentences for corruption, include only probation in public and not imprisonment. 5 prison sentences for corruption issued by the Special Court of First Instance include a maximum of 3 years and a minimum of 6 months of imprisonment.

There are 25 criminal cases for active corruption and 6 for passive corruption against public employees registered in the court. Only 3 corruption cases were charged against judges and prosecutors, and any case of corruption was against the high level of public officials or local elected officials.

There were 225 denunciations for 271 persons, half of them for organized crime and the other part for corruption, waiting for Special Prosecution against Corruption and Organized Crime/ SPAK. Whereas last year, out of 343 criminal proceedings, half belonged to corruption and only 42 related to organized crime. Out of 162 organized crime files, only 16 of them have been sent for trial.

According to the study, out of 240 corruption files, only 39 were sent for trial. In total, only 10 percent of cases investigated by the Special Prosecution Office were sent for trial to the Special Court for Corruption and Organized Crime.

About 30 percent of the defendants were proceeded by the Special Court. Out of 310 property investigations, only 11 requests for sequestration were sent to the court, and only for 4 cases in process, the Special Prosecution requested the confiscation of the seized property.

Taking into consideration, the public perception that, the corruption phenomenon is spread on all levels of state administration, the expectations were concentrated on new judiciary institutions and their activity on preventing, investigating, and prosecuting high-level corruption cases in a high level of administration. The study presented by the Center for the Study of Democracy and Governance, through indicators proved and justified the reasons for the significant decline of citizens' trust related to justice reform and SPAK.

According to the CSDG<sup>15</sup>, Barometer<sup>16</sup>, fewer citizens believe that, the fight against corruption and organized crime will be strengthened with the establishment of the Special Structure against Corruption and Organized Crime (SPAK) and that the court's effectiveness will increase after justice reform.

The general perception of respondents is that justice institutions (Prosecution Office and Courts) are corrupt and dependent on politics.

Even the vetting /verification process itself showed different problems: double standards on the evaluation of candidates, political pressures, differences in training and judgment between the same control/vetting structures, evaluation only of the wealth component, and avoiding the evaluation of the other two (professionalism or integrity). The Independent Commission on Qualification (ICQ)<sup>17</sup>/ the Institution of Public Commissioner (IPC)<sup>18</sup>/ Special College of Appeal (SCA)<sup>19</sup> lacks on having a clear strategy, regarding the first subjects that will be under the vetting process (for example, the professionals who applied for the new judicial institution's membership will be evaluated first) or, how will be evaluated the complaints of third parties (public, injured parties), persons harmed by magistrate's actions who are out of the judicial system, etc.

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<sup>15</sup> CSDG –Center for the Study of Democracy and Governance, <http://csdgalbania.org/>

<sup>16</sup>Source: <http://csdgalbania.org/sq/prezantohet-edicioni-i-dyte-i-barometrit-shqiptar-te-sigurise-2020/> Accessed June 30, 2021.

<sup>17</sup> Independent Commission on Qualification (Komisioni i Pavarur i Kualifikimit – KPK).

<sup>18</sup> Institution of Public Commissioner (Institucioni i Komisionereve Publike – IKP).

<sup>19</sup> Special College of Appeal (Kolegji i Posaçëm i Apelimit – KPA).

#### 4. Conclusions

The vetting format, as a concept, offered a good way to scan even politics, media, academia or sport, etc., responding to the public's demand for an elite rotation but at the same time, has been abused for political and populist needs that have determined its decreasing importance.

The transition period from vetting to the establishment of new institutions, up to their full functioning is being used by various groups within the justice system to achieve justice denial or to conduct suspicious acts of corruption. This category is expected to resign as verification procedures approach closely. The lack of an integral connection between the dismissal decision from the Independent Commission on Qualification / Special College of Appeal and the consequence of bringing the violators of law in front of justice offers space and immunity to people who are still in power but with negative credentials in the judicial system, as well as undermining public support for the core of justice reform (ISP, 2018).

In this context, the question arises spontaneously: why are independent institutions in Albania so vulnerable, are they conditioned by the failures of the 1998 Constitution or by the Albanian citizen who does not accept their independence or he/she is not used to it?

In this context, the answer can list several factors, starting with the submission of the Constitution to political influence, which is a common philosophy for our political operators. According to the Albanian constitutionalist, Prof. Aurela Anastasi:

*"the representatives of the institutions put the political interest in the first place, rather than the Constitution. This political opportunity has also damaged the judiciary, which has often been subjected to the intrusive pressure of people clothed with political power. On the other hand, the failures of a Constitution cannot be understood as separate from the failures of the entity that imposes it. The Constitution sets out some principles and a modeled framework to follow, but how the political entity or operator applies it, or not applies it at all, is a determining factor. When we talk about the failures of individuals, we also consider the institutional entities. Therefore, the individual fails not only as such but also as the institution that he/she leads or works on". (Anastasi, 2015, Reporter.al).*

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