

Strasbourg, 4 April 2022

CDL-PI(2022)008

Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

in cooperation with

THE UNIVERSITY LA SAPIENZA, ROME and
THE UNIVERSITY OF BARCELONA

International Round Table
**SHAPING JUDICIAL COUNCILS
TO MEET CONTEMPORARY CHALLENGES**

University La Sapienza, Rome
21 – 22 March 2022

(Hybrid format)

PRESENTATION

by

Ms Naureda LLAGAMI

Chairperson of High Judicial Council, Albania

**INSIGHTS FROM THE JUDICIAL COUNCIL IN ALBANIA:
TOWARDS A TAUGH BUT SAFE PATH!**



The international Round Table was co-financed by the project “Instrumentos contramayoritarios en el estado constitucional (PID2019-104414GB-C32)” of the Spanish Ministry of Research and by the European Union’s Horizon 2020 research and innovation programme under grant agreement No. 822590, DEMOS.

CDL-PI(2022)008

Dear Organisers, Dear Guests,
Thank you for the invitation!

I am truly delighted to be able to contribute to today's event! This is for us the opportunity to speak not only about a model of judicial governance but also about an experience!

Thinking about it in simple terms is like building a new car and driving the same old obstacles on a long and bumpy road.

Since 2016, as you might already know, Albania is implementing the deepest & the most comprehensive reform occurred in the last decade: Justice Reform! With a two- fold aim: fighting corruption and restoring trust in justice institutions!

The primary focus of this Reform remains independence, accountability, efficiency & professionalism in the justice system. This required a new start, a radical change of the institutional landscape and a reform in the architecture of justice institutions!

Although the design of the brand-new car was ready in 2016, including constitutional changes and a package of organic laws of the reform, the High Judicial Council was constituted only 3 years later (on 12th December 2018).

We didn't only have to make the new car running, adapt the Ferrari to our roads but the most challenging of all, was to adapt our roads to the Ferrari!

This doesn't require only policy changes, making rules and establishing standards! This requires a change of mindset, a change of the justice concept and especially a concept of independence that is far from our culture, especially institutional one.

The Council is not only responsible for safeguarding judicial independence in Albania but also to pave the way of being independent, feeling and thinking as an independent institution. This is easier to be said than done!

I have to say that the model and composition of the Council itself was key to introducing these new concepts and approaches. By introducing a representative composition of the Council by all court actors and not only judges, but the new composition has also introduced as well as more open and democratic venue for all interests to be represented, voices to be heard and decision-making to meet a wider acceptance and trust from the practitioners and the public. In that regard the composition of councils balances judicial and non-judicial representation as well as judges vs. other actors of the courts.

On one side, it gives a majority of the membership to judges (6 out of 11 members) but the chairing of the meetings, administrative and managerial leadership to lay members coming from legal practitioners and academics as well as civil society.

As such, the new models of judicial as well as prosecutorial councils were shaped after a thorough analysis and a theory of change that aims at turning structural problems into outcomes and objectives for the system itself, such as lack of accountability, corporatism, and resistance expose corruption, elitism driven by the interests of judges vs. other legal and societal actors.

But some of these problems were also related to divisions of powers in a democratic society. One of the major problems had to do first and most with the political influence. Our old model was the embodiment of political influence over the judiciary. The council was chaired by the

president and most of the competences in relation to discipline and inspections were shared with the executive (namely the Ministry of Justice).

De-politicizing the judicial governance has not only helped to ease the tension between the executive and the judiciary, but it helped with the outside perception of its independence, boosting ownership of its decision-making within the system, as well as paving the ground for a different approach of cooperation with the executive or the legislative. It is a fact that the relationship between the government and the judiciary has improved since the start of the reform.

This is partly due to the new model of judicial governance but mostly to a reform deal accepted and supported by all the parties together with its costs for the judiciary and the entire society. No one can say today, we didn't agree to go that deep with the change! And yes, one must put down the bitter together with the medicine! I cannot say though that everyone is happy with the result!

Contrary to the past, full-time membership and the establishment of standing committees in key areas of the activity of the Council has created the premises for multiplication of the number and quality of decision-making as well as efficiency in responding to different individual and normative processes.

The new High Judicial Council would have a larger power of competences compared to its predecessor.

- The High Judicial will decide on the status of judges at all levels, including the High Court (for the first time). It is among others, in charge of selection, appointment, transfer, evaluation, promotion and all other issues related to the status of the judge.
- In the new legal design, the Council has financial, administrative and normative independence, ruling in almost all areas of the judiciary, court service and court administration.
- The HJC is the exclusive authority which directs and manages the administration of the courts, proposes and administers its own budget and the budget of the courts.
- It adopts detailed rules for the functioning of the administration of the Council as well as standard rules for the internal functioning of the courts and determines the territorial jurisdiction and the size of courts etc.
- HJC can give opinions to the Minister of Justice on draft acts in the field of justice, even make proposals on legal changes that may affect the work of the judiciary and any other matter that is within the responsibility of the Council.
- Adopts normative bylaws, as well as instructions for all the judges, judicial administration, private persons and public bodies.
- The HJC can also start a constitutional dispute before the Constitutional Court for matters of its interests.

During the first two years of establishment, the HJC faced an expansive mandate consisting of 16 areas of competencies, some of them completely new and all requiring effective and timely implementation. These new competencies and functions of the new governing body of the judicial system are related to the status of judges, their ethical and professional evaluation, administration of the courts' budget, as well as the High Court, which for the first time, falls under the auspices of the HJC.

The Council is constantly working towards consolidating the standards of professionalism and integrity of the judicial system, which prior to being a constitutional and legal obligation is a moral commitment to our society!

As a matter of fact, the procedures of selection, appointment and promotion of judges are at the heart of the HJC' mission. Moreover, the philosophy of these procedures is all about why the comprehensive Justice Reform was initiated: aiming to clean up the system from the

CDL-PI(2022)008

judges and prosecutors with suspicious integrity and links with organized crime by completely transforming the way how they are elected.

I must admit that building up internal oversight mechanisms for strengthening integrity and accountability of judges is not an easy task. This didn't come without its fair share of side effects for the judicial system.

Thus, in parallel of mastering the new car, the one also has to build a path! For that reason, together with improving legal and institutional architecture, justice reform also included a thorough re-evaluation of judges and prosecutors that is ongoing!

As the reform is still on the way, our conclusions at this stage can only be preliminary. But we had a great deal of learning!

For us the challenge was not only to implement the new model but also to develop rules and standards!

Why this was important!

Firstly, because we inherited a terrible image! We found out that the judiciary was at its worst days! This was also a conclusion of the re-evaluation process that emptied our courts! Especially the High Court and the appeals from human capital invested in 25 years! Most of these judges were not dismissed for lack of professionalism but for unjustified wealth and improper ties with crime! In the first year of its life, the Council was faced with:

- Most of chief judges of the courts dismissed or resigned.
- No judges at the High Court.
- Nowadays, we have only 1/3 of the judges in the appeals.

Thus, we had to establish standards and rules first, to be fair and credible! Otherwise, what would the difference with the previous council that didn't conduct a single proficiency evaluation round for the judges since 2012? Thus, together with institution building, we had to develop rules, standards and processes that go through clear criteria for judges' evaluation and judges' promotion in the higher courts. Such procedures are very important and have already been implemented, along with a well-defined career-development system of magistrates.

Overall, it is safe to say that even though HJC in its first three years of existence has been fairly shook from various obstacles during its journey, we have managed to successfully overcome them with integrity, professionalism, transparency and persistence.

And of course, paving our way and mastering our new Ferrari will continue to keep us busy for some time!

But this is for the first generation of the Council Members and for me personally, a one-in-a-lifetime opportunity! It is a personal and generational challenge! It's about closing a chapter and starting a new one!

Thank you all for your time.