



The Impact of The Court Map in the Field of Advocacy

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Abstract: The rule of law operates in accordance with the law, focusing on the equality of citizens before the law and the prohibition of the arbitrary power of the executive (Government). Justice reform is a mechanism that made it possible for citizens to increase their trust in justice. Justice reform was a mechanism that we had not heard before and it is important in this paper to mention the causes and consequences of justice reform by balancing them to understand its positive and negative sides. Judicial reform has mostly affected judges and prosecutors, but also lawyers in court cases as well and the public had an important role to denounce any judge or prosecutor who had given court decisions in violation of the law but also cases of corruption of judges or prosecutors. In this paper it is very important to address two very important principles sanctioned by the European Convention on Human Rights. the second is a trial within a reasonable time by analyzing court decisions and the importance of respecting deadlines by the courts for a speedy and effective justice. A new innovation taken from the countries of the European Union was the new court map that does not brought a few debates in our country and how the new court map will affect the economy of Albanians given that Albania is a developing country.

Keywords: Legislation, reform, principle of proportionality, access to court, principle of due process, principle of trial within a reasonable time

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A. Introduction

One of Albania's aspirations is to join the European Union, a process that is not easy but not impossible. Justice reform was the contribution of the United States of America who encouraged and helped make this process transparent, but above all impartial. The public confidence in the justice reform made this process continue even more and even any citizen could denounce any case of corruption by the judge or court decisions that the prosecutor had dismissed in violation of the provisions of the Code of Criminal Procedure. A new innovation for our country was the creation of the institutions which have as their value independence, professionalism, integrity and accountability in taking their responsibilities. These are very important principles to ensure an effective and quality judicial system. In the latest amendments of 2017 to the Code of Civil Procedure in its provisions in art in 399 it is decided to calculate the reasonable deadlines that the court must respect in resolving the dispute and it is necessary to cooperate with the parties in the judicial process in order to avoid delays in cases and reduce the economic cost for Albanian citizens.

Judicial reform affected prosecutors but also lawyers. Lawyers cannot function without a judge just as a judge cannot function without having a defense lawyer in criminal cases primarily. In a civil, criminal and administrative process, the lawyer has a key role in the most effective and quality protection of his client. The role of the judge is very important to give a reasoned decision and on the basis of his internal conviction without being influenced by other factors. The judge, prosecutor, lawyer, notary and bailiff are the "actors" who directly contribute to guaranteeing an independent and impartial judiciary.

B. Result and Discussion

1. Justice Reform Causes and Consequences that Affected the Albanian Judicial System

Judicial reform is a positive asset that brought a better reform of the judicial system, taking into account the functions of the institutions that formed the High Judicial Council and the High Prosecution Council, whose function is to appoint, evaluate, transfer and promote Judge's duty also evaluates and disciplinary measures for the judge for the prosecutor is the HJC. with the exception of the well-being of information technology which is regulated by a decision of the Council of Ministers and up to the information

of the public and the Assembly on the judicial situation. According to the report of the European Commission of 2021, the structure of the new bodies progressed steadily bringing good results by increasing public confidence in justice. Causes that led to the improvement and creating new bodies of justice:

1. The courts were quite weak in terms of quality and effectiveness as many court cases were dismissed unfairly.
2. For the application of the principle of accountability to the public which means that the public has the right to information unless the information is classified or confidential.
3. Reduction of magistrates who had not shown professional moral skills but also non-declaration of income.
4. Bringing a positive image for our country
5. Reforming the judicial system will lead to impartiality in adjudicating disputes and non-interference of executive bodies over the judiciary.
6. Increase effectiveness and quality at the trial level as no important principles were applied starting from the principle of judgment within a reasonable time, the principle of responsibility and the principle of accountability.

Consequences of justice reform:

1. Increase effectiveness and quality
2. It brought about the implementation of constitutional guarantees sanctioned by the ECHR and the Constitution
3. Greater public access to denunciation of corruption cases or denunciation of cases related to moral and professional ethics.
4. It also influenced Albania's process towards the European Union.
5. The negative consequence lies in not appointing new judges causing vacancies and as such many court cases have affected the workload of judges.
6. Many court cases are not tried within a reasonable time.
7. The right to a fair legal process is violated.

2. Constitutional guarantees and the universalization of fundamental human rights and freedoms

The judiciary is a strong guarantor of the constitution which is related to the principle of the rule of law and closely related to the principle of independence of the judiciary. The independence of the judiciary should be a priority of every government to guarantee the quality and effectiveness of law enforcement. Constitutional guarantees are directly sanctioned by the

constitution. Taking into account the pyramid of legal norms, the constitution stands at the top, followed by international agreements, ratified laws and bylaws.

A very important aspect is the fundamental rights and freedoms of the individual where we have the protection of dignity, autonomy and freedom of the individual is a vital aspect of national regional and international communities. Human rights are not only necessary as instruments for the protection of human beings, but they are also primary elements of world peace. There is no peace within the borders of a state, nor beyond them, when human rights are not respected. Both are closely linked. International peace is threatened when human rights are violated internal peace can be maintained if democracy, the rule of law and in particular human rights are respected. Also, the intervention of public power should be based on law and based on legitimate reasons based on the principle of proportionality without affecting the essence of rights. Effective judicial protection is always necessary. The universalization of human rights has horizontal and vertical geographical dimensions as well as the internal dimension related to quality with the essential aspect related to the issue and functional related to efficiency.

The substantive aspect of this dimension includes human rights which are inherent in all human beings - the active and passive aspect lies human rights must be protected from all violations. Basic values such as dignity and autonomy must be so explicit or implicit objective protected aspect. The functional aspect of the aforementioned internal human rights dimension includes the following requirements:

1. Necessary restrictions must respect the principle of optimization of human rights.
2. The intervention of public power must be law-based, supported by a law, and be necessary for the needs of a democratic society.

Judicial activism in promoting effective protection of human rights plays an essential role in this cause. At the international and regional level, human rights guarantees are defined by treaties which belong to the sources of law indicated by Article 38 of the Statute of the International Court of Justice, where the binding character derives from the principle of *pacta sunt servanda*.

3. The principle of due process of law and its importance in the constitutions of democratic countries

The principle of due process of law is a principle which occupies an important place in the constitutions of democratic countries and its essence lies in guaranteeing access to justice and the independence of the judiciary from other powers. The executive can not restrict this right, but it is necessary to provide mitigating procedures in order for the individual to use legal remedies to resolve the dispute because the individual is the one who moves the institutions at central and local level. Let's take the example where a court in Golberg, USA, hailed the due process as a revolution, but welfare recipients objected to the procedures followed by New York City to revoke the welfare benefits which were eligible and benefit a rightfully. This was a right sanctioned by the New York statute because it allowed poor people to meet well-defined requirements, but the city of New York would have to give detailed notice and then hear the proceedings. New York could not deny its citizens the right to welfare but should go through the procedures required by the constitution. The principle of due process is an important shield against arbitrary and critical government deprivation of welfare.

The principle of due process of law has an important impact in Albania where it is sanctioned in Article 1 of the Code of Administrative Procedures where the purpose of the law is to ensure the realization of public administrative functions where also to ensure the protection of the interests of natural or legal persons. We have in mind 4 important points 1) realization of public functions by the public body 2) these services to be realized against natural and legal persons 3) activity of public administrative bodies to protect the rights and legitimate interests of natural or legal persons and 4) the violation must be provided by law.

Let's take a concrete case: The case is the tax exemption from the lawsuit and the review of the claim by the lower court has not yet started. The essence of the case was the compensation for monetary and non-monetary damage for the loss of their family members without determining its value. The applicant had sued the Ministry of Defense. The plaintiff's claims to the right to a fair trial were fair because the claimant had the active legitimacy to seek monetary and non-pecuniary damages and should have been exempt from litigation fees given that the person was unemployed and not in good economic condition and that he was treated with KEMP so every person has the right to attend the hearing within a reasonable time. The applicant was limited to having his case treated due to economic impossibility. Article 41 of the Convention provides that when there is a violation of the Convention or

the protocols and if the domestic law of the High Contracting Party allows only a partial redress to be made only a partial redress is allowed and the court awards a fair compensation to the injured party. all this lies in the fact that the principle of due process is a very important compass in democratic countries and can not nd be limited regardless of the socio-economic conditions of the individual and contradicts the principle of equality before the law and the principle of legality. The principles are taxing, and we can not change them.

The principle of due process of law is an important vital guarantee in any democratic society and as such is strongly attacked in the constitutions of democratic countries, so regardless of the legal system this principle is evident, important and the obligation of the courts to make efficient decisions. and based on law and other international acts without prejudice to the rights of others in litigation. The impact given by the European Convention on Human Rights in Albania has been quite large and has given a great evolution in the development of Albanian judicial practice starting from the training that has been done for judges, prosecutors and lawyers.

The US Constitution encompassed many of the principles of the rule of law that were developed throughout Europe. In the US it was necessary to explicitly define the creation of a government power that would be qualified, divided into different channels. all this has been the control of the judiciary which was motivated by the contempt of the rule of law for arbitrariness which would bring about the rule of law. The aim was to establish the rule of law in order to increase public confidence in justice. the functioning of the rule of law. An important detail is in fact the fact that the judge is independent in his decision-making and the political part was separated from the judiciary and that the judge can not use his function to make decisions by favoring the whims of politicians.

I would also like to mention the case of *Morice v. France* where it concerns the conviction of a lawyer for the remarks reported in the press and the defamatory co-operation of the investigating judge who were excluded from the trial and investigation into the death of Judge Benard Borrel and the applicant alleged that we had violations of the principle of impartiality, due process of law and freedom of expression. The conclusion of the court has been disproportionate interference with the right to freedom of expression and is not necessary in a democratic society. As for the claim to the principle of impartiality it is merely a legitimate doubt, and its fear is justifiable.

4. Principle of trial within a reasonable time, its importance and practical cases

The principle of a trial within a reasonable time is an important principle found in the European Convention on Human Rights. The Code of Civil Procedure has given reasonable deadlines for the completion of the investigation, trial or execution of the court decision whereas a deadline in the administrative trial of the first instance and on appeal the completion of the trial is within 1 year in each instance. In the civil trial of the first instance, appeal and in the high court the term is within 2 years. Regarding the procedure for the execution of decisions, the completion of the execution of civil or administrative decisions, excluding periodic obligations or determined in time, the 1-year period begins from the moment of submitting the request for execution. The applicant may request the determination of the length of the proceedings taking into account the complexity of the object of the dispute, the complexity of the dispute, the conduct of the body conducting the proceedings and the applicant has the right to claim the adjournment of the trial, investigation and execution of the court decision. When the trial or proceedings are extended, the time when it has been suspended for legal reasons or when it has been postponed due to the request of the requesting party or when objective circumstances for the proceedings appear does not count. The questions are the deadlines set out in the code? Will the deadlines be able to implement these? If the issue due to its nature and complexity can be time consuming? These are questions that have a lot of legal vacuums. The legal vacuum will cause problems in the interpretation and implementation of the procedure code. Through the legal vacuum it gives space to the judge for the case to last for months or years.

Practical case: 1) The applicant has filed a lawsuit in the administrative court of first instance against the Local Police Directorate of Elbasan and the commissioner for personal data protection with the object "Obligation to provide information requested by him. The applicant has claimed in the high court the violation for a due process of law as a result of non-adjudication within a reasonable time. The argument of the high court was the fact that this delay has a general character justice reform has dismissed and suspended judges a significant number of judges. of its decision that the case does not pass to the plenary session because all legal remedies provided by law have not been exhausted. I emphasize that the constitutional court is a court of law which is taken only if the constitutional provisions and international conventions have been violated and the issue is not resolved on the merits, so it does not deal with the analysis of facts and evidence while

the courts of ordinary jurisdiction are fact courts as they deal with evidence and the issue is resolved on the merits.

Practical case 2) Qufaj Co Shpk is an Albanian-Australian company where the essence of the problem lies in the execution of the court decision by paying the company the value of the damage, but the municipality had refused to fulfill the obligation. The Ministry of Finance rejected the request of bailiffs for the fact that it was not applicable in this case to provide the necessary funds. The court decision was not executed and how can the court decision have its effects without being executed? The European Court of Human Rights rightly ruled in favor of the appellant company because 1) the principle of due process had been violated 2) the principle of a trial within a reasonable time had been violated and 3) the execution of the judgment for granting legal effects.

Article 42 of the constitution of the Republic of Albania clearly defines the trial within a reasonable time, which means that the court is responsible and decisive in scheduling court hearings. The court in civil proceedings seeks the cooperation of the parties in providing relevant evidence to apply the principle of adversarial and equality of arms. timely expert report to avoid delays in litigation.

Practical case: 3) X against France. X is a French citizen who died in 1992 in hospital. X suffers from hemophilia and would need a blood transfusion and was later found to be infected with HIV positive. request to the Minister to cover the field of health claiming that the delay in implementing the appropriate rules for blood supply caused the citizen X and many others to become infected with this virus. There were 649 requests for the same issue. For the day before the expiration of the legal deadline, the Director General of Health rejected this request. to avoid this problematic. His claims in the European Court of Human Rights were that his request was not considered within a reasonable time, ie Article 6 of the Convention was not implemented. The European Court of Human Rights ruled: Article 6 of the European Convention on Human Rights was not implemented and that the damage was high, and the government was aware of the consequences that would come from the inaction of the authorities. The extension of the reasonable time takes into account the circumstances and complexity of the case and that X had made it impossible to initiate the investigation.

5. The Impact of Justice Reform on Albanian Lawyers and Citizens

Justice reform was a very important step and required the support of all domestic and international actors. Justice reform showed a positive image for our country. According to the report of the European Commission for Albania October 2020, Albania has made good progress in managing the process.

Problematic is the fact that many judges have been dismissed from this process and are not replaced, resulting in the burden on the cases of incumbent judges, but also the conduct of court hearings by repeatedly violating the important working in the flight against corruption and crime. The flight against corruption and crime in Albania has a “wound” and has negatively affected the reduction of the image of our country.

Many judges have been fired and are not being replaced, bringing overload in resolving court cases. Not all lawsuits are statute-barred. According to the Civil Code of the Republic of Albania, the lawsuit is not statute-barred in the case of restoration of a personal non-property right, recognition lawsuits, co-ownership division lawsuits, lawsuits for return of amounts deposited in the bank, lawsuits which have the statute of limitations sanctioned. and there are also lawsuits for compulsory execution of decisions. The impact on the public has been non-positive as they will have to wait for the start date of the court hearing, so any problems that the lawyer goes through are passed directly to the client, creating distrust in the public. The right to a fair trial is one of the rights enshrined in the European Convention on Human Rights (ECHR).

A new innovation for the public is that the natural or legal person can address the High Inspectorate of Justice regarding the inaction, professionalism of the judge and the prosecutor and then the Inspectorate sends a request to the HJC. The respective institutions do the timely verification and receive necessary measures related to the respective case. At the moment when the denunciation is performed by the natural or legal person, the registration of the denunciation becomes possible, then the relevant documentation is reviewed to the competent authority where the administrative investigation can start or not and in case of lack of competence the denunciation goes to the competent authority. Regarding the object of the denunciation. 2) initiation of disciplinary proceedings against the judge when he has given a decision contrary to law.

6. The new court map, its problems and the experience of countries such as Denmark and Sweden

The new court map was a novelty for Albania as in all cities of Albania we have first instance criminal courts and courts of appeal. We have administrative courts in only a few cities. The new Judicial Map provided that the courts in the first instance will have Tirana, Durrës, Shkodra, Lezha Fieri, Vlora Berati, Gjirokastra, Elbasan, Korca, Dibra and Kukes. The Court of Appeals will be in Tirana only. The questions that are asked are:

1. Has the economic situation of Albanians been taken into account?
2. How can there be only one Court of Appeal in the capital given that most court cases end on appeal?
3. Will there be time for the appellate court to adjudicate cases coming from other districts as well?
4. Will the mapping of the judicial system guarantee quality effectiveness to Albanians, or will it cause delays?

When such a proposal is realized, the economic situation of the population must be seen because there are not only cities but also remote villages which are economically impossible to travel. This situation will also affect the lawyers in these districts as they risk closing the law offices. The process of re-evaluating the distribution in the districts is done according to 3 criteria 1) guaranteeing access to justice, proximity of the court to the natural or legal person 2) cost reduction transport and 3) quality enhancement.

If we take the case of Sweden Sweden has the reduction of transport costs has a higher economic level than Albania where the level of gross domestic product per capita has decreased in 2020. Sweden has 6 courts of appeal where one court can cover and 5 other courts where the number of judges reaches 600 judges. Even in Sweden there are special sessions for adjudicating disputes such as the market court, as the court dealing with labor issues , with land and environment issues .Sweden has 80 different agencies and boards is part of the judicial system but also includes crime prevention agencies and authorities such as the Swedish police, the prosecution and the Swedish economic crime authority as well as the prison service and The trial even includes the Swedish National Board of Forensic Medicine and Customs. The administrative court employs 650 people, which means that there are more employees, but the state also invests in the courts. The Danish court has 24 courts. 2 courts are high courts with certain areas such as maritime and commercial. The court in Copenhagen consists of 49

judges and 1 president. In different areas the number of judges varies from 7 to 10 judges. above are 3 courts with 63 judges. The organization of the courts is based on the respective field. Denmark has a high standard of living starting from economic development, social development and politic development. Small enterprises are dominant.

C. Conclusions and Recommendation

The Justice reform, supported as well by international, brought great changes in the political and economic life of Albania. It brought as a novelty the right of access to the newly formed institutions, the High Judicial Council HJC and the High Prosecution Council HJC. The HJC and the HJC have important powers ranging from the appointment and transfer of judges to the taking of disciplinary action against a judge or prosecutor (HJC). Nonetheless, the judicial vacancies from the removal of judges and their non-replacement in time remain problematic. Thus, replacing vacancies on time as it causes delays in resolving disputes is recommended.

The reform in the judiciary had an impact on the lawyers (such as the appointment of the court session) and on the public as well (increasing the trust in justice). One of the most sensitive issues is the large workload of judges to adjudicate cases efficiently and qualitatively. The principles of due process and the principle of a trial within a reasonable time have been openly violated.

The practical cases treated above showed that if the remedies are not exhausted then the constitutional court cannot accept the request as the constitutional court is a court of law and not a court of facts, so it has jurisdiction over constitutional interpretation based on international conventions and agreements and courts of jurisdiction. The ordinary courts have the power to examine the dispute on the merits by analyzing the facts and evidence. For these reasons, non-execution of court decisions will not bring the desired legal consequences. The effectiveness and enforceability of the law ends with the execution of the court decision.

Interventions in freedom of expression, but not only, must be in proportion to the situation that has dictated it, in accordance with the principle of proportionality. The Code of Civil Procedure in its provision has defined the calculation of time limits in Article 399 as a novelty in the calculation of time limits. With this regard, some concerns may arise, such

as: where "objective causes" are mentioned, what is considered an objective cause? Is the objective cause in proportion to the situation that dictated it? Considering the legal vacuum, it's the judge's prerogative to interpret the objective causes. The law itself should not create equivocality and ambiguity in its drafting. As far as the deadline is violated (so it may be the case of compensation for damage and the bailiff has refused to execute the court decision).

The new court map is problematic as the economic level of Albanians has not been studied but also the support of the state which is very little. The new court map will result in the closure of advocacy offices in the districts and will also lead to an increase in advocacy fees for natural or legal persons. As analyzed in this paper, Sweden and Denmark are part of developed countries, have a quality infrastructure and a high number of high-level employees, and the state has supported the judicial system. On the contrary, the judicial map of Albania is disproportionate to the economic situation of Albanians. Undertaking such an initiative should be in proportion to the economic and social conditions of the country.

Thus, the new court map needs to be reviewed as there are many problems starting with the appellate court which will be only one. In determining the court map, the principle of proportionality, responsibility, access to justice must be applied, which means that the individual is as close as possible to the court and the trial within a reasonable time. The State should also consider increasing the number of employees in the judicial system to cope with the high volume in the court administration. It should support the judicial system and increase the infrastructure, economic and social policies, the quality of services in order to increase the public trust in the courts decisions.

Albania will need to improve efficiently and better functioning of the judiciary to enable better implementation of legal instruments and will result in access to justice and the principle of legality and that of legal certainty. Factors that need to be considered for the quality of the justice system are the use of technology in special cases and the efficient management of the system will also require the training of judges and staff and will need control and monitoring and evaluation of the courts. The use of surveys to improve the quality of court services and funding is an important factor in rapid and effective justice.

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When the world is
silent, even one voice
becomes powerful.

Malala Yousafzai (*Pakistani Advocate
& Activist*)

Known as Malala, this Pakistani advocate and activist is best known for promoting education, especially for girls. After surviving an assassination attempt by the Taliban, Malala became famous internationally and spoke to the United Nations. In 2014, the then-17 year-old co-won the Nobel Peace Prize with Kailash Satyarthi, a children's rights activist from India. Malala has since graduated from the University of Oxford and continued her activism. Her speeches often center on speaking up for justice and progress, no matter who or where you are.

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