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**GENERAL HISTORY
OF THE DISCIPLINARY
PROCEEDINGS
AGAINST MAGISTRATES
IN ALBANIA
(1912 - 2025)**

Co-funded by
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GENERAL HISTORY OF THE DISCIPLINARY PROCEEDINGS AGAINST MAGISTRATES IN ALBANIA (1912 - 2025)

Prepared on the occasion of the 5th anniversary of the
establishment of the High Inspector of Justice

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FOREWORD BY THE HIGH INSPECTOR OF JUSTICE

When my colleagues and I at the Office of the High Inspector of Justice discussed the idea of producing a publication on the disciplinary proceedings against magistrates in Albania, one that would trace the origins of this process through research in the State Archives, the National Library, consultations with various scholars, and exchanges with actors who have been directly involved over the years, the enthusiasm for such a demanding undertaking ran in parallel with a strong sense of responsibility. This responsibility stemmed from the need to faithfully reflect the substantial work carried out by a wide range of institutional and legal actors to ensure an accountable justice system, even in periods when the foundations of the State were not particularly solid, yet when the rule of law nonetheless had to remain resilient.

It is moving to observe the strong sense of State responsibility present from the very foundation of the Albanian State in 1912. The Provisional Government of Vlorë decided that, alongside the establishment of courts and prosecution offices of the Albanian state, a justice inspectorate should also be created to ensure not only the accountability of the system but also its independence, since inspectors were vested with a significant power: to verify that the State administration did not interfere with or exert any form of influence on the activity of the courts.

Among the subsequent reforms, up to the moment when the country was proclaimed a monarchy, particular emphasis was placed on the professional competence of magistrates. This was reflected in the preservation - drawn from Ottoman legislation - of the rule that where more than half of a judge's decisions were overturned by a higher court, or where more than half of the decisions rendered proved unenforceable, the Ministry of Justice would order the imposition of the disciplinary sanction of dismissal from office.

It is interesting to observe how, in 1928, with the Fundamental Statute

of the Kingdom, the independence of judges and their irremovability from office were formally enshrined. Alongside these guarantees, however, the accountability of magistrates was also ensured through a number of supervisory and decision-making bodies. Their inspection was thus entrusted to two entities and was subject to oversight by both the Minister of Justice and the Head of State. The Justice Inspector carried out inspections upon the order of the Minister of Justice and identified disciplinary breaches. The second supervisory authority was the Chief Prosecutor, who ascertained disciplinary violations committed by judges on the basis of reports received from prosecutors attached to lower courts, as well as through his own examination of cases in which he acted as the representative of the State in judicial proceedings. The Chief Prosecutor, like the Inspector, reported to the Minister of Justice; however, such reporting also required the approval of the Supreme Judicial Council.

After a regression of the rule of law during the period of monism, when courts and prosecutorial offices were merged into the party-state, the advent of pluralism brought renewed attention to the role of the judiciary as a key pillar of the rule of law, formally recognising the independence of judges and prosecutors. The model initially tested by Albania - featuring the President of the Republic as chair and, subsequently, an increasingly prominent role for the Minister of Justice - underwent successive refinements until 2016. Time ultimately showed that this model was insufficient to ensure an independent system capable of effectively upholding the rule of law. Consequently, through a rare political consensus between the governing majority and the opposition, the Albanian Parliament adopted the justice reform in July 2016, which reshaped the entire system through a new institutional architecture, unified by a common denominator: the independence of judges and prosecutors, now clearly enshrined in law, together with the independence of the newly established justice institutions. Within this new institutional architecture, the disciplinary process was, for the first time, vested in a single authority: the High Inspector of Justice, an independent constitutional institution entrusted with responsibility for the disciplinary inspection of judges and prosecutors at all levels. The appointment to the office of High Inspector of Justice came with the extraordinary responsibility of establishing such an institution on solid professional foundations, while responding to the expectations of the public, of political and institutional actors, and of the justice system itself. In the absence of any predecessor model, the setting of appropriate standards - and, above all, the preservation of a careful balance between the independence of magistrates and the entirely legitimate public interest in how justice is administered - was and remains the guiding compass

of the Office of the High Inspector of Justice. This remains the greatest professional and personal challenge of the Office of the High Inspector of Justice—not merely in terms of institutional stability, but insofar as this balance of interests is conceived as a fundamental constitutional principle for the future of the justice system and the rule of law. Naturally, like any process, the testing of this working philosophy requires its own period of confrontation with the challenges faced by the system, and time will ultimately demonstrate the resilience of its practical implementation, as well as its long-term effects on the system as a whole.

With sincere appreciation to Erind, the tireless and dedicated professor who brought this scholarly work to fruition, as well as to the team of the High Inspector of Justice, which invested time, energy, and commitment in supporting the completion of this documentary endeavour, I hope that this publication will serve professionals in the field, researchers, students, and readers with broader interests alike, not merely as a historical account of the disciplinary process, but as a reflection of the continuous efforts of Albanian and international actors and stakeholders to improve, learning from both achievements and shortcomings, with a shared objective: a justice system that serves society as a whole and contributes to the country's democratic development.

Artur Metani
High Inspector of Justice

CHAPTER I
I. INSPECTION AND DISCIPLINARY PROCEEDINGS
AGAINST JUDGES AND PROSECUTORS IN THE PERIOD
1912-1992

1. The Proclamation of Independence and Ottoman Legislation on Inspection and Disciplinary Accountability within the Justice System (1912–1925)

Albania declared its independence from the Ottoman Empire on 28 November 1912, with the National Assembly of Vlorë. However, the proclamation of independence did not entail an immediate rupture with Ottoman law, primarily because it was entirely impossible to abrogate, at once, the entire Ottoman legal corpus in force in Albania at that time. An immediate repeal would have created an almost total legislative vacuum, effectively eliminating all applicable rules up to that moment and thereby severely disrupting social relations. At the same time, given the conditions and circumstances of the period, the Albanian State lacked the human, material, and technical capacities necessary to promptly draft modern legislation capable of replacing the Ottoman legal framework then applicable in Albania.

For these reasons, the decision of the Provisional Government of Vlorë to continue applying Ottoman legislation in Albania was both understandable and, at that time, the only natural solution. Such legislation was to remain in force until the various organs of the Albanian State adopted new legal acts.

At this point, it is necessary to clarify which Ottoman acts were recognised as applicable in Albania. Understandably, a country's legal system consists of norms that are hierarchically ordered according to the authority that adopts them and their legal force. In this respect, Ottoman law likewise comprised primary and secondary norms. Precisely in order to clarify this issue, and interpreting the decision of the Government of Vlorë, the Council of State took the position that:

“Therefore, the letter of the Ottoman Grand Vizier mentioned above does not constitute a valid interpretation pursuant to the decision adopted by the Albanian Government of Vlorë, according to which, until new laws are

promulgated, only laws, regulations, and irades issued prior to the Turkish Constitution shall remain in force and must be considered applicable laws, but not the decrees of the Ottoman Grand Vizier."¹ This passage is of particular importance, as it provides a clear picture of which acts were recognised by the Government of Vlora and, consequently, had legal effect within the Albanian legal order. These included the *irades* of the Sultan, i.e., legislative acts adopted by the Ottoman head of state during the period of absolutism, and the laws and codes adopted by the Ottoman Parliament during the period when constitutionalism was reinstated. Subordinate legislation was excluded from this recognition.²

In order to identify the relevant norms in Ottoman legislation, reference was made to the work of an English diplomat, George Young (1872 - 1952), who compiled the entirety of the Ottoman legislation of the time in a seven-volume work entitled "*The Corpus of Ottoman Law: A Compilation of the Codes, Laws, Regulations and the Most Important Acts of Domestic Law and Studies of Customary Law of the Ottoman Empire*" (*Corps de droit ottoman; recueil des codes, lois, règlements, ordonnances et actes les plus importants du droit intérieur, et d'études sur le droit coutumier de l'Empire ottoman*).³

On the basis of this approach, in order to identify the Ottoman legislation that continued to be applied in Albania after the proclamation of independence and that governed the organisation and functioning of the judicial power, reference is again made to the work of this author, in which the Law on the *Nizamiye* Courts, dated 27 Jumada al-Thani 1296 (27 June 1879), is published. This law regulated the organisation and functioning of the general-jurisdiction judicial system of the Ottoman Empire, which was structured into courts of first instance, courts of appeal, and the Court of Cassation. These courts were competent to adjudicate all civil and criminal matters. Excluded from their jurisdiction were family and inheritance matters, which were governed by religious law and adjudicated by religious courts. Likewise, matters involving foreigners were excluded from the jurisdiction of these courts, as such cases were examined under consular jurisdiction, pursuant to the

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1. Opinion no. 58 dated 23.05.1933 of the Justice and Administration Section, approved by decision no. 162 dated 30.05.1933 of the Plenary Session of the Council of State.
 2. Kristinka Jançe and Ilirjana Nano, "*Jurisprudence of the Council of State on Ottoman Legislation*", published in the proceedings of the National Scientific Conference, "*The Council of State and the Development of Law in Albania (1929 - 1944)*", under the auspices of Aurela Anastasi and Erind Merkuri, held on 22 November 2022, organised by the Faculty of Law of the University of Tirana, Tirana 2024, pp. 194 - 195.
 3. *Ibid*, pp. 196-197.

capitulations regime. These courts also did not adjudicate administrative disputes, which were examined, as appropriate, by sub-prefectural and prefectural councils, with the Council of State serving as the final instance.

This law also regulated the prosecutorial system, which was subordinated to the Minister of Justice, who proposed to the Head of State the appointment and dismissal of prosecutors.⁴ The prosecution service was organised into a Prosecutor-General attached to the Court of Cassation, Prosecutors General attached to the Courts of Appeal, and deputy prosecutors attached to each Court of First Instance.⁵ In accordance with the legislation of the time, prosecutors participated both in criminal proceedings and in certain categories of civil proceedings.

1.1. Disciplinary inspection

The Law on the *Nizamiye* Courts, dated 27 Jumada al-Thani 1296 (27 June 1879), also provided, in its provisions, for the establishment of a Justice Inspectorate, placed under the authority of the Minister of Justice. Inspectors were appointed by the Head of State, upon the proposal of the Minister of Justice, for each region, and were entrusted with examining and supervising the functioning of the courts within their respective districts.⁶

In order to be appointed as a justice inspector, a candidate was required to possess thorough knowledge of civil and criminal legislation, both substantive and procedural, and to be worthy in every respect of the Government's trust.⁷

The law stipulated that justice inspectors were obliged to regularly inspect all courts within their territorial jurisdiction,⁸ verifying in particular: i) whether judges attended court at the prescribed times and devoted themselves diligently to the examination of cases; ii) whether procedural rules governing judicial debate were respected; iii) whether notifications and other judicial acts were served in accordance with procedural provisions; iv) the number of pending/unresolved cases; v) the manner in which the services of the court registries were carried out; vi) whether court fees were collected and recorded in compliance with the relevant rules.⁹

The law further provided that the functioning of the courts was

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4. The Law on the "*Nizamiye*" Courts, dated 27 Jumada al-Thani 1296 (27 June 1879), Article 57.
 5. Law of *Nizamiye* Courts, dated 27 Jumada al-Thani 1296 (27 June 1879), Article 59.
 6. Law of *Nizamiye* Courts, dated 27 Jumada al-Thani 1296 (27 June 1879), Article 74.
 7. Law of *Nizamiye* Courts, dated 27 Jumada al-Thani 1296 (27 June 1879), Article 75.
 8. Law of *Nizamiye* Courts, dated 27 Jumada al-Thani 1296 (27 June 1879), Article 76.
 9. Law of *Nizamiye* Courts, dated 27 Jumada al-Thani 1296 (27 June 1879), Article 77.

to be supervised in every detail, granting justice inspectors the right to examine casefiles and registers, as well as to verify whether court clerks, enforcement officers, their assistants, and judges performed their functions accurately and diligently.¹⁰

Through their supervisory powers, justice inspectors were required to ensure that all parties, regardless of their social status or personal characteristics, were treated equally, without favouritism or contempt on the part of judges. Judges were not permitted to utter any statements supporting the claims of one party or endorsing the defence of the other.¹¹

In criminal proceedings, justice inspectors verified whether records relating to persons accused of crimes were submitted to the court in a timely manner, whether the questioning of defendants was conducted properly, and whether investigations and expert examinations ordered by the court were promptly carried out. Where deficiencies were identified, inspectors were required to notify the Minister of Justice.¹²

The judicial inspectors reported to the Minister of Justice where their requests were not complied with, or where the irregularities they had identified were repeated.¹³ Likewise, where court decisions and orders remained unenforced, where enforcement was incomplete or exceeded the limits set by law, or where acts or procedures occurred that prevented convicted persons from lodging an appeal or submitting a petition to the High Court, the inspectors were required to notify the local authorities and the Minister of Justice.¹⁴

The inspectors were under an obligation to report to the Minister of Justice on judges and judicial officials who were unfit to perform their functions and to provide evidence substantiating the need for their dismissal.¹⁵

However, inspectors of justice were vested with another important power. They were tasked with verifying that the state administration did not interfere with or exert any form of influence over the activity of the courts.¹⁶ Within the scope of this oversight, inspectors examined whether state administrative bodies submitted requests or complaints to courts or to incompetent councils, summoned individuals to appear before the courts in the absence of any lawful notification, carried out arrests or detentions not authorised by law, exercised pressure in the form of demands for guarantees, or engaged in other similar practices. Where

10. Law of *Nizamiye* Courts, dated 27 Jumada al-Thani 1296 (27 June 1879), Article 78.

11. Law of *Nizamiye* Courts, dated 27 Jumada al-Thani 1296 (27 June 1879), Article 79.

12. Law of *Nizamiye* Courts, dated 27 Jumada al-Thani 1296 (27 June 1879), Article 85.

13. Law of *Nizamiye* Courts, dated 27 Jumada al-Thani 1296 (27 June 1879), Article 84.

14. Law of *Nizamiye* Courts, dated 27 Jumada al-Thani 1296 (27 June 1879), Article 88.

15. Law of *Nizamiye* Courts, dated 27 Jumada al-Thani 1296 (27 June 1879), Article 90.

16. Law of *Nizamiye* Courts, dated 27 Jumada al-Thani 1296 (27 June 1879), Article 80.

such situations were identified, the inspector responsible for the relevant district was required to request the local authorities to put an end to such irregularities;¹⁷ failing that, the inspector was obliged to immediately notify the Minister of Justice.¹⁸

These powers did not entitle inspectors of justice to interfere in judicial deliberations or to influence the courts. Inspectors were strictly required to limit their role to reporting any irregularities observed.¹⁹

The law also empowered inspectors of justice to inspect prisons in order to verify: (i) whether individuals were being detained beyond the legally prescribed term of imprisonment; (ii) whether persons were being held in custody in violation of the law; (iii) whether the internal regulations of prisons and the conduct of staff towards detainees complied with applicable standards; and (iv) whether prison facilities met the hygiene standards required by law.²⁰

The law further provided that inspectors were not permitted to accept appeals or petitions as procedural remedies against decisions of lower courts. Nevertheless, where such complaints concerned a decision of a court of first instance, inspectors were to receive the complaint and forward it to the *vali* or *mutasarraf*, for transmission to the Court of Appeal having jurisdiction over that court. Where a complaint related to a decision of a court of appeal, the inspector was required to transmit it to the Minister of Justice, for onward referral to the Court of Cassation.²¹

Inspectors were granted access to documents filed with the courts and were entitled to request certified copies from the head of the court.²²

Every three months, inspectors were required to submit a report to the Minister of Justice summarising the results of their inspections and the actions undertaken, based on a register in which all such data²³ had to be recorded. Inspectors of justice were also obliged to inform the Minister of Justice of any circumstances that might give rise to difficulties in the application of laws and regulations.²⁴

Inspections are shown to have been carried out during this period on the basis of the aforementioned law. The newspaper "*Dit' e Re*" - which was later renamed the *Official Gazette of Albania* - in its issue dated 5 April 1922, contains the following entry: "*Mr Demir Vila arrived. The First Secretary of the Ministry of Justice, Mr Demir Vila, who had been dispatched to*

17. Law of *Nizamiye* Courts, dated 27 Jumada al-Thani 1296 (27 June 1879), Article 87.

18. Law of *Nizamiye* Courts, dated 27 Jumada al-Thani 1296 (27 June 1879), Article 86.

19. Law of *Nizamiye* Courts, dated 27 Jumada al-Thani 1296 (27 June 1879), Article 81.

20. Law of *Nizamiye* Courts, dated 27 Jumada al-Thani 1296 (27 June 1879), Article 83.

21. Law of *Nizamiye* Courts, dated 27 Jumada al-Thani 1296 (27 June 1879), Article 89.

22. Law of *Nizamiye* Courts, dated 27 Jumada al-Thani 1296 (27 June 1879), Article 91.

23. Law of *Nizamiye* Courts, dated 27 Jumada al-Thani 1296 (27 June 1879), Article 92.

24. Law of *Nizamiye* Courts, dated 27 Jumada al-Thani 1296 (27 June 1879), Article 93.

conduct inquiries into the Prosecutor and the assistant Judge of Peace in Korça, has returned. He submitted the complaint report to the Ministry.” This entry suggests that the First Secretary of the Ministry of Justice of Albania effectively performed the role of an inspector of justice.

1.2. Disciplinary liability of judges

This law provided, as a guarantee for judges, security of tenure, inasmuch as they could not be transferred from office without their consent.²⁵

The law further stipulated that judges were accountable for conduct or actions incompatible with the functions of a judge. Accordingly, judges were subject to disciplinary liability. Depending on the seriousness of the violation, the disciplinary sanctions that could be imposed were: a warning, a reprimand, or suspension from office, the latter entailing the suspension of salary.²⁶ As may be observed, the law vested the disciplinary bodies with discretion to determine, first, whether inappropriate conduct or actions had occurred, and second, if their existence was established, to determine the appropriate disciplinary sanction having regard to the nature of the conduct or action. In this context, disciplinary sanctions were required to be imposed in a manner proportionate to the gravity of the violation.

The most severe measure, dismissal from office, was imposed where a judge was convicted of a criminal offence, subject to corrective penalties, or where an administrative sanction involving deprivation of liberty was imposed by the police.²⁷

The law also provided that where, within the course of one month, a judge was absent three times without valid justification and without leave, such conduct would be deemed a resignation and the judge would be replaced.²⁸ Although this conduct was treated as resignation by conclusive actions, it may likewise be classified as a disciplinary sanction equivalent in effect to dismissal.

With regard to this provision, archival documents reveal a practical case in which the Disciplinary Chamber of the Court of Cassation adopted the following position in respect of a judge: *“The Chief Prosecutor’s Office, on the basis of Order no. 2115/I dated 13.12.1924, of the Ministry of Justice, by its communication no. 13 dated 13/XII/1924, has submitted to the Court of Cassation the casefile of the Judge of Peace in of Fier, Mr J. S., who, without*

25. Law of *Nizamiye* Courts, dated 27 Jumada al-Thani 1296 (27 June 1879), Article 48.

26. Law of *Nizamiye* Courts, dated 27 Jumada al-Thani 1296 (27 June 1879), Article 49.

27. Law of *Nizamiye* Courts, dated 27 Jumada al-Thani 1296 (27 June 1879), Article 49.

28. Law of *Nizamiye* Courts, dated 27 Jumada al-Thani 1296 (27 June 1879), Article 50.

obtaining leave and without notifying the Ministry, abandoned his duties and, citing illness as the reason, travelled to Elbasan to collect his children. The acts of this case were registered under no. 1 of the special register in order to conduct the necessary examination pursuant to Article 5 of the Law of 22/VIII/1922 amending Chapter IV of the Criminal Procedure Code. From the above-mentioned order of the Ministry of Justice and from the telegrams of the Prosecution Offices of Berat and Elbasan, it emerges that the Reconciliation Judge of Fier, without having obtained leave and without having notified the Ministry, abandoned his duties and travelled to Elbasan. This anti-disciplinary act entails punishment under Article 50 of the Law on the Organisation of Courts, and we request that the necessity of adjudication in respect of J. S. be determined.

After all the acts were read and examined, the matter was deliberated with the following conclusion: From the correspondence produced it is understood that the Judge of Fier, relying on a medical report, left his duties and travelled to Elbasan for eight days without obtaining leave from the Ministry. Although his illness is substantiated by the medical report of the Fier physician, his departure from duty without the authorisation of the Ministry constitutes a disciplinary guilt. Therefore, pursuant to Article 50 of the Law on the Organisation of Courts, it was decided to deduct the salary corresponding to the eight (8) days of absence from duty.”²⁹

As regards the procedure followed after the inspection, a joint interpretation of Articles 49 and 90 of this law indicates that cases concerning the disciplinary prosecution of judges were referred to the Court of Cassation, which was the body competent to decide on the imposition of disciplinary sanctions.

Another case, related to amendments subsequently introduced to this law - which remained in force at the time Albania proclaimed its independence and was therefore applicable domestically - merits particular attention. This concerned situations in which, within the course of one year, **more** than half of the decisions rendered by a court of first instance or by a court of appeal were modified or quashed, depending on the category of cases. In such circumstances, the Heads of the Court of Cassation were required to request from the Ministry of Justice the reorganisation (reform) of the respective court, and the judges of that court would be dismissed from office upon authorisation by the Ministry of Justice.³⁰

In a case documented in archival sources, it appears that in 1927, in application of this provision, the Ministry of Justice addressed the Chief Prosecutor’s Office at the *Court of Dictation*, requesting as follows: “*Kindly*

29. Decision no. 1 dated 11.04.1925 “...of the Investigative Panel of the Court of Dictation, taken from “*Decisions of the High Court - 110 Years of Judicial Experience*”, a publication of the High Court, Tirana 2023, p. 58.

30. Addition dated 29 Sha’ban 1304 (17 May 1888).

forward us the list those courts in which, during the past year, more than half of the judgments rendered have been quashed, both in civil and criminal matters, and that, pursuant to the supplement to Article 42 of the Law on the Organisation of the Courts (d. 304, Ottoman), the views of the court heads be communicated regarding the measures deemed necessary to be taken against those judges.”³¹

Following the receipt of the information from the Court of Dictation, two statistical tables were submitted in response: one concerning the courts of first instance and another relating to the courts of peace, both of which warrant detailed analysis below.

Statistics of the activity of the first-instance court judges³²

No.	Judge		Court	Overtured	Upheld
1	Haki	Mahmuti	Berat	2	0
			Gjirokastra	0	1
2	Hysejn	Sula	Berat	1	0
3	Kolë	Dhimitri	Berat	1	0
4	Irakli	Noçka	Tirana	4	0
5	Theodhor	Papamihajli	Tirana	3	0
6	Ferid	Çene	Vlora	4	2
7	M.	Sulo	Vlora	6	3
8	Qazim	Dede	Vlora	4	1
9	Andrea	Saatçiu	Korça	2	0
10	Kahreman	Frashëri	Korça	3	3
11	M.	Boriçi	Vlora	13	16
12	Vasil	Haxhijani	Shkodra	2	1
			Vlora	4	12
13	B.	Benussi	Vlora	8	14
14	Genti	Tafili	Vlora	0	1
			Korça	2	0
15	R.	Kopliku	Shkodra	1	2
16	N.	Pepe	Shkodra	1	2
17	Izet	Leskoviku	Shkodra	1	3
18	Mustafa	Qenani	Gjirokastra	1	1

31. Albanian Central Archive, F. 156, year 1926, D. 742, dated 01.02.1927, p. 1. Letter no. 146 dated 26.1.1927 of the Minister of Justice addressed to the Chief Prosecutor of the Court of Dictation.

32. Albanian Central Archive, F. 156, year 1926, D. 742, dated 01.02.1927, pp. 2-3.

19	Koço	Bisha	Gjirokastra	2	3
20	Asim	Borshi	Gjirokastra	1	5
21	Ylvi	Kadiu	Gjirokastra	1	1
22	Neki	Delvina	Vlora	12	21
23	Teofika	Delvina	Elbasan	2	1
24	Enrik	Komasku	Vlora	7	11
25	Andon	Kosmaçi	Elbasan	0	1
			Korça	2	2
26	M.	Hoxha	Elbasan	1	1
27	Qazim	Dani	Gjirokastra	1	1
28	N.	Venediku	Gjirokastra	6	7
29	Fehim	Qorri	Gjirokastra	1	1
30	Fuat	Fico	Korça	3	3
31	F.	Emini	Gjirokastra	2	1
32	Paolo	Sopiqoti	Vlora	0	2
			Gjirokastra	0	1
33	H.	Dervishi	Gjirokastra	1	0
34	Abdurrahim	Tepelena	Tirana	9	3
35	Petraç	Pilkati	Korça	1	1
36	A.	Dino	Tirana	1	0
37	F.	Bishka	Tirana	1	1
			Gjirokastra	1	1
38	Josif Haxhi	Mima	Shkodra	2	0
39	Nazif	Dobi	Shkodra	2	1
40	Spiro	Xhufka	Elbasan	1	0
			Berat	1	0
41	Xhafer	Hysejmi	Berat	1	0
42	Faik	Bregu	Tirana	6	2
43	Thanas	Noti	Tirana	6	3
44	Etëhem	Kopliku	Elbasan	1	0
45	R.	Prodani	Vlora	1	0
46	Ramiz	Shehu	Korça	2	0

The above information shows that in 1926 Albania had a total of seven first-instance courts, located in the country's main cities, namely Tirana, Vlora, Korça, Shkodra, Berat, Gjirokastra, and Elbasan. This

geographical distribution of judicial institutions covered most of the national territory and enabled a relatively balanced access to justice for the population of the time. Nevertheless, distances and the limited infrastructure of the period constituted significant obstacles for certain remote and rural regions.

In total, 277 cases were examined by the first-instance courts in 1926. Of these, 141 decisions were overturned by the higher court, representing 50.9% of the cases, while 136 decisions were upheld, accounting for 49.1% of the total. This ratio demonstrates that more than half of the decisions rendered by the first-instance courts did not withstand review by the higher court, a finding that indicates an elevated level of incorrect application and interpretation of the law.

An analysis of this data reveals several findings regarding the performance of the first-instance courts in Albania at that time, which are set out below and ranked according to their performance:

- Vloëa First-Instance Court rendered 142 decisions, accounting for 51.2% of the total number of decisions. Of these, 83 decisions (58.5%) were upheld, while 59 decisions (41.5%) were overturned.
- Gjirokastra First-Instance Court rendered 40 decisions, accounting for 14.5% of the total number of decisions. Of these, 23 decisions (57.5%) were upheld, while 17 decisions (42.5%) were overturned.
- Shkodra First-Instance Court rendered 18 decisions, accounting for 6.6% of the total number of decisions. Of these, 9 decisions (50.0%) were upheld, while 9 decisions (50%) were overturned.
- Korça First-Instance Court rendered 24 decisions, accounting for 8.7% of the total number of decisions. Of these, 9 decisions (37.5%) were upheld, while 15 decisions (62.5%) were overturned.
- Elbasan First-Instance Court rendered 8 decisions, accounting for 2.8% of the total number of decisions. Of these, 3 decisions (37.5%) were upheld, while 5 decisions (62.5%) were overturned.
- Tirana First-Instance Court rendered 39 decisions, accounting for 14.0% of the total number of decisions. Of these, 9 decisions (23%) were upheld, while 30 decisions (77%) were overturned.
- Berat First-Instance Court rendered 6 decisions, accounting for 2.2% of the total number of decisions. Of these, zero decisions were upheld, while all the six (100%) were overturned by the higher court.

This high rate of overturned decisions reveals several structural shortcomings of the judicial system of the time, including the judges' limited professional experience, the potential influence of extra-legal factors on decision-making, and the insufficient standardisation of judicial practice.

Presented below are the statistics relating to the Courts of Peace in Albania for the year 1926, as follows:

Statistics of the activity of judges of peace³³

No.	Judge	Court	Overtured	Upheld	
1	Asim	Borshi	Përmet	2	2
			Libohova	5	3
2	Shaqir	Hoxha	Përmet	5	2
			Korça	1	0
			Bilishtë	8	6
3	Mersin	Lulashi	Tepelena	0	1
4	Mustafa	Qenani	Elbasan	7	3
			Bilishtë	1	0
			Gjirokastra	10	15
5	Faik	Emini	Përmet	2	2
			Durrës	11	4
			Bilishtë	0	2
6	Tefik	Lamçe	Korça	8	6
7	Ferdi	Kumbaro	Libohova	0	1
8	Mehmet	Pajuni	Kavaja	8	3
9	Asaf	Emini	Tepelena	1	0
			Fieri	1	0
10	Abdurrahim	Tepelena	Shkodra	42	10
11	Avni	Koka	Pogradec	1	0
12	Kolë	Gurakuqi	Pogradec	2	0
			Korça	2	0
13	Ali	Tabaku	Durrës	1	0
14	Xhevdet	Mehqemeja	Peqin	1	0
15	Fevzi	Kumbaro	Fieri	3	2
16	Ymer	Malile	Delvina	22	8
17	Namik	Jusufi	Konispol	1	0

33. Albanian Central Archive, F. 156, year 1926, D. 742, dated 01.02.1927, pp. 4 - 6.

18	Hajdar	Verçuni	Lezha	1	2
			Kruja	2	1
19	Ylvi	Kadiu	Berat	6	5
			Gjirokastra	8	7
20	Jusuf	Skile	Fieri	0	1
			Gramsh	0	2
21	Izet	Leskoviku	Shkodra	1	0
22	Fehmi	Telepena	Tirana	0	7
23	Abdyl	Mexhiti	Elbasan	21	16
24	Ragip	Konica	Tepelena	1	2
			Lushnja	4	1
25	Dajlan	Novosela	Përmet	3	0
			Kruma	0	1
26	Myhtar	Zajmi	Dibra	12	3
27	Çile	Vreto	Kolonja	6	0
28	Etëhem	Kopliku	Shkodra	25	13
29	Selami	Libohova	Pogradec	1	4
			Qukës	0	2
			Dibra	4	0
30	N.	Cico	Pogradec	2	0
			Gjirokastra	1	0
31	Emin	Xhango	Libohova	4	1
32	Arif	Ahmeti	Pogradec	2	1
33	Hysjen	Topçiu	Lezha	1	0
34	Sait	Vogli	Durrës	1	0
35	A.	Spahiu	Mallakastra	1	0
36	Tahsin	Dylgjeri	Durrës	0	1
			Bilisht	2	0
37	Vesel	Dobi	Kolonja	3	1
			Tirana	4	7
38	Nd.	Stavro	Përmet	2	1
39	Refail	Prodani	Korça	16	13
40	Mehmet	Pengili	Kruja	3	5
41	S.	Noçka	Tepelena	1	0
42	M.	Myftiu	Peqin	1	0
43	I.	Doku	Berat	4	3
44	S.	Cani	Dibra	1	0

45	Beqir	Gjergjani	Peqin	4	5
46	Dervish	Gjina	Lushnja	0	5
47	Irfan	Baçi	Fieri	0	1
48	Sh.	Sylejmani	Himara	0	1
			Delvina	1	0
49	T.	Lolo	Himara	4	2
50	V.	Dauti	Dibra	0	1
			Kavaja	1	0
51	Faik	Monopati	Berat	10	7
52	M.	Sako	Libohova	1	0
53	Salih	Hamzaj	Konispol	4	1
54	A.	Çausi	Kurvelesh	1	0
			Qukës	2	1
55	Kasem	Bozgo	Shkodra	1	3
56	Selim	Sirri	Tirana	4	5
			Lezha	3	4
			Peqin	1	0
57	Leonidha	Kona	Kolonja	4	1
58	Demir	Sokoli	Krumë	1	1
59	Faik	Vrioni	Skrapar	4	0
60	Gjon	Thaçi	Shkodra	2	2
			Lezha	1	0
61	Jonuz	Tafaj	Kolonja	6	3
62	N.	Labinoti	Elbasan	0	1
63	Tefik	Hysa	Libohova	2	1
64	Fehim	Qorri	Shkodra	7	10
65	F.	Leskoviku	Bilishtë	1	0
66	Kahreman	Frashëri	Pogradec	1	2
67	Qazim	Dede	Bilishtë	1	0
68	Demir	Librazhdi	Korça	0	2

The information above shows that in 1926 Albania had a total of 32 Courts of Peace operating across the national territory. These courts were located in major administrative centres such as Shkodra, Tirana, Korça, Elbasan, Durrës, Gjirokastra and Berat, as well as in smaller towns including Pogradec, Peqin, Kruma, Libohova and Delvina. This territorial distribution was intended to ensure the widest possible geographical coverage. Nevertheless, taking into account the infrastructure and means

of communication of the time, access to justice for citizens most likely remained limited, particularly in remote and mountainous areas.

As to the number of judges of the peace, in 1926 Albania had a total of 69 such judges, a relatively modest figure given the country's population and territorial extent at the time. This distribution indicates that, in many cases, a single judge was responsible for several jurisdictions, further constraining the right to a prompt and effective judicial process.

Overall, the Courts of Peace delivered 585 decisions, of which 356 were overturned by the higher court (60.85%), while only 229 decisions were upheld (39.15%). Such a high rate of annulled decisions demonstrates that the quality of adjudication in the Courts of Peace suffered from significant deficiencies, reflecting, in particular, the inadequate legal training and preparation of judges during that period.

An analysis of these statistics reveals several findings concerning the performance of the Courts of Peace in Albania at that time, which are set out below, ranked according to their performance:

- Court of Peace in Gramsh rendered 2 decisions, accounting for 0.3% of the total number of decisions, and both were upheld.
- Court of Peace in Tirana rendered 27 decisions, accounting for 4.6% of the total number of decisions. Of these, 19 decisions (70.4%) were upheld, while 8 decisions (29.6%) were overturned.
- Court of Peace in Kruma rendered 3 decisions, accounting for 0.5% of the total number of decisions. Of these, 2 decisions (66.6%) were upheld, while 1 decision (33.4%) was overturned.
- Court of Peace in Lushnja rendered 10 decisions, accounting for 1.7% of the total number of decisions. Of these, 6 decisions (60%) were upheld, while 4 decisions (40%) were overturned.
- Court of Peace in Qukës rendered 5 decisions, accounting for 0.9% of the total number of decisions. Of these, 3 decisions (60%) were upheld, while 2 decisions (40%) were overturned.
- Court of Peace in Kruja rendered 11 decisions, accounting for 1.9% of the total number of decisions. Of these, 6 decisions (54.5%) were upheld, while 5 decisions (45.5%) were overturned.
- Court of Peace in Gjirokastra rendered 41 decisions, accounting for 7% of the total number of decisions. Of these, 22 decisions (53.6%) were upheld, while 19 decisions (46.4%) were overturned.
- Court of Peace in Gjirokastra rendered 12 decisions, accounting for 2.1% of the total number of decisions. Of these, 6 decisions (50%) were upheld, while 6 decisions (50%) were overturned.
- Court of Peace in Fier rendered 8 decisions, accounting for 1.3%

- of the total number of decisions. Of these, 4 decisions (50%) were upheld, while 4 decisions (50%) were overturned.
- Court of Peace in Tepelena rendered 6 decisions, accounting for 1.1% of the total number of decisions. Of these, 3 decisions (50%) were upheld, while 3 decisions (50%) were overturned.
 - Court of Peace in Pogradec rendered 16 decisions, accounting for 2.7% of the total number of decisions. Of these, 7 decisions (43.8%) were upheld, while 9 decisions (56.2%) were overturned.
 - Court of Peace in Korça rendered 48 decisions, accounting for 8.2% of the total number of decisions. Of these, 21 decisions (43.7%) were upheld, while 27 decisions (56.3%) were overturned.
 - Court of Peace in Berat rendered 35 decisions, accounting for 6% of the total number of decisions. Of these, 15 decisions (42.8%) were upheld, while 20 decisions (57.2%) were overturned.
 - Court of Peace in Himara rendered 7 decisions, accounting for 1.1% of the total number of decisions. Of these, 3 decisions (42.8%) were upheld, while 4 decisions (52.7%) were overturned.
 - Court of Peace in Elbasan rendered 48 decisions, accounting for 8.2% of the total number of decisions. Of these, 20 decisions (41.6%) were upheld, while 28 decisions (58.4%) were overturned.
 - Court of Peace in Bilisht rendered 21 decisions, accounting for 3.6% of the total number of decisions. Of these, 8 decisions (38%) were upheld, while 13 decisions (62%) were overturned.
 - Court of Peace in Përmet rendered 21 decisions, accounting for 3.6% of the total number of decisions. Of these, 7 decisions (33.4%) were upheld, while 14 decisions (66.6%) were overturned.
 - Court of Peace in Libohova rendered 18 decisions, accounting for 3.1% of the total number of decisions. Of these, 6 decisions (33.4%) were upheld, while 12 decisions (66.6%) were overturned.
 - Court of Peace in Peqin rendered 12 decisions, accounting for 2.1% of the total number of decisions. Of these, 5 decisions (33.4%) were upheld, while 7 decisions (58.3%) were overturned.
 - Court of Peace in Shkodra rendered 116 decisions, accounting for 19.8% of the total number of decisions. Of these, 38 decisions (32.7%) were upheld, while 78 decisions (67.3%) were overturned.
 - Court of Peace in Durrës rendered 18 decisions, accounting for 3.1% of the total number of decisions. Of these, 5 decisions (27.7%) were upheld, while 13 decisions (72.3%) were overturned.

- Court of Peace in Delvina rendered 31 decisions, accounting for 5.3% of the total number of decisions. Of these, 8 decisions (25.8%) were upheld, while 23 decisions (74.2%) were overturned.
- Court of Peace in Kavaja rendered 12 decisions, accounting for 2.1% of the total number of decisions. Of these, 3 decisions (25%) were upheld, while 9 decisions (75%) were overturned.
- Court of Peace in Kolonja rendered 24 decisions, accounting for 4.1% of the total number of decisions. Of these, 5 decisions (20.8%) were upheld, while 19 decisions (79.2%) were overturned.
- Court of Peace in Dibra rendered 21 decisions, accounting for 3.6% of the total number of decisions. Of these, 4 decisions (19%) were upheld, while 17 decisions (81%) were overturned.
- Court of Peace in Konispol rendered 6 decisions, accounting for 1.1% of the total number of decisions. Of these, 1 decision (16.6%) was upheld, while 5 decisions (83.4%) were overturned.
- Court of Peace in Skrapar rendered 6 decisions, accounting for 0.7% of the total number of decisions. All these decisions were overturned by the higher court.
- Court of Peace in Kurvelesh rendered 1 decision, accounting for 0.1% of the total number of decisions. It was overturned by the higher court.
- Court of Peace in Mallakastra rendered 1 decision, accounting for 0.1% of the total number of decisions. It was overturned by the higher court.

The above data suggests that the professional abilities of the majority of judges at that time could not be regarded as satisfactory. It is understandable that, in light of these findings, notwithstanding the legal provisions in force at the time, no measures were taken against them, as doing so would have left the judiciary almost entirely without judges.

Subsequent legislation adopted in Albania after the proclamation of independence did not amend this part of Ottoman legislation relating to inspection, disciplinary proceedings, liability, and disciplinary sanctions, as analysed above. Such was the case with the *Canon of Zhurie* (Canon of Jurie) dated 23 May 1913,³⁴ approved by the Provisional Government

34. Incorrectly, the date of entry into force of the *Canon of Jurie* has been considered to be 10 May 1913, on the assumption that it was approved by the Government of Vlora on that date. This date has consequently been taken into account both for the designation of the *Day of Justice* in Albania and as the reference date for the establishment of the High Court. However, reference to archival documents reveals a handwritten copy of this *Canon*, which bears at its conclusion the date 10 May 1913, together with the signature of the Minister of Justice of that time. The same archival file contains another act adopted by the Provisional Government

of Vlorë. While this law regulated jury trial procedures in criminal cases, as well as appeals against such decisions, it did not address matters concerning the inspection or disciplinary proceedings of judges or prosecutors. The same applies to the later law entitled *Canon of the Courts of Justice of Albania* dated 4 June 1914, decreed by Prince Wilhelm of Wied.³⁵ This act consisted of 33 articles and was divided into two parts: the first (Articles 1 - 10) dealt with the judicial organisation and the powers of courts, while the second (Articles 11 - 31) regulated criminal procedural norms. However, this decree contained no provisions whatsoever concerning the inspection, disciplinary proceedings, or disciplinary liability of judges and prosecutors. Moreover, Article 32 of this law expressly provided that, for matters not regulated therein, Ottoman legislation would continue to apply, thus leaving the above-mentioned law fully in force during that period.

The law adopted in 1919 by the Government of Durrës again dealt with the organisation of the judicial power, but not with inspections, disciplinary proceedings, or the disciplinary liability of judges. The law of 1921, for its part, was conceived as a supplement to Ottoman legislation, introducing various adjustments to the organisation of courts and judicial offices; however, it likewise contained no provisions addressing disciplinary liability.

Although in 1922 the *Expansion of the Statute of Lushnjë (Zgjanimi*

of Vlorë, namely the *Canon of Damages* which, on its final page, contains an explicit note stating that the act was discussed and approved at a meeting of the Government. Such a note is, in fact, absent from the *Canon of Jurie*, a circumstance that calls into question whether this act was indeed approved on 10 May 1913. This doubt is further reinforced by additional archival evidence; in another archival file, the same hand-written act *Canon of Jurie*, appears again, bearing at the bottom the following annotation: "Read in the Council of Ministers on 23 May 1913 and approved. Certified and signed for implementation". This notation suggests that the formal discussion and approval of the Canon of the Jury took place on 23 May 1913, rather than on 10 May 1913, thereby casting serious doubt on the latter date as the act's effective date of adoption. The only plausible way to reconcile these two documents preserved in the State Archives is to assume that, on 10 May 1913, the Minister of Justice submitted this act to the Council of Ministers as a proposal, after which its members took the necessary time to examine its content, and that the Government of Vlorë subsequently approved it at its meeting of 23 May 1913. The same date also appears in the newspaper "Birth of Albania" in which this Canon was published in full in its issues no. 15, 16, 17 and 18 in March 1914. More specifically, in issue no. 18, dated 1/14 March 1914, p. 5, the date "23 May 1913" is published as the date of approval of this legislative act. Consequently, this date should be regarded as the moment when the act was formally adopted. See Central State Archives (AQSH), Fond 155, Years 1913–1918, File 37, dated 10.05.1913–13.05.1913, p. 14, and File 233, dated 23.05.1913, p. 14.

35. Albanian Central Archive, F. 155, year 1913, D. 38.

i Statutit të Lushnjës) was adopted, followed in 1923 by the law of 28 January 1923 “*On the Organisation of the Courts of Justice*”, these acts still failed to regulate the status of magistrates or matters of inspection and disciplinary responsibility. This meant that, with regard to these aspects, the old Ottoman norms remained applicable. Furthermore, despite the adoption of another Fundamental Statute in 1925, as will be examined below, its provisions were subject to transitional arrangements that prevented their entry into force. Similarly, the Decree-Law of 2 May 1925 “*On the Organisation of Justice*”, having not been approved by the Parliament of the time, remained in force for no more than one month. The political and legal developments of the period ultimately resulted in these provisions never being implemented, leaving the aforementioned Ottoman legislation legally and factually in force. This is clearly demonstrated both by the decision of the Court of Dictation in 1925 and by the correspondence of 1927 concerning judicial decisions rendered in 1926. Consequently, Ottoman judicial legislation - at least with respect to inspection, disciplinary proceedings, and disciplinary liability of judges and prosecutors - formally remained in force until 1929, when the new judiciary law entered into effect.

2. Inspection and disciplinary liability according to the *Extension of the Statute of Lushnja* (1922)

In 19120, the Congress of Lushnja adopted a constitutional document entitled *Foundations of the Canon of the High Council*, historically known as the *Statute of Lushnja*. This constitutional act consisted of only six articles and did not regulate any aspect of the judiciary or the prosecution system.

Given its incomplete nature, in 1922 the Parliament adopted a more comprehensive constitutional act, which was based upon and considered a continuation of the Statute of Lushnja. For this reason, it was called the *Expansion of the Statute of Lushnja*.

As to the judiciary, this Statute provided for the separation of judicial power from the other branches of government³⁶ and for the appointment of judges and prosecutors by the High Council of the Regency, upon proposal by the Council of Ministers, based on a selection carried out by a special commission. This commission was composed of the Minister of Justice, who also served as its chair, the Secretary-General of the Ministry of Justice, the Heads of the Court of Dictation, the Chief Prosecutor of the Court of Dictation, and the heads of the other highest court seated in the

36. 1922 Statute, Article 80.

capital. The qualifications required of judges and prosecutors were to be determined by law.³⁷

As regards disciplinary accountability, it was stipulated that a judge could not, under any circumstances, be dismissed from office except pursuant to a decision rendered by the Court of Dictation for disciplinary offences.³⁸

However, these provisions - along with others relating to judicial irremovability, criminal prosecution of judges, and incompatibility of functions - were to apply only after the entry into force of a new law establishing the qualifications required of magistrates and would become applicable only three years after that law entered into force.³⁹

It is understandable that, due to the circumstances and developments of the time, these provisions never entered into force. As noted above, the law of 28 January 1923 *“On the organisation of the Courts of Justice”* likewise contained no provisions concerning the status of magistrates or issues of inspection and disciplinary liability.

3 Inspection and Discipline under the Fundamental Statute of 1925 and the Decree-Law of 2 May 1925 “On the organisation of Justice”

In 1925, the Constitutional Assembly proclaimed the Republic and adopted a new constitutional act, namely the Fundamental Statute of the Republic of 1925. This Statute provided for the independence of the courts⁴⁰ and regulated judicial appointments on the basis of proposals made by a commission composed of the Minister of Justice (presiding), the Secretary-General of the Ministry of Justice, and the Heads and Chief Prosecutor of the Court of Dictation.⁴¹ It also enshrined the principle of irremovability of judges and prosecutors from office,⁴² although protection against transfer without consent was guaranteed only for judges.⁴³ In addition, it regulated incompatibility with office⁴⁴ and political neutrality.⁴⁵

Regarding disciplinary liability, Article 103 of the 1925 Statute provided that: *“A judge may not, for any reason, be removed from office against*

37. 1922 Statute, Article 84.

38. 1922 Statute, Article 85.

39. 1922 Statute, Article 89.

40. Statute, Article 98.

41. Statute, Article 102.

42. Statute, Article 103.

43. Statute, Article 104.

44. Statute, Article 105.

45. Statute, Article 106.

his will, except on the basis of a judgment rendered by a competent court or a decision of the Court of Dictation for disciplinary offences.

A judge may not be brought to trial for acts relating to his official duties without a decision of the Court of Dictation. A decision of the competent authority to bring a judge under indictment entails suspension from office in the cases provided by law. A judge may not be transferred unless he has previously declared in writing his consent to the new post.

A judge may not be placed on retirement against his will except when he has completed the years of service or reached the age prescribed by law, or when physical or mental illness renders him unfit for service. In the latter case, retirement shall be ordered by a decision of the Court of Dictation.

The procedure for indictment and for adjudication of disciplinary offences of members of the Court of Dictation shall be regulated by a special law."

As may be seen from this constitutional provision, a judge could be dismissed either as a consequence of a criminal conviction or as a result of disciplinary proceedings decided by the Court of Dictation. No comparable constitutional provisions appear to have existed for prosecutors.

Practical cases indicate that these provisions were not effectively implemented, a fact clearly illustrated by the changes made to the Court of Dictation in 1925, which were justified on grounds of institutional reorganisation. In this context, the Court of Dictation was dissolved by an order of the then Minister of Justice, Petro Poga, who directed the dismissal of all members of its single chamber.

As a result of the reorganisation of the Court into two limbs, civil and criminal, the Minister decided "...to abolish the Court of Dictation and reorganize it into two limbs (civil and criminal). Your honour, for administrative reasons, you are relieved of your duties."⁴⁶ It appears that the position adopted by the Minister of Justice at the time was based on the fact that Article 107 of the 1925 Statute provided that "Only judges who possess the qualifications prescribed by the law to be enacted shall enjoy the rights set forth in this Chapter after three years of service." So, constitutional protection for judges extended only after three years of service once the judge had been confirmed in office as suitable by the commission provided for by the Statute. This clearly demonstrates that the constitutional protection envisaged by the constitutional act of the time remained largely ineffective in practice.

At that time, Decree-Law of 2 May 1925 "On the organisation of

46. Aurela Anastasi, "The Court of Dictation in Reflections on Constitutional Review," published in the proceedings of the National Conference entitled "The Judicial Practice of the High Court: From National Identity to Universal Values," held on 10 May 2023, on the occasion of the 110th anniversary of the establishment of the High Court, Tirana, 2023, p. 56. In this instance, the author refers to the letter of the Minister of Justice dated 14 September 1925.

Justice" was also adopted. This act provided for the establishment of courts of first instance in every sub-prefecture and prefectural centre,⁴⁷ courts of appeal in each prefectural centre,⁴⁸ and the Court of Dictation, to be seated in the capital.⁴⁹

On the other hand, the Prosecution Service was organised on a hierarchical basis, beginning with the Chief Prosecutor attached to the Court of Dictation,⁵⁰ followed by prosecutors attached to the courts of appeal.⁵¹ The law did not provide for prosecutors at courts of first instance;⁵² instead, it allowed judges of first instance to perform prosecutorial functions, for which they were placed under the administrative authority of the appellate prosecutors.⁵³

3.1. Inspection

The 1925 legislation entrusted inspection powers to the Chief Prosecutor and to prosecutors attached to the courts of appeal. These prosecutors were vested with the authority to exercise oversight over courts and the respective offices within their jurisdiction.⁵⁴ Accordingly, where the Chief Prosecutor observed that a justice official - this concept including judges - deserved commendation, reprimand, or disciplinary sanction, he would address the Minister of Justice and undertake the actions prescribed by law in relation to legal breaches committed by justice officials.⁵⁵ Likewise, appellate prosecutors, within their respective districts, upon identifying unlawful or irregular conduct and following the necessary inquiries, would report to the Minister of Justice for the adoption of appropriate measures.⁵⁶

The legislation of that period provided that judges and prosecutors could be dismissed from office for disciplinary offences, which were adjudicated by the Court of Dictation, without prejudice to dismissal ordered by the commission responsible for the selection of judges and executed through the Ministry of Justice.⁵⁷

Furthermore, prosecutors were under a legal obligation to inform

47. Decree-Law dated 2 May 1925, Articles 1, 2 and 11.

48. Decree-Law dated 2 May 1925, Articles 1, 4 and 12.

49. Decree-Law dated 2 May 1925, Articles 1, 7 and 14.

50. Decree-Law dated 2 May 1925, Article 8.

51. Decree-Law dated 2 May 1925, Article 6.

52. Decree-Law dated 2 May 1925, Article 30.

53. Decree-Law dated 2 May 1925, Article 21.

54. Decree-Law dated 2 May 1925, Article 25.

55. Decree-Law dated 2 May 1925, Article 22.

56. Decree-Law dated 2 May 1925, Article 23.

57. Decree-Law dated 2 May 1925, Article 51.

the Minister of Justice without delay of any irregularities detected in judicial activity; failure to do so entailed their own disciplinary liability.⁵⁸

3.2. Disciplinary liability and sanctions

As noted above, the Statute provided that a judge could be dismissed either following a criminal conviction or as a result of disciplinary proceedings. The decree-law, for its part, stipulated the dismissal of judges and prosecutors when they committed criminal offences connected with the exercise of their duties, as well as other ordinary criminal offences.⁵⁹

In addition, specific obligations were imposed on judges, who were required not to impair the dignity of their office in any manner and to safeguard judicial dignity both within and outside official working hours.⁶⁰ Certain forms of conduct were expressly prohibited⁶¹ by the decree-law itself, such as receiving visitors in judicial offices, as well as the obligation to maintain the confidentiality of internal office activities under their direction.⁶² These two examples that could be classified as undermining judicial dignity and failure to properly perform the duties were not exhaustive but highlighted particular aspects that the legislator sought to emphasise.

Another provision, seemingly derived from Ottoman legislation, stipulated that where more than half of a judge's decisions were overturned by a higher court, or where more than half of the decisions rendered were unenforceable, the Ministry of Justice could impose the disciplinary sanction of dismissal from office.⁶³

Archival sources indicate that, following complaints lodged by various individuals, the Ministry of Justice initiated inspections during this period concerning improper conduct by judges, incorrect adjudication of cases, and matters that also engaged the attention of the Head of State.⁶⁴

The disciplinary sanctions provided by law were: (i) *a written reprimand*; (ii) *deduction of a portion of salary for up to two months*; (iii) *demotion in rank*; and (iv) *definitive dismissal from office*.⁶⁵ The decree-law required that these measures be applied proportionately, according to the gravity of the

58. Decree-Law dated 2 May 1925, Article 65.

59. Decree-Law dated 2 May 1925, Article 51.

60. Decree-Law dated 2 May 1925, Article 59.

61. Decree-Law dated 2 May 1925, Article 62.

62. Decree-Law dated 2 May 1925, Article 66.

63. Decree-Law dated 2 May 1925, Article 67.

64. Central State Archives, Fund 155, D. I-131, dated 03.03.1925-15.12.1925.

65. Decree-Law dated 2 May 1925, Article 60.

misconduct.⁶⁶ Furthermore, in cases of demotion, the law provided for an additional sanction consisting of the denial of travel expenses.⁶⁷

However, these provisions were not enacted through a law adopted by Parliament, but rather through a decree-law. Article 88 of the Statute stipulated that *“when the legislative bodies are in recess, the Government has the right to issue decree-laws; however, these shall be submitted to the legislative authority at the opening of the next session for review and approval. If they are not submitted or are not approved, they shall be deemed automatically repealed”*.

In these circumstances, the decree-law ought to have been approved by the Parliament of the time; however, this process was never completed. Thus, according to several Members of Parliament, the decree-law allegedly gave rise to numerous problems in the administration of justice. The Minister of Justice reportedly sought to suspend its application by means of a circular, which, however, was refused by the courts. Faced with this situation, a group of MPs⁶⁸ submitted to the Chamber of MPs a draft law entitled *“On the reinstatement of the previous organisation of the Courts”*, pursuant to which the former judicial organisation in Albania⁶⁹, seeking that the legal framework in force prior to Decree-Law of 2 May 1925 be restored. Following the presentation of the report by the Justice Commission, the Chamber of MPs approved the draft law at the same sitting,⁶⁹ while the Senate approved it two days later.⁷⁰

In conclusion, the decree-law remained largely a failed attempt, with the 1923 legislation, as well as the other Ottoman-era acts discussed earlier in this study, continuing to remain in force.

4. Inspection and Disciplinary Liability under the 1928 Fundamental Statute and the Law of 2 February 1929 “On the organisation of Justice”

In 1928, the so-called monarchy was proclaimed, and for this reason the Fundamental Statute of the Kingdom of 1928 was drafted.⁷¹ This

66. Decree-Law dated 2 May 1925, Article 61.

67. Decree-Law dated 2 May 1925, Article 64.

68. The proposing MPs were M. Tutulani, R. Matja, H. Vrioni, H. Muftiu, Xh. Ypi, K. Radovicka, Q. Dëshnica, H. Biçaku, H. Toska, V. Bamiha and Dr. Gjini.

69. Minutes of the parliamentary session of the Chamber of MPs, dated 13 June 1925, published by the Assembly of Albania in *Parliamentary Debates*, No. 1 of 1925, Tirana, 2015, pp. 413 and 415.

70. Minutes of the parliamentary session of the Senate, dated 15 June 1925, published by the Assembly of Albania in *Parliamentary Debates*, No. 2 of 1925, Tirana, 2015, p. 325.

71. 1928 Statute, Article 118.

Statute provided for the independence of judges and also guaranteed their irremovability from office.⁷² However, unlike the previous Statute, it delegated matters of discipline to regulation by ordinary legislation. On the basis of these provisions, and within the broader framework of the reforms being undertaken in Albanian legislation - most notably the drafting and adoption of the Criminal Code, the Civil Code, and the Second Amendment to the Civil Procedure Code - the adoption of a new law on the organization of the justice system was deemed necessary. This law was subsequently approved by the Parliament of the time on 02.02.1929.⁷³

The Law dated 02.02.1929 "On the Organization of Justice" established the system of ordinary courts, which consisted of the Courts of Peace, set up in the administrative centres of each prefecture and sub-prefecture. These courts had jurisdiction over criminal misdemeanours and offences punishable by a fine of up to 4,000 gold francs. In civil matters, they examined claims with a monetary value of up to 2,000 gold francs, as well as claims for maintenance obligations, possessory actions, and similar cases. The Court of First Instance adjudicated civil cases with a value ranging from 2,000 to 6,000 gold francs, while in criminal matters it had jurisdiction over all offences that did not constitute serious crimes. Collegiate courts adjudicated criminal cases for which the law provided for a fine exceeding 4,000 gold francs, as well as civil cases with an indeterminate subject matter or with a value exceeding 6,000 gold francs, a threshold that was later reduced to 2,500 gold francs. At the apex of this system stood the Court of Dictation which was divided into a civil limb and a criminal limb, but which could also sit as a General Council.⁷⁴

As regards the prosecution system, it was organised under the authority of the Minister of Justice and comprised a Chief Prosecutor attached to the Court of Dictation, who exercised hierarchical authority over all other prosecutors, organised at the level of the lower courts.⁷⁵ This law did not contain specific provisions governing disciplinary proceedings against prosecutors; consequently, they were subject to the rules applicable to other civil servants within the public administration.

The law established, as a key body for the administration of the judicial system, the Supreme Judicial Council, composed of the Minister of Justice, the Heads of the Civil and Criminal Limbs of the Court of Dictation, the State Prosecutor-General, and the Secretary-General of the

72. 1928 Statute, Article 120.

73. Official Gazette no. 6, dated 13 February 1929, pp. 1-11.

74. Aurela Anastasi, *History of constitutional law in Albania, 1912-1939*, "Dajti 2000" Publishing House, Tirana, 2018, p. 1.

75. Article 44.

Ministry of Justice, and chaired by the Minister of Justice.⁷⁶ As will be further addressed below, in cases where a judge was subject to proceedings for dismissal, this body was supplemented by two additional members of the Court of Dictation, appointed by the Minister of Justice.⁷⁷ Decisions were adopted by a relative majority of votes and, in the event of a tie, the vote of the Minister of Justice was decisive.⁷⁸

4.1 Inspection and disciplinary proceedings against judges

This law, already in Article 1, provided for the inclusion within the organisational structure of the Ministry of Justice of an “inspector,” whose duty was, upon order of the Minister, to inspect all courts, prosecution offices, and other related offices, and to report on the findings. The law required that the manner of inspection be regulated by a specific regulation; until such regulation entered into force, inspections were to be conducted in accordance with the instructions of the Minister of Justice.⁷⁹ The inspector’s report was submitted to the Secretary-General of the Ministry, who in turn transmitted it to the Minister of Justice.⁸⁰

In order to be appointed as an inspector of justice, a person was required to be an Albanian citizen, to enjoy civil and political rights, to be literate in the official language, not to have been sentenced to imprisonment exceeding one year for forgery, theft, fraud, abuse of trust, or offences against public morals, to possess good moral character,⁸¹ to be at least 30 years of age, to hold a law degree, to demonstrate proven professional competence, and to have knowledge of at least one of the following foreign languages: English, French, Italian, or German.⁸²

The inspector also participated in meetings of the General Council of the Court of Dictation when candidates for judicial appointments were examined.⁸³ Moreover, the inspector was a member of the Supreme Judicial Council, which dealt with the status of judges as well as matters concerning the administration of judicial and prosecutorial services.⁸⁴

The law provided that inspections of judges were to be carried out independently by the Minister of Justice (through the inspector) and by

76. Article 63

77. Article 90.

78. Article 63.

79. Article 3.

80. Article 2.

81. Article 33.

82. Article 10.

83. Article 31.

84. Article 63.

the Prosecutor-General.⁸⁵ It further stipulated that where a judge was subject to criminal proceedings and was ultimately acquitted or the case was dismissed, disciplinary proceedings nonetheless had to be initiated in order to fully verify the concrete facts and assess whether they could give rise to disciplinary liability.⁸⁶

If, during disciplinary proceedings, the judge tendered his resignation, the disciplinary proceedings were discontinued. However, should that person seek reappointment in the future, such reappointment could not take place without the reopening and examination of the prior disciplinary proceedings.⁸⁷

The law provided for several bodies empowered to impose disciplinary sanctions, as well as the right of appeal in certain cases. Thus, the disciplinary sanctions of *reprimand*, *admonition*, or *withholding of salary for up to five days* were imposed by the Minister of Justice. With respect to the sanction of a reprimand, the law established a written procedure whereby the Minister of Justice notified the judge of the alleged violations, and the judge was required to respond in writing.⁸⁸ No such procedure was prescribed for the other sanctions. The judge had the right to appeal within ten days to the Supreme Judicial Council, whose decision was final.⁸⁹

In order to establish disciplinary violations leading to the *demotion* of judges, the law required the submission of a report either by the inspector of justice or by the Prosecutor-General. It is therefore evident that judicial inspection was carried out by two separate actors. The inspector could identify disciplinary violations during inspections conducted upon order of the Minister of Justice. The Prosecutor-General, on the other hand, could ascertain disciplinary violations by judges on the basis of reports submitted by prosecutors attached to lower courts, as well as through his own examination of cases in which he participated as the representative of the State before the Court of Dictation. In such cases, he was under a duty to report to the Minister of Justice. Nevertheless, in these situations, an additional written submission was required, as appropriate, from the Heads of the Civil or Criminal Chambers of the Court of Dictation. In any event, the relevant provision required that such reporting be approved by the Supreme Judicial Council.⁹⁰

The disciplinary sanctions of *suspension from office* or *withholding of salary* and *dismissal*, where mandatory, were imposed by the Supreme Judicial Council, whose decision was not subject to appeal. With regard

85. Article 95.

86. Article 96.

87. Article 95.

88. Article 80.

89. Article 90.

90. Article 85.

to other cases of dismissal, these were likewise decided by the Supreme Judicial Council; however, in such cases the Council was supplemented by one additional member from each of the Civil and Criminal Chambers of the Court of Cassation, appointed by the Minister of Justice.⁹¹

It is noted that the Supreme Judicial Council⁹² exercised disciplinary jurisdiction over all judges, with the exception of judges of the Court of Dictation.

As regards judges of the Court of Dictation, the Supreme Judicial Council was again the competent authority, but subject to certain distinctions. The Supreme Judicial Council was competent over the first three disciplinary sanctions, namely *reprimand*, *admonition*, and *loss of the right to promotion*. For the remaining three sanctions, *suspension from office or withholding of salary*, *demotion*, and *dismissal*, these were decided by the Supreme Judicial Council; however, both the judge upon whom such a sanction had been imposed and the Minister of Justice had the right to appeal to the Council of Ministers. The latter was required to issue a decision within one week from the date on which the casefile was transmitted; failing this, the decision of the Supreme Judicial Council became final.⁹³

Regarding the procedure followed by the Supreme Judicial Council, the law provided that, in assessing the facts capable of giving rise to disciplinary liability, it was not bound by strict legal rules, but acted according to its conscience, taking into account the duty of care required to safeguard the prestige and dignity of the judicial corps. Even where there was insufficient evidence to establish the judge's culpability, but it nonetheless appeared that the judge had lost, in the eyes of public opinion, the respect, trust, and esteem required by his position, the Supreme Judicial Council could propose to the Minister of Justice that the judge be dismissed from office.⁹⁴

4.2 Disciplinary liability and sanctions

This law, in general terms, provided that judges were subject to disciplinary liability for: (i) *the improper or negligent performance of their duties; and (ii) the commission of acts, whether in the exercise of their functions or outside them, which undermined public trust in, or compromised the prestige of, the judicial authority.*⁹⁵

91. Article 90.

92. Article 91.

93. Article 92.

94. Article 93.

95. Article 78.

The disciplinary sanctions, also referred to above, provided for by the law were: (i) reprimand; (ii) admonition; (iii) loss of the right to promotion; (iv) suspension from office or withholding of salary; (v) demotion; and (vi) dismissal.⁹⁶

A *reprimand* was imposed as a disciplinary sanction where the judge had committed minor shortcomings in the performance of his duties, with such deficiency being formally noted and accompanied by an instruction not to repeat it.⁹⁷

An *admonition* was imposed where the judge displayed negligence, irregularities, carelessness, harsh conduct, or other deficiencies in the performance of duties that could not be classified as minor, or where the judge had previously been sanctioned twice with a reprimand.⁹⁸

The *loss of the right to promotion* was imposed on a judge where he had been sanctioned twice with an admonition, or for a serious disciplinary offence, as assessed by the High Judicial Council. This measure was lifted if the judge demonstrated commendable conduct for a period of at least three years.⁹⁹

The *suspension from office or withholding of salary* was imposed for a period ranging from five days to one year, resulting in the suspension of the exercise of duties and of salary. However, this measure could also be imposed in part only, by withholding up to one half of the salary, while the judge continued to remain in office.¹⁰⁰

In addition to the imposition of the three aforementioned measures, the judge could, by decision of the High Judicial Council, also be subjected to the supplementary sanction of transfer.¹⁰¹

The *demotion*, or reduction in rank, was imposed where a judge was, for the first time, found to be incapable of properly performing his duties, or to have engaged in conduct incompatible with the reputation, honour, dignity, and prestige of the judiciary, including the consumption of alcohol in public places, conduct contrary to good morals, or gambling, even if merely for entertainment.¹⁰²

The final and most severe measure, that of *dismissal*, was imposed either mandatorily or at the discretion of the competent authority, depending on the circumstances. Accordingly, this measure was imposed mandatorily where a judge had been convicted of a criminal offence punishable by imprisonment exceeding three years, as well as where the

96. Article 79.

97. Article 80.

98. Article 81.

99. Article 82.

100. Article 83.

101. Article 84.

102. Article 86.

judge was sentenced to severe imprisonment, imprisonment, internment, or for criminal offences involving forgery, theft, abuse of trust, or offences against good morals.¹⁰³ This measure could also be imposed where the judge was convicted of other criminal offences, when such conviction undermined the dignity of judicial office; where, through his conduct, the judge had compromised his own prestige or that of the judicial body of which he was a member; where the judge had been sanctioned three times with the disciplinary sanction of *admonition* or *the loss of right to promotion*, twice for the disciplinary sanction of *suspension from office* or *withholding of salary*, or where the judge repeated the same violation for which he had previously been sanctioned with the measure of *demotion*.¹⁰⁴

Another circumstance warranting the imposition of *dismissal* was where the judge was publicly known, in the place where he exercised judicial functions, to be a drunkard, a gambler, or to engage in conduct contrary to good morals, as well as where it was proven that the judge had intentionally acted so as to delay or obstruct the adjudication of cases entrusted to him.¹⁰⁵

The law further provided, in other provisions, for actions that judges were prohibited from undertaking and for the specific disciplinary sanction applicable in each case. An analysis of these provisions - particularly those concerning incompatibilities - shows that the disclosure of investigative or judicial secrecy¹⁰⁶ was considered a disciplinary offence. Likewise, the receipt of confidential information concerning cases under adjudication, or requesting other persons to draft judicial acts, was classified as harmful conduct. In such cases, the disciplinary sanction was imposed according to the gravity of the offence.¹⁰⁷

Another disciplinary violation consisted in a judge dealing with judicial matters that did not fall within his own caseload, exerting influence over such matters, or providing legal advice, whether remunerated or not. In such cases, the law provided for the disciplinary sanction of *suspension from office* or *withholding of salary*.¹⁰⁸

Pursuant to the law, the acceptance of extraordinary gifts incompatible with the prestige of judicial office, or gifts from persons having an interest in cases pending before the judge, entailed the imposition of the disciplinary sanction of *demotion*, that is, reduction in rank.¹⁰⁹

103. Article 87.

104. Article 88.

105. Article 89.

106. Article 70.

107. Article 71.

108. Article 72.

109. Article 73.

Judges were also prohibited from engaging in situations which today would be classified as conflicts of interest. This provision prohibited the issuing of recommendations or requests seeking favours from ministers or from persons subordinate to them. Likewise, judges were forbidden from intervening in the judicial system for the purpose of protecting the interests of such persons. The disciplinary sanction provided for in such cases was the withholding of salary and the publication of the judge's name in an official circular.¹¹⁰

In cases where a judge was prosecuted for criminal offences, or where a preventive measure was imposed against him, the judge was suspended from office and did not receive salary. Nevertheless, for family-support reasons, the Minister of Justice could, at his discretion, decide that during this period the judge receive an amount of up to one half of the salary. Where the judge was acquitted, he was entitled to receive the unpaid salaries, except where the High Judicial Council had ordered suspension.¹¹¹

Referring to practical cases from this period, the most serious instance occurred in 1932, when, by decree of 4 March 1932, almost all members of the Court of Dictation were dismissed. The dismissal was ordered by decree of the Council of Ministers on the grounds that all judges of both the civil and criminal limbs "...were actively participating in political currents, conduct which hinders the fulfilment of their high mission with a free and untainted conscience". By this decree, Mr. Agjah Libohova, head of the criminal limb of the Court of Dictation, as well as the members Baltazar Benusi, Salim Luniku, Kol Dhimitri, Neki Delvina, Vasil Bidoshi, Dervish Sula, and Avni Dabulla, were dismissed. The Court of Dictation was composed of twelve members and records show that eight judges and one assistant judge, Mr. Hasan Dosti, were dismissed. Meanwhile, other sources indicate that the last remaining member, Harilla Theodhori, subsequently resigned. Based on the available data, it appears that nine judges and one assistant judge were removed from the Court of Dictation. Contemporary press reports, however, stated that all members of the Court of Cassation were removed. It is possible that the court's composition at that time was incomplete, or that the press reported an incorrect number of dismissals.¹¹²

In Albania at that time, another high judicial body was also in

110. Article 74.

111. Articles 75-77.

112. Aurela Anastasi, *"The Court of Dictation and endeavours for constitutional control"*, published in the proceedings of the National Conference entitled *"The Judicial Practice of the High Court: From National Identity to Universal Values,"* held on 10 May 2023, on the occasion of the 110th anniversary of the establishment of the High Court, Tirana, 2023, pp. 56 and 58.

operation, namely the Council of State, which, in addition to its advisory functions in the legislative field and in the interpretation of laws and regulations pertaining to public law, was designated by its organic law as the Supreme Administrative Court of that period. According to the organic law of this institution, *“disciplinary sanctions on members of the Council of State were adopted by decision of the Council of Ministers, upon proposal of the Ministry of Justice”*.¹¹³

From the archival sources, only one case emerges in which this procedure appears to have been set in motion. Specifically, it appears that the Head of this Council, Mehdi Frashëri, during a speech delivered in the city of Elbasan, spoke in negative terms about the Islamic religion. This led to the submission of a complaint by the Muslim Community, addressed to the Minister of Justice, in which, inter alia, it was stated that: *“Based on the report submitted to us by the Muftiate of Elbasan through letter no. 2 dated 22/7/1935, it is understood that Mr. Mehdi Frashëri, in his capacity as Head of the Council of State, on the occasion of the inauguration of the ‘Qemal Beholli’ Library in Elbasan and of the extracurricular association ‘Bashkimi Elbasanas,’ on 21 July 1935, delivered a speech in which, while purporting to highlight the importance of the work, he allegedly stated that even God had left no work of such a kind behind, but that His wealth had gone on a silver plate to the hodjas. These words were reportedly repeated on several occasions in a discrediting manner, and on this occasion he even dared to characterise Albania as Bukhara, Samarkand, Mecca, and Jerusalem.”*

The conduct of Mr. Frashëri astonished us all the more when one considers that he occupies one of the highest offices of the State and, as such, ought better than anyone to understand the weight of the words he uses, such as those uttered in Elbasan, which served to bring about discredit and discord among social elements and to incite hostility, without exception, on the part of the Muslim clergy, by a person who dares to demean both God and Albania.

Taking into account the recommendations of the clergy and of the General Council of the Muslim Community, this Presidency protests in the most categorical manner against the statements of Mr. Mehdi Frashëri, Head of the Council of State, and respectfully requests Your Excellency, Minister, to have the kindness to submit this matter to His Excellency the Prime Minister in order for the appropriate measures to be taken to prevent such harmful conduct.

*We further add, in addressing Your Excellency, the wish of the Muslim clergy and of the General Council that this matter be clearly brought to the attention of His Majesty the King, in whom this element, constituting the majority of the Albanian population, has placed its hopes.”*¹¹⁴

113. Law dated 19.03.1929 “On the organization of the Council of State”, Article 20.

114. State Central Archives, Fond 149, Year 1935, File VI-520, fol. 2. Letter no. 19 res.,

The Minister of Justice, without undertaking any further action, referred this request to the Council of Ministers for decision-making.¹¹⁵ However, the archival file contains no decision of the Council of Ministers, nor any other act indicating the progress or outcome of this procedure. It is therefore highly likely that the Council of Ministers did not take action in this case, although such a conclusion cannot be regarded as definitive in the absence of additional archival sources.

With the occupation of Albania by Fascist Italy, by decision of the Constitutional Assembly dated 12 April 1939, the union of the Crown of Albania with that of Italy was proclaimed. In this context, since the King of Italy was regarded as the King of Albania, he decided to *grant* Albania a constitutional act known as the *Fundamental Statute of the Kingdom*. This constitutional act contained very limited provisions concerning the organisation of the judiciary and delegated most regulatory matters to ordinary legislation, including issues relating to the discipline of judges and prosecutors.¹¹⁶ This formal act imposed by the occupying power ceased to exist with the capitulation of Italy.

As regards the period of German occupation of the country, the Constituent Assembly of October 1943 decided to restore the constitutional provisions of 1928, insofar as they were incompatible with the decisions of that Assembly. In this instance as well, no legal changes were introduced with respect to the organisation of the judiciary.

5. Inspection and discipline under Law no. 275 dated 13.08.1946 “On the organisation of the Judiciary”

With the adoption of the Statute of 1946, it became necessary to approve a new law on the organisation of judicial power, which was achieved through Law no. 275, dated 13.08.1946 “On the organisation of the Judiciary.” This law organised the judicial system into three instances: sub-prefecture courts, whose judges were elected by the Popular Council of the sub-prefecture; prefecture courts, whose judges were elected by the Popular Council of the prefecture; and the High Court, whose judges were elected by the People’s Assembly.¹¹⁷ In accordance with the prevailing mindset of the time, the law provided that judges were accountable for

dated 30 July 1935, of the Presidency of the Muslim Community addressed to the Ministry of Justice.

115. State Central Archives, Fund 149, Year 1935, File VI-520, fol. 1. Letter no. 60 *res*, dated 18.08.1935 of the Ministry of Justice addressed to the Prime Minister’s Office.

116. 1939 Statute, Articles 40-44.

117. Law no. 275/1946, Articles 1 and 21.

their actions before the representative body that had elected them.¹¹⁸

5.1. Inspection and disciplinary proceedings

An overall analysis of the provisions of this law shows that the bodies responsible for electing judges were also responsible for their inspection and disciplinary proceedings. Accordingly, the Popular Councils of the sub-prefectures inspected and instituted proceedings against judges of the sub-prefecture courts. Likewise, the Popular Councils of the prefectures inspected and instituted proceedings against judges of the prefecture courts. As regards the members of the High Court, they were subject to disciplinary proceedings conducted by the People's Assembly.

Disciplinary proceedings could be initiated by the competent body *ex officio* or on the basis of complaints submitted to it. The law further provided that a lower-level Popular Council could initiate disciplinary proceedings at the request of a higher-level Popular Council or at the request of the Minister of Justice.¹¹⁹

Once proceedings were initiated, the competent body established an investigative commission, composed of members of that same body.¹²⁰ Accordingly, the members of the commission had to be members of the Popular Council itself and not part of the administrative staff.

The law further required that, in cases of dismissal of a judge, the Minister of Justice also express his position. Such position was to be given in writing, either by the Minister personally or by a person delegated by him.¹²¹ Upon completion of the preliminary investigation, the commission submitted a report to the Popular Council, setting out the findings established.¹²²

The law mandatorily required that, prior to dismissal, the judge be heard.¹²³

5.2. Disciplinary liability and sanctions

This law provided that a judge could be dismissed in several circumstances. The first ground was the failure to perform the duties prescribed by the law.¹²⁴ The duties that were required to be carried out on a regular basis were: (i) the protection of the State and social organisation

118. Law no. 275/1946, Article 28.

119. Law no. 275/1946, Article 28.

120. Law no. 275/1946, Article 29.

121. Law no. 275/1946, Article 30.

122. Law no. 275/1946, Article 31.

123. Law no. 275/1946, Article 32.

124. Law no. 275/1946, Article 28.

of Albania at that time, the safeguarding of the rights and interests guaranteed by law of institutions, enterprises, and organisations, as well as the protection of personal rights and private property and the legally guaranteed rights and interests of private individuals; (ii) ensure the strict application of laws and provisions having the force of law by institutions, enterprises, organisations, and by public and private officials; and (iii) educating citizens in the spirit of loyalty to the homeland and respect for the laws, justice, and civic duties.¹²⁵ As can be observed, the duties that judges were required to perform under these provisions were very broad in scope and diverse in nature.

As a second ground, the law also considered as a disciplinary violation the performance of these duties in an incorrect manner.

Another ground arose where the judge was found to be professionally incompetent. An overall reading of the law shows that no method was provided for the evaluation of judges' professional performance; consequently, a lack of professional competence entailed the judge's disciplinary liability.

Continuing with the grounds for a judge's disciplinary liability, another cause arose where the judge's conduct seriously impaired the functioning of the office. This covered cases in which, through acts or omissions, the judge harmed judicial activity, including, inter alia, the loss or destruction of judicial files and the undue delay of proceedings.

As a final ground, the law provided for situations in which the judge's conduct undermined the prestige of the court. This provision was very broad in scope and encompassed any acts or omissions, whether during or outside official working hours, which diminished the dignity and image of both the judge and the institution itself.

The law also provided, as a ground for dismissal, for the judge's resignation at his own request.¹²⁶ It is evident that, in such cases, one is not dealing with disciplinary liability, even though the terminology of the time continued to classify this situation as a form of dismissal.

6. Inspection and discipline under Law no. 4406 dated 24.06.1998 "On the organization of the Judiciary"

In 1968, following constitutional amendments, the court system was reorganised, providing for the operation of village courts, town courts, and neighbourhood courts, which adjudicated offences of low social

125. Law no. 275/1946, Article 2.

126. Law no. 275/1946, Article 28.

dangerousness, simple civil cases, and misdemeanours, as defined by law.¹²⁷

The law also provided for district courts, which adjudicated appeals against decisions of the village, town, and neighbourhood courts and also acted as courts of first instance for all other cases. A military chamber was established within these courts.¹²⁸

At the apex of this system stood the High Court, organised into civil, criminal, and military chambers, as well as a plenum, composed of all judges.¹²⁹

According to the legal framework of the time, judges at all levels were elected. Thus, district judges were elected by popular vote. Where a position became vacant and could not be temporarily filled by an assistant judge, the District Council appointed a judge until new elections were held.¹³⁰ As regards the members of the High Court, they were elected by the presidium of the People's Assembly.

With regard to the liability of judges, the law provided that, in the exercise of their functions, judges were subject to criticism and control by the working masses,¹³¹ were accountable before their electors, while the High Court was accountable before the People's Assembly and its Presidium.¹³² It is evident that this framework offered no genuine guarantees of judicial independence, notwithstanding the fact that the law itself formally proclaimed the irremovability of judges and their enjoyment of immunity.¹³³

This law contained no provisions governing the inspection of courts, the manner in which such inspection was to be carried out, or the safeguarding of judges' procedural rights in such proceedings.

As regards disciplinary liability, the law was limited to a single provision, stipulating that: "*The judge and the assistant judge may be removed from office only when so decided by the electors or by the body that elected them, when they are criminally convicted, or when they themselves request it for reasonable causes.*"¹³⁴

The first situation was the most abusive, as judges could be dismissed at any time by their electors, that is, by the electoral body that had elected them. In such cases, the electors could revoke the mandate of the judge at their discretion, without the law requiring any

127. Law no. 4406/1968, Article 9.

128. Law no. 4406/1968, Articles 10 dhe 11.

129. Law no. 4406/1968, Articles 12 dhe 13.

130. Law no. 4406/1968, Article 20.

131. Law no. 4406/1968, Article 4.

132. Law no. 4406/1968, Article 21.

133. Law no. 4406/1968, Article 22.

134. Law no. 4406/1968, Article 23.

specific grounds or legal criteria. Where a judge had been temporarily appointed by a District Council, that body could likewise dismiss the judge at any time. As regards members of the High Court, they could be dismissed by the Presidium of the People's Assembly at any time, again without any statutory conditions or criteria. Thus, electors and other bodies enjoyed very broad discretionary powers in deciding on the dismissal of judges.

The second situation constituted the only objective ground, as it required the existence of a criminal conviction, which could be imposed solely by the courts.

The third situation essentially amounted to resignation from office and did not entail disciplinary liability, even though the terminology of the time continued to classify this situation as a form of *dismissal*.

7. Inspection and discipline under Decree no. 7174 dated 20.11.1987 "On the judicial organization"

This decree represented a further attempt by the communist regime to reform the judicial system. Under this decree, the judicial system in Albania was organised into three levels: (i) district courts, whose judges were elected by the people;¹³⁵ (ii) regional courts, acting as courts of second instance, whose judges were elected by the district councils within whose territory they operated;¹³⁶ and (iii) the High Court, whose members were elected by the People's Assembly.¹³⁷ The High Court was organised into its Plenum, as well as Civil, Criminal, and Military Chambers.¹³⁸ Despite this structure, village courts, town courts, and neighbourhood courts continued to operate, adjudicating criminal offences of low social dangerousness, simple civil cases, and misdemeanours, as provided by law.¹³⁹

The decree stipulated that courts, in the exercise of their activity, were guided by the policy of the Party of Labour,¹⁴⁰ and that judges were required to be accountable before those who had elected them.¹⁴¹

This decree likewise contained no rules governing disciplinary proceedings against judges, providing only that: "*The judge and the assistant judge may be removed from office only when so decided by the electors*

135. Decree no. 7174/1987, Article 15.

136. Decree no. 7174/1987, Article 16.

137. Decree no. 7174/1987, Article 7.

138. Decree no. 7174/1987, Article 19.

139. Decree no. 7174/1987, Article 13.

140. Decree no. 7174/1987, Article 2.

141. Decree no. 7174/1987, Article 8.

or by the body that elected them, when they are transferred, when they themselves request it for reasonable causes, or when they are criminally convicted."¹⁴²

This provision again set out four situations for removal from office. The first, and most problematic, allowed judges to be dismissed at any time by their electors, without any legal grounds or criteria. The same applied to judges of the regional courts, who could likewise be dismissed at any time. Members of the High Court could also be dismissed at any time by the People's Assembly, again without any legally defined conditions.

The second situation, transfer, remained unclear, particularly because judges were elected officials, making it uncertain how a transfer could be effected. Moreover, the placement of transfer within this provision suggests that it was conceived as a disciplinary sanction, yet the authority competent to order such a measure was not specified.

The third situation amounted, in substance, to resignation from the system and did not entail disciplinary liability, even though the terminology of the time continued to describe it as *removal from office*. Notably, judges were required to provide reasons for their resignation, a requirement that further restricted this option.

The final situation again constituted the only objective ground, namely the existence of a criminal conviction, which could only be imposed by the courts.

It should be emphasised that, as a result of the political changes of 1991, coinciding with the adoption of Law no. 7491 dated 29.04.1991 "On the main constitutional provisions," amendments were also introduced to this decree through Law no. 7535, dated 17.12.1991. Article 3 of that law, amending Article 7 of the decree, provided inter alia that: "*Judges and assistant judges of district and regional courts, as well as of military courts, shall be appointed and dismissed by the President of the Republic, upon proposal of the Minister of Justice*". Accordingly, the power to dismiss judges was removed from electors, local bodies, and the Assembly, and vested in the President of the Republic, acting upon a proposal from the Minister of Justice. As can be seen, this marked a return to earlier traditions, reintroducing the role of the Minister of Justice in exercising control and inspection over the judiciary.

8. Prosecutorial system in the period 1945 - 1992

As regards the prosecution system during the communist regime, the Statute of the People's Republic of Albania of 1946, as

142. Decree no. 7174/1987, Article 9.

amended in 1950, and later the Constitution of the People's Republic of Albania, provided that the Prosecution Office was an organ of the People's Assembly, entrusted with the mission of supervising the strict implementation of the law by ministers and other administrative bodies, as well as by public officials and all citizens.¹⁴³ The institution was headed by the Prosecutor-General, who, together with his deputies, was appointed by the People's Assembly. Other prosecutors were appointed by the Prosecutor-General.¹⁴⁴ The Statute further provided that all public prosecutors were independent of local bodies and were subordinate solely to the Prosecutor-General, from whom they received orders and instructions.¹⁴⁵

As can be observed, at this stage the separation of the prosecution service as a distinct entity from the judicial system begins, along with its organisation in a more centralised form, a model which, with certain modifications, would continue to be followed in Albania until the 2016 reform.

The legislation adopted during this period included Law No. 107 of 1945 "On the Prosecution Service", Law No. 279, dated 09.08.1946 "On the Prosecution Service", and Decree no. 1790 dated 28.12.1953 "On the Prosecution Service". These instruments elaborated the statutory/constitutional provisions and vested the Prosecution Service with oversight over the legality of subordinate normative acts, over the administrative activity of central and local bodies, over judicial activity pursuant to the Codes of Civil and Criminal Procedure, over investigations, and over the enforcement of decisions. As can be observed, the Prosecution Service's powers were very broad.

As regards the appointment and dismissal of prosecutors, these legislative acts essentially reiterated the constitutional provision, according to which the Prosecutor-General and his deputies were appointed and dismissed by the People's Assembly, whereas other prosecutors were appointed and dismissed by the Prosecutor-General. These provisions were highly laconic and regulated no aspect of inspection, control, proceedings, or disciplinary liability of prosecutors.

Archival sources also contain references submitted by district Party committees addressed both to the Ministry of Justice and to the Party's Central Committee. These documents report poor conduct by certain prosecutors and propose their dismissal.¹⁴⁶

143. 1946 Statute, Article 88.

144. 1946 Statute, Article 89.

145. 1946 Statute, Article 90.

146. No. 326, 01.02.1950-27.12.1950

Various reports were submitted by district Party committees and by the Ministry of Justice to the Central Committee of the Party of Labour of Albania, concerning

From the foregoing, it follows that complaints against prosecutors could originate from various actors, above all from Party bodies, which triggered the system to hold prosecutors disciplinarily accountable.

In 1976, the Constitution of the People's Socialist Republic of Albania entered into force. It provided that the Prosecution Service had the duty to ensure the strict and uniform implementation of laws by ministries and other central and local bodies, by courts, investigative bodies, enterprises, institutions, organisations, officials, and citizens. It also had the right to lodge a protest against any unlawful act and could request the competent bodies to repeal or amend it. The prosecutor's request had to be examined within the statutory time-limit; otherwise, the implementation of the act was suspended.¹⁴⁷ The Prosecutor-General would bring before the People's Assembly and its Presidium cases in which laws and decrees were inconsistent with the Constitution, and before the Council of Ministers cases in which its decisions and orders were inconsistent with the law.¹⁴⁸ The Prosecutor-General and his deputies were appointed at the first session of the People's Assembly, whereas other prosecutors were appointed by the Presidium of the People's Assembly.¹⁴⁹

As can be seen, the Prosecution Service of that period retained substantially the same scope of powers, which were further detailed in Law no. 6298 dated 27.03.1981 "On the Prosecution Service." As regards the appointment and dismissal of prosecutors, it provided that: "*The Prosecutor-General and his deputies are appointed and dismissed by the People's Assembly. Between sessions of the People's Assembly, Deputy Prosecutors General are appointed or dismissed by the Presidium of the People's Assembly. The District Prosecutor is appointed and dismissed by the Presidium of the People's Assembly. Other prosecutors are appointed and dismissed by the Prosecutor-General*".¹⁵⁰

As may be noted, this provision went beyond the constitutional regulation by continuing to provide that the Prosecutor-General appointed and dismissed other prosecutors, whereas the constitutional provision, without distinction, entrusted that power solely to the Presidium of the People's Assembly. Moreover, this provision, and the law as a whole, contained no rules on inspection procedures, disciplinary proceedings, disciplinary liability, or the procedural rights of prosecutors at these stages. This new legislation likewise left

the state of the Prosecution Service and the courts, as well as instances of poor conduct by prosecutors and judges, including proposals for their dismissal.

147. 1976 Constitution, Article 104.

148. 1976 Constitution, Article 105

149. 1976 Constitution, Article 106.

150. Law no. 6298/1981, Article 8.

a wide discretion to the appointing authorities to dismiss prosecutors according to their assessment.

In this period, archival sources refer to the appointment and dismissal of prosecutors in 1979,¹⁵¹ 1980,¹⁵² 1985,¹⁵³ 1986,¹⁵⁴ etc.

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151. No. 1-3, 27.07.1979–15.09.1979 - *Secret*. Decision of the Secretariat of the Central Committee of the Party of Labour of Albania and a decree of the Presidium of the People's Assembly, concerning the appointment and dismissal of prosecutors in the District of Mat.
 152. No. 1-8, 29.09.1980 – *Secret*. Decree of the Presidium of the People's Assembly and a proposal of the General Prosecution Office concerning the dismissal and appointment of prosecutors in the District of Kolonja.
 153. No. 287, 06.01.1985-27.02.1986. Decrees of the Presidium of the People's Assembly, decisions, and correspondence concerning the appointment, transfer, and dismissal of Prosecution Service personnel.
 154. No. 1-10, 10.01.1986-20.12.1986 - *Secret*. Decisions of the collegial body of the Prosecutor-General's Office, together with correspondence with institutions and district prosecution offices, concerning the appointment, transfer, and dismissal of Prosecution Service personnel.

CHAPTER II

II. INSPECTION AND DISCIPLINE IN THE PERIOD 1992 - 1998

1. **Constitutional provisions under Law no. 7561 dated 29.04.1992 “On the organization of justice and of the Constitutional Court”**

Political, economic, and social changes were accompanied by corresponding legal transformations. Initially, the legislative body, the People’s Assembly, adopted Law no. 7491 dated 29.04.1991 “On the main constitutional provisions,” which, inter alia, provided for the independence of the judiciary¹⁵⁵ and the de-politicisation of the judicial system and the prosecution service.¹⁵⁶

However, this constitutional law was not comprehensive with regard to the justice system. This shortcoming was addressed through the adoption of Constitutional Law no. 7561 dated 29.04.1992, which introduced a new chapter into the law “On the main constitutional Provisions,” entitled “Organisation of Justice and of the Constitutional Court.” This law provided for the establishment of a judicial system composed of the Court of Cassation, courts of appeal, courts of first instance, and military courts.¹⁵⁷

With regard to the Court of Cassation, defined as the highest judicial authority in the country, the constitutional law stipulated that a judge of that court could be removed from office only on the basis of a reasoned decision of the People’s Assembly, where it was established that the judge had committed one of the serious criminal offences expressly provided for by law, or where the judge was found to be mentally unfit.¹⁵⁸

This provision was initially interpreted in abstract terms by the Constitutional Court, which held that: *“The final paragraph of Article 6 of Constitutional Law no. 7561 dated 29.04.1992 ‘On certain amendments and additions to Law no. 7491 dated 29.04.1991 ‘On the main constitutional provisions’ provides that ‘a judge of the Court of Cassation may be removed*

155. Law no. 7491/1991, Article 5.

156. Law no. 7491/1991, Article 6.

157. Law no. 7561/1992, Article 5.

158. Law no. 7561/1992, Article 6.

from office only on the basis of a reasoned decision of the People's Assembly when it is established that he has committed one of the serious criminal offences expressly provided for by law or when he is mentally unfit.' By this provision, the legal principle of the irremovability of judges of the Court of Cassation is enshrined, subject to the exceptions determined by the constitutional law itself.

In interpreting this provision, the Court concluded that the **People's Assembly**, by means of a reasoned decision, could remove a judge of the Court of Cassation from office where the judge had been sentenced by a final decision of a competent court to deprivation of liberty for the commission of a criminal offence provided for by law. A judge could not continue to perform judicial functions where he had been sentenced to imprisonment, as such a situation was incompatible with the function and image of a judge.¹⁵⁹

Through this interpretation, the Constitutional Court clarified that the protection afforded by the principle of irremovability of judges of the Court of Cassation was not absolute, but was excluded in cases where the judge had been convicted by a final judgment for the commission of a serious criminal offence. According to the Court, irremovability, as a guarantee of judicial independence, could be limited only in clearly defined circumstances, namely where the judge's moral integrity and capacity to perform judicial functions were impaired. This approach sought to preserve a balance between the independence of judges and the need to protect the credibility and integrity of the justice system from individuals unfit due to criminal conduct or mental incapacity.

During this period, there was only one case involving the dismissal of a member of the Court of Cassation, who was simultaneously the Head of that institution. The dismissal carried out by the People's Assembly was based on a prior decision of the Constitutional Court, which had found the actions of the Head of the Court of Cassation to be unlawful in relation to the suspension of final judicial decisions¹⁶⁰. The decision of the People's Assembly to dismiss the Head of the Court of Cassation was challenged before the Constitutional Court, not by the individual concerned, but by a parliamentary group. In this case, the Constitutional Court held that: "According to the final paragraph of Article 6 of Law no. 7561 dated 29.04.1992, a judge of the Court of Cassation may be removed from office only on the basis of a reasoned decision of the People's Assembly, where it is established that he has committed one of the serious criminal offences expressly provided for by law, or where he is mentally unfit."

From the content of this provision, taking into account the well-established principle of the presumption of innocence, also enshrined in Article 7 of the Law "On Fundamental Human Rights and Freedoms," it follows that there are two

159. Decision no. 1, dated 19.01.1995 of the Constitutional Court.

160. Decision no. 12, dated 21.09.1995 of the Constitutional Court.

necessary and sufficient conditions for the mandatory removal of a judge of the Court of Cassation, including the Head and Deputy Head of that Court: namely, the commission of a serious criminal offence provided for by law, established by a final judicial decision, and mental incapacity.

The Constitutional Court adhered to this position also in its decision no. 1 dated 19.01.1995, in which, inter alia, it stated: "The People's Assembly, by a reasoned decision, may remove a judge of the Court of Cassation from office when he has been sentenced to deprivation of liberty for the commission of a criminal offence by a final decision."

Both of the above conditions are intrinsically linked to the principle of judicial irremovability and constitute a guarantee for the independent exercise of judicial functions; however, they do not exempt the judge from certain fundamental and clearly defined obligations, in particular the obligation to respect the constitutional law and the law in general. A judge cannot evade this obligation by invoking the principle of his objective or personal independence.

Therefore, the Court considers it objectively necessary to examine the legitimacy of People's Assembly decision no. 269 dated 21.09.1995, concerning the dismissal of the Head of the Court of Cassation, Mr. B., through the prism of the duty and responsibility incumbent upon a judge of the Court of Cassation to respect the constitutional law. Such an examination does not in any way conflict with, nor run counter to, the content of Article 6(4) of Law no. 7561, dated 29.04.1992.

Respect for the Constitution lies at the foundation of the activity of all state bodies. In this regard, the Constitutional Court refers to Article 2(2) of Law "On the main constitutional provisions". On the basis of this provision, which defines the essential characteristics of the democratic State, all public authorities (the State) are under a duty to respect and safeguard the Constitution (the constitutional order). There is no doubt that a breach of this duty entails consequences, including removal from office, since the provision is constitutive rather than declaratory in nature; it is precise and imperative. It should further be noted that the imposition of the measure of removal from office - unlike under Article 6(4) of Law no. 7561 dated 29.04.1992 - is conditional upon a range of factors, such as the gravity of the legal violation, whether it was committed intentionally or repeatedly, and similar considerations.

The body that elected them cannot remain indifferent and cannot fail to react in cases where the activity of these highest representatives of judicial power is declared unconstitutional and unlawful by an authority entrusted with constitutional review.

The Court finds it necessary to refer to a specific provision of the law "On the main constitutional provisions," namely Article 27(a). The content of this provision - providing for the dismissal of the Head of State in the event of a violation of constitutional law - cannot serve, as might appear at first glance, as an argumentum a contrario; it does not demonstrate the opposite of the position set

out above or of the conclusions reached by the Court, but rather reinforces them.

The regulation of this responsibility through a specific legal norm applicable to the Head of State, dictated by particular reasons, demonstrates the paramount importance of the duty to respect the Constitution and the central role that its safeguarding and protection occupy in a democratic state. This responsibility applies to everyone, and especially to those entrusted with high state functions.

By its Decision no. 12 dated 21.09.1995, the Constitutional Court declared the activity of the Head of the Court of Cassation, Mr. B., unconstitutional and unlawful. This decision served as the basis for the People's Assembly to dismiss him from all functions within the Court of Cassation.

The claim of the Parliamentary Group of the Socialist Party, that the decision of the Constitutional Court could not replace a final criminal judgment and could not serve to establish the commission of a criminal offence by the Head of the Court of Cassation, is unfounded, since it takes into account only the wording of Article 6 and not the substantive content of Article 2(2) of Law "On the main constitutional provisions".

From the examination of the documents, electronic records, and minutes containing the relevant data, it appears that, at the time the session of the People's Assembly was opened - prior to the inclusion of the B. case on the agenda - 73 MPs were present. According to the claims of the Parliamentary Group of the Socialist Party, the MPs G. P., A. I., and Sh. C., contrary to the content of the documents and electronic records, did not participate in the plenary session, in the conduct of the proceedings, or in the voting on the decision.

Furthermore, the examination of these documents shows that, both in the vote to place the issue on the agenda and in the vote to approve or reject the proposal for the dismissal of the Head of the Court of Cassation, 73 deputies participated, including two of the three MPs mentioned above. This proves that, at the time of voting, at least 71 MPs were present in the session, meaning more than half of the total number of MPs, excluding G. P. and A. I.. It is known that during the session, the composition of the assembly changes continuously, which is why the law requires that a majority of MPs must be present at the time of the vote (Articles 43 and 44 of the Rules of Procedure of the People's Assembly).

Therefore, even accepting the claim of the requesting party that the majority of deputies were not present at the opening of the session, the results of the vote show that 71 MPs voted in favour of the dismissal of the Head of the Court of Cassation, Mr. Z. B., excluding G. P. and A. I., meaning that the required majority was present at the time of voting, as stipulated by the law.

Based on the circumstances above, the Constitutional Court concludes that there has been no violation of the substantial requirements of the legislative procedure, which would necessitate the declaration of nullity of this procedure.¹⁶¹

161. Decision no. 2, dated 14.02.1996 of the Constitutional Court.

This decision of the Constitutional Court, which examined the constitutionality of the dismissal of the Head of the Court of Cassation by the People's Assembly, contains a complex line of reasoning concerning the interpretation and application of constitutional provisions relating to the removal of judges of the Court of Cassation from office. While the decision sought to preserve the previously established position on respect for the principle of judicial irremovability, it also introduced a new scope of grounds for dismissal, relying not only on final criminal convictions but also on violations of constitutional provisions ascertained by the Constitutional Court itself.

In its analysis, the Constitutional Court emphasized that paragraph four of Article 6 of Law no. 7561 dated 29.04.1992, set out two specific conditions for the removal from office of a judge of the Court of Cassation, namely: the commission of a serious criminal offence provided for by law and mental incapacity, both of which had to be established by a final and binding court decision. However, in the present case, it was found that the People's Assembly had based the dismissal not on a final criminal conviction, but on a decision of the Constitutional Court declaring the activity of the Head of the Court of Cassation to be unconstitutional and unlawful. Following this line of reasoning, the Constitutional Court stressed that compliance with the Constitution constitutes an obligation for all state authorities, including judges, and that its violation, even in the absence of a criminal judgment, may constitute a lawful ground for removal from office.

This interpretation clearly introduced an expansion of the grounds for the removal of judges from the Court of Cassation, as the Constitutional Court's decision practically created a new constitutional norm, according to which the violation of constitutional provisions could trigger the removal of a judge from office even without the existence of a final criminal decision.

As for the procedure followed by the People's Assembly, the Constitutional Court carefully examined the claims made by the petitioner regarding the legality of the procedure, concluding that at the time of the vote, the required number of deputies was present, as stipulated by the Rules of Procedure of the People's Assembly. The Court also held that there was no substantial violation of parliamentary procedure that would justify declaring the Assembly's decision null and void. It reiterated that the presence of 71 deputies at the time of the vote was more than sufficient to meet the quorum required for making the decision.

As for the prosecution system, this constitutional law provided that the Prosecution Office was the authority responsible for conducting criminal prosecution, both in the investigative phase and in the judicial

phase. It was organized and operated within the judiciary, as a unique and centralized body.¹⁶²

Further, this constitutional law stipulates that the Prosecutor-General and his deputy are to be elected by the People's Assembly, on the proposal of the President. They enjoyed the immunity and the rights set out in Article 6 of this constitutional law for the judges of the Court of Cassation.¹⁶³

Pursuant to this provision, there were also disciplinary proceedings against the Prosecutor-General initiated by the People's Assembly, which resulted in his dismissal. It should be emphasized that although the constitutional law did not provide for an appeal in such cases to the Constitutional Court, this Court considered itself as having the remit to review such appeals. In relation to this specific case, the Constitutional Court established that *"the former Prosecutor-General M. H. claims in the application addressed to this Court that the decision of the People's Assembly to dismiss him from office is in blatant contradiction with Articles 6 and 14 of Law no. 7561, dated 29.04.1992, 'On some amendments and additions to Law no. 7491, dated 29.04.1991, 'On the main constitutional provisions."*

By decision no. 231, dated 17.0.9.1991, the People's Assembly dismissed from office the Prosecutor-General M. H. for significant deficiencies in his work, lack of objectivity, and delays in investigating several important criminal cases. Additionally, he was criticized for appointing a prosecutor in the Vlora District without obtaining the approval of the High Council of Justice and in violation of Article 15 of Law no. 7561, dated 29.04.1992. All these shortcomings and actions - without their legal classification and regardless of criminal consequences - were considered serious violations in the performance of his duties.

In these circumstances, the decision of the People's Assembly to dismiss the Prosecutor-General cannot rely solely on the lens of Article 6 (in conjunction with Article 14) of Law no. 7561, dated 29.04.1992, because it restricts the possibility of dismissing the Prosecutor-General and his deputies to two cases: the commission of a serious criminal offense expressly provided by law and the mental incapacity, particularly, particularly in the spirit of Article 16(10) of Law no. 7491, dated 29.04.1991, bearing in mind both the protection of the individual rights of the head of an important State institution such as the General Prosecution Office, and the assurance of its proper and normal functioning at all levels. In this aspect, the matter brought before this Court and its resolution is of fundamental importance as these two provisions are at the same footing: both are constitutional, but neither is lower in rank. The principles expressed by these two constitutional norms neither contradict nor exclude one-another; they have different content. Based on Article 6 of Law no. 7561, dated 29.04.1992,

162. Article 13.

163. Article 14.

the dismissal of the Prosecutor-General and his deputies - when it is legally established that they have committed a serious criminal offense or are mentally incapable - is mandatory. Meanwhile, in the case provided for by Article 16(10) of Law no. 7491, dated 29.04.1991, the body exercising control, the People's Assembly, establishes whether violations have occurred and, if yes, whether these violations justify the imposition of sanctions.

According to Article 16(10) of Law no. 7491, dated 29.04.1991, the People's Assembly has the right to oversee the activity of the General Prosecution Office, the prosecutor and his depositions, and such check has a mandatory, continuous and strict nature.

The right of oversight, expressly vested on the People's Advocate by a constitutional provision, necessarily implies - as a sine qua on condition for the effective exercise of such oversight - the right to impose sanctions, including dismissal from office, beyond the limited cases specifically provided for in Article 6 of Law no. 7561, dated 29.04.1992. Such cases include, for example, failure to duly perform official duties, professional incompetence, physical incapacity and so on.

It is clear that the right to impose sanctions in such cases - arising as a necessary consequence of the People's Assembly's right of oversight over the activity of the General Prosecution Office - has the same constitutional value as the provision contained in Article 16(10).

Otherwise, the provision of Article 16(10), which establishes parliamentary oversight over the activity of the General Prosecution Office would remain merely declarative in nature, and simple logic would lead to a paradoxical conclusion: the right of the People's Assembly, the sole legislative body and holder of sovereignty, would lose all power, reducing its role to that of an observer of a created situation, with grave consequences to the State and society. Conversely, this would exempt the Prosecutor-General and his deputies from any kind of liability for breach of duty, except, of course, for the singular case of committing a serious criminal offense expressly provided by law.

The liability of the Prosecutor-General and his deputies can in no way be limited solely to the first case provided for in Article 6 of Law no. 7561, dated 29.04.1992, because they would - contrary to every principle and logic - enjoy an entirely unjustified and exceptional protection, placing them in a privileged position compared to all other State bodies which are ranked higher within the State organization. Such a situation finds no basis in any constitutional provision or in any norm of equivalent legal value.

For the reasons described above, the Constitution Court reaches the conclusion that the People's Assembly has the right to exercise oversight over the activity of the General Prosecution Office based on Article 16(10) of Law no. 7491, dated 29.04.1991 "On the main constitutional provisions", therefore, it also has the right to impose sanctions where oversight finds that serious violations have been committed in the performance of duty or that causes have been established which

hinder the normal functioning of work."¹⁶⁴

This decision, albeit preceding those concerning the judges of the Court of Cassation, precisely demonstrates the same expansive approach of the Constitutional Court, which through its interpretative activity, created new norms by expanding the grounds of dismissal of the Prosecutor-General. So, the Constitutional Court interpreted Article 6 of Law n. 7561, dated 29.04.1992 and Article 16(10) of Law no. 7491, dated 29.04.1991 "On the main constitutional provisions. In this way, the Constitutional Court equated the cases of dismissal of the Prosecutor-General with the right of the People's Assembly to exercise oversight over the activity of the General Prosecution Office.

According to Article 6 of Law no. 7561, the Prosecutor-General and his deputies may be dismissed only in two limited and clearly defined cases - specifically, when they commit a serious criminal offense expressly provided by law, or when they were declared mentally unfit to perform their duties. This provision aims to establish clear and narrow standards for the dismissal of these high-ranking officials, ensuring special protection for the institutional position of the Prosecutor-General and for the independence of the prosecution service from political interference.

On the other hand, Article 16(10) of Law no. 7491, dated 29.04.1991 "On the main constitutional provisions" gave the People's Assembly the right to oversight over the General Prosecution Office and its executives. According to the Constitutional Court, this oversight was not just formal or declarative, but inherently entailed the right to take measures against the executives of the prosecution office in the event of violations or incompetence that affected the operation of the institution.

In this context, the People's Assembly cited several reasons in its decision to dismiss Prosecutor-General M. H., such as significant deficiencies in performance, lack of objectivity, delays in handling criminal cases, and an unlawful appointment made in violation of regulations. Although these reasons were not expressly included among the two cases provided for in Article 6 of Law no. 7561/1992, the Assembly appears to have relied on its right to exercise oversight and to impose sanctions based on Article 16(10) of Law no. 7491/1991. This right was interpreted by the Constitutional Court as a provision having the same constitutional value as that established by Article 6 of the 1992 constitutional law, concluding that the Assembly could take measures also for other breaches of duty - beyond the limited cases set forth in Article 6 of Law no. 7561/1992.

The Constitutional Court adopted an expansive interpretation of the powers of the People's Assembly, by not limiting its right solely to the

164. Decision no. 12, dated 28.10.1992 of the Constitutional Court.

two cases explicitly provided for the dismissal of the Prosecutor-General. The Court's main argument was that restricting the Assembly's oversight only to those two cases would render Article 16 a provision without any practical legal effect, and would create an unjustifiable protection for the Prosecutor-General, placing him in a privileged position compared to all other State institutions. In this manner, this decision established a new legal norm which broadened the meaning of dismissal beyond the limits set forth in Article 6 of Law no. 7561/1992.

The Constitutional Court complemented the above position as it held that *"by decision no. 12, dated 28.10.1992, the Constitutional Court accepted that the People's Assembly, by virtue of having the right to oversee the activity of the Prosecutor-General - a right expressly provided by a constitutional provision (Article 16(10)) of Law "On the main constitutional provisions") - also has the right to take sanctions up to his removal from office. In that decision, the forms of such oversight were not the scope of review. One of the modalities of exercising this oversight is to question the Prosecutor-General in a plenary session regarding aspects of his activity, as foreseen in Article 82 of the Rules of Procedure of the People's Assembly. The claim raised by him that such appearance contradicts Article 1 of Law no. 7561, dated 29.04.1992 "On some amendments and additions to Law no. 7491, dated 29.04.1991 'On the main constitutional provisions" - which provides for the independence of the judiciary, and Article 13 of that law, which provides that the Prosecution Service is organized and functions within the judicial system - is unfounded. This is because, according to Article 5 of the same law, the Prosecution Service is not part of the judiciary power, but only organized and operates within that branch of power, as a unique and centralized body, meaning one that has hierarchical dependence."*¹⁶⁵

This decision represented a further development of constitutional jurisprudence concerning the relationship between the People's Assembly and the General Prosecution Office, consolidating the earlier position expressed in the above-mentioned decision on the dismissal of the Prosecutor-General. As discussed, in that decision, the Court had recognized the Assembly's right to oversee the activity of the General Prosecution Office and to take sanctions up to the dismissal of its head, by giving an expansive (almost norm-creating) interpretation to Article 16(10) of Law "On the main constitutional provisions". However, the earlier decision did not address the specific forms through which this oversight could be exercised; this matter became the scope of review in the present decision."

At this stage, the Constitutional Court further completed its jurisprudence by accepting that the questioning of the Prosecutor-General by the People's Assembly in a plenary session constituted a legitimate form

165. Decision no. 2, dated 25.02.1994 of the Constitutional Court.

of exercising parliamentary oversight over the activity of the Prosecution Service. This position, although seemingly an interference with the independence of the prosecutorial body, was justified by the Court as permissible, given that the Prosecution Service, under the constitutional framework of that time, was not genuinely part of the judicial power, but operated alongside it as a unique and centralized body with hierarchical dependence. Relying on Article 5 of Constitutional Law no. 7561/1992, the Court emphasized that the meaning of the independence of the judiciary could not be extended in the same manner to the Prosecution Service, because the latter had a different nature from the courts and was subject to continuous oversight by the People's Assembly.

For the administration of the justice system, the constitutional law provided for the establishment of the High Council of Justice, chaired by the President of the Republic and composed of the Head of the Court of Cassation, the Minister of Justice, the Prosecutor-General, and nine jurists known for their professional abilities, elected once every five years in a joint meeting of the Court of Cassation and the Prosecutor-General's Office, without the right to immediate re-election. The High Council of Justice was defined as the sole authority responsible for the appointment, transfer, and disciplinary liability of the first-instance and appellate judges and prosecutors.¹⁶⁶

The establishment of this institution represented an important step toward building an independent and balanced justice system, reflecting the essential need to distance the judiciary from political and authoritarian influence that had characterized the communist period. Until that time, the justice system in Albania had been organized on the principle of extreme centralization and under the full control of the party-State, which had stripped it of any functional independence. The novelty introduced by the establishment of this body lay precisely in its role as an institutional guarantor for the protection of the independence of judges and prosecutors, shielding them from arbitrary interference by the executive and legislative branches. Its heterogeneous composition and the fact that it was chaired by the President of the Republic, as a *super partes* figure, together with the inclusion of distinguished jurists and the key institutions of the justice system, represented an effort to establish a comprehensive and stable structure. The establishment of this Council aimed at developing a new culture of accountability and integrity within the judicial and prosecutorial system, introducing a new standard in the administration of this system - one that was essential for a fledgling democratic rule-of-law State.

The constitutional legislation of that period addressed only the

166. Law no. 7561/1992, Article 15.

disciplinary liability of the judges of the Court of Cassation and of the Prosecutor-General and his deputies, but it lacked provisions defining modalities of inspection and disciplinary liability of other judges and prosecutors. An attempt was made to regulate this through ordinary legislation, which was adopted on the basis of, and for the implementation of, these constitutional provisions.

2. Inspection and disciplinary liability of judges and prosecutors, pursuant to Law no. 7574, dated 24.06.1992 “On the organization of justice and some amendments to the criminal and civil procedure codes”.

The Constitutional Law no. 7561, dated 29.04.1992 “On the organization of the Judiciary and the Constitutional Court” provided in Article 10 that *“the judges of the first-instance and appellate courts shall have immunity and cannot be removed from office during the exercise of their functions. The lifting of immunity and their removal may be carried out only by the competent body, in the cases and according to the procedure established by law.”* In addition, Article 15 stipulated that their removal and disciplinary liability was decided by the High Council of Justice. The content of this provision envisaged at constitutional level that judges could be removed from office only by the competent body - in this case the High Council of Justice - in the cases and pursuant to the procedure established by law. Regarding prosecutors, the provisions that governed the organization and functioning of the prosecution system exclusively by law were applicable, including the immunity of prosecutors, the possibility of their removal, and the imposition of disciplinary liability again by the High Council of Justice.

Based on these new constitutional stipulations, the first law adopted during the democratic system for the purpose of reflecting them was Law no. 7574, dated 24.06.1992 “On the organization of justice and some amendments to the criminal and civil procedure codes”.

This law represented a key moment in the reform of the Albanian justice system following the fall of the communist regime. It regulated the structure and functioning of the courts, the prosecution service, and the investigative bodies, defining the role and competencies of each component within the new justice system. The courts were organized into three levels: district courts as the foundational tier, the courts of appeal, and the Court of Cassation - which examined the legality of final decisions and appeals in cases involving the death penalty.

An important novelty was the definition of the role of the prosecution

service as an independent body that exercised criminal prosecution and directed investigations. Prosecutors and investigators had clear powers in initiating and closing criminal cases, while the investigative police operated under their supervision. Another essential element was the establishment of a disciplinary mechanism for judges, prosecutors, and investigators, and the respective disciplinary sanctions which were imposed by the High Council of Justice.

Furthermore, the law guaranteed immunity for judges, prosecutors, and investigators, prohibiting their arrest or criminal prosecution without the approval of the body that had appointed them, except in cases where they were caught in flagrante committing a serious crime. This regulation aimed at safeguarding the independence of the judicial system from possible interference by the executive and legislative branches.

2.1 Inspection of judges and prosecutors

Breaking away from the previous legal mindset and culture could not happen easily. This is clearly reflected in the way Law no. 7574, dated 24.06.1992 *"On the organization of justice and certain amendments to the criminal and civil procedure codes,"* was drafted, as it contained no provisions regarding the modalities of inspection or oversight over judges and prosecutors.

The only stipulations were the general ones set out in Constitutional Law no. 7561, dated 29.04.1992 *"On the organization of the judiciary and the Constitutional Court"* mentioned. To better understand the legislative gap that existed in this area, we refer to the case law of the time, which established *inter alia* that *"Mr. U. B. had served as a judge at Tirana District Court, until the issuance of the decisions of the High Council of Justice challenged by him before this Court. On 21.10.1993, he was verbally notified the decision dated 20.10.1993 of the High Council of Justice to transfer him as Head of Laç District Court. This is also proven by the Ministry of Justice's letter no. 353/2, dated 03.03.1994 attached to the case documents, which explicitly states:"*

"Following decision no. 10, dated 20.10.1993, of the High Council of Justice, in the context of the reorganization and improvement of the functions of the justice bodies, Mr. U. B. was transferred from Tirana District Court to the position of Head of Laç District Court."

Mr. Z. B. addressed the Ministry of Justice and the Head of the High Council of Justice requesting explanations on the decision made in his absence, but received no response.

On 25.11.1993, he was notified the other decision no. 12, dated 12.11.1993 by which he was ordered to be placed 'on assistance' (inactive status).

The above is also proven by letter no. 353/2, dated 03.03.1994, of the

Ministry of Justice, with the following content: "Following decision no. 12, dated 12.11.1993 of the High Council of Justice, in the context of the reorganization and improvement of the functions of the justice bodies, given that Mr. U. B. did not appear to take up the position of Head of Laç District Court, is hereby placed 'on assistance'".

In order to obtain more complete evidence for the adjudication of this case, the Constitutional Court requested from the Ministry of Justice - on the basis of the final paragraph of Article 20 of Law no. 7574, dated 24.06.1992, as the body responsible for submitting the relevant materials concerning the judges to the High Council of Justice and from the High Council of Justice itself - the Council's Rules of Procedure, the minutes of the case hearing and the decisions issued by that Council. It also requested that a member of the Council, or its representative, provide the necessary explanations before this Court.

Since the Rules of Procedure of the High Council of Justice had not been published in order to be made known to judges and prosecutors, and were not made available to the Constitutional Court despite its insistence, this Court is convinced that the High Council of Justice adjudicated the matter without having an applicable set of rules of procedure. This contradicts Article 10 of the Constitutional Law no. 7561, dated 29.04.1992 adopted to protect judges, according to which "the first-instance and appellate judges shall have immunity and cannot be removed from office during the exercise of their functions. The lifting of immunity and their removal may be carried out only by the competent body, in the cases and according to the procedure established by law."

...

Furthermore, from the examination of this case in its entirety, the Court found that the applicant's claims are proven, as he was neither informed in advance of the reasons for which he would be judged, nor was he summoned or allowed to participate in the examination of his case; in other words, he was not given the opportunity to provide explanations or to have his reasons heard.

He was also not given any decision reasoned in facts and in law, nor the opportunity to appeal it to a competent State authority.

To reach complete and objective conclusions, the Constitutional Court insisted on having the minutes of the case hearing but the fact that these minutes were not submitted leads to the conclusion that either the minutes are not in the proper form, or were not kept at all. Equally unjustifiable and incompatible with the standards of a State governed by the rule of law is the refusal of the High Council of Justice to send a representative to attend the proceedings, in order to give the necessary explanations regarding the procedure followed in deciding the case.

Based on the information regarding the manner in which the case of judge U. B. was adjudicated, and on the fact that the High Council of Justice lacked a duly approved and published set of Rules of Procedure, the Constitutional

Court concludes that, in this specific case, the constitutional right to a due process of law - provided in Article 38 of the Constitutional Law no. 7692, dated 31.03.1993 "On fundamental human rights and freedoms" - was also violated. The above-mentioned constitutional provision states that "liberty, property, or rights recognized by law may not be infringed without a due process of law" and this refers not only to ordinary citizens but also to those who judge others - that is, judges themselves. Judges have a status defined in constitutional provisions, in the law on judicial organization, and in the provisions of international instruments universally recognized in democratic and rule-of-law States. The rights they enjoy under the aforementioned provisions may not be infringed, unless in cases expressly provided therein and in accordance with the procedures established by them.¹⁶⁷

From the above passages, it becomes clear that there were several serious issues related to the inspection and discipline of judges and prosecutors at that time. The first and most important was the absence of a duly approved and published set of Rules of Procedure by the High Council of Justice, which should have clearly defined the procedures to be followed during the adjudication of disciplinary cases. This absence created a significant legal void and opened the way for biased and unsubstantiated decision-making. The specific case showed that the judge had not been informed of the proceedings against him, had not been summoned to provide explanations, and had not been given a reasoned decision - thereby depriving him of the right to a due process of law.

In its decision, the Constitutional Court emphasized the importance of respecting the constitutional rights of judges, noting that they, as guarantors of justice, enjoyed a special legal and constitutional status that could not be infringed except in the cases and according to the procedures clearly established by law. The refusal of the High Council of Justice to send a representative and to make available the necessary documentation for the review of the case demonstrated a lack of transparency and professionalism in the administration of disciplinary procedures. This situation also highlighted the urgent need for a clearer and more comprehensive legal framework governing the inspection and discipline of judges, and for strengthening the safeguards of their independence.

From this case, it becomes clear that, notwithstanding the initial steps taken toward reforming the justice system, the identified deficiencies demonstrate that disengagement from the past legal culture and the establishment of an independent and impartial judiciary required a more thorough and systematically regulated disciplinary framework.

167. Decision no. 8 dated 03.11.1994 of the Constitutional Court.

Only through strict adherence to due process of law and the creation of a transparent, impartial, and procedurally sound inspection mechanism could the foundations for a functional and credible justice system be secured.

It appears that the High Council of Justice later reacted by approving a *regulation*, but even this act - apart from not being published in the Official Gazette - created rights only for the institution itself and not for the judges, as confirmed by the Constitutional Court's reasoning: "*The applicants Xh. B., I. T., K. B., E. V., A. G., K. K., Gj. D., Gj. L., and B. L. were judges in the district courts of Kukës, Tirana, Mat, Vlora, Kurbin, and Shkodra, and by the HCJ's decisions no. 1 dated 30.03.1995, no. 7 dated 06.02.1996 and no. 8 dated 23.08.1996, they were dismissed from the office of judge on grounds of "serious breach of work discipline," "breach of judicial ethics," and "violation of the law and incompetence in office, respectively."*

During the adjudication of the case, the Court found that all these cases the High Council of Justice had rendered its decisions without summoning the applicants and without giving them any opportunity to defend themselves by presenting their claims or arguments.

The imposition of sanctions upon the applicants by the High Council of Justice without granting them the right to be heard constitutes, in the Court's view, a violation of due process of law, a principle enshrined in Article 38 of Law no. 7692, dated 31.03.1993 "*On fundamental human rights and freedoms.*"

The principle that a judge must be necessarily heard by the body examining the disciplinary sanctions against them is also reflected in the "*Basic Principles on the Independence of the Judiciary*" adopted by the United Nations General Assembly in its Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. Paragraph 17 of these principles stipulates that: "*A charge or complaint made against a judge in his judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing.*"

Consequently, the above-cited decisions of the High Council of Justice that dismissed the applicants Xh. B., I. T., K. B., A. G., E. V., K. K., Gj. D., Gj. L., and B. L. From their position of judge should be annulled, and the High Council of Justice should re-examine the case of each applicant by giving them the opportunity to defend themselves. Their claims related to the charge must be verified thoroughly and in detail. Only after such a due legal procedure, the High Council of Justice may render decisions that are reasoned and based on law.

During the review of the case, the Court also found that the second sentence of Article 11 of the Regulation no. 1/1 dated 30.03.1995 "*On the modalities governing the functioning and activity of the High Council of Justice*", stipulated that "*when it deems it necessary, the High Council of Justice may summon to the meeting, address questions to, and request explanations directly from the*

*employee against whom the disciplinary sanction is sought." The Court deems that this provision is in contradiction with Article 38 of Law no. 7692, dated 31.03.1993, "On Fundamental Rights and Freedoms of the Individual," because it leaves to the discretion of the High Council of Justice whether to summon or not the person against whom a disciplinary sanction is being imposed or who is being transferred."*¹⁶⁸

The Constitutional Court, in examining this new situation - where the High Council of Justice had approved a regulation but had not published it, and had dismissed from office several judges without giving them the opportunity to defend themselves - considered this a violation of the right to due process of law, a safeguard that extended to these officials as well. The Court found that the regulation of the High Council of Justice had not been publicly disclosed so as to be known to judges, and, moreover, its content created an unacceptable situation by placing at the Council's discretion the decision whether to summon the judge to provide explanations during the examination of the disciplinary sanction him. This constituted a direct infringement of the judges' procedural rights, albeit these being recognized by constitutional and international instruments.

The Constitutional Court emphasized that any disciplinary sanction on judges must be grounded in a fair, transparent, and legally reasoned procedure. In this case, the failure to summon the judges to be heard and the issuance of decisions without relying on a complete and thorough examination rendered the procedure followed by the High Council of Justice unlawful and unfounded. For this reason, the Court annulled the decisions of the High Council of Justice and ordered a reconsideration of the cases, requiring that judges be granted the opportunity to present their arguments and that all rights inherent in a fair process be fully guaranteed.

This decision of the Constitutional Court reinforced its prior position that the inspection and disciplinary accountability of judges must be conducted in full compliance with constitutional and international standards. In this case, the Constitutional Court also highlighted that even after the approval of the regulation by the High Council of Justice, the procedures followed by that body remained truncated and biased, thereby endangering not only the independence of judges but also the integrity of the justice system as a whole. In this manner, the Constitutional Court reaffirmed its firm stance that adherence to proper procedures and guaranteeing the defence rights constitute fundamental pillars for the functioning of justice in a democratic State.

168. Decision no. 15, dated 03.06.1997 of the Constitutional Court.

2.2. *Disciplinary liability and sanctions*

Regarding the cases and grounds under which the judges and prosecutors are to be held disciplinarily liable, this law envisaged that judges, assistant judges, prosecutors and investigators may be removed from office by decision of the High Council of Justice if they committed a criminal offense, became medically unfit, failed to pass the periodic professional exam, committed a serious violation of the work discipline, or undermined their moral image.¹⁶⁹

As observed from this provision, the rule addressed in general terms the cases of removal of judges and prosecutors from the justice system. Among all these cases, only three of them - specifically the commission of a criminal offense, a serious breach of work discipline, and undermining of moral integrity - could be classified as disciplinary grounds.

In one of the earliest examinations of these provisions related to a concrete dispute brought before the Constitutional Court, it held that *“the cases of dismissal of judges are provided for in Article 19 of Law no. 7574, dated 24.06.1992. Among these, ‘reorganization and improvement of the functions of the justice bodies’ is not included. Furthermore, based on the case materials, it does not appear that Mr. U.B. committed any disciplinary violation; however, even if the existence of such a violation were to be established, the High Council of Justice would have had the authority to impose one of the disciplinary sanctions provided in Article 20 of this law. Such sanction is not included in either this article or in any other legal provision concerning the status and guarantees of judges.”*

Insofar as judge U. B. was transferred without his consent and later removed from office - both actions taken without a ground foreseen in the constitutional provisions or in other legal provisions adopted in accordance with the Constitution - we reach the conclusion that, in this case, the constitutional principle of the irremovability of judges during their mandate was violated.

Consequently, even the other constitutional principle of the independence of the judiciary has been violated, because the judge was left without the appropriate safeguards of protection.”¹⁷⁰

The approach of the Constitutional Court in the above-mentioned case demonstrates a strong adherence to the principles of irremovability and independence of the judiciary. In the case at hand, the Constitutional Court concluded that the decision of the High Council of Justice to transfer the judge and subsequently dismiss him from office lacked any legal basis, since the existing legal provisions did not prescribe the removal or transfer on grounds of “reorganization or improvement of the functions of justice bodies” as a punitive measure. In the absence

169. Law no. 7574/1992, Article 19.

170. Decision no. 8, dated 03.11.1994 of the Constitutional Court.

of any concrete disciplinary violation, the action of the High Council of Justice seriously undermined the principle of judicial irremovability, a fundamental element for ensuring judges' independence in the exercise of their functions. This approach by the Court reflected a clear stance in protecting the status and safeguards of judges, emphasizing that any interference with their office must be justified, based on concrete grounds and supported by clear constitutional and legal provisions.

Despite this position, the High Council of Justice later repeated the same practice, compelling the Constitutional Court once again to intervene. Thus, the Court held that *"the applicant S. S. served as a judge at Vlora District Court, and by decision no. 7, dated 06.02.1996 of the High Council of Justice he was transferred to the Delvina District Court 'for a period of two years for the reorganization of that court', and subsequently, by decision no. 8, dated 23.08.1996 of the High Council of Justice, he was dismissed from office as judge for failing to comply with the first decision."*

The Court holds that both these decisions must be annulled, because that they only undermine the constitutional principle of due process of law sanctioned in Article 38 of Law no. 7692, dated 31.03.1993 "On fundamental human rights and freedoms" (because these sanctions we imposed without summoning the applicant and without giving him the possibility to defend himself), but also run counter to Article 10 of the constitutional Law no. 7561, dated 29.04.1992 according to which judges may be removed only by the competent body and according to the procedure established by the law. There is no legal provision allowing the dismissal of a judge for refusing the "transfer to another court for reorganization reasons".

The Constitutional Court had expressed the same stance even in its earlier decision no. 7, dated 03.11.1994".¹⁷¹

Possibly with the intention of improving the system, the legislator, through the 1995 reform, provided that judges, assistant judges, prosecutors, and investigators could be removed from office by decision of the High Council of Justice when they committed a criminal offense, became medically unfit, failed the periodic professional examination, or were professionally incompetent in relation to the soundness of their decisions, and when they became unsuitable to perform their duties due to their conduct.¹⁷²

The amendments introduced by the 1995 reform concerning the disciplinary liability of judges and prosecutors represented an attempt to clarify and expand the legislative framework, by bridging some gaps in the previous wording of 1992. In the initial form, the relevant provision addressed the disciplinary liability in a limited manner, because the

171. Decision no. 15, dated 03.06.1997 of the Constitutional Court.

172. Law no. 7919, dated 19.04.1995, Article 1.

grounds for dismissal from office consisted only of the commission of a criminal offense, a serious breach of work discipline and undermining of the moral image. Although those stipulations included the basic elements of discipline, they omitted other situations such as the professional incompetence and the unsuitable conduct vis-a-vis the function of a judge or prosecutor.

For this reason, the 1995 reform represents an effort by the legislator to include professional incompetence as a ground for removal from office, introducing a clearer criterion related to the soundness of decisions rendered by judges. This amendment expanded the concept of liability, moving it beyond mere disciplinary or moral conduct and incorporating elements related to the professional ability and quality of the work performed by judges and prosecutors. Furthermore, removal from office on the basis of inappropriate conduct was provided for - a broader wording intended to address any behaviour that could undermine public confidence in the justice system. These changes marked a step forward toward the standardisation of judicial and prosecutorial accountability, significantly raising the requirements for ethical conduct and professional competence, in line with the expectations of a trustworthy judicial system.

From judicial practice, the following case has been assessed as a serious breach of work discipline under the previous provision, or as unsuitability to perform the duties. In this case, the High Court held that *"following the events of March 1997, the claimant R. D. abandoned his judge duty and, until the end of September 1997, made no notification regarding the reasons for his absence or his whereabouts. Indeed the unrest during this period resulted in the burning of the courthouse and hindered its normal functioning; however, while the other employees awaiting the resumption of work maintained continuous contact with one another and with the district authorities, the claimant did not show any interest and did not appear even to collect his salary, and the accountant had no other way but to remit the claimant's salary for the period March - September 1997 to the State Budget through payment order no. 556977 dated 7.9.1997."*

On 29.09.1997, via telegram from Tirana, the claimant informed Saranda District Court that he was ill, submitting two medical reports for temporary incapacity for the period 15 September - 15 October 1997. These reports were rightly found to be invalid and were not taken into consideration to justify his one-month absence from work. Although issued by a medical commission composed of three members, one report was signed by only two doctors and the other by only one doctor. Both reports pertain to the Memaliaj Polyclinic, whereas the telegram sent to Saranda District Court was dispatched from Tirana on 29.09.1997. These circumstances cast further doubts on the sincerity and

veracity of the claimant's claims regarding the reasons for his failure to appear at work.

His claim that he appeared at work in November 1997 and adjudicated criminal and civil cases is irrelevant and does not affect the conclusion regarding the legality or illegality of the decision of the High Council of Justice, because the hearing dates of 09.11.1997 and 13.11.1997 fall after the issuance of the decision of the High Council of Justice, which had examined and evaluated the reasons for the claimant's failure to appear at work up to 04.11.1997.

Ultimately, the Court established that for a period of eight months, the claimant not only failed to appear at work, but also showed no interest - unlike the other employees - in the possibility of resuming work, which demonstrates a lack of seriousness, responsibility, and commitment. Such conduct was rightly considered to render the claimant unsuitable to perform the duties of a judge. Therefore, given these disciplinary violations found in the claimant's performance, his dismissal from judicial office is also supported by Article 19 of Law no. 7574 dated 24.06.1992, as amended by Law no. 7119 dated 19.04.1995.

The fact that there had been no cessation of his salary up to the date on which the High Council of Justice issued the decision to dismiss the claimant, does not demonstrate that he remained connected to his duties. Due to the situation that had arisen, all employees were remunerated even without working; however, whereas the others showed interest and appeared from time to time over a six-month period, the claimant showed no interest whatsoever in his work, to the point that the accountant was compelled, through a particular payment order, to transfer only his salary to the State Budget - an action which likewise indicates that he had been absent from his duties for an extended period of time.

The claimant's absence from his workplace, far from both his place of employment and residence, and without any known whereabouts, made it even more difficult to notify him of the disciplinary sanction proposed by the Minister of Justice to the High Council of Justice. Nevertheless, the claimant's absence so that he could be preliminarily heard and present his arguments before the high Council of Justice regarding the proposed disciplinary sanction appears not to have affected the adoption of a well-founded decision.

In the adjudication of the case before the Joint Chambers, the claimant had the opportunity to be represented by a lawyer, to provide explanations, to raise claims, and to adduce evidence; in other words, he was given the opportunity for a due process of law. However, upon the analysis and assessment of all the evidence relating to the claimant's work performance, such disciplinary violations were established as to fully justify the sanction imposed by the High Council of Justice for his dismissal from office."¹⁷³

This reasoning of the High Court appears to clearly reflect the rationale behind the 1995 reform, which expanded the scope of judicial

173. Decision no. 1054, dated 28.09.1999 of the High Court's Joint Chambers.

and prosecutorial accountability not only to serious disciplinary violations or the commission of criminal offenses, but also to inappropriate professional conduct. In the specific case, the judge's prolonged absence from duty and his lack of interest in performing the function for which he had been appointed were interpreted as behaviour that seriously undermined his moral integrity and professional commitment, thereby constituting sufficient grounds for his removal from office.

Regarding the disciplinary sanctions, the law provided that, for breaches of work discipline by judges, prosecutors, and investigators, the following disciplinary sanctions could be imposed: a reprimand, a reprimand with a warning of removal from office, suspension from duty for up to six months, transfer, and - as the most severe sanction - dismissal from office.¹⁷⁴

3. Inspection and disciplinary liability of judges and prosecutors under Law no. 8265, dated 18.12.1997 "On the organization of the judicial power"

Given that Law no. 7574, dated 24.06.1992 "On the organization of justice and some amendments to the criminal and civil procedure codes" contained numerous shortcomings regarding the inspection modalities for judges and prosecutors, the prosecution modalities, the grounds that could give rise to disciplinary liability, as well as the types of disciplinary sanctions that could be imposed, the legislator deemed it necessary to intervene by adopting Law no. 8265, dated 18.12.1997 "On the organization of the judicial power", which, unlike the earlier legislation, made a more detailed regulation of the judicial system. The judiciary was organized into three levels: courts of first instance, courts of appeal, and the Court of Cassation, which, in accordance with constitutional provisions, was considered the highest authority for reviewing the legality of court decisions. The law also defined the conditions for the admission and appointment of judges and prosecutors, mandating graduation from the School of Magistrates and professional experience for candidates. It also established clear prohibitions for judges and prosecutors, including the prohibition on participating in political activities and engaging in commercial activities, with the aim of preserving their independence and integrity.

One of the most significant novelties introduced by this law was the establishment of the Inspectorate at the High Council of Justice, which was tasked with inspecting courts and prosecution offices, verifying

174. Law no. 7574/1992, Article 20.

complaints, and assessing the professional abilities of judges and prosecutors. This novelty sought to improve discipline and efficiency within the judicial system. The law also set out clearer procedures for the proficiency evaluation of judges and prosecutors, whereby a rating of “incompetent” constituted grounds for removal from the system. On the other hand, any decision that the High Council of Justice might take against a judge or prosecutor could be appealed before the Court of Cassation, thereby guaranteeing the right to a fair and independent process.

The law provided detailed disciplinary liability for judges and prosecutors, specifying a wide range of violations - such as delays in work, unjustified absences, and improper conduct - which could lead to disciplinary sanctions ranging from a reprimand to removal from office. In all cases, hearing of the judge or prosecutor and the safeguards of a due process of law were mandatory.

Overall, this law marked a qualitative improvement compared to the previous legislation, as it strengthened the functioning of the justice system.

3.1 Inspection of judges and prosecutors

As mentioned above, the law provided for the establishment of an Inspectorate at the High Council of Justice. Inspectors were to be selected from among judges and prosecutors appointed by the High Council of Justice, and were tasked with inspecting the first-instance and appellate courts, and the prosecution offices attached to them. They were responsible for verifying complaints by citizens and institutions, inspecting the organization of judicial services, assessing the professional abilities of judges and prosecutors, evaluating their workload, and, more broadly, assessing the efficiency of courts and prosecution offices. The law further stipulated that the Minister of Justice would make his specialists available to the inspection teams to assist in the performance of these duties. However, this assistance did not extend to the evaluation of judges. For further details, the law mandated the High Council of Justice to implement a regulation that defined the organization and functioning of this Inspectorate.¹⁷⁵

This provision was further complemented by another provision which stipulated that disciplinary proceedings against judges were initiated by the Minister of Justice, whereas those against prosecutors were initiated by the Prosecutor-General. These two authorities could do so only if the initiation occurred within three years from the date the

175. Law no. 8265/1997, Article 17.

violation had been committed. During the verification process, carried out by judicial or prosecutorial inspectors, it had to be determined whether a disciplinary violation as defined by law had occurred, the type and gravity of the violation, the culpability of the individual, and the factual elements underlying the conclusions. Since this inspection stage, it was expressly required that the judge or prosecutor alleged to have committed the violation be heard in every case. The provision established that inspectors were obliged to verify any claims raised by the judge or prosecutor concerned. Thereafter, the verification results together with the supporting documentation had to be reflected in a final report, which was to be made known to the judge or prosecutor alleged to have committed the violation. The materials obtained from the inspection were to be submitted, as appropriate, to the Minister of Justice or the Prosecutor-General, and to the High Council of Justice. Before taking a decision, the High Council of Justice was required to hear the parties' arguments in a separate hearing. The complete casefile had to be made available to the judge or prosecutor at least 10 days prior to the hearing. Magistrates had the right to defend themselves personally or through legal counsel during the hearing.¹⁷⁶

This form of inspection of courts and prosecution offices aimed to establish a formal mechanism for oversight and for ensuring discipline within the justice system. The Inspectorate established at the High Council of Justice was vested with broad powers to examine disciplinary misconducts and to determine culpability, the gravity of the misconduct, and the type of disciplinary sanction that could be imposed.

A positive aspect of this inspection system was the establishment of a detailed and documented procedure, which required not only the verification of claims but also the hearing of judges and prosecutors accused of misconduct. The provision of the right to defence and representation by counsel during the hearing before the High Council of Justice constituted an important safeguard for the rights of judges and prosecutors. Likewise, the fact that inspectors were selected from among justice professionals provided a basis for a more informed inspection process grounded in internal knowledge of the system.

This law introduced the possibility of involvement of the Ministry of Justice's administration in the inspection of judges and prosecutors through its specialists. As will be discussed further below, this development represents the early stage of what would later become the Inspectorate at the Ministry of Justice, thereby creating a kind of inspection dualism that would characterize the subsequent period of inspections in the justice system.

176. Law no. 8265/1997, Article 44.

This form of inspection and disciplinary procedure in Albania represented an effort to enhance accountability and responsibility in the justice system.

3.2 Disciplinary liability and sanctions

The 1997 law contained several provisions concerning the removal of judges from office. It stipulated that judges and prosecutors could not be removed from their position except in cases where they resigned, reached the statutory retirement age, were sentenced to deprivation of freedom by a final court decision, were found to be incapable of performing their duties, failed the periodic professional exam organized by the High Council of Justice, were imposed disciplinary sanctions, engaged in actions related to participation in political parties or activities of a political nature - such as holding elective mandates, public or private functions - or engaged in commercial or management activities in civil or commercial companies.

Furthermore, the law provided that when criminal proceedings were initiated against a judge or prosecutor, he/she could be suspended from duty until the court decision became final. If, at the end of the proceedings, the judge or prosecutor was found not guilty, he/she had the right to be reinstated to the previous position and to receive full salary for the entire period of suspension.¹⁷⁷

To reinforce this framework, the law established that all judges and prosecutors were liable for disciplinary violations and for any actions that could undermine their integrity or the authority of the justice system.¹⁷⁸

Elaborating further on this provision, the law defined the following eight cases as disciplinary violations:¹⁷⁹

1. *Actions that, under the law, are incompatible with the function of a judge or prosecutor*; it constituted one of the most serious forms of disciplinary misconduct, as it directly undermined the principles of independence, integrity, and impartiality of the justice system. The legislator deemed it essential to prohibit any action or involvement by judges and prosecutors in political, commercial, or other activities that could compromise their image as guarantors of the justice system and as representatives of a branch of power that must remain independent from external influence. This disciplinary violation encompassed not only direct participation in prohibited activities, but also any conduct that could create doubts about external interference in the exercise of judicial or prosecutorial duties.

177. Law no. 8265/1997, Article 27.

178. Law no. 8265/1997, Article 40.

179. Law no. 8265/1997, Article 41.

The commission of such misconduct not only created a potential conflict of interest but also diminished public confidence in the justice system.

2. *Disclosure of investigative secrecy, deliberation-room confidentiality, or other information of an intimate nature*; it constituted a serious disciplinary violation when committed by judges or prosecutors, as it gravely undermined public confidence in the justice system. Such conduct risked causing significant harm not only to the interests of the parties involved in the case but also to the dignity and personal security of individuals. Investigative and judicial secrecy served as a fundamental guarantee for the conduct of a fair and impartial process, while the protection of intimate or sensitive information aims to safeguard individuals' privacy and private life. Consequently, a violation of this kind not only compromised the integrity of the specific proceedings, but also created a broader climate of distrust toward justice institutions and the professionalism of those entrusted with upholding them.

3. *Serious or systematic delays in the performance of duties* primarily concerned unjustified delays in the investigation of criminal offenses or in the adjudication and resolution of court cases, as these posed grave consequences on citizens who expected justice to be delivered as promptly as possible. As a principle, continuous and repeated delays undermine the right of timely access to justice, creating a sense of distrust among citizens toward the justice institutions. In addition to imposing an unnecessary burden on the parties to the proceedings, such conduct negatively affected the public image of judges and prosecutors as public figures who represented this system.

4. *Failure to observe rules of solemnity*; this disciplinary violation jeopardized the dignity and seriousness of investigative and judicial activity, weakening the authority of the officials entrusted with carrying out these functions. The rules of solemnity - which included conduct, attire, and manner of communication in the courtroom - were essential to preserving the prestige and importance of judicial proceedings. Violating these rules created an inappropriate atmosphere for an institution of the justice system, where the maintenance of solemnity plays a fundamental role in strengthening the authority of courts and prosecution offices, as well as in building a judicial system that inspires respect and public confidence. Failure to observe these rules not only demonstrated a lack of seriousness in the exercise of duty but also damaged the image of the justice system as a whole and created the impression that those responsible for upholding the law did not themselves respect the solemnity required by such a high office.

5. *Unjustified absences at work*; this type of violation, when committed by judges or prosecutors, demonstrated a lack of responsibility and

commitment to duty - qualities that were and remain essential to the functioning of the justice system. Their continuous presence and engagement were indispensable for ensuring the regular conduct of judicial proceedings and the thorough and comprehensive investigation of cases. Unjustified absences caused delays in the examination of cases, created obstacles for the parties, and increased the workload of their colleagues, thereby impairing the efficiency of courts and prosecution offices. This disciplinary violation constituted an unacceptable indication of professional negligence and stood in blunt contradiction to the high standards expected of the justice system.

6. *Engaging in improper or immoral conduct, whether during or outside working hours*; this constituted a disciplinary violation that directly affected the moral integrity and dignity of judges and prosecutors, who were required to preserve their integrity under all circumstances. This form of misconduct was not limited to the performance of their official duties during working hours; rather, it extended to their personal and social behaviour, aiming to ensure that they appeared - and indeed were - a model for society. As representatives of the justice system, any action of theirs, even in their private lives, had a direct impact on the public confidence in that system, creating the perception that such officials were unfit to hold such a high office. This disciplinary violation reflected the legislator's expectation that judges and prosecutors exhibit not only professionalism in the exercise of their duties, but also dignified conduct in every aspect of life, as a safeguard for the independence and integrity of the justice system.

7. *Actions contrary to the proper fulfilment of duty, or failure to carry out mandatory procedural acts, unless it construes a criminal offense*; this type of misconduct represented a severe disciplinary violation that undermined the main principles underlying the justice system. Judges and prosecutors, as high public officials, were obliged to adhere rigorously to procedural rules and to perform all necessary actions to ensure a fair trial and the correct application of legal norms. Violations of this nature - whether intentional or by negligence - could seriously harm not only the interests of the parties to the proceedings but also the functioning of the justice system itself. Failure to comply with procedural duties demonstrated a lack of professionalism and integrity, creating the perception that judges and prosecutors could act arbitrarily. Even though such conduct did not constitute a criminal offense, it remained unacceptable. Through the sanctioning of this violation, the legislator sought to uphold the highest standards of correctness and responsibility in the exercise of judicial and prosecutorial functions, preventing any deviation that could compromise citizens' right to a fair and lawful process.

This law remained in force for a relatively brief period of time, but long enough to see judicial practice established from the examination of several cases. Thus, the High Court held in a case that *“in the civil case brought by the complainant company ‘F’ shpk against the respondent AKP, the court decided to dismiss the lawsuit seeking the partial invalidation of the land acquisition act and the reappraisal of the asset ‘Brick Factory Vora’ - specifically, ‘to reduce the value of the asset auctioned only by 292,526,710 ALL which represents...’.* In this case, the statement of claim sought a reduction of accounting and physical depreciation without specifying the extent to which such a reduction should be made; the claimant was allowed to file the lawsuit in the capacity of owner, even though it did not hold such status, as it had not paid the full value of the asset acquired at auction within the prescribed deadline, but only 10% of the price, and had not concluded the sale contract with the State. The reasoning and the operative part of the decision contain wording that contradicts each other, making the decision impossible to enforce.

In court decision no. 5820, dated 14.11.1997, the establishment of the fact of construction contradicts the law, because the plot and the constructed building are property of the State and not of the two institutions involved. The issuance of this decision created grounds for abuse, as apartments were subsequently sold by an individual acting in the capacity of representative of those two institutions.

In civil case no. [no number], dated 03.12.1997, individuals who were not claimants in the lawsuit were recognized as legal heirs of the testator. The decision is in contradiction with the evidence in the casefile, which shows that the sole heir is the respondent.

There were serious procedural violations even in the adjudication of three other cases, specifically concluded through decisions no. 3800, no. 8568, and no. 9311.

All the six civil cases mentioned above were quashed by the appellate court and the Court of Cassation, and were remanded for retrial.

The Joint Chambers of the High Court, having heard the applicant’s arguments in relation to each case and having examined the verification reports prepared by the inspectors of the High Council of Justice related to them and the relevant decisions of the Court of Appeal and the Court of Cassation, and having analysed the minutes of the meeting of the High Council of Justice - taking into account the nature of the violations committed - consider that the decision of the High Council of Justice to dismiss M.D. from her position as judge on grounds of failure to properly deliver her duties, is correct and based on Law no. 8265, dated 18.12.1997.”¹⁸⁰

Referring to this reasoning, the ascertained violations - including serious deficiencies in the reasoning of decisions, the granting of unfounded court complaints and the issuance of unenforceable decisions

180. Decision no. 729, dated 29.06.1999 of the High Court’s Joint Chambers.

- demonstrated both a lack of professionalism and negligence in the fulfilment of duty. Given that all the cases decided by the judge had been quashed by the higher judicial instances and remanded for retrial due to her violations, the decision to remove her from office appeared justified and necessary to safeguard the credibility of the judicial system.

While the aforementioned case concerned a judge, the High Court's jurisprudence shows that there were at least two other cases in which this violation was committed by prosecutors. Specifically, in the first case, the High Court stated that *"on 14.07.1997, Lezha Prosecution Office initiated criminal proceedings against the three defendants Gj. L., Ç. Gj. and P. P., for the criminal offense of smuggling under Articles 172 and 25 of Criminal Code. For the verification of the tasks ordered by the General Prosecution Office, F. M. assigned the judicial police officer V. M. Later inquiries confirmed that all the actions conducted by the judicial police officer and the documents obtained by him were forged.*

According to the applicant, precisely this forged documentation led to the decision to dismiss criminal case no. 87, dated 12.09.1997 for absence of the elements of the criminal offense of smuggling.

The minutes of meeting no. 16 of the High Council of Justice held on 20.06.1998, the statements of the HCJ's representative, the expert report no. 1801, and the other documents in the casefile confirmed that applicant F. Muça acted in contradiction with the proper fulfilment of his duties for the following reasons:

The five invoices numbered 234, 286, 51, 52, and 53 - of which the first two date from 1995 and the remaining three from 1997 - were collected in violation of Articles 188 and 191 of the Criminal Procedure Code, which require that the taking of evidence be documented by an official record indicating by whom it was collected.

Although the investigation of the case was carried out by the judicial police officer, oversight of that investigation lies with the case prosecutor, who cannot evade responsibility, particularly when he assumes responsibility for verifying the invoices.

As regards the questioning of Mr. L. K., the minutes indicate that he was not questioned at all or that another person may have been questioned instead.

The expert report concluded that the signature in the questioning minutes does not belong to L. K. and the document contained in the casefile as the sole identification document - a tax registration certificate - was found not to belong to L. K.

The High Council of Justice rightly concluded that the applicant F. Muça acted in contradiction with the proper fulfilment of his duties, as he failed to identify the person in accordance with the requirements of the Criminal Procedure Code regarding identification and the manner in which information

must be obtained (Article 312 of the Criminal Procedure Code).

As regards civil decision no. 268 dated 03.11.1997 of Lezha District Court, concerning the annulment of the seizure order dated 14.07.1997 issued by the prosecution office, the action of applicant F. Muça, was rightly considered contrary to the proper fulfilment of duty. In these minutes, although the seized goods lacked the excise stamp, the applicant - who represented the prosecution office in the capacity of defendant - did not express his position on the resolution of the case, but instead stated during the hearing that he "...left the matter to the discretion of the court." This *modus operandi* runs counter to Articles 303, 462, and 483 of Civil Procedure Code, which require that the prosecutor participating in the civil proceedings express his opinion on the case at all levels of adjudication."¹⁸¹

From the above passages, it emerges that the violations identified - including the collection of evidence in contravention of procedural rules, the failure to properly identify witnesses, and the failure to defend the State interests in a civil case - demonstrated a profound lack of commitment and professionalism in the performance of duty. Given that these violations undermined the integrity of investigations and the fairness of court proceedings, the competent authorities concluded that the prosecutor's dismissal from office constituted a justified and necessary measure.

In the other case, which likewise concerned a prosecutor, the High Court - having found no violation - held that "during the examination of the criminal case against the defendant L. L. for allegedly improper fulfilment of duty, new evidence and circumstances emerged that led me to the final conclusion that the criminal offense should be qualified as homicide committed in excess of the limits of necessary self-defence."

The district court found this conclusion fair and accordingly changed the legal qualification of the criminal offense, and ultimately the case was dismissed as *amnestied*.

This decision was not appealed by either the Vloza District prosecutor or the Vloza Appellate prosecutor, as they found this decision to be fair. I just applied the power vested in me by Article 25(3) of Criminal Procedure Code according to which, 'in proceedings, the prosecutor exercises his powers in complete independence'.

According to the report presented by the High Council of Justice, the prosecutor should have asked the court to administer the evidence collected in the course of the investigation and which prove the charge of pre-mediated homicide, under Article 369 of Criminal Procedure Code.

The case prosecutor A. K. had requested several times that the hearing be adjourned, for the sole purpose of summoning certain prosecution witnesses. The

181. Decision no. 1291, dated 23.03.1999 of the High Court's Joint Chambers.

Court granted it, but it was not possible for the witnesses to appear at trial, not even through compulsory escort by the police.

The minutes indicate that the court administered the entire investigative file and ultimately concluded to change the legal qualification of the criminal offense from Article 76 to Article 83 of the Criminal Code - a decision which had not been appealed. In these circumstances, it is held that the claimant did not commit actions contrary to the proper fulfilment of duty, and consequently, decision no. 22/1 of the High Council of Justice, dated 31.10.1998, must be annulled.”¹⁸²

This decision reflects the High Court’s effort to balance the prosecutor’s right to exercise his functions with full independence against the corresponding duty to respect procedural requirements. The decision not to appeal the ruling of the first-instance court - after the complete administration of the investigative file and the impossibility to obtain additional evidence - demonstrates a realistic and measured approach by the case prosecutor, thus avoiding the procrastination of proceedings that clearly would not yield any meaningful outcome. It was established that the prosecutor conducted all the necessary steps correctly and exercised his powers in compliance with the law.

8. *Unjustified failure to execute an imposed disciplinary sanction*; this category of disciplinary violation could be committed by judges or prosecutors when a previously imposed disciplinary sanction was not executed due to their refusal or unjustified failure to comply. Among the full range of disciplinary sanctions provided under this law, and given their inherent nature, the sanctions whose non-execution could give rise to this violation were primarily: suspension from duty and reassignment to a lower position within the court or prosecution office for a period of six months to one year, and the transfer to another court or prosecution office. The unjustified failure to comply with such disciplinary sanctions imposed by the High Council of Justice constituted a disciplinary violation that undermined the authority and proper functioning of this body, thereby weakening the importance of accountability mechanisms. Judges and prosecutors, as key actors in the administration of justice, were under a duty not only to observe professional rules and obligations, but also to execute the disciplinary sanctions imposed upon them. Such non-execution reflected a lack of responsibility and created a dangerous precedent for the authorities tasked with administering the justice system.

The law provided for six types of disciplinary sanctions, namely:

- 1.Reprimand;
- 2.Reprimand with warning;
- 3.Reduction of salary by up to 25% for a period of three to six months;
- 4.Suspension from duty and reassignment to a lower position within

182. Decision no. 959, dated 29.07.1999 of the High Court’s Joint Chambers.

the court or prosecution office for a period of six months to one year;

5. Transfer to another court or prosecution office;

6. Removal from office.¹⁸³

These sanctions could be imposed by the High Council of Justice based on an assessment of the nature and gravity of the violation committed.¹⁸⁴

As for appeals, the law provided that any judge or prosecutor against whom a disciplinary sanction was imposed, as well as any judge or prosecutor dismissed from office, had the right to lodge an appeal before the Court of Cassation, which examined the case in Joint Chambers.¹⁸⁵

183. Law no. 8265/1997, Article 42.

184. Law no. 8265/1997, Article 43.

185. Law no. 8265/1997, Article 46.

CHAPTER III

III. INSPECTION AND DISCIPLINARY LIABILITY UNDER THE CONSTITUTIONAL FRAMEWORK IN THE PERIOD 1998 - 2016

The entry into force of the Constitution of the Republic of Albania on 28.11.1998 abrogated the previous constitutional framework, marking a significant milestone in the consolidation of the rule of law and the democratic order in Albania. Departing from a prolonged period during which the country had been governed by provisional constitutional laws, the new Constitution represented a substantive effort to establish a stable legal foundation that would guarantee the check and balance of powers, the independence of the judiciary, and the right of every individual to due process of law. Compared to the Constitutional Law no. 7491, dated 29.04.1991 "On the main constitutional provisions", and Constitutional Law no. 7561, dated 29.04.1992 "On the organisation of the judiciary and the Constitutional Court", the 1998 Constitution introduced several important advancements and novelties in the organisation and functioning of the justice system.

One of the principal elements distinguishing the new Constitution was its clear and detailed codification of the principles governing judicial independence. Unlike the more general and often insufficient provisions contained in the earlier constitutional laws, the 1998 Constitution set out, in a rigorous manner, the separation between the judicial and executive branches, ensuring that judges and prosecutors would remain independent in the exercise of their functions and subject only to the Constitution and the law. This independence was further reinforced through provisions expressly prohibiting interference in the work of the courts, as well as safeguards that guaranteed the irremovability of judges and the preservation of their professional benefits.

Another important novelty was the reinforcement of accountability mechanisms for judges. The 1998 Constitution provided clearer rules for their disciplinary liability, and for the dismissal of the judges of the High Court, the Prosecutor-General and ordinary judges, thus setting higher standards for their professional conduct and integrity expected of them. This demonstrated an attempt to balance the independence and accountability of judges, aimed at building a more credible justice system.

From an institutional perspective, the new Constitution improved the organisation and functioning of the High Council of Justice (HCJ), strengthening its role in the oversight of judges. This development was essential for establishing a more stable and functional structure for managing the judicial system, thereby avoiding the ambiguities and questionable practices that had previously characterised the system.

The 1998 Constitution introduced a more modern and advanced vision for the role of the prosecution service, defining it as a centralised body operating alongside the judicial system, while at the same time ensuring that prosecutors remain independent in the exercise of their functions. The provisions governing the appointment and dismissal of the Prosecutor-General and the obligation imposed upon him to report to Parliament on the state of criminality in the country, established a necessary system of checks and balances aimed at preventing abuses of power.

These findings constitute the basis for the analysis of the inspection mechanisms applicable to judges and prosecutors, as well as their disciplinary liability in Albania, prior to the 2016 reform.

As regards the dismissal grounds and how those had to be interpreted, the Constitutional Court issued a decision that served as guidance and an interpretative basis for all subsequent cases. So, the Constitutional Court reasoned that *“Articles 128 and 140 of the Constitution contain identical wordings, as they set out four constitutional grounds upon which Parliament must rely to justify a decision to dismiss judges of the Constitutional Court and the High Court, whereas Article 149(2) provides the grounds for the dismissal of the Prosecutor-General, of which only one differs from those established in the preceding provisions.”*

Among all the dismissal grounds for these high-level officials set out in these constitutional provisions, two of them - namely, “commission of a criminal offence” and “mental or physical incapacity”- are of such a nature that they cannot be established directly by Parliament, as they require prior determination and verification by the competent authorities.

The matter becomes more complex when it comes to the interpretation of the constitutional concepts of acts or conduct that seriously discredit the position and image of a judge or prosecutor, and serious violations of the law committed by the Prosecutor-General in the exercise of his functions.

For the interpretation of these norms, the Constitutional Court does not assume the role of a positive legislator by enumerating exhaustively every possible case that may fall within these constitutional grounds, as such an undertaking would be impossible. It is impossible for the Constitution, the statutory law or court decisions to precisely codify the acts or forms of conduct that seriously discredit the position and image of a judge or prosecutor; nor can

they predetermine all situations in which the law may be deemed to have been seriously violated.

The purpose of the Constitutional Court's interpretation of these constitutional provisions or specific terms is to analytically articulate and define the criteria, core concepts, and guiding principles upon which the competent authority must rely when determining the appropriate constitutional ground for the dismissal of a judge of the Constitutional Court, a judge of the High Court, or the Prosecutor-General.

The acts or omissions of these high-level State officials that may fall within the constitutional grounds for their dismissal are to be assessed on a case-by-case basis by the authority responsible for conducting the dismissal procedure. Nevertheless, in all instances, such conduct must relate to improper or unworthy behaviour by these officials, whether in the performance of their duties or outside the scope of their official functions, when such behaviour constitutes an abuse or violation of public trust and causes harm to society or the State. The improper acts or conduct must be of such gravity, must so severely discredit the standing and reputation of the judge or prosecutor, and must so diminish the dignity of the institution they represent, as to compel the competent authority to impose the sanction of dismissal from office.

Based on Article 149(2) of the Constitution - which, among other grounds for the dismissal of the Prosecutor-General, includes the expression "serious violations of the law committed in the exercise of his functions" - the Constitutional Court reasoned that the correct and proper meaning of this term, as used in this and other constitutional provisions, must be analysed and assessed comprehensively by reference to several factors. These include the importance of the legal norm that has been violated; the consequences that have occurred or could potentially have arisen from such violation; the duration of these consequences and the difficulties associated with remedying them; and the subjective stance of the individual concerned toward the violation committed and its resulting consequences. Moreover, the qualifier "serious," used both with respect to conduct that severely discredits the position and image a judge or prosecutor and to violations of the law, serves simultaneously to assist the competent authority initiating dismissal proceedings in distinguishing such conduct from lesser forms of misconduct, which cannot justify the application of dismissal as a constitutional ground.

The wording of the grounds for dismissal in the Constitution appears to leave open and subject to debate an unlimited range of interpretations regarding cases that parliamentary practice may classify as serious violations of the law or as acts and conduct that seriously discredit the position and public image of a judge or prosecutor. Nevertheless, judicial jurisprudence - particularly the Constitutional Court's current and future examination of concrete cases relating to these constitutional concepts - will undoubtedly provide a comprehensive and

clearer understanding of these constitutional grounds.

The Constitutional Court deems, from its further analysis of these constitutional notions, that it necessary to emphasise that the meaning of the constitutional terms relating to grounds for dismissal must be assessed in close connection with the entire legal process followed by the Assembly when initiating dismissal proceedings against judges of the Constitutional Court, judges of the High Court, and the Prosecutor-General.

If a judge of the Constitutional Court, a judge of the High Court, or the Prosecutor-General is found to have violated the Constitution, committed acts that seriously discredit his position and public image, or committed a serious breach of the law, the imposition of the dismissal sanction by the Assembly shall be necessarily linked to the conduct of the corresponding procedures. The function exercised by the Assembly in such cases is of a special nature. The process carried out by the Assembly differs from its ordinary activity as a legislative body. This legal process - being disciplinary proceedings akin to administrative investigative procedures - has its own principles, which relate to the verification, analysis, and substantiation of the specific grounds that have prompted the competent authority to impose the dismissal sanction upon the judge or prosecutor.

The constitutional provisions subject to interpretation are substantive and procedural in nature and are intended to define exhaustively the classic cases in which judges or the Prosecutor-General may be dismissed. The existence of these constitutional grounds for dismissal serves as an additional safeguard for the functions they perform, as well as for the constitutional institutions they represent.

These constitutional articles leave to the discretion of the Assembly both the assessment of the nature and gravity of the violation committed, and the determination of whether the act or conduct is of such nature as to discredit the image of the judge or prosecutor. What the constitutional provision requires is that the specific case giving rise to dismissal must have occurred and must be duly established as such.

This conclusion follows precisely from the interpretation of the second sentence in Articles 128 and 140. When reviewing the Assembly's decision to dismiss a judge, the Constitutional Court verifies whether a ground for dismissal actually exists. In other words, it examines whether the Assembly has acted in accordance with the Constitution, its Rules of Procedure, and the relevant laws, and whether it has respected all procedural requirements necessary to fully substantiate, justify, and reason its dismissal decision.

Through this constitutional review of the Assembly's decision, the Constitutional Court scrutinizes not only the dismissal procedure but also the substance of the matter. Therefore, in order for the Assembly's decision to be well-founded and not struck down as unconstitutional, it must satisfy all essential elements of a proper procedure, since even a failure to comply with procedural

requirements or with the prescribed form for issuing such an act is sufficient for it to be deemed invalid.

As regards Article 149(2) of the Constitution, the Constitutional Court deems that it is the President of the Republic the competent authority designated by the Constitution to conduct a constitutional assessment of both the grounds and the procedures followed by the Assembly in dismissing the Prosecutor-General. This conclusion derives from the wording of this constitutional provision, in which the use of the phrase "may be dismissed" signifies that the Assembly's decision proposing the dismissal of the Prosecutor-General is not final, but merely initiates a dismissal procedure whose legal and constitutional soundness is, in this instance, subject to the evaluation of the President of the Republic.

Based on the above, the Constitutional Court finds it appropriate to reiterate that the basic elements of a lawful procedure - relating to the initiation of dismissal proceedings, the quorum required for decision-making, the legal grounds for dismissal, and the authority vested with the power to take the final decision - are generally set out in the Constitution. However, further regulation can be found in the organic laws, such as in the case of the required quorum for initiating dismissal procedures for judges of the Constitutional Court. As for members of the High Court, there is no statutory regulation governing the initiation of dismissal proceedings. Similarly, with respect to proposals for the dismissal of the Prosecutor-General, the Law "On the organisation and functioning of the Prosecution Service in the Republic of Albania" does not provide the basic procedural elements. The only relevant constitutional reference that may be applied in this case is Article 78(1) of the Constitution, which lays down the general rule (except where the Constitution expressly provides for a qualified majority) concerning the votes required for the Assembly to take a decision.

Given that the Constitution, or any other law, does not provide a detailed regulation of the essential elements of a procedure, the Constitutional Court deems it necessary to emphasise that such procedural rules cannot be supplemented through its interpretative decision. Interpretation, as a function and method, applies only to an existing norm when uncertainty arises regarding its meaning, and is not intended to fill a legislative gap; otherwise, the Constitutional Court would place itself in the wrong position of creating legal norms - a function which rests with the legislator.

Nevertheless, the Constitutional Court underlines that, irrespective of the manner in which dismissal procedures for judges or prosecutors are regulated in the Constitution or by law, this does not preclude the Assembly from adopting specific rules either for each individual case or for all cases as a whole, provided that it always respects the constitutional principle of due process of law.

The universally recognised democratic standards, which have found their place in the Constitution and in several decisions of the Constitutional Court,

have defined and consolidated a set of elements constituting due process of law, the absence of which invalidates both the procedures and the decisions adopted by any authority. The substantiation of the alleged violations; the observance of the principle of checks and balances during the examination; the prior notification of the individual whose dismissal is sought, together with the materials attributing responsibility; and the respect for the right to be heard and to defend oneself both through the opportunity to provide preliminary clarifications and during the examination of the case, constitute some of the fundamental elements that guarantee the constitutional right of every person to a fair and due process of law. Any infringement of this fundamental right has consistently been identified by the jurisprudence of the Constitutional Court as a violation of the Constitution.

From the entirety of this constitutional analysis - which does not create any new legal norm but merely provides a logical and interpretative reasoning of Articles 128, 140 and 149(2) in conjunction with other constitutional provisions - the Constitutional Court concludes that the request is well-founded and must be upheld."

Ultimately, the Constitutional Court ruled as follows: "The Court interprets Articles 128, 140 and 149(2) of the Constitution, within the confines of the scope of the request, is as follows:

1. The phrase "acts and conduct that seriously discredit the position and image..." , as provided in Articles 128, 140 and 149(2) of the Constitution, encompasses a range of elements which may and must be identified on a case-by-case basis by the competent authority responsible for deciding the dismissal of a judge of the Constitutional Court, a judge of the High Court, or the Prosecutor-General. These elements relate to irregular or indecent acts and conduct that such officials during the exercise of their duties, by virtue of their office, and outside the performance of their official functions. These acts or omissions - assessed in light of the circumstances in which they occurred, the subjective element involved, and the harm they cause to society and the state - are of such a nature that they render the continued exercise of constitutional functions by these officeholders impossible.

2. The phrase "serious violation of the law in the exercise of functions" by the Prosecutor-General, as set out in Article 149(2) of the Constitution, relates to a series of elements concerning breaches of legal provisions committed in the performance of official duties and by virtue of the office. These violations acquire their serious character through a close connection with the importance of the legal norm breached; the consequences that have resulted or could have resulted from the violation; the frequency of the infringement; the duration of its effects and the difficulty of remedying them; as well as the subjective attitude of the alleged culprit towards the violation and the triggered consequences.

3. In determining the procedures for the dismissal of a judge of the Constitutional Court, a judge of the High Court or the Prosecutor-General, the respective authorities must comply with the rules laid down in the Constitution,

in their organic laws, and in other applicable legal acts. In undertaking dismissal proceedings against these officials, the constitutional right to due process of law as guaranteed by Article 42(1) of the Constitution should be observed in all cases.

*This decision is final, unappealable, and has retroactive effect.*¹⁸⁶

The above decision of the Constitutional Court addresses both substantive and procedural aspects concerning the dismissal of members of the Constitutional Court, the High Court, and the Prosecutor-General. Focusing on the procedural dimension, the "Inspectorate" in such cases is, in effect, the Assembly of the Republic of Albania. For this reason, the Constitutional Court examined extensively the procedure followed by the Assembly in relation to the dismissal proceedings of High Court judges and of the Prosecutor-General, in order to determine the constitutional boundaries and the legal rules governing these procedures.

The Constitutional Court clearly emphasised that the dismissal of such high-ranking officials is a particular procedure differing from its traditional activity as legislative body. In the dismissal procedures, the Assembly acts not only as an investigative-administrative body, but it also takes on additional elements of proceedings, because it must analyse and verify the facts and dismissal grounds claimed. This particular function of the Assembly required that the followed procedure had to rely on the principle of checks and balances and the right to a due process of law, in order to respect the fundamental rights of officials who were the subject of those proceedings.

To guarantee the legitimacy of this process, the Constitutional Court required the Assembly to base its decisions on clear and proven facts, to follow a procedure grounded in the Constitution, and to ensure that the individuals concerned were afforded every opportunity to defend themselves and to present their positions. These requirements aimed to prevent arbitrary proceedings and to ensure that the Assembly acted objectively and impartially.

Furthermore, the Constitutional Court placed particular emphasis on its own role as a supervisory body over the Assembly's decisions in such cases. It considered it mandatory to review the Assembly's decision to dismiss judges of the High Court not only from a procedural standpoint, but also from a substantive one. This dual level of scrutiny ensured that the Assembly not only complied with formal rules but also did not abuse its discretion by adopting decisions that could seriously undermine the integrity of the justice system.

Regarding the procedures for the dismissal of the Prosecutor-General, the Court emphasised the role of the President of the Republic as an additional verifying authority that safeguards the constitutionality

186. Decision no. 75, dated 19.04.2002 of the Constitutional Court.

of the Assembly's decision. The designation of the President as the final body responsible for assessing the legal and constitutional soundness of the Assembly's decision introduced an added layer of security to any such act. This role of the President was made evident by the use of the expression *may be dismissed* in Article 149(2) of the Constitution, a term indicating that the Assembly's decision does not have a final nature, but instead requires further verification by the President to ensure its compliance with the Constitution.

As regards to the grounds for the removal of judges and the Prosecutor-General, the Constitutional Court reasoned toward establishing a clearer and higher standard for cases in which the mandate of such high officials may be terminated. The Court clarified that the grounds for dismissal, as provided in Articles 128, 140 and 149 of the Constitution, encompass broad concepts such as "*acts and conduct that seriously discredit the position and image*" and "*serious violations of the law in the exercise of functions.*" These wordings are intentionally general, as the drafters of the Constitution did not intend to enumerate exhaustively every possible situation, but rather to establish a general framework capable of being applied in accordance with the specific circumstances of each case.

The Constitutional Court held that the expression "*acts and conduct that seriously discredit the position and image*" does not refer solely to actions or omissions committed in the context of performing official duties, but also to conduct occurring outside the exercise of the office, when such conduct directly affects public confidence in the justice system. According to the Constitutional Court, the integrity of these officials cannot be separated from the functions they perform. Any conduct that undermines that integrity and erodes public trust in the institutions they represent may justify the initiation of dismissal proceedings.

As regards the second ground for dismissal - "*serious violations of the law in the exercise of functions*" - this term requires a thorough assessment of several elements, including the importance of the legal provision breached, the actual or potential consequences of the violation, the frequency of the infringement, and the individual's attitude toward the violation and its effects. Through this interpretation, the Court established a clear standard for distinguishing serious violations from minor ones and ensured that dismissal proceedings would be instituted only in cases where the breaches had a significant negative impact on the functioning of justice system institutions and on public confidence.

The Constitutional Court's reasoning demonstrates the importance of linking dismissal grounds to concrete and grave consequences for society and the State. The violations and conduct referred to in these constitutional provisions must not be routine or ordinary in nature;

rather, they must constitute exceptional situations requiring a serious and well-reasoned intervention by the Assembly and, subsequently, by the Constitutional Court or the President, depending on the case. This approach ensures a balance between preserving the independence and proper functioning of these institutions and ensuring the existence of an accountable justice system.

Although the decision of the Constitutional Court did not interpret Article 147(6) which concerns the dismissal of ordinary judges, as will also be addressed below, the subsequent jurisprudence of the High Court and of the Constitutional Court itself - considering that these cases were identical to those governing the dismissal of members of the High Court and applying the *presumption of consistent usage canon*¹⁸⁷ - correctly determined that the same interpretative conclusions apply equally to such cases.

In the recent period, several laws have been adopted regulating the organisation and functioning of the judiciary, the prosecution service, the High Council of Justice, and the Ministry of Justice. Viewed from the perspective of disciplinary proceedings, these laws will be examined in the order in which they were enacted.

1. Inspection and discipline under Law no. 8436, dated 28.12.1998 “On the organization of the judicial power”

In implementation of the constitutional obligations, within one month of the entry into force of the new Constitution, the Law no. 8436 dated 28.12. 1998 “*On the organisation of the judicial power,*” was adopted. With respect to judges, this law did not introduce any substantive changes compared to the previous Law no. 8265, dated 18.12.1997 “*On the organization of justice*”.

As regards inspection and disciplinary liability of judges, this law reproduced almost identically the provisions of the 1997 law. The principal change consisted merely in the removal of references and provisions relating to prosecutors, who - under the new constitutional framework - were now recognised as an independent branch. The relevant norms underwent certain stylistic modifications, but essentially retained the provisions that the legislator had already adopted in 1997. Thus, it may be concluded that the 1998 law constituted a continuation of the 1997 law, adjusted solely to apply to judges.

187. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* (Thomson/West), 2012, pp. 170-173.

1.1 Inspection and disciplinary proceedings for judges

This law, insofar as it concerned inspection and disciplinary liability within the judicial branch, largely preserved the earlier wordings. It provided that an Inspectorate would be established within the High Council of Justice, and that this Council would appoint inspectors tasked with inspecting first-instance and appellate courts. Their duties included verifying complaints submitted by citizens and institutions, reviewing the organisation of judicial services, assessing the professional abilities of judges, evaluating workload, and determining the overall efficiency of the courts. The law stipulated that these inspectors were to be assisted by personnel from the Ministry of Justice, who would support them in performing the above-mentioned duties - except for those relating to the proficiency assessment of judges. Inspectors could be appointed from among individuals holding a law degree who met the eligibility criteria to serve as appellate judges. For these purposes, inspectors were equated with appellate judges in terms of salary and other rights.¹⁸⁸

The 1999 reform established that inspectors would be appointed and dismissed by the President of the Republic upon the proposal of the Minister of Justice. This amendment appears to have been introduced to fully equate the status of inspectors with that of appellate judges, including the modalities of their appointment. The goal may have been to enable inspectors to perform their functions independently and without undue influence from the members of the High Council of Justice. However, removing the Council's power of appointment and transferring it to other institutions appeared to undermine the organisational independence of the High Council of Justice itself.

Furthermore, the same reform provided that the inspectors were responsible for inspecting first-instance and appellate courts, verifying complaints submitted by citizens and other entities against judges, reviewing the organisation and functioning of judicial services, assessing the professional abilities of judges, evaluating their workload, and, more generally, determining the efficiency of the courts.¹⁸⁹ Subsequently, with the 2000 reform, the Inspectorate was additionally assigned the duty of verifying and recording the assets declared by judges, as well as examining matters related to the compatibility of their activities and conduct.¹⁹⁰

All these provisions were abrogated upon the Assembly's adoption of the organic law on the High Council of Justice in 2002,¹⁹¹ which

188. Law no. 8436 dated 28.12.1998, Article 17.

189. Law no. 8546 dated 05.11.1999, Article 4.

190. Law no. 8656 dated 31.07.2000, Article 7.

191. Law no. 8811 dated 17.05.2002, Article 39.

regulated inspection by law - which will be examined below.

As regards the disciplinary proceedings themselves, they were initiated exclusively by the Minister of Justice.¹⁹² This power of the Minister of Justice was also provided for in Law no. 8678, dated 14.5.2021 "On the organisation and functioning of the Ministry of Justice," which, among other things, stipulated that *"the Ministry of Justice, in accordance with the main directions of the general State policy and the Government's programme, shall exercise its activity in the following fields: ... 9. Conduct inspections and disciplinary proceedings of judges of first-instance and appellate courts, in accordance with the law"*,¹⁹³ as well as that *"the Inspection Directorate shall carry out the following activities: (a) inspect first-instance and appellate courts concerning the organization and performance of judicial services and judicial administration in general, and prepare recommendations for the Minister of Justice relating to required measures for the resolution of problems and identified violations; (b) conduct inspections in courts and particular judges, according to the law, and prepare recommendations for the Minister of Justice relating to required measures for the resolution of problems and identified violations"*.¹⁹⁴

This prerogative of the Minister of Justice had been regarded as constitutional by the High Court, which initially held the following position: *"In the complaint submitted by the applicant, in addition to issues relating to the violations in the specific case, it was argued that the dismissal procedure was contrary to Article 147 of the Constitution, on the grounds that the material forwarded to the High Council of Justice had been prepared by the inspectors of the Ministry of Justice and not by the inspectors of the High Council of Justice."*

The Constitution of the Republic of Albania establishes in Article 147 the composition, organisation, and powers of the High Council of Justice. However, it does not and cannot set out in detail the manner in which this body operates in exercising those powers. Such regulation is achieved through the organic Law no. 8811, dated 17.5.2001, 'On the organisation and functioning of the High Council of Justice'. Article 31 of this law provides for the Minister of Justice's authority to conduct inspections pursuant to programmes prepared proactively or in execution of tasks assigned by the HCJ, following the verification of citizens' complaints, as well as on the basis of information received either independently or through the HCJ Inspectorate. It is precisely the Minister of Justice who, under this provision, submits the proposal for disciplinary proceedings against a judge before the HCJ.

The above does not violate the constitutional principle of separation of powers, because the executive branch (in this case, the Ministry of Justice)

192. Law no. 8436 dated 28.12.1998, Article 44.

193. Law no. 8678 dated 14.05.2001, Article 6.

194. Law no. 8678 dated 14.05.2001, Article 11.

performs only the preliminary procedures (up to the submission of the proposal for disciplinary proceedings) expressly provided for in the law cited above, as well as in Law no. 8436, dated 28.12.1998 "On the organisation and functioning of the Judicial Power". It is the High Council of Justice that assesses the request for disciplinary proceedings and decides, in accordance with Article 147 of the Constitution and the aforementioned laws, on the dismissal of the judge".¹⁹⁵

Thus, since the final decision-making authority rested with the High Council of Justice, the conduct of the disciplinary investigation by the Minister of Justice did not, in the view of the High Court, raise issues concerning the separation of powers or constitutional compatibility.

However, following this position, the High Court later changed its stance and requested that the Constitutional Court annul these provisions. The Constitutional Court did not consider the claims raised to be well-founded, reasoning as follows: *"The Constitution establishes that judicial power is exercised solely by the courts, namely, by the High Court, the appellate courts and the first-instance courts. In addition, other constitutional standards relating to the independence of the judiciary concern the guarantees enjoyed by judges with respect to their appointment, their irremovability from office without justified grounds, and the prohibition against subjecting them to criminal or disciplinary proceedings without a reasoned decision of the High Council of Justice. Among these standards, Article 147(4) of the Constitution provides that the HCJ decides on the transfer of judges and on their disciplinary liability, in accordance with the law. From the content and spirit of this provision, it follows that the Constitution has not expressly envisaged, as constitutional standards, matters relating to inspections or to the initiation of disciplinary proceedings.*

In consideration of above, particularly important is the fact that HCJ is the sole authority competent to decide on the disciplinary liability of judges. The legislator has elaborated these constitutional aspects in two laws - the provisions of which are under review - as well as in the law "On the organisation of the judicial power in the Republic of Albania," which provides in Article 11 that "... court decisions may be subject to review only on the basis of appeals or recourses filed in judicial channels, in accordance with the provisions of the procedural codes or of special laws." Thus, since the judicial authority is exercised in a hierarchical manner, in accordance with the principle that decisions of lower courts are reviewed by higher courts, no other body - whether the High Council of Justice or the Minister of Justice - has the authority to review or assess the legality or merits of final court decisions, to disregard their content, or to impose liability on the judge who rendered them. Referring also to its own jurisprudence, the Constitutional Court considers it necessary to reaffirm its established position that judicial decisions may be reviewed only by a higher court, and that no other body may evaluate the legality or soundness of court decisions, so long as those

195. Decision no. 30, dated 31.03.2003 of the High Court's Joint Chambers.

decisions have not been amended, overturned or quashed by a higher court.

The High Council of Justice may impose disciplinary sanctions on judges without being conditioned on whether the judicial decision has become final, only in cases where such decisions rely on acts and conduct that seriously discredit the position and image of the judge and generally undermine the prestige and authority of the judicial power.

This position is also reflected in Resolution no. (94)12, according to which: "...the decisions of a judge cannot be subject to review outside the system of appeals provided by law."

By comparing the contested provisions with the constitutional concepts, the Constitutional Court finds that these provisions do not concern a review of judicial decision-making (that is, the manner in which the case was resolved, or the administration and assessment of evidence), but rather inspections relating to the administration of justice and the functioning of judicial services.

The assertion made in the decision of the Joint Chambers - that the Minister of Justice's authority to conduct inspections of courts and judges, and his authority to propose disciplinary sanctions to the High Council of Justice, including dismissal, constitutes a power that infringes the principle of separation of powers and the principle of judicial independence, as enshrined respectively in Articles 7 and 145 of the Constitution - is not accurate.

According to Article 7 of the Constitution: "The system of governance in the Republic of Albania is based on the separation of powers among the legislative, the executive and the judiciary". This principle can be correctly understood only when the constitutional wording is examined in its entirety, from which it becomes evident not only that the three powers are separate, but also that they are balanced against each other. Had the Constitution intended to emphasise solely the separation of powers, the phrase "separation of powers" would have been unnecessary or even meaningless. Although these powers are separated in terms of their functional autonomy and in the independence with which they exercise their constitutionally assigned duties, they nevertheless balance one another through their interaction in the performance of these duties – by respecting, supporting, facilitating, and supervising each other.

The principle of separation of powers must not be understood as implying that each branch of government is closed off and free of any oversight. The separation of powers among the three branches of governance is ensured only through a system of checks and balances. Thus, under the Constitution, to the same extent that separation is emphasised, so too is the balancing of powers. The purpose of this constitutional concept is to prevent any branch of government from exercising unlimited authority. The checks and balances recognised by the Constitution grant each branch powers that counterbalance or mitigate those of the others. Various tools and mechanisms exist to maintain this balance, because, ultimately, no branch can fulfil its mission if its activity is not aligned with

that of the other branches, and if a reciprocal equilibrium, coordination, and oversight is not secured - oversight which, naturally, must not extend to the point of undermining their respective constitutional mandates.

Article 145 of the Constitution provides that judges are independent and subject only to the Constitution and the laws. This entails the independence, responsibility, and exclusive powers of judges in delivering justice through the adjudication of concrete cases. No other branch of power may function as a court or exercise the duties of a judge. No one may interfere in the justice delivery or in the rendering decisions in specific cases. No authority is permitted to question the validity or binding force of court decisions, nor to refuse their enforcement, once they have become final. These principles concerning the independence of the judiciary and of judges are also reflected in the statement of the Consultative Council of European Judges, according to which "...the fundamental principles governing the status of judges must be set out in internal legal norms of the highest level and in rules of legislative rank".

Judges are obliged to render decisions in accordance with the Constitution and the law; therefore, mechanisms and safeguards have been established to ensure protection from undue pressure, whether exerted by public officials or other institutional structures, or originating from within the judiciary itself, including from judges of higher instances or from those who are members of decision-making bodies responsible for judges' career progression and status.

Under Article 147(4) of the Constitution and the aforementioned laws, the High Council of Justice is the sole authority competent to impose the disciplinary sanction of dismissal on judges of first-instance and appellate courts, irrespective of who verified the alleged violation or who submitted the proposal for the disciplinary sanction.

The High Council of Justice exercises this power by acting as a body that hears the "parties" and administers the evidence necessary to examine the claims presented.

The High Council of Justice is free to reject any request or proposal for disciplinary sanctions, when it does not create the conviction that the violation exists or when it deems that the identified violation does not justify the proposed sanction. The HCJ acts as a democratic body because the judge accesses in advance all the materials against him, but also participates in the HCJ meeting and may even be represented by a counsel; the judge also has the right to present explanations and rebut any allegation by filing evidence that the judge deems necessary.

On the one hand, the composition of the HCJ - where 2/3 of the members are representatives of the judiciary - and, on the other hand, its functioning on democratic principles, ensure that this body act objectively and adopt fair measures when violations are substantiated, and protect judges against unfounded accusations. Thus, for this body, it matters little who submits the

proposal. Moreover, pursuant to Article 16(c) of the Law on the High Council of Justice, the HCJ has both the right and the duty to carry out verifications in relation to disciplinary proceedings proposed by the Minister of Justice, whenever the Council deems such verification necessary. In these circumstances, the HCJ also possesses the appropriate mechanisms - namely, its own Inspectorate - to verify any proposal submitted for disciplinary action. Accordingly, the fact that, under the law, the Minister is entitled to conduct inspections and, upon verifying violations that entail disciplinary responsibility, to initiate disciplinary proceedings, does not constitute an unconstitutional arrangement, as it does not conflict with Articles 7 or 145 of the Constitution.

In addition to the above, this Court considers that all three laws - including the law "On the organisation of the Judicial Power in the Republic of Albania" - require improvements. The existence of two inspectorates, which appear to duplicate one another's functions; the need for a clear definition and delineation of the concepts of inspection, control, and verification; the avoidance of overlapping powers between the two inspectorates and between the two institutions (the Ministry of Justice and the HCJ) in relation to the administration of justice and judicial services; and the establishment of clear limits on oversight in respect of courts and judges - all of these issues merit study and review by the competent authorities within the broader framework of legislative reform.

Based on the foregoing, the Constitutional Court concludes that the application of the Joint Chambers of the High Court must be dismissed as unfounded."¹⁹⁶

As is evident from the foregoing reasoning, the Constitutional Court concluded that all statutory provisions granting the Minister of Justice the authority to conduct inspections and to initiate disciplinary proceedings against judges were in conformity with the Constitution. The Court held that these provisions did not infringe the principle of separation of powers or the independence of the judiciary, since the power for taking the final decision remained exclusively with the High Council of Justice. In this case, for the first time, the Constitutional Court relied not on the principle of separation of powers but on the principle of *balancing* the powers, emphasising that the balancing of powers is a fundamental element of democratic governance, and that the Minister of Justice's role as inspector and proposer did not constitute interference with judges' independence. By maintaining a clear distinction between the inspection function and the decision-making function, the Constitutional Court determined that the laws in question complied with both constitutional and international standards. Nevertheless, the Court noted the need to improve the legal framework in order to better harmonise the respective powers of the Ministry of Justice and the High Council of Justice, thereby

196. Decision no. 11, dated 11.05.2004 of the Constitutional Court.

avoiding any overlap or ambiguity in the implementation of the law. In this context, the application of the High Court for annulment of these provisions was dismissed as unfounded.

The law further provided that the Minister of Justice's ability to initiate disciplinary proceedings was subject to a statutory time-limit: the initiation of such proceedings could occur only within three years from the date on which the violation was committed. During the verification process conducted by the inspectors, it was required to determine whether a disciplinary breach, as defined by law, had been committed; the type and gravity of the violation; the culpability of the individual concerned; and the evidentiary basis supporting the conclusions reached. In all cases, the judge alleged to have committed the violation had to be heard, and the inspectors were obliged to verify all claims raised by the judge. The results of the verification, together with the accompanying documentation, were to be set out in a final report, which had to be communicated to the judge alleged to have committed the violation.¹⁹⁷ The materials were then forwarded to the Minister of Justice and to the High Council of Justice.¹⁹⁸

These provisions were abrogated with the adoption of the organic law on the High Council of Justice¹⁹⁹ after which these matters were regulated by the new legislation that will be addressed below.

As regards the inspection procedures, reference to judicial practice reveals a case in which the procedure followed by the High Council of Justice was deemed to be regular. In another case, the Constitutional Court held that *"the Constitutional Court considers unfounded the applicant's claims that her right to access the information collected about her, and her right to be heard - rights guaranteed respectively by Articles 35 and 33 of the Constitution - were not respected"*.

From all the materials contained in the casefile, the Court found that the applicant was previously informed by the Inspectorate at the High Council of Justice of the grounds and violations for which the disciplinary proceedings had been initiated; she was notified and participated in the meeting of the High Council of Justice together with her counsels, where she was heard, provided explanations, contested the allegations, and responded to the questions addressed to her. After the decision of the High Council of Justice was communicated to her, she filed an appeal with the High Court, was notified of and participated in the hearing held by the Joint Chambers, and, through her representative, presented the arguments which, in her view, rendered the decision of the High Council of Justice unfounded. In this respect, the claim raised at the hearing

197. Law no. 8436, dated 28.12.1998, Article 44.

198. Law no. 8436, dated 28.12.1998, Article 44.

199. Law no. 8811, dated 17.05.2002, Article 39.

concerning the alleged breach of the adversarial principle is equally unfounded. From the manner in which the proceedings were conducted - both before the High Council of Justice and before the Joint Chambers of the High Court, whose decision is sought to be annulled - it is evident that this principle was respected, in accordance with Articles 18, 19 and 20 of the Civil Procedure Code.²⁰⁰

From the above reasoning, it is clear that the disciplinary procedures were duly respected by both the Inspectorate and the High Council of Justice, which had made all the necessary notifications.

In another case concerning inspection procedures, the following reasoning is found: *“The applicant alleges that the HCJ decision is the result of an irregular legal process and that his right to be an equal party before the law in a due process of law was denied. He asserts that the procedures for notifying him of the initiation of disciplinary proceedings by the HCJ were not respected; that he was not given access to the reports of the HCJ Inspectorate and the relevant documentation; that the alleged violations forming the basis of the proceedings were not proven; and that he was not notified of the date of the HCJ meeting.*

- From the examination of the case, it is established that the applicant's claim regarding the non-observance of the legal requirements for a due process of law is unfounded. The documents contained in the casefile indicate that claimant A.H. was duly informed by the HJC inspectors and there are due notices of the disciplinary proceedings instituted by HCJ.

Thus, on 22.11.2001, the claimant A.H. was made available the HJC report prepared by the inspectors A.K. and M.P., concerning the legal violations found to have been committed by him, and he signed the document acknowledging receipt.

On 4.1.2002, the chief registrar of the court, T. M., handed over to him the HCJ report relating to the verified case of V. Q., and he signed confirming its receipt.

On 06.2.2002, he was handed over the Minister of Justice's request for the initiation of disciplinary proceedings against the claiming A. H., and he signed it.

On 28.02.2002, he was notified to appear on 4.3.2002 at 15:00 at the Office of the President of the Republic, in order to participate in the HCJ meeting at which the Minister of Justice's request for disciplinary proceedings against him would be examined. The notification was delivered to his spouse A.H., who signed to acknowledge receipt in the presence of the court courier and a witness.

On 23.4.2002, a copy of the report dated 25.3.2002 of the HCJ Inspectorate on his disciplinary proceedings was notified to his spouse A. H., who signed to acknowledge receipt in the presence of the court courier and a witness.

On 4.5.2002, he was personally notified the copy of the supplementary request for disciplinary proceedings, prot. no. 96/5 dated 2 .5.2002 submitted by the Minister of Justice, but he refused to sign for and receive the documents from

200. Decision no. 18 dated 18.04.2000 of the Constitutional Court.

the HCJ; this fact is confirmed by the court courier and a witness.

On 21.5.2002, he was personally notified that on 27.5.2002, at 14:00, a HCJ meeting would be held at the premises of the Office of the President to examine the Minister of Justice's request for disciplinary proceedings against him. He refused to sign the notice in the presence of the court courier and a witness."²⁰¹

From the above reasoning, it is evident that both the inspection procedure and the notification process concerning the disciplinary proceedings against the judge in question were carried out in full compliance with the legal requirements. The inspection process conducted by the HCJ inspectors was carefully documented, including detailed reports on the alleged violations and the communication of these findings to the judge at every stage of the procedure. The inspectors' reports - accompanied by the signature of the judge or of his spouse - constituted unambiguous evidence that the subject of proceedings had been made aware of the content and the grounds supporting the disciplinary action. The fact that the judge refused, on several occasions, to sign for or receive the documents did not invalidate the procedure; on the contrary, it demonstrated his unwillingness to cooperate with the HCJ.

In this case, the HCJ inspectors had performed their duties diligently, preparing clear reports and complying with all procedural deadlines and requirements. This demonstrated that the process had been conducted with precision and ruled out any possibility that the judge's procedural rights had been infringed.

The law provided that, before taking a decision, the High Council of Justice was required to hear the parties' arguments in a hearing, and that the complete casefile be made available to the judge at least ten days prior to the hearing. The judge had the right to present his defence either personally or through legal counsel at the hearing.²⁰²

These procedural rules and deadlines were established with the purpose of guaranteeing the right of defence of the judge subject to disciplinary proceedings. Evidently, failure to respect the right to be heard would result in the invalidity of the High Council of Justice's decision, as the High Court reasoned in one case: *"However, in adopting this decision, the High Council of Justice did not respect the due process of law, as it ordered the removal of the appellant from her position as judge without first hearing her, as required by Law no. 8436 dated 28.12.1998 'On the organisation of the Judicial Power in the Republic of Albania' (as amended), Article 44, which was enacted in implementation of the Constitution of Albania.*

According to that provision, in every case of disciplinary proceedings, the

201. Decision no. 88, dated 18.11.2002 of the High Court's Joint Chambers.

202. Law no. 8436, dated 28.12.1998, Article 44.

judge alleged to have committed the violation must be heard. Verification of the allegations is mandatory.

Before taking its decision, the HCJ must hear the claims of the parties in a hearing. The complete casefile must be made available to the judge at least ten days prior to the hearing. The judge has the right to present his defence either personally or through legal counsel at the hearing.

In this manner, the appellant - through no fault of her own - had no opportunity to be heard or to defend herself before the HCJ, as the latter had failed to duly notify her and had not made the case materials available to her prior to the hearing.

At the time she took one year of authorised leave to pursue postgraduate Master studies at the Complutense University of Madrid in October 1998, the appellant had left an address, which had been communicated to Tirana District Court where she served as a judge, through the letter no. 3148 dated 17.9.1998 of the Minister of Justice. Thus, she had not departed to an unknown location. In these circumstances, the HJC, through the Head of the aforementioned court, is presumed to have been aware of her location, where she was continuing her studies, now at the level of a higher scientific degree, PhD.

Consequently, the HCJ should have notified the appellant through the Head of Tirana District Court, using the address she had provided, and should have sent her - within the time-limits prescribed by the above-mentioned law - the materials concerning her dismissal from office.

Instead, the High Council of Justice, through its inspectors, confined itself to locating and obtaining a statement from the appellant's father, dated 08.10.2000, in which he declared that he did not know whether the appellant had obtained a second period of leave to continue her studies, nor did he have any information as to whether she intended to return to Albania upon completion of her studies.

Thus, on 15.11.2000, the Minister of Justice requested that the HCJ initiate disciplinary proceedings against the appellant and dismiss her from the office of judge on the above-mentioned grounds.

In these circumstances, the HCJ had every opportunity - before taking the decision to remove the appellant from her office of judge - to respect her right to be heard and to defend herself, in the manner prescribed by the aforementioned Law "On the organisation of the Judicial Power in the Republic of Albania" (as amended).

The HCJ's failure to respect this right renders its decision no. 97/2 dated 25.11.2000 unlawful insofar as it concerns the dismissal of the appellant from the position of judge, therefore, this decision must be annulled in that part.²⁰³

In this ruling, the High Court placed particular emphasis on compliance with the procedures concerning the notification of the subject

203. Decision no. 1, dated 16.01.2002 of the High Court's Joint Chambers.

under disciplinary proceedings and the safeguarding of his defence rights. It was precisely the violation of these procedural safeguards that led to the annulment of the HCJ decision.

In another case, concerning the procedures followed by the HCJ, the Constitutional Court reasoned as follows: *“The examination of the case by the Constitutional Court found that the High Council of Justice, in adopting the decision to dismiss the applicant from office, failed to conduct a due process of law, in violation of Article 42(1) of the Constitution. It failed to ensure the applicant the opportunity to be heard and to defend himself at the hearing in which the case was examined, an omission that infringed her rights guaranteed by the Constitution and by Law ‘On the organisation of the Judicial Power in the Republic of Albania.’”*

The Constitutional Court established that the applicant A. A. had not been notified to participate in the HCJ meeting on 20.12.2000, either through a public notice plated at Tirana District Court, or through her counsel or the court courier.

The evidence administered at the public hearing indicate that, through the notice placed at the court on 30.11.2000 notified the applicant to appear at the HCJ Inspectorate to be communicated the materials of the disciplinary proceedings initiated by the Minister of Justice, but it did not contain the date of the examination of the case.

The declaration of the court courier confirmed that the applicant had not been notified of the date of examination of the case, because the courier took over the task of handing over to the applicant the materials of the HCJ Inspectorate.

The applicant’s notification of the date of examination of the case was not made to her counsel, either. The proceedings found that the applicant had not assigned a counsel to represent her. The name of the alleged counsel authorized to receive the notice was not stated, and undoubtedly the applicant left Albania not to abscond or avoid the examination of the case.

In the aforementioned circumstances, the High Council of Justice acted in contravention of Article 33(1) of the Constitution and Article 6 of the European Convention on Human Rights, both of which enshrine the principle that every person has the right to be heard before being judged. It also acted in violation of Article 44 of the Law ‘On the organization of the Judicial Power in the Republic of Albania’, which establishes the obligation of the High Council of Justice, in every case of disciplinary proceedings, to hear the judge’s submissions in a hearing, the latter having the right to defend himself either personally or through legal counsel.”²⁰⁴

It seems from the foregoing reasoning that the notification procedures applicable at various stages of the disciplinary proceedings were confused. Specifically, the notice on the initiation of disciplinary

204. Decision no. 11 dated 02.04.2003 of the Constitutional Court.

proceedings should not have been confused with the date of the hearing of the case before the HCJ.

The application of disciplinary procedural rules, for the purpose of ensuring the right of defence before the HCJ, became the subject of debate between the High Court and the Constitutional Court, centred on whether the right to be heard had been respected in circumstances where the judge under disciplinary review repeatedly requested adjournments of the hearing by citing successive medical reports. In this instance, the High Court considered such conduct as an attempt to evade the judge's obligation to appear before the High Council of Justice, and reasoned specifically that: *"In the appeal against the HCJ decision, M. M. adduced several issues which, in her view, relate to violations of the procedures followed by the HCJ in examining the case, as well as to unjust conclusions regarding the assessment of matters concerning the application of substantive law by the court."*

Thus, the appellant, M.M., argues that the HCJ decision is manifestly unlawful, as the examination of the disciplinary proceedings and the decision rendered were the outcome of an irregular legal process, conducted in her absence and thereby depriving her of the constitutional right to defend herself.

In the manner in which the appellant frames the issue, the matter concerns one of the fundamental rights of every citizen when faced with the determination of a case, whether in administrative or judicial proceedings. Various international conventions, in which Albania has adhered to, emphasize that every individual has the right to be present in court proceedings and to defend himself, or to be assisted by a counsel of his own choosing. Similarly, Article 33 of the Constitution of the Republic of Albania states that "everyone has the right to be heard before being judged", while Article 42(1) provides that "... the rights recognized by the Constitution and by law may not be infringed without a due process of law".

A review of the case materials shows that the appellant's claim regarding the failure to observe the legal requirements of due process of law is unfounded. The appellant was served with the documentation containing the conclusions drawn from the inspection carried out by the HCJ inspectors since 4.1.2002, transmitted by HCJ letter no. 513, dated 3.1.2002. Likewise, the casefile contains a letter dated 27.2.2002, addressed to the appellant, which states: "You are hereby notified to appear on 4.3..2002 to participate in the HCJ meeting, during which the request of the Minister of Justice for disciplinary proceedings against you will also be examined". This letter bears the appellant's handwritten note: "Notification received on 28.2.2002".

On 23.4.2002, there is a note written by the appellant M.M., stating: "Today, on 23.4.2002, I, judge M.M., received a copy of the report concerning the violations in the adjudication of criminal and civil cases". On the same date, there is also a letter bearing the appellant's signature, which reads: "You are hereby served with a copy of the HCJ Inspectorate's report regarding the

initiation of disciplinary proceedings against you”.

Evidently, the appellant M.M. was duly and timely provided with all the materials pertaining to the conclusions of the inspection carried out by the HCJ Inspectorate, as well as the materials concerning the disciplinary proceedings initiated against her, submitted to the HCJ by the Minister of Justice.

Following the completion of the preliminary legal procedures, it appears that the HCJ consistently fulfilled its obligations regarding the notification of the appellant, the examination of the case in accordance with the legal procedures, and her participation in those proceedings. On 17.5.2002, the appellant M.M. was sent a telegram from the HCJ notifying her that “on Monday, 27.5.2002, you are requested to be present at the HCJ meeting, as the request of the Minister of Justice for disciplinary proceedings will be examined. The appellant did not appear on that date, as she submitted a medical report dated 24.5.2002 indicating that, due to a condition of depressive neurosis, she had been granted 15 days of medical leave, which obliged the HCJ to postpone the examination of the case.

On 10.6.2002, the appellant was notified that the HCJ meeting would take place on 15.6.2002; however, she again sent a telegram stating: “I am unable to appear due to health reasons. Enclosed please find the medical report”. The enclosed medical report dated 8.6.2002, shows that she had been granted 15 days of medical leave with the diagnosis of “depressive syndrome”, which again obliged the HCJ to postpone the examination of the case to 15.7.2002. On 8.7.2002, by letter prot. no. 127, the HCJ notified the appellant M.M. that: “At the meeting of 15.6.2002, the HCJ decided to examine the Minister of Justice’s request at its next meeting, and should you fail to appear, as on previous occasions, you are instructed to appoint legal counsel to represent you; otherwise, the disciplinary proceedings will be conducted in your absence”.

However, even after this notification, the appellant maintained the same conduct. On 14.7.2002, she sent a letter to the HCJ stating: “On 13.7.2002, I became aware that the disciplinary proceedings would be held on 15.7.2002. Due to my health condition, as in the previous meeting, I am unable to be present at the session”, and she enclosed a medical report dated 13.7.2002 that granted her medical leave until 16.7.2002.

Faced with this pattern of behaviour - whereby, upon each notification of the date of the HCJ meeting, the appellant would submit a medical report without addressing the fact that, if she could not appear personally, she should appoint a legal counsel to represent her - the HCJ proceeded to examine the case and unanimously decided to dismiss her from office

In view of the above-mentioned facts, the appellant M.M.’s claim that the proceedings were irregular and that she was not heard before the imposition of the disciplinary sanction is unfounded. The case was resolved in full compliance with the legal requirements. It is clear that the HCJ must take its decisions only after hearing the individual concerned, reviewing his submissions, and verifying

them. However, it is equally evident that these guarantees apply where the judge alleged to have committed the violation is genuinely interested in exercising those rights, and not in evading them through various means. The HCJ complied with all legal requirements and, over the course of several months, after duly observing the notification procedures, repeatedly requested the appellant's presence for the examination of the case. Nevertheless, by continually submitting medical reports, the appellant effectively prevented the HCJ from providing her the opportunity to be heard prior to deciding on her dismissal from the judge position

In the present case, it must be borne in mind that the appellant was afforded every opportunity to appear personally or through a representative before the HCJ. Under the law, any individual who, for various reasons, claims an inability to attend the examination of a case against him is fully entitled to present submissions through a counsel of his choosing - an option that was equally available to the appellant. M.M. had the possibility to appoint a defence counsel who, even if only formally, could have appeared before the HCJ, declared his representation, and stated that he lacked authority to defend the appellant in her absence. Obviously, the appellant herself took no steps to present her submissions before the HCJ, displayed no interest in exercising her right of defence, and, by failing to comply with the legal rules, it is deemed that she effectively sought to impede their application and evade the process. Furthermore, nothing in her letters to the HCJ indicates that she requested an adjournment of the hearing in order to participate personally or through a representative. On the contrary, her communications suggest acceptance that the proceedings continue without her presence or that of any counsel appointed by her.²⁰⁵

Thus, as may be observed, the High Court considered the judge's conduct unjustified, given that she repeatedly sought adjournments of the hearings on the grounds that she was unable to be present. Nevertheless, despite this analysis and following the admissibility of the individual constitutional complaint, the Constitutional Court held that: "The Minister of Justice requested the initiation of disciplinary proceedings for the imposition of the measure of 'reprimand with warning' against judge M.M., on the grounds that she had violated the requirements of Article 387 of Criminal Procedure Code. The Inspectorate at the High Council of Justice prepared an additional report concerning violations of the law committed by the judge in the adjudication of certain criminal and civil cases. On this basis, the Minister of Justice submitted a supplementary request for disciplinary proceedings seeking the judge's dismissal from office. The notification regarding the supplementary request for disciplinary proceedings does not appear to have been made in accordance with the rules laid down in the Administrative Procedure Code, because at that time the applicant had been suspended from her duties.

205. Decision no. 83 dated 18.12.2002 of the High Court's Joint Chambers.

The High Council of Justice was unable to examine the request for disciplinary proceedings on 27.5.2002 and 15.6.2002 because the applicant submitted two long-term medical reports diagnosing depressive neurosis and depressive syndrome. The meeting of the High Council of Justice was therefore postponed to 15.7.2002. The applicant notified the authority by telegram that, due to her serious health condition, she would be unable to attend that meeting and enclosed an additional medical report. In the applicant's absence, the High Council of Justice decided to proceed with the hearing and dismissed her from office. It is on this action taken by the authority that the Constitutional Court focused its analysis in order to address the applicant's claim that her right to due process of law had been violated.

The applicant contends that she was not heard in a due legal hearing by the High Council of Justice. The established and codified rule in our legislation is that a judge may not be dismissed without first being heard. Pursuant to Article 44 of the Law "On the organization of the Judicial Power in the Republic of Albania", the judge accused of a violation must, in every case, be heard, and the verification of his submissions is mandatory.

Article 33 of Law "On the organization and functioning of the High Council of Justice" set out the manner in which the judge is to be summoned, in conformity with the rules of the Administrative Procedure Code. Furthermore, Article 7(4) of the Regulation "On disciplinary proceedings for judges" adopted by the High Council of Justice, provides that where a judge's failure to attend is due to justified reasons, the High Council of Justice must postpone the examination of the disciplinary proceedings to the next available meeting, once the cause for non-attendance has ceased.

The Constitutional Court finds that these procedural rules - relating to the right to be heard and the right to defend oneself - were not respected by the High Council of Justice. The applicant did not attend/appear at the meeting of the High Council of Justice at which the request for disciplinary proceedings was to be examined, claiming that she was temporarily unable to work. She justified her absence by submitting several medical reports, the diagnosis of which appears to have been of a serious nature. The interested authority did not consider the applicant's absence, nor the submission of the medical report, to constitute a justified reason for postponing the hearing.

The Constitutional Court considers that, in a disciplinary procedure involving essential elements of the individual's right to a fair hearing, it was the duty of the High Council of Justice to ascertain and give reasoned consideration to the grounds for the applicant's non-appearance. The medical report submitted by the applicant constitutes an official document with evidentiary value, deemed valid unless its falsity is proven. This reflects the meaning attributed to an official act endowed with probative value under the Civil Procedure Code. The submission of the medical report by the applicant constituted a legitimate and

reasonable ground requiring the High Council of Justice not to examine the request for disciplinary action against her, but rather to postpone the meeting. Since the reason for the applicant's non-appearance was to be regarded as lawful and justified, the hearing could not be held, nor could the sanction of her dismissal from office be imposed, without affording her the opportunity to be heard and without observing the principles of adversarial proceedings.

The procedural rules applicable to disciplinary proceedings against judges refer to Article 33 of Law "On the organisation and functioning of the High Council of Justice" and the provisions of the Administrative Procedure Code. Article 96 of that Code sets out the circumstances in which the parties' right to be heard before the decision-making body may be precluded. In cases involving the adoption of urgent measures, or where it is evident that such hearing could compromise the execution of the decision, the decision-making body may conduct the proceedings without hearing the party. In addition, proceedings may be held in the absence of the interested party when the latter has already had an opportunity to present its views during the course of the procedure, or when the information submitted in the proceedings leads to a decision in favour of that party. In the case at hand, none of the above-mentioned circumstances appear to have been present so as to justify the conduct of the disciplinary proceedings in the judge's absence.

In examining and deciding this case, the Constitutional Court initially refers to the constitutional meaning attributed to the right to a due process of law. The jurisprudence of the European Court of Human Rights, and in particular that of the Albanian Constitutional Court, has recognised that the essential elements of this right apply not only to judicial proceedings, but equally to parliamentary and administrative procedures. Values such as the independence of the judiciary, the inviolability and irremovability of judges - linked to their status and constitutional safeguards - oversight of decision-making, impartiality in adjudication, and the right to be heard and to defend oneself, have all been treated as essential components of the right to a due process of law within constitutional jurisprudence. Failure to observe the procedures necessary to uphold these standards in a legal process is regarded as an infringement of the very essence of this right.

The Constitution of the Republic of Albania, international instruments, and the jurisprudence of the Constitutional Court have recognised that the right to a due process of law constitutes one of the individual's non-restrictable rights. It is a right through which individuals seek the enforcement of regular and equitable legal procedures. The right to a due process of law is a safeguard for the citizen against unlawful actions of public authorities and, at the same time, imposes upon such authorities the obligation not to infringe the rights and freedoms of citizens without ensuring adherence to proper legal procedures. Every public authority, in the exercise of its constitutional and legal functions, is

required to respect the universally accepted democratic standards reflected in the Constitution. "The substantiation of the alleged violations, compliance during the examination with the principle of separation of powers, the prior notification of the person whose dismissal is sought together with the materials establishing the alleged responsibility, and the observance of the right to be heard and to defend themselves - both through the opportunity to provide preliminary explanations and during the examination of the case - constitute some of the fundamental elements that guarantee the constitutional right of every individual to a due process of law. Any infringement of this fundamental right has consistently been identified in the jurisprudence of the Constitutional Court as a violation of the Constitution."

Based on this detailed analysis and in reference to the procedural rules governing disciplinary proceedings against judges, as well as the constitutional concept of the individual's right to a due process of law, the Constitutional Court concludes that, in the present case, the High Council of Justice violated the applicant's right to be heard and to defend herself, within the meaning of Article 42 of the Constitution and Article 6 of the ECHR."²⁰⁶

As may be observed, the decisions of the High Court and the Constitutional Court reflect two diametrically opposed approaches regarding the observance of the judge's procedural rights during the disciplinary proceedings and the interpretation of the right to a due process of law. At its core, the issue centred on whether the judge's repeated failure to appear before the High Council of Justice - justified by medical reports - constituted a deliberate evasion of the procedure, or a circumstance to which the HCJ should have responded by postponing the meeting and fully safeguarding the right to be heard.

The High Court reasoned that the conduct of the judge subject to the disciplinary proceedings constituted a means of avoiding participation in the process. Through its analysis of the documents and medical reports submitted, the Court held that the HCJ had fulfilled all its legal obligations regarding notification and the provision of opportunities for the judge to present her views, whether personally or through a representative. Considering that the judge had been afforded multiple opportunities to provide explanations, yet chose to remain passive in her defence by repeatedly submitting medical reports, the High Court found the HCJ's decision to continue the proceedings and issue a dismissal decision to be lawful. For the High Court, the responsibility for failure to exercise the defence rights falls on the individual who avoided the procedure, as she chose not to exercise her rights within the legal requirements.

In contrast, the Constitutional Court examined the matter from the broader point of the right to a due process of law, placing emphasis on the

206. Decision no. 17 dated 12.11.2004 of the Constitutional Court.

constitutional and procedural safeguards afforded to an individual in the context of disciplinary proceedings. It underscored that the duly issued medical reports - justifying the judge's temporary absence on account of her health condition - constituted official acts with full evidentiary value, which the High Council of Justice could not disregard without conducting a thorough inquiry into their authenticity. The Constitutional Court concluded that the judge's non-appearance, grounded in a documented medical condition, did not constitute deliberate evasion of the proceedings but rather an objective impediment requiring a more rigorous observance of her right to be heard and to defend herself. Assessing the circumstances, the Court determined that conducting the disciplinary proceedings in the judge's absence amounted to a violation of Article 42 of the Constitution and Article 6 of the European Convention on Human Rights, as the minimum elements of the right to due process of law had not been guaranteed.

So, while the High Court focused on the individual's responsibility to cooperate in disciplinary proceedings, the Constitutional Court viewed the matter through the prism of fundamental procedural guarantees and the duty of institutions to ensure the full protection of the individual. The decision of the Constitutional Court reflected a higher standard of justice, requiring State bodies to take special measures when the circumstances of a case make it impossible for an individual to effectively exercise his rights.

Notwithstanding the above-mentioned violations, judicial jurisprudence also contains cases in which the conduct of the HCJ was not deemed to have infringed the procedural rights of judges undergoing disciplinary proceedings. Accordingly, the failure to observe those procedural rights did not render the proceedings invalid, provided that the judge concerned had not sought their observation. So, the High Court reasoned in a case that: *"The appellant's claim that he was not afforded sufficient time to prepare his defence before the HCJ is also unfounded. The minutes of the HCJ meeting show that the appellant provided full explanations regarding the reasons for his absence from the organised examination and did not allege lack of sufficient time to prepare his defence before that body. If the HCJ had failed to comply with the statutory time-limit for prior notification, it was the appellant's duty to request the postponement of the disciplinary hearing if he was unable to prepare. The absence of such a request, combined with the fact that he provided explanations, demonstrates that the appellant had sufficient time to prepare."*²⁰⁷

As may be observed, the protection of procedural rights requires active engagement by the person subject to the proceedings. A passive

207. Decision no. 438, dated 21.2.2000 of the High Court's Joint Chambers.

stance cannot subsequently serve as a basis for that same individual to invoke the invalidity of the procedure.

Such procedural safeguards were not required where the termination of judicial status did not arise from disciplinary grounds but from other circumstances, as reflected in the following reasoning of the High Court: *"The obligation of the High Council of Justice to hear the judge in advance is connected to situations in which disciplinary proceedings has been initiated against the judge by the Minister of Justice, and the judge, in relation to the disciplinary violations identified, has the right to present a defence and raise objections before the HCJ. In the present case, no such initiative was taken by the Minister, nor was any disciplinary sanction sought or pursued by the High Council of Justice against the claimant. Her request - submitted only on 13.10.1999 -for authorisation to continue her specialisation cannot justify or legitimise her prolonged absence from work, during which she was not remunerated, thereby amounting, in effect, to a voluntary termination of the employment relationship. The Joint Chambers hold that the claimant's failure to report to work in the present case amounts to a voluntary resignation manifested through conclusive conduct, therefore, the procedure followed by the respondent could not be the one asserted by the claimant, but rather the procedure applied by the HCJ.. Accordingly, the Joint Chambers held that the decision rendered was correct and grounded in law."*²⁰⁸

The jurisprudence has not regarded procedural rights as having been violated in cases where the individual, through his own conduct, seeks precisely to undermine the procedure itself, as is also reflected in the following reasoning of the High Court: *"The High Council of Justice undertook every possible measure to notify the applicant of the date of the hearing, so that he could be provided with the full casefile materials ten days prior to the hearing, and so that he could exercise his right to defend himself during the hearing, either personally or through counsel.*

The applicant had been suspended from judicial office. On 23.6.1999, he was informed of the violations identified by the inspectors of the HCJ Inspectorate and, through a written report, submitted his explanations regarding the alleged breaches.

After that date, as acknowledged by his representative, he left the country."

The meeting of the High Council of Justice was notified to him by the courier of Tirana District Court at the respondent's residence, at the address on record, but no one was found there. Subsequently, the courier went to the residence of his sister in order to communicate the hearing date and the relevant materials, but she refused to accept them. In these circumstances, and being unable to determine the respondent's whereabouts, notice was effected by public announcement at Tirana District Court.

208. Decision no. 627, dated 06.04.2000 of the High Court's Joint Chambers.

The Joint Chambers considered the notification procedure lawful, noting that even the refusal by the respondent's sister to receive the notice could be deemed sufficient to consider service of notification as having been effected."²⁰⁹

Another interesting case arose when the High Council of Justice conducted two separate votes for the same subject, because the first vote did not reach the required majority, thus a second vote was necessitated. The dismissed judge in that case challenged the decision, alleging a violation of the principle of *res judicata*. The High Court, however, adopting a different position, reasoned as follows: "*The applicant's claim that his dismissal was decided through an irregular process of law by the High Council of Justice, and that the principle of res judicata was thereby violated, is unfounded. The High Council of Justice duly conducted the disciplinary proceedings and subsequently the hearing on 27.4.2001, in compliance with the requirements of Law no. 8436 of 28.12.1998 'On the organization of the Judicial Power,' as amended. Thereafter, it regularly proceeded with the voting procedure for the applicant's dismissal from judicial office. As no decision was reached on that date due to the lack of the required majority, the vote was repeated on 11.5.2001. Under these circumstances, the High Council of Justice faced no impediment in repeating the vote, as it is the Council itself that determines whether a revote is warranted when, under the applicable rules, no decision can be adopted owing to the absence of the required majority. It is evident that the vote was repeated not against the will of its members.*

In this case, the principle of res judicata could not apply, as no prior decision had been adopted by the High Council of Justice, notwithstanding the fact that a vote had been conducted."²¹⁰

In addition, Likewise, another case concerned a situation in which the Deputy Head of the HCJ had reached the end of his mandate, leading to a dispute in the appeals proceedings regarding whether the procedures he had undertaken were valid. According to the High Court, this claim could not be upheld, as reflected in the following reasoning: "*Ultimately, the claim that the HCJ representatives lacked proper legal authorisation in the proceedings is likewise inadmissible. An examination of the authorisation document shows that it was issued in accordance with the requirements of Article 35 of Law no. 881, dated 17.5.2001 'On the organisation and functioning of the High Council of Justice'. Both the substance of the document and its express wording confirm that it was issued by the Council itself. It is true that the document was signed by a member of the High Council of Justice who, at the time of signature, no longer held the position of Deputy Head; however, this does not render the act invalid. This member of the Council, until the entry into force of the cited law, exercised the function of Deputy Head and, in effect, continues*

209. Decision no. 25, dated 04.04.2001 of the High Court's Joint Chambers.

210. Decision no. 73 dated 27.06.2001 of the High Court's Joint Chambers.

to exercise that function until the election of a new Deputy Head, who has not yet been elected. Consequently, the Joint Chambers of the High Court consider that the authorisation is a legally valid document."²¹¹

In this case, the High Court considered that the official in question was required to remain in office until his successor assumed the position, so as not to impair the functioning of the institution - particularly given that the acts he had signed expressed the will of the entire HCJ rather than his individual will.

The High Court established that there is no breach of this procedure if the judge leaves Albania without notifying any person and his whereabouts cannot be found, as in this reasoned decision: *"The claim advanced by the applicant and his counsel that the High Council of Justice violated his rights under Article 44 of the Law 'On the organization of the Judicial Power in the Republic of Albania' is unfounded. Pursuant to this provision, the judge alleged to have committed the violation must in every case be heard, his objections must be verified, and he must be provided with the full casefile materials ten days prior to the HCJ hearing, where the parties' submissions are to be heard. These statutory requirements are mandatory for the Inspectorate and the HCJ. However, in the present case they could not be fulfilled - not because the HCJ failed to observe them, but because, despite all efforts by the HCJ inspectors, it was not possible to identify any address or information regarding the applicant's whereabouts. As previously mentioned, and as shown by the casefile, none of the colleagues or staff of the Military Court of Appeal had any knowledge of where the applicant had gone or why he had left.*

The Joint Chambers also found unfounded the further claim that no disciplinary sanction of dismissal could be imposed on the applicant because, in October 2000, he had submitted to the HCJ a request for resignation from the positions of the head of court and judge. The documents submitted and administered in the case do not show that any such request was ever filed; moreover, even assuming such a request had been submitted, it cannot justify his prolonged absence from duty without any decision having been issued by the competent authority for him."²¹²

Looking at the above cases concerning inspection procedures and disciplinary proceedings against judges, a clear judicial position emerges regarding the obligation of the competent authorities to comply with these procedural requirements. The essential element in such cases was the observance of judges' fundamental rights to be heard and to present a defence during the disciplinary procedure.

A breach of these procedures was deemed to have occurred whenever the judge was not provided with the full casefile within the statutory

211. Decision no. 85 dated 20.11.2002 of the High Court's Joint Chambers.

212. Decision no. 9 dated 11.09.2007 of the High Court's Joint Chambers.

time-limits, or when he/she was not duly notified of the hearing before the HCJ. In cases where the inspectors or the HCJ failed to effect proper notification, this was considered a violation of procedural rights, which frequently resulted in the annulment of the decision. In several cases, the courts stressed that delayed notification or the absence of proper notice constituted a violation of the principles of due process of law, undermining the judge's right to prepare and to present explanations.

Another serious violation was deemed to occur when the medical reports submitted by a judge, justifying his absence on health grounds, were not respected. In such cases, where the reports were duly documented and had not been contested by the competent authorities, the Constitutional Court reasoned that they constituted a valid ground for adjourning the hearing, and that conducting the proceedings in the judge's absence amounted to a serious infringement of his rights. Medical reports, being official acts, carried full evidentiary value under the jurisprudence, and failure to take them into consideration constituted a breach of procedural rules.

However, not every claimed violation was considered well-founded. In cases where the judge showed no interest in exercising his procedural rights - for example, by refusing to appear, failing to cooperate with the inspectors, or declining to appoint a representative - the procedures followed by the HCJ were deemed proper. This approach was based on the principle that a judge's passivity could not justify the invalidation of the HCJ's decision-making. In such situations, the judge's refusal to accept notifications or to cooperate was regarded as an attempt to evade the proceedings and obstruct the disciplinary procedure.

In certain specific cases, where the judge had deliberately abandoned his duties and left the country without giving proper notice, the procedures followed by the HCJ were considered lawful, even when notifications were made through public announcements or delivered to the judge's family members. In such circumstances, the disciplinary bodies had no alternative means of formally complying with notification procedures, due to the judge's own conduct.

1.2 Disciplinary liability and sanctions against judges

The disciplinary liability of judges was regulated by Chapter V, Articles 40 - 46. The Law provided that the judges should be held accountable for disciplinary violations and for the commission of acts or conduct that seriously discredit their image and the authority of justice.²¹³

Maintaining the same wording as the previous law, the following

213. Law no. 8436 dated 28.12.1998, Article 40.

eight cases were similarly considered disciplinary violations:²¹⁴

1. *Actions that, under the law, are incompatible with the function of a judge or prosecutor.* This constituted one of the most serious forms of disciplinary misconduct, as it directly undermined the principles of independence, integrity, and impartiality of the justice system. The legislator deemed it essential to prohibit any action or involvement by judges and prosecutors in political, commercial, or other activities that could compromise their image as guarantors of the justice system and as representatives of a branch of power that must remain independent from external influence. This disciplinary violation encompassed not only direct participation in prohibited activities, but also any conduct that could create doubts about external interference in the exercise of judicial or prosecutorial duties. The commission of such misconduct not only created a potential conflict of interest but also diminished public confidence in the justice system.

2. *Disclosure of investigative secrecy, deliberation-room confidentiality, or other information of an intimate nature.* Even this violation constituted a serious disciplinary violation when committed by judges or prosecutors, as it gravely undermined public confidence in the justice system. Such conduct risked causing significant harm not only to the interests of the parties involved in the case but also to the dignity and personal security of individuals. Investigative and judicial secrecy served as a fundamental guarantee for the conduct of a fair and impartial process, while the protection of intimate or sensitive information aims to safeguard individuals' privacy and private life. Consequently, a violation of this kind not only compromised the integrity of the specific proceedings, but also created a broader climate of distrust toward justice institutions and the professionalism of those entrusted with upholding them.

3. *Serious or systematic delays in the performance of duties.* This violation primarily concerned unjustified delays in the investigation of criminal offenses or in the adjudication and resolution of court cases, as these posed serious consequences on citizens who expected justice to be delivered as promptly as possible. As a principle, continuous and repeated delays undermine the right of timely access to justice, creating a sense of distrust among citizens toward the justice institutions. In addition to imposing an unnecessary burden on the parties to the proceedings, such conduct negatively affected the public image of judges and prosecutors as public figures who represented this system.

4. *Failure to observe rules of solemnity.* This disciplinary violation jeopardized the dignity and seriousness of investigative and judicial activity, weakening the authority of the officials entrusted with carrying out these functions. The rules of solemnity - which included conduct,

214. Law no. 8436 dated 28.12.1998, Article 41.

attire, and manner of communication in the courtroom - were essential to preserving the prestige and importance of judicial proceedings. Violating these rules created an inappropriate atmosphere for an institution of the justice system, where the maintenance of solemnity plays a fundamental role in strengthening the authority of courts and prosecution offices, as well as in building a judicial system that inspires respect and public confidence. Failure to observe these rules not only demonstrated a lack of seriousness in the exercise of duty but also damaged the image of the justice system as a whole and created the impression that those responsible for upholding the law did not themselves respect the solemnity required by such a high office.

5. *Unjustified absences at work.* This type of violation, when committed by judges or prosecutors, demonstrated a lack of responsibility and commitment to duty - qualities that were and remain essential to the functioning of the justice system. Their continuous presence and engagement were indispensable for ensuring the regular conduct of judicial proceedings and the thorough and comprehensive investigation of cases. Unjustified absences caused delays in the examination of cases, created obstacles for the parties, and increased the workload of their colleagues, thereby impairing the efficiency of courts and prosecution offices. This disciplinary violation constituted an unacceptable indication of professional negligence and stood in blunt contradiction to the high standards expected of the justice system.

Regarding this violation, there are also several practical cases that contributed to the development of jurisprudence. The first case concerns an unjustified departure from an ongoing court hearing, as reflected in the following reasoning: "*V.K. served as assistant judge at Tirana District Court.*

By decision no. 44/2, dated 26.6.1999, the High Council of Justice dismissed her from the position of assistant judge for disciplinary violations at work. On 11.6.1999, the claimant was part of the panel examining a civil case involving the parties B.L. and S.S. During the hearing, at the request of the assistant judge V.K. herself, it was requested that a court file located in the archive of that court, be retrieved and administered. For this reason, the hearing was postponed to 14:00 hrs. on the same day. The assistant judge failed to appear at that hearing. The judge M. F. looked for the assistant judge even at the deputy head of the court, Mr. F. L., and at the supervisor of assistant judges, B. K., and they waited for the claimant until 15:00 hrs. Being that the panel could not be formed in her absence, the hearing was postponed to another date.

The High Council of Justice, acting upon a request for disciplinary proceedings submitted by the Minister of Justice, examined the matter in accordance with the requirements of Law no. 8436, dated 28.12.1998, and

concluded that the unjustified absence from work by the assistant judge constituted conduct incompatible with the proper performance of her duties."²¹⁵

The above-mentioned conduct of the subject under disciplinary review - who herself requested the retrieval of a court file, causing the hearing to be postponed for that purpose, and then failed to appear - clearly demonstrates improper behaviour and a breach of workplace discipline, which falls within this category of violations.

In another case, a violation was found where the judge left the workplace and showed no further interest in performing his duties, regardless of the fact that the city in which the court was located was affected by civil unrest. More specifically, the High Court held as follows: *"The claimant R.D. had been appointed as a judge at Saranda District Court.*

By decision no. 4, dated 10.11.1997, the High Council of Justice ordered his removal from the office of judge, on the grounds that he had been absent from duty for an extended period of time.

Upon the appeal filed by the claimant R.D., the Court of Cassation' Joint Chambers (by its decision no. 1462, dated 03.11.1998) upheld decision no. 4, dated 10.11.1997 of the High Council of Justice.

By decision no. 43, dated 04.06.1999, the Constitutional Court annulled, as unconstitutional, the aforementioned decision of the Court of Cassation's Joint Chambers, ordering that the case be re-examined by them again, now operating as part of the High Court.

Based on the explanations provided by both parties to the proceedings and the administration of several pieces of evidence during the proceedings, it is concluded that the decision of the High Council of Justice was lawful and well-founded, therefore, the lawsuit filed by R.D. seeking its annulment must be dismissed as unsubstantiated.

Following the events of March 1997, the claimant R.D. left his judge position and, until the end of September 1997, failed to provide any notification regarding the reasons for his departure or his whereabouts. It is true that the unrest during that period resulted in the burning of the court building and hindered its normal functioning; however, while the other court employees, awaiting the resumption of work, maintained continuous contact with one another and with the local authorities, the claimant neither showed interest nor presented himself even to collect his salary. As a consequence, the court's accountant, through payment order no. 556977, dated 07.09.1997, was compelled to deposit his salary for the period March–September 1997 into the State Budget.

On 29.09.1997, by telegram sent from Tirana, the claimant notified the Saranda District Court that he was ill, submitting two medical reports for temporary incapacity covering the period 15.09–15.10.1997. These reports were rightly deemed invalid and were not taken into consideration to justify

215. Decision no. 690 dated 29.07.1999 of the High Court's Joint Chambers.

the claimant's one-month absence from work. Although each report purported to be issued by a three-member medical commission, one was signed by only two doctors and the other by just one. Both reports were issued by the Memaliaj Polyclinic, whereas the telegram addressed to Saranda District Court was sent on 29.9.1997 from the city of Tirana- circumstances that further cast doubt on the sincerity and credibility of the claimant's assertions regarding the reasons for his failure to report to work.

The claimant's assertion that, in November 1997, he appeared at work and adjudicated criminal, and civil cases is irrelevant and does not affect the assessment of the legality of the High Council of Justice's decision. This is because the hearing dates of 9.11.1997 and 13.11.1997 fall after the decision of the High Council of Justice had already been issued, and that body examined and evaluated the reasons for the claimant's failure to appear at work up to 4.11.1997.

In conclusion, it is established that for a period of eight months the claimant not only failed to appear at work, but also showed no interest - unlike the other employees - in the possibility of resuming his duties. This conduct demonstrates a lack of seriousness, responsibility, and commitment, behaviour which was rightly deemed to render the claimant unsuitable for the judicial office. Accordingly, the disciplinary violations identified in the claimant's conduct provide grounds for his dismissal from the position of judge, as supported by Article 19 of Law no. 7574, dated 24.6.1992, as amended by Law no. 7119, dated 19.4.1995.

The fact that, up to the date on which the HCJ rendered its decision dismissing the claimant, there was no interruption in his financial remuneration does not indicate that he remained engaged with his judicial duties. Due to the prevailing circumstances, all employees were compensated despite not working. However, whereas the other employees showed interest and presented themselves periodically over a six-month period, the claimant demonstrated no interest whatsoever in his duties, to the extent that the court accountant was compelled, through a special payment order, to transfer only the claimant's salary to the State Budget, and this circumstance further confirms that he had been absent from his duties for an extended period.

The claimant's prolonged stay in an undisclosed location, far from his workplace and place of residence, also hindered the ability to duly notify him of the disciplinary sanction that the Minister of Justice proposed to the High Council of Justice."²¹⁶

As noted from the above reasoning, although his initial absence might be regarded as justified, his complete lack of interest, failure to inform the authorities as his colleagues did, and his subsequent non-appearance demonstrate a wilful intention not to report for duty and, therefore, this constitutes a disciplinary violation.

In another case deemed to constitute abandonment of duty, a

216. Decision no. 1054 dated 28.09.1999 of the High Court's Joint Chambers.

judge, who also served as Head of Court, had emigrated abroad with his family. In this case, the High Court reasoned as follows: *“The documents administered and the explanations provided by the parties indicate that the applicant A.H. served as a judge and, in 1995, was appointed Head of the Military Court of Appeal in Tirana. In September 2000, without informing the competent authorities and without cause, he left Albania together with his family and settled in Albania, from where he returned in July 2006.*

Following his departure from duty, based on a request submitted by the Minister of Justice, the HCJ Inspectorate conducted an inspection at the Military Court of Appeal. According to the reports submitted, aside from disruptions and shortcomings in the Court’s work, no one had any knowledge regarding the applicant’s departure. On this basis, on 22.11.2000, the Minister of Justice requested the initiation of disciplinary proceedings against the Head of the Military Court of Appeal of Tirana, Mr. A.H., resulting in the imposition of the disciplinary sanction of dismissal from office.

The High Council of Justice, following the verifications conducted by its Inspectorate, was unable to notify the applicant regarding its examination of the Minister’s request. After thoroughly analysing the case, it approved the disciplinary sanction proposed by the Ministry of Justice and dismissed him from the position of Head of Court and from the office of judge, by decision no. 97/2, dated 25.11.2000

In the complaint submitted on 25.7.2006, A.H. claimed that the HCJ decision dismissing him from judicial office was unfounded. In his complaint and during the judicial review before the Joint Chambers of the High Court, the applicant argued that his departure from Albania and relocation to Canada had been for justified reasons, as his life and the lives of his children had been threatened and placed at risk by individuals with an interest in a criminal case. He further argued that the HCJ had violated legal requirements by failing to respect his right to access to the disciplinary file, as well as his right to notification and to be heard.

Following a comprehensive analysis of the documentation, the claims, and the relevant explanations, the Joint Chambers of the High Court consider the applicant’s claims to be unfounded. The applicant himself does not dispute that he left his post without the authorization of the competent authorities. In all cases, regardless of the circumstances or the reasons, a judge may not abandon his duties without notifying and obtaining the requisite authorization, and this obligation is imperative, particularly for individuals holding leadership positions within the court. Their departure, without ensuring the proper arrangements for the court’s normal functioning, causes disruptions (as occurred in the case at hand) in the allocation of cases by lot, in their adjudication, and in the overall judicial and administrative activity.

The prolonged absence of a judge from duty for several months, without

notification or the prior authorization of the competent authorities, leads the Joint Chambers to conclude that such conduct constitutes an act that gravely discredits the position and the public image of the judge. Pursuant to Article 147(6) of the Constitution of the Republic of Albania, this constitutes grounds for dismissal from office. Besides, under Article 40 of the Law "On the organisation of the Judicial Power in the Republic of Albania," judges are accountable for disciplinary violations, as well as for acts and conduct that seriously discredit their reputation and the authority of the judiciary. Article 41 defines, *inter alia*, unjustified absences from work (paragraph 5) and the performance of actions contrary to the regular fulfilment of official duties (paragraph 7) as disciplinary violations which, under Article 42, may result in the sanction of dismissal from office.

This reasoning of the Joint Chambers confirms the lawfulness of the HCJ decision to dismiss the applicant A.H. from judicial office. It should also be emphasised that, through his conduct, the applicant effectively abandoned his position unilaterally - that is, he effectively dismissed himself - since he failed to appear for duty for several months and returned from Canada only after approximately six years (September 2000 - July 2006), at which point he lodged the complaint against the HCJ decision.

It must also be taken into consideration that the applicant, by virtue of his position as Head of the Military Court of Appeal, held the rank of Colonel, and there is no evidence that he obtained authorization for his departure from the Ministry of Defence."²¹⁷

Even in this instance, it is concluded that the subject was absent from work without justification and without providing the required notice regarding his actions. The High Court reasoned that, through his own unequivocal conduct, the individual had effectively "dismissed himself," although it did not explain why such conduct should not be regarded as a resignation, but instead classified as a ground for dismissal. In this instance, it appears that the High Court adopted this approach because the Minister of Justice had assessed the circumstances as falling within those situations in which the individual ought to be disciplinary liable.

The above-mentioned cases do not appear to align with another situation addressed in judicial jurisprudence, where the High Court has sought to distinguish between a voluntary departure from employment through conclusive conduct (i.e., a *de facto* resignation) and a disciplinary violation consisting of failure to report to work. Thus, in its case-law, the High Court reasoned *inter alia* as follows: "During the proceedings, it was established that the claimant M.B. had served as an assistant judge at Lezha District Court since 1993. On 13.12.1998, the claimant left her position to attend a specialization programme abroad and did not return thereafter, up until her dismissal by decision no. 56, dated 16.10.1999 of the High Council

217. Decision no. 9 dated 11.09.2007 of the High Court's Joint Chambers.

of Justice. For the period from 13.12.1998 to 17 March 1999, the claimant justified her absence by submitting a medical certificate, which she failed to do for the subsequent period. During that latter period, having effectively chosen between her employment and the specialization programme, the claimant neither sought authorization from the competent body nor showed any further interest in maintaining her employment relationship. This was established through the notification submitted by the Head of Lezha District Court, Mr. J. N., by letter no. 7/4 dated 7.4.1999 addressed to the Minister of Justice, and through the HCJ report dated 11.5.1999. The claimant was unable to rebut these findings with any evidence during the judicial hearing.

The Joint Chambers consider that the claimant's departure from duty was correctly regarded by the KLD as her voluntary abandonment of employment - not through a written act, but through conclusive conduct - by remaining absent from work for more than six months for a reason that, in her own assessment, outweighed the duties of her position.

In view of this fact, her removal from office was properly based on Article 27(1) of Law no. 8436, dated 28.12.1998, "On the organisation of the Judicial Power in the Republic of Albania," rather than treated as a disciplinary violation under Article 41(5) of the same law."²¹⁸

In this case, the individual subject to the proceedings, in addition to abandoning the workplace and displaying a lack of interest, made no effort whatsoever to resume the employment relationship. Consequently, this conduct was regarded as a resignation rather than an unjustified absence from work.

Although this case differs from the first one - where the individual attempted to exercise judicial functions and even conducted certain court hearings - this decision appears highly similar, as the Court similarly held that the individual had been "self-dismissed" through conclusive conduct. The only distinction between the second and the third case lies in the fact that, in the former, the Minister deemed it appropriate to initiate disciplinary proceedings, whereas in the latter, cited above, the High Council of Justice acted on its own motion. However, this distinction is largely formal, and the High Court itself did not attempt to draw any substantive differentiation between its two decisions in its reasoning.

In another case involving unjustified absence at work, the High Court reasoned as follows: "By decision no. 56, dated 16.10.1999, the High Council of Justice dismissed from office of the assistant judge N. Gj. at Kruja District Court.

According to the above-mentioned Decision, the inspection carried out by the HCJ Inspectorate of the High Council - following the notification submitted by the Head of Kruja District Court - confirmed that the claimant, during the

218. Decision no. 627 dated 06.04.2000 of the High Court's Joint Chambers.

year 1999, had committed disciplinary violations by being absent from work without justification for 35 days, qualified as such under Article 41(5) of Law no. 8436, dated 28.12.1998 "On the organisation of the Judicial Power in the Republic of Albania."

On the other hand, the claimant admits to the absences, but alleges that those were generally justified and undertaken with the full knowledge of the Head of Kruja District Court.

He argued that the reason for his absences was the extremely serious health condition of his brother, who, being paralyzed, required daily assistance and care. Likewise, during the same period, his mother was also in grave medical condition; she had been hospitalized and undergone surgery, and similarly required daily support. Under these circumstances, he claimed that it had been objectively impossible for him to report to work at the scheduled time.

During the proceedings, the representative of the High Council of Justice confirmed the claimant's claims regarding the severe and ongoing problems and concerns he faced within his family during that period.

Taking into account the disciplinary breach at work, in light of the requirements set forth in Article 41(5), in relation to the measure imposed under Article 42(6) of the aforementioned law, it results that the latter is excessively severe and does not justify the violation committed. In the present case, the decision adopted by the High Council of Justice is deemed to have been taken in contradiction with the legal requirements."²¹⁹

In the above case, it may be fully stated that the judge's absence, although proven, was justified, considering that his family members were in a difficult health situation. However, based on the reasoning of the High Court's decision, due to the conduct of this judge, it appears that the possibility of imposing a disciplinary sanction could not be excluded, but merely that the sanction dismissal was disproportionate in this instance.

Furthermore, failure to appear at work has not been considered in the case where a judge, who had just completed the School of Magistrates, had not accepted the final appointment. In this case, the High Court reasoned as follows: "The Joint Chambers, after discussing the matter in its entirety, reach the conclusion that the High Council of Justice erred in applying Article 41(5) of the Law 'On the organization of the judicial power in the Republic of Albania,' by dismissing the requesting judge E.H. from duty. The proceedings showed that, in accordance with the law on the School of Magistrates, the applicant, at the beginning of the academic year, entered into a contract with the School of Magistrates, determining the reciprocal obligations for attending the school. Pursuant to Article 22 of this law, as further materialised in the aforementioned agreement, it is stipulated that magistrates who have been appointed and, without

219. Decision no. 1095 dated 08.12.1999 of the High Court's Joint Chambers.

*justified reasons, resign or request relief from duty before the expiration of five years from their appointment, are obliged to reimburse the School of Magistrates a monetary amount according to the provisions set out in this article. According to the law 'On the School of Magistrates of the Republic of Albania', students who complete this school are appointed by the President of the Republic, without being subject to a competition, to the respective positions of judges or prosecutors. Under this same law, from the moment they begin the school, they also receive 50% of the salary of a judge or prosecutor, depending on the position to which they will be appointed. In the meaning of the analysed provisions, the Joint Chambers consider that although the law imposes reciprocal obligations, it also recognises the right of an appointed magistrate to resign from the position, and when he does so within a certain period of time, this entails, as a consequence, the obligation to compensate the expenses incurred by the School of Magistrates for his education. Upon examining the resignation of the applicant E.H., the High Council of Justice should not have discussed its acceptance or rejection, but was required to determine the legal consequences arising from such resignation. According to the Joint Chambers, the refusal to accept the resignation in no way obliged the applicant to appear in the position where he had been appointed, given that he had already voluntarily resigned from it. The regulation of Article 22 of the Law on the School of Magistrates is in harmony with Article 27(1) of the Law 'On the organisation of the judicial power,' and consequently, it was not appropriate to apply dismissal from duty as a disciplinary sanction against the applicant E.H. In the spirit of the Constitution, the European Convention on Human Rights and Fundamental Freedoms, and the aforementioned laws, the applicant cannot be compelled to accept an appointment made by the appointing authority without his free will."*²²⁰

According to this decision of the High Court, it follows that magistrate candidates could not be regarded as "judges" without a definitive appointment, and such appointment had to be expressly accepted by them.

For this reason, in respect of those individuals who had not accepted their definitive appointment, the legal provisions governing the disciplinary responsibility of judges were not applicable. Instead, other legal provisions regulating the status of these individuals as magistrate candidates were to be applied.

From the above analysis, it results that unjustified absences from work constituted a serious disciplinary violation for judges, reflecting a lack of responsibility and commitment towards their duties, which is essential for the proper functioning of the justice system. This is clearly evidenced by the fact that the High Council of Justice consistently

220. Decision no. 16 dated 13.02.2000 of the High Court's Joint Chambers. See decision no. 19 dated 13.02.2001 of the High Court's Joint Chambers.

imposed the most severe sanction - dismissal from office.

Judicial jurisprudence has examined a number of cases relating to this violation, emphasising the importance of the presence and engagement of judges to ensure the fair and efficient conduct of judicial proceedings. In the cases reviewed by the High Court, different circumstances have been analysed, such as judges leaving their post without notification or without the required authorisation, lack of interest in the performance of duties following sudden departures, as well as cases concerning the refusal of judicial appointments by magistrate candidates. In these decisions, a certain approach may be observed to distinguish between disciplinary breaches and conduct amounting to *de facto* resignation or voluntary departure, although this distinction did not always appear clear. Through these cases, jurisprudence established a number of important standards for the treatment of disciplinary liability relating to unjustified absences from the workplace, aiming to ensure a proper balance between disciplinary responsibility and the rights of judges, with a view to safeguarding integrity and authority within the judicial system.

6. *Engaging in improper or immoral conduct, whether during or outside working hours.* This disciplinary violation directly affected the moral standing and dignity of judges, from whom it was required to preserve their integrity under all circumstances. Such violation was not limited solely to the exercise of their functions during official working hours, but extended to their personal and social conduct, aiming to ensure that judges would both appear and be exemplary for society. As representatives of the justice system, any of their actions - including those taking place in their private lives - had a direct impact on the public's confidence in that system, creating the perception that such officials were not worthy of exercising such a high office. This disciplinary breach demonstrated that the legislator expected from judges not only professionalism in the performance of their duties, but also dignified behaviour in every aspect of life, as a guarantee for the independence and integrity of the justice system.

The jurisprudence of that period reflects several cases in which this disciplinary violation was committed by different judges, as evidenced in the following reasoning: *"The High Council of Justice, upon the request of the Minister of Justice for disciplinary proceedings, examined the case in accordance with the requirements of Law no. 8436 and reached the conclusion that the actions of the assistant judge D.G., who insulted and physically assaulted judge A.B in the premises of the court, seriously undermine the moral standing of the judge and equally undermine the judicial authority. In this context, the High Council of Justice acted correctly in considering his actions 'improper and immoral,' both during and outside working hours.*

The claimant's claim that a second sanction (dismissal from office) could not be imposed before the conclusion of the criminal proceedings is unfounded, since his actions gravely affect the judge's image, and therefore the competent authority (the HCJ), when imposing a disciplinary sanction, cannot depend on whether criminal proceedings have commenced or concluded. In the present case, criminal prosecution is at the discretion of the injured party, towards whom the claimant committed the insult and assault; however, the commission of this act within the premises of the court and against a judge gives the competent body the legal right to initiate disciplinary proceedings. The claimant's conduct is flagrant and manifestly contrary to the norms established for work within judicial bodies."²²¹

In this case, the disciplinary sanction of "dismissal from office" was deemed justified and intolerable when a judge insults and physically assaults a colleague. Such conduct is clearly incompatible with the judge's image and therefore legitimises the imposition of this sanction. This decision also confirms that criminal prosecution does not suspend or affect administrative disciplinary proceedings, especially when the criminal prosecution was initiated through complaint, in other words, a so-called "private accusation".

Another interesting case relating to improper conduct is found in the following reasoning of the High Court, which held that: *"It has been proven that judge S.S., on 03.02.2002, while participating in a training seminar held at Hotel 'Pameba' in Kavaja, travelled to Tirana for personal reasons, where he met citizen A.L., whom he had not known before. In these circumstances of acquaintance, S.S. socialised with him, they consumed alcoholic beverages and subsequently travelled together to Hotel 'Pameba' in Kavaja. To the hotel staff, citizen A.L. was introduced by S.S. as his friend, after which they went together to the judge's room. Shortly thereafter, noise was heard and persons nearby entered the room, where they found that S.S. and A.L. had assaulted each other. Each reported the other to the competent authorities, alleging criminal wrongdoing.*

The Joint Chambers of the High Court hold that the act of S.S. accompanying an unknown person, while serving as a judge of Saranda District Court, ending up in mutual conflict and physical violence with him, constituted grounds for dismissal.

In view of Article 147(6) of the Constitution of the Republic of Albania and Articles 34 and 41(6) of Law no. 8436, dated 28.12.1998 'On the organisation of the judicial power,' these actions seriously discredit the position and image of the judge and therefore the dismissal of S.S. from duty is lawful.

Based on the above, the grounds for removal from office are actions that seriously discredit the judge's position and image, and not whether the appellant will be subject to criminal liability. Accordingly, the fact claimed by him that

221. Decision no. 656 dated 17.02.2000 of the High Court's Joint Chambers.

he had been found not guilty does not affect the reasoning for his dismissal."²²²

This case illustrates another form of improper conduct by judges. Thus, meeting random individuals, allowing such person access to hotel premises reserved solely for the judge, and subsequently engaging in violent behaviour, are incompatible with the rules of conduct expected from a judge; moreover, as the judge was in a training period, he was expected to display appropriate behaviour.

In another case, the Court considered the actions of the judge toward a private individual as immoral conduct, aimed at maintaining an intimate relationship. According to the High Court, "*The Inspectorate of the High Council of Justice, based on the complaint filed by citizen O.P. regarding conduct incompatible with the law by a judge outside the performance of official duties, allegedly compromising judicial office, the justice bodies, and the image of the judge in society, and pursuant to Law no. 8811, dated 17.05.2001 'On the organisation and functioning of the HCJ,' Article 16(1), carried out the relevant verifications concerning this complaint.*

The Inspectorate concluded that judge L.D., in his non-judicial activities, had manifested conduct incompatible with the law, compromising the profession, the justice bodies, and the image of the judge. Therefore, it sent the respective documents to the Minister of Justice, who proposed to the HCJ the imposition of the disciplinary sanction 'dismissal from office,' on the grounds of conduct and acts that seriously discredit the image of the judge and the justice system.

The HCJ Inspectorate, in accordance with the Regulation 'On the disciplinary proceedings of judges', ensured that the legal procedure for notifying the judge of the initiation of disciplinary proceedings was followed, and on 28.03.2006, during the HCJ meeting where the Minister of Justice's proposal for dismissal was examined, the appellant was present and presented his arguments.

Furthermore, the HCJ, upon the request of Berat Prosecution Office for authorisation to commence criminal proceedings against judge D., based on a criminal complaint filed by the lady citizen O.P. on 11.11.2004, granted authorisation for criminal prosecution and simultaneously ordered his suspension from office, requesting the Inspectorate to conduct further verifications.

From the verifications and the documentation submitted and examined during the disciplinary proceedings, the HCJ established as follows: "Judge L.D. had served for several years as a judge at Skrapar District Court and had been married since 1989, and fathered a child.

In 2002, while serving as a judge at that court, he adjudicated a civil case regarding dissolution of marriage, where citizen O.P. was in the capacity of claimant. By decision dated 14.04.2002 her marriage with her former husband was dissolved.

That same year, as confirmed by both O.P. and the judge himself, an intimate

222. Decision no. 13 dated 27.01.2003 of the High Court's Joint Chambers.

relationship was established between them, which continued normally until 2004 - 2005, when O.P. decided to end the relationship and attempted to distance herself, as he had begun to impose himself through physical and psychological coercion, insisting on continuing the relationship. She and her family became frequent targets of insults and threats, often in public, in the city of Skrapar. The facts presented by O.P. were verified by the HCJ Inspectorate, which gathered statements from various citizens attesting to the harassment suffered by O.P. and her family due to the judge's persistent conduct.

For instance, the manager of a driving school in Çorovoda confirmed that, in August 2004, while giving a driving lesson to O.P. and her sister D.P., he was forced to stop as citizen D. (known as a judge in that city) blocked the road and attempted to forcibly remove O.P. from the vehicle, insulting both her and the driving instructor for preventing him from doing so.

In that same year, O.P. filed a criminal complaint against the judge, and as noted above, the HCJ approved criminal prosecution and ordered his suspension from duty.

From the information in writing obtained by the HCJ Inspectorate from the police authority of "Qyteti Studenti" in Tirana, it resulted that, in the period May - June 2005, citizen O.P., a student and resident in one of the dormitory buildings of this complex, had appeared several times at the police station, where she complained of continuous insults and harassment by citizen L.D., who, according to her, insisted that she continue the intimate relationship and marry him. The same fact was confirmed by the statements of the administrator and the front-desk clerk of the dormitory where the student resided; these written materials were submitted to the HCJ.

Furthermore, from the information obtained from the Borsh-Saranda police authority, it resulted that, in July 2007, when the family of O.P. was on holiday with their daughter, a complaint was filed by this family (the girl's parents) at the police station, as they were disturbed by the insulting and threatening behaviour of the judge, who during the same period was also in Borsh, staying in a dwelling near the house where the P. family was spending their holidays. In this case, it appears that the police authorities confirmed that citizen D. had disturbed public order and that he had been warned by the police patrol.

These written acts were submitted by the representative of the HCJ in the court session as evidence, attached to the HCJ decision for the dismissal from office of the judge.

In addition to the insults and repeated disturbances, including in public, citizen O. complained that her family, in particular her father, was also harassed by judge D. during the period 2004 - 2005 through SMS messages sent to the mobile phone of her father from different telephone numbers at various times of day and night. For these acts, a criminal complaint was filed before the prosecuting authority, as acts committed by the judge, who, according to the complainant,

used the same insulting expressions but from different mobile devices in order not to be identified.

Judge D., both during the complaint-verification procedure and during the examination of the disciplinary proceedings before the HCJ, did not deny the intimate relationship with the complainant nor the termination of that relationship, but denied the insults, threats and other similar acts committed in public against the complainant and her family members, claiming that:

- The grounds put forward for his dismissal by the complainant were not those alleged; rather, she had taken from him a certain amount of money that she refused to return for a long time.

- The HCJ, in violation of the Constitution and the law deriving therefrom, had hastened in issuing the decision.

- Unlawful investigations had been carried out against him by SIS and the HCJ Inspectorate, as these bodies had exceeded the powers given to them by law.

- There had been intrusions into his private life by the HCJ Inspectorate, claims which were not proven during the trial of the case.

The Joint Chambers of the High Court hold that:

The circumstances and facts presented in the proceedings, and the documents supporting the HCJ decision, analysed above, prove that the acts and conduct of the judge, carried out outside the performance of his official duties, are not related to his private life. By their nature, analysed in light of the manner in which they were committed, the subjective element, and the harm caused to society and the State, through the abuse and violation of public trust, they are considered as serious and of such a nature that they render impossible the further exercise of his function as a judge. They have gravely discredited the image of the judge and the body he represents and rightly compelled the competent authority to impose the disciplinary sanction of dismissal from office, based on Article 147(6) of the Constitution of the Republic of Albania.

In their position and conclusions, the Joint Chambers of the High Court rely on decision no. 75, dated 19.04.2000, of the Constitutional Court, which interprets Articles 128 and 140 of the Constitution of the Republic of Albania, provisions that lay down the grounds for dismissal from office of a judge of the Constitutional Court and a judge of the High Court, in order to define the criteria, the basic concepts, and the principles on which we rely when concluding on the application of the dismissal ground also in respect of a first-instance judge.

The interpretation by that court of the constitutional concept of “conduct that seriously discredits the position and image of the judge” corresponds to the case provided for in Article 147(6), on the basis of which judge D. was dismissed from office.

In addition to the above, the HCJ rightly concluded that the acts and conduct of the judge were also in contradiction with Article 34 of Law no. 8436

dated 28.12.1998 "On the organization of the judicial power in the Republic of Albania", according to which:

"Judges must maintain their authority by not allowing actions that compromise the profession, the justice bodies, and their public image in society."

By acting in contradiction with the above legal provision, which is mandatory in the exercise of his function, and by manifesting in public irregular behaviour and acts towards the complainant and her family members, the judge's conduct not only does not fall within the limits of private life, as he claimed, but has compromised the profession and the public trust in the judge. He has used the authority of his judicial status to pursue his personal interests, creating for others the impression that he was acting in such a manner precisely because of the authority vested in his office, and has acted in contradiction with the rules of judicial ethics, as rightly cited in the HCJ decision (Rules 3, 4, 15, etc. of the Code of Judicial Ethics).

As to his request that the case should be examined only after a court decision is rendered in the criminal case initiated against him for the offence of "malicious use of telephone calls" under Article 275, which offence was amnestied by Law no. 9678, dated 13.01.2007, this is unfounded.

The Joint Chambers of the High Court examine the case based on the complaint filed by the applicant against an administrative act by which the disciplinary sanction of dismissal from office has been imposed on a judge, namely the HCJ decision, which did not base the dismissal on the criminal decision cited by the appellant, but on a set of acts and evidence submitted during the trial and collected in the course of the administrative verification procedure of the complaint by the HCJ Inspectorate - acts on which the dismissal decision was based."²²³

The above decision confirmed the principle that a judge is not only a representative of justice in the courtroom, but also a figure who must maintain a high standard of conduct outside official duty. It should be emphasised that the ground for dismissal was not the establishment of an extra-marital intimate relationship, but his behaviour aimed at coercing another person to continue that relationship. The serious discrediting of his image through the documented conduct made it impossible for him to remain in office and turned this case into an important precedent for the observance of ethical and disciplinary norms by judges.

From the analysis of the provision and the jurisprudence, it results that this type of violation, relating to the commission of improper or immoral acts, both during and outside working hours, represents a fundamental aspect of judicial ethics and responsibility. A judge is required to preserve moral and professional integrity in every circumstance. Cases such as insults or assaults against colleagues, inappropriate behaviour during

223. Decision no. 7 dated 11.09.2007 of the High Court's Joint Chambers.

official duties, or abuse of authority in personal relationships have been deemed unacceptable breaches, leading to the imposition of extreme disciplinary sanctions, including dismissal from office. Jurisprudence has stressed that such conduct is not confined within the boundaries of private life, but directly affects the public image of a judge and the authority of the judiciary. Maintaining and upholding a high ethical standard and dignified conduct were indispensable for preserving the integrity of justice and public confidence therein.

7. *Actions contrary to the proper fulfilment of duty, or failure to carry out mandatory procedural acts, unless it construes a criminal offense.* This type of violation constituted a serious disciplinary breach, which affected the basic principles on which the justice system is founded. Judges, as key figures, had the obligation to strictly observe procedural provisions and to carry out all necessary acts in order to ensure a due process of law. Such violations, whether committed intentionally or through negligence, could seriously harm not only the interests of the parties to the proceedings but also the functioning of the institutions of the justice system itself. Non-compliance with procedural duties demonstrated a lack of professionalism and integrity, creating the perception that judges could act arbitrarily. Even though these cases did not amount to criminal offences, they were considered unacceptable. Through the sanctioning of this violation, the legislator sought to preserve the highest standards of accuracy and responsibility in the exercise of judicial functions, preventing any deviation that could compromise citizens' right to a due process of law.

As to this form of disciplinary breach, it appears that the commission of acts relating, *inter alia*, to the manner of examining requests for early conditional release, or the imposition of sentences below the statutory minimum, was recognised as such, as shown by the following reasoning of the High Court: *"From the judicial examination of the case it results that the applicant R.Sh. served as a military judge at Tirana District Court and, in this capacity, in several cases, as appears from the documents administered and the judicial decisions, acting either as judge or as presiding judge, he committed acts that run counter to legal requirements and the regular performance of his duties. By decision no. 61, dated 13.10.1999, the Tirana District Court - in whose composition was the applicant R.Sh. - granted the request of the convicted person A.L. for early conditional release in respect of the unserved part of the sentence of 3 years, 5 months and 23 days, ordered his immediate release from the correction facility, and suspended the execution of that sentence for a period of two years.*

The trial of this case established that, by decision no. 93 dated 12.08.1992, Berat District Court sentenced A.L. to 14 years in prison for the crime of rape, and

that up to 13 March 1997 he had been serving his sentence, and on that date he absconded from the place of imprisonment and failed to report again to continue serving his sentence. In the adjudication of this case, the legal requirements were seriously violated, both those of criminal procedure and those provided in the substantive law. The procedural time-limits for trial, laid down in Article 333 of the Criminal Procedure Code, were not observed, as the parties were not duly notified of their participation in the trial, and the documents submitted by the defence counsel, the General Directorate of Prisons and the Vaqar Correction Facility were accepted without being subject to proper assessment, in order to determine whether the applicant A.L. met the criteria set out in Article 64 of the Criminal Code for early conditional release. Regardless of the fact that preliminary acts were carried out by former judge Sh.D., the applicant R.Sh., as a member of the panel, was obliged to examine the documents and written evidence submitted on the day of trial, as well as to assess the information that emerged in trial about the personality of the defendant, the time served, the date of his appearance to continue serving the sentence, and the circumstances relating to whether the goal of re-education - as one of the main requirements for deciding early conditional release - had been achieved.

The documentation in the casefile and subsequent verifications established that A.L. had not appeared at Vaqar Prison to continue serving his remaining sentence and, instead of him, two days before the hearing, his brother presented himself. As a consequence of the failure by the judges to perform their duties properly in the adjudication of the case, and the toleration of numerous procedural violations, the trial was not conducted in a regular manner and in accordance with the requirements of substantive and procedural law. The documents administered were not subjected to an assessment of their authenticity and accuracy and, as a result, false documents were administered without being treated as such at the time of their submission, such as, for example, the certificate no. 3/77 dated 17.05.1999 concerning the convicted person A.L., issued by the Judicial Records Office at the Ministry of Justice, stating that 'under this identity we have no convicted person' (whereas in fact A.L. was requesting early conditional release from further execution of his sentence), or the notarial declaration dated 20.06.1998 submitted as evidence at trial, whereby the victim declared before the notary that she had forgiven the applicant - a document which, with minimal care, would have been found inadmissible as evidence, since it was irregular and lacked the notary's registration numbers, thus rendering it invalid.

As rightly concluded by the HCJ, the court misapplied Article 64 of the Criminal Code in the examination of the request presented by the A.L. Paragraph 2 of this article provides, as a criterion for early conditional release, that the convicted person has been re-educated through his conduct and work during the execution of the sentence. In contrast, the documents in the file that this person had absconded from the place of imprisonment in March 1997 and did not return,

despite the calls and legal facilities created for those who voluntarily reported to continue serving their sentence - a fact which leads to the conviction that the purpose of his re-education had not been achieved during the partial serving of his sentence. Moreover, the documents in the file stated that A.L. had presented himself to continue serving the sentence only three days before, which emerges from the letter of the General Directorate of Prisons dated 12.07.1999 and that of the Vaqar Correction Facility dated 13.10.1999, stating that the convicted person appeared there on 11.10.1999 - which documents were not subjected to judicial assessment.

By analysing the above, the Joint Chambers conclude that, in the trial of this case, in which the applicant R.Sh. sat as judge, acts were permitted which, within the meaning of Articles 41(7) and 44 of Law no. 8436, dated 28.12.1998 "On the organization of the judicial power in the Republic of Albania", constitute irregular performance of duty and serve as grounds for dismissal from office.

In addition to the irregular approach in the examination of the request filed by A.L., the HCJ rightly concluded that acts and positions incompatible with the regular performance of the judge's duties were also permitted in several other cases in which he acted as presiding judge or member of the panel, relating to the imposition of sentences below the statutory minimum, in violation of Article 53 of the Criminal Code, and to early conditional release. Such cases include decision no. 734 dated 16.11.1999, by which the defendant A.H. was convicted to 10 months in prison for the crime of robbery with violence under Articles 139 and 25 of the Criminal Code, whereas the law provides a minimum of 10 years in prison; decision no. 255 dated 23.04.1999, by which the defendant L.Ç. was convicted to two years and six months in prison for the crimes of fraud and counterfeiting of currency under Articles 143 and 183 of the Criminal Code - a sentence which was amended by the Court of Appeal by increasing it to five years; and decision no. 174 dated 23.03.1999 by which defendant G.M. was convicted to five months in prison for the criminal offence of possession of narcotic substances under Article 283(1) of the Criminal Code, while this provision provided a sentence of at least three years on prison.

Likewise, in cases of early conditional release, the requirements of Article 64 of the Criminal Code were not carefully examined, and conditional release was granted even when the applicants did not meet the legal conditions. Thus, by decision no. 32, dated 24.05.1999, early conditional release was granted to the convicted person Sitki Nuri convicted to four years in prison for the crimes of intentional homicide and unlawful possession of weapons, even though the materials and documents administered at trial showed that, during his stay in the place of imprisonment, the purpose of his re-education - this being an essential requirement of Article 64 of the Criminal Code and of the sentencing in general - had not been achieved.

Similar approaches were followed by the court and judge R.Sh. in the

adjudication of requests for early conditional release of defendants I.K., E.R. and A.H., all of whom had been convicted of serious offences such as armed robbery and robbery with violence. In these cases, not all circumstances were thoroughly analysed in order to reach a conclusion as to whether their requests should be granted or not. The applicant's argument that the HCJ's reasoning was incorrect because in the cases decided he had taken into account the three requirements of Article 64 of the Criminal Code (service of half the sentence, lack of recidivism, and achievement of the purpose of re-education) cannot be accepted as well-founded, because satisfying these conditions does not place the court under the obligation to grant the request for early conditional release. The three requirements, once fulfilled, give the convicted person the right to request early conditional release, but do not oblige the court to grant it, as the law itself states that the person sentenced to imprisonment 'may' be released early, leaving to the court the power and duty, through a fair and objective examination of all matters relating to the requirements of Article 64 of the Criminal Code, the defendant, his dangerousness and that of the offence, to assess with due care, particularly whether the purpose of re-education has been achieved, in order to decide whether to grant or refuse the request.

Contrary to what the applicant R.Sh. argued, these cases, even though he acted as presiding judge in only one of them, entail his responsibility for the disciplinary breach in the form of acts committed contrary to the regular performance of duty. Certainly, in every case, the presiding judge or rapporteur bears responsibility for directing the hearing, complying with all procedural requirements and exercising care in receiving and assessing evidence, but these obligations also extend to the other members of the panel, and this responsibility becomes even more apparent in the adjudication of first-instance cases.

Equally unfounded is the applicant's claim that the HCJ, by imposing a measure on him, acted in violation of the 'Basic Principles on the Independence of the Judiciary', since by pointing out the violations of the law and other shortcomings in the adjudication of cases, and by taking measures against judges who allowed such violations, it cannot be accepted that the HCJ interferes in the adjudication of cases and infringes judicial independence. It is its legal duty to hold accountable judges who act contrary to the law and to the regular performance of their duties, without influencing the adjudication or resolution by the court of any specific case.

By decision No. 73, dated 04.03.2000, the HCJ granted the request of the prosecutor for criminal prosecution of the applicant R.Sh. and suspended him from office; however, this decision does not prevent it from fully examining the violation that led to his suspension together with other violations that were established, and from adopting a disciplinary sanction it deems appropriate.

Equally unfounded is the applicant's argument that the HCJ rendered a disciplinary decision against him in respect of final judicial decisions which no

authority has the right to examine on the merits, since there is no appeal. Firstly, it should be stressed that, in none of the decisions analysed, did the HCJ enter into the merits of the cases, but merely identified the legal violations committed during their adjudication; and secondly, the fact that the decisions became final without being appealed does not mean that they were lawful for the purposes of the legal violations which constitute grounds for disciplinary proceedings against the judge.

*In the above circumstances, the Joint Chambers of the High Court consider correct and well-founded decision no. 99 dated 20.12.2000 of the High Council of Justice on the dismissal from office of the applicant R.Sh.*²²⁴

In these cases, the judge's decision-making was characterised by clear departures from procedural and legal standards. The breaches included, *inter alia*, the improper granting of early conditional release and the imposition of sentences below the statutory minimum. The judicial decisions examined revealed a lack of care in the examination and assessment of evidence, non-observance of procedural rules, and a failure to fully evaluate the circumstances in accordance with criminal norms. It is interesting that the judge's conduct and decisions were considered disciplinary violations in the form of irregular performance of duties, regardless of whether he acted as presiding judge or as a member of the panel. This approach demonstrates that all members of a judicial panel bear equal responsibility in the exercise of their functions.

In another case, the High Court considered this violation to have been committed, reasoning as follows: *"On 23.06.1998, the applicant B.M. validated the lawfulness of the arrest in flagrante delicto of citizen L.M., deciding that the arrest was lawful and imposing the security measure of "pre-trial detention". The defendant was charged with the crime of theft in complicity, committed against citizen A.Ago, in a dwelling, stealing 6,600 Lekë and 20,000 Drachmas. In the decision it was reasoned that the defendant admitted the theft, also indicating the accomplice who had fled.*

The arrested person appealed this decision before the Vlora Court of Appeal which, by decision no. 13 dated 20.07.1998, upheld the decision of Fier District Court.

On 02.07.1998 the defendant lodged a request for revocation and replacement of the security measure. The same judge, by decision dated 09.07.1998, rejected the request as unfounded in law. In that trial it emerged that the defendant would also be charged with another theft of 48,000 Lekë committed with a weapon.

This decision was not appealed. On 21.08.1998 another request was submitted for revocation of the 'arrest in prison' measure and its replacement with another measure. This request was again examined by the same judge, who,

224. Decision no. 10 dated 13.02.2001 of the High Court's Joint Chambers. See also decision no. 25 dated 04.04.2001 of the High Court's Joint Chambers.

by decision no. 222 dated 26.08.1998, decided to grant the request of the arrested person L.M., and replace the security measure “pre-trial detention” with “house arrest”.

In the decision it was reasoned that the need for security had diminished, that the security measure no longer corresponded to the seriousness of the act and to the sentence that might be imposed on the arrested person, etc.

The prosecutor appealed this decision and the Vloa Court of Appeal, by decision No. 18 dated 02.10.1998, decided to amend the decision, imposing the security measure of “pre-trial detention”. The Court of Cassation, by decision no. 219 dated 12.11.1998, rejected the appeal lodged by the defendant.

From the above and from the content of the decisions, it results that, although the same circumstances co-existed in all three cases, the judge, in contradiction with the requirements of Article 260 of the Criminal Procedure Code, changed the security measure.

Precisely this position, maintained in violation of the law, has rightly been considered as the commission of acts contrary to the regular performance of duty.

The Joint Chambers, having established the existence of a violation of procedural law, consider that the dismissal decision is correct, since the measure imposed for the disciplinary violation is assessed by that very body.”²²⁵

In this case, the breach was linked to the manner of handling requests for security measures, where the judge changed the measure from “pre-trial detention” to “house arrest”, even though the circumstances of the case had not changed, and his actions were contrary to the requirements of procedural and substantive law. Although earlier decisions of the Fier District Court and the Vloa Court of Appeal had considered the security measure of “pre-trial detention” lawful, the judge took a different decision, arguing that the need for security had diminished and that the previous measure was disproportionate to the seriousness of the act and the likely sentence. This reasoning was found to be unfounded by the Court of Appeal and the Court of Cassation, which reversed the decision by reinstating the pre-trial detention.

Finding disciplinary liability once again on this basis, in another case the High Court reasoned as follows: “By decision no. 27/3 dated 06.03.1999, the High Council of Justice dismissed the claimant from office on the ground of ‘commission of acts contrary to the regular performance of duty’. The decision was communicated to the claimant on 12.03.1999 by the Minister of Justice, by letter bearing the same date and protocol no. 899/1. Within the legal time-limit, the claimant lodged a complaint seeking annulment of the above decision, arguing that the disciplinary proceedings had been overly hasty, as the HCJ had not awaited the decision of the High Court on the lawfulness of the decision (the court case in which the violations were found). In relation to

225. Decision no. 572 dated 29.06.1999 of the High Court’s Joint Chambers.

this claim, it was concluded that the Court of Appeal had examined the case with claimant R.N. and had quashed the decision, dismissing the proceedings on the ground that claimant R. had first to address the Property Restitution and Compensation Commission (PRCC), since he neither held a restitution title nor a negative decision by that commission and, in those circumstances, she lacked legal standing to file a lawsuit for recovery of property. This case was dismissed even at the civil chamber because the claimant withdrew the recourse. In these circumstances, the claimant's assertion that review at a higher instance would have led to changes in the decision that quashed her own decision remains unfounded.

The law and judicial practice of those years is clear and leaves no room for differing interpretations that, properties not restituted by PRCC, irrespective of whether they had been taken without title, cannot be restituted ipso jure or automatically in favour of the former owner. In such circumstances, where the claimants are not owners, a vindication lawsuit cannot be accepted. Rendering a decision in open contradiction with the law and established practice shows that the claimant D. did not properly perform her duties.

By accepting the violation established by the High Council of Justice, it is concluded that the decision must be upheld."²²⁶

In this case, non-compliance with the rules concerning the claimant's legal standing - rules that should have been applied in accordance with the interpretation of existing judicial practice, which was consolidated in such cases - was considered a disciplinary breach of this type.

In another instance of this disciplinary violation, the High Court reasoned as follows: "The applicant B.Xh. served as a judge at Gjirokastra District Court. By decision no. 23 dated 14.11.1998, the High Council of Justice removed him from office for 'commission of acts contrary to the performance of duty', under Article 41(7) of Law no. 8436, dated 28.12.1998 'On the organization of the judicial power in the Republic of Albania'.

The documents show that these irregular acts and omissions in the performance of duty were identified by the HCJ in the conduct relating to the late submission of the request to withdraw from adjudicating the security measure (request for revocation) against defendant A.A., and in civil decision no. 482 dated 15.06.1998 concerning an injunction order in a dispute between 'AAM' and 'A.G.' and F.D., with the scope 'partition of liability'.

Following the analysis of these claims, it is established that:

The request for the validation of the arrest of defendant A.A. triggered the commencement of trial proceedings on 15.07.1998, with a maximum time-limit for adjudication up to 25.07.1998. After several refusals by other judges to adjudicate it, this request was assigned to judge B.Xh. on 22.07.1998. On the same date, he submitted a recusal request to the head of court. This request was

226. Decision no. 672, dated 29.06.1999 of the High Court's Joint Chambers.

approved by the head of court on 24.07.1998, whereas the recusal request bears the date 22.07.1998. The two-day discrepancy cannot support the applicant's claim that it was merely the result of the weekend between the submission of the recusal request and its approval by the head of court. Moreover, the connection made between this act of the applicant and the expiry of the time-limit for adjudication is illogical.

As regards Civil Case no. 482, a number of irregular procedural acts are noted on the part of judge B.Xh.

The court complaint attached to the file bears no notation by the head of court, or even by the judge, indicating the date of filing. Recording this date is extremely important, particularly in these proceedings since the judge issued an injunction order on 15.06.1998. Consequently, the filing date of the court complaint should have been recorded in order to verify the consequences of the injunction order, which, pursuant to Article 204(2) of the Civil Procedure Code, expires upon the lapse of the period laid down in that provision.

Furthermore, the interim measure itself was not imposed in accordance with the requirements of Article 202(2) of the Civil Procedure Code. The materials of the case show that, through the 'interim measure' decision, the execution of a final judicial decision was effectively suspended.

In these circumstances, the Joint Chambers of the High Court conclude that, in the conduct of the applicant B.Xh. related to the above-mentioned civil file, there are present 'acts committed contrary to the regular performance of duty and failure to perform mandatory procedural acts', which, according to Article 41(7) of Law no. 8436 dated 28.12.1998 'On the organization of the judicial power in the Republic of Albania', qualify as 'disciplinary violations'. Equally, the HCJ's decision to impose the sanction of 'dismissal from office', in light of Article 43 of that law, is considered lawful."²²⁷

The actions of the judge in those proceedings involved the manner of documenting acts in the casefile, but above all the way a final court decision was effectively suspended - a measure that can only be taken by higher courts and only in clearly defined instances under procedural legislation. Precisely these irregular acts in relation to the judicial file led to disciplinary proceedings against this judge for this type of breach.

Such a breach was also found in the case of a judge leaving the panel when the court had already withdrawn to deliberate and render the final decision, as results from the following reasoning: "By his conduct the applicant has seriously discredited the position of a judge.

Specifically, at the moment when the judicial panel had withdrawn to deliberate and deliver the final decision, on 20.10.2000, at 14:00, in a civil case with parties B.D. as claimant and K.Z. et al. as respondents, concerning recognition of ownership, he arbitrarily prevented the rendering of that decision.

227. Decision no. 793 dated 14.07.1999 of the High Court's Joint Chambers.

Initially, he insisted that the other two judges of the panel withdraw from the case, although the panel had already retired to deliberate and issue the final decision. After their refusal, he left the panel himself.

It is true that a judge has the right not to participate in the adjudication of a case when there are justified grounds; however, this does not apply once the panel has retired to deliberate and issue the final decision. Therefore, the head of Korça Court of Appeal, where he served as judge, rightly did not examine his recusal request submitted under Articles 72(6) and the last paragraph and 73 of the Civil Procedure Code, which concern, respectively, recusal and disqualification of a judge from a case, because, the proceedings in this case had been completed, i.e., in the sense that the judicial investigation had been closed and the parties' final submissions had been received, and the panel had already scheduled the date and time for delivery of the decision.

Thus, a judge's recusal or disqualification is possible up to the moment when the panel has not yet retired to deliberate and deliver the final decision. At this final stage, the judge is obliged to respect his position as judge and the interest of justice, and not to withdraw from the panel at the moment of decision-making.

As appears, in addition to the presumption that, as an appellate judge, he was aware of such a situation, it was clearly explained to the appellant why his withdrawal request at that stage could not be examined. Nevertheless, he left the panel at the moment when it had retired to deliberate and deliver the decision.

As a result of the applicant's arbitrary departure, the panel was unable to render and deliver the decision, which could not be justified before the litigant parties or before public opinion, which was informed of this event. It took the intervention of the Inspectorate of the High Council of Justice, several days later, for the applicant to return and participate again in the panel.

In these circumstances, by his conduct he has seriously discredited the position of judge.

The applicant claimed that the main reason compelling him to submit his recusal request was an attempt by a person to bribe him in the court premises, but this cannot justify his departure from the panel. Although he was in the position of judge, he failed, surprisingly, to follow the regular legal avenue for reporting this offence and its perpetrator at the time the event allegedly occurred and, at a minimum, did not immediately inform the other two members of the panel of this matter. Only when he was asked to provide in writing the reasons for his recusal from the panel, he, in addition to referring to the position of the two judges regarding the rejection of the respondents' disqualification request filed with the court registry after the panel had retired to deliberate, mentioned that he had been offered money.

It is established that, in this case, the High Council of Justice conducted a due process of law, under Article 44 of Law no. 8436 dated 28.12.1998 'On the

organization of the judicial power in the Republic of Albania', as amended by Law no. 8546 dated 05.11.1999, and Law no. 8656 dated 31.07.2000, by making all the materials available to the applicant due time prior to the hearing and by hearing his arguments before adopting the above-mentioned decision. At the same time, his right to appeal to the High Court against the HCJ decision was respected.

However, the High Council of Justice should have qualified the applicant's conduct not as a serious disciplinary breach in the performance of duty, but as conduct that seriously discredits the position of the judge, under Article 147(6) of the Constitution of the Republic of Albania.

Nevertheless, the HCJ decision is substantively correct and must therefore be upheld."²²⁸

In this case, the breach is more than evident, as the judge, being part of the panel, decided unilaterally to leave precisely at the moment when the panel had withdrawn to deliberate and decide. At this stage of the proceedings, what all parties and the public legitimately expect is for the court to render a decision. At that point, neither any member of the panel individually, nor the panel collectively, nor the parties can undertake any further procedural acts. For this reason, the judge's departure and his subsequent withdrawal request, intended to justify that act, were without any legal basis. Accordingly, the HCJ's decision-making was considered lawful.

Some other actions qualified to construe this type of violation include the imposition of the sentences for minors, summary trials, security measures, lacking reasoning and so on, as shown in the following reasoning: *"Specifically, during his judicial activity at Gjirokastra Court of Appeal, violations were identified with respect to the requirements of Article 51 of the Criminal Code concerning the determination of sentences for minors. Although the first-instance court had correctly applied Article 51 of the Criminal Code in its decision, the Court of Appeal - in which the applicant K. I. served as a member - applied the same provision a second time. Thus, by decision no. 12 dated 16.02.2000 of Gjirokastra Court of Appeal amended decision no. 42 dated 13.12.1999 of Tepelena District Court. Moreover, the presiding judge of the panel, not sharing this view, voted in the minority.*

Secondly, in several decisions of the Court of Appeal in which the applicant acted either as rapporteur or as a member of the panel, the requirements of Article 406 of Criminal Procedure Code were violated by applying the summary trial procedure, as its application is permissible solely before the first-instance court.

Thus, by decision no. 68 dated 27.07.2000 of Gjirokastra Court of Appeal amended decision no. 40 dated 26.6.2000 of Saranda District Court by applying Article 406 of Criminal Procedure Code, even though the latter had not granted

228. Decision no. 27 dated 04.04.2001 of the High Court's Joint Chambers.

the request for summary trial. Of the same nature is the appellate decision no. 30 dated 2.12.1998 which amended decision no. 24 dated 15.10.1998 of Saranda District Court, as well as decision no. 19 dated 14.04.1999 of Gjirokastra Court of Appeal which amended decision no. 2 dated 16.02.1999 of Përmet District Court - by erroneously applying Article 406 of Criminal Procedure Code.

Thirdly, in some decisions of the Court of Appeal in which the applicant sat as either a rapporteur or member, there was an erroneous application of the criminal procedure law in imposing and replacing the security measure, by acting in contravention to the requirements of Articles 228 et seq. and 260 et seq. of Criminal Procedure Code.

Thus, by decision no. 3, dated 22.04.1998, Gjirokastra Court of Appeal, with the petitioner serving as the judge rapporteur, amended the decision of the Tepelena First-Instance Court regarding the defendant V. S., accused of unlawful possession of weapons, by imposing a security measure of "pre-trial detention" for a period of two months, instead of just "pre-trial detention". In this case, the reasoning stated that... "the prosecuting authority, regardless of the explanations provided by the defendant, which cannot be altered, must take into account that the head of the household and other household members reside in the dwelling; therefore, detention should be imposed for a limited period." As observed, there is no legal justification provided for the modification of the decision.

By decision no. 11, dated 24.06.1998, Gjirokastra Court of Appeal, with the petitioner as judge rapporteur, amended the decision of the Sarandë First-Instance Court regarding the defendant R. L., accused of aggravated intentional bodily harm and property destruction using explosives, by imposing the security measure of "house arrest" instead of "pre-trial detention." Once again, the reasoning lacks legal support: "... nevertheless, considering the fact that the defendant had previously travelled to Monastir together with others, he must be placed at the disposal of the procedural authority for the investigation of the case, imposing a milder precautionary measure, namely house arrest."

By decision no. 19, dated 14.08.1998, Gjirokastra Court of Appeal, with the petitioner serving as a member, amended the decision of the Sarandë First Instance Court regarding the defendant O. L., accused of aggravated intentional bodily harm and property destruction using explosives, by imposing the security measure of "obligation to report to the judicial police" instead of "house arrest." The reasoning again lacks a legal basis. On one hand, it is stated that no new evidence exists, while on the other hand, it concludes that the defendant is the sole employed person in the family.

A decision of a similar nature is decision no. 5, dated 20.05.1998.

Fourthly, in the adjudication of civil cases at the appellate level, whether serving as rapporteur or as a member of the judicial panel, he has allowed the adoption of decisions that are illogical and in violation of substantive and

procedural law, which, with good reason, were annulled by the Civil College of the High Court.

Thus, decision no. 12 dated 20.01.1999 of Gjirokastra Court of Appeal, in which the petitioner served as rapporteur, was annulled by decision no. 56 dated 26.01.2000 of the Civil Chamber of the High Court, on the grounds that it was manifestly illogical. Similar is decision no. 28 dated 27.10.1999, in which the petitioner also acted as rapporteur. This decision was annulled by decision no. 1129 dated 14.12.2000 of the Civil Chamber of the High Court, on the grounds that it was manifestly illogical and adopted in violation of the law, without following the guidance of the High Court. Likewise, decision no. 246 dated 16.10.1998, in which the petitioner was the rapporteur judge, was annulled by decision no. 1133, dated 18.06.1999 of the Civil Chamber of the High Court, on the grounds that the proceedings were conducted in direct violation of the provisions of Article 75 of the Civil Procedure Code, which regulates the procedures for the disqualification of judges. Furthermore, decision no. 210 dated 09.06.1999, in which the petitioner acted as judge rapporteur, was annulled by decision no. 729 dated 07.06.1999 of the Civil Chamber of the High Court, on the grounds that the evidence had not been properly analysed, the legal basis had not been established, decisive evidence had not been considered, and documents lacking probative value had been admitted. Similar issues were found in decision no. 139 dated 29.07.1998, annulled by decision no. 736 dated 03.06.1999; decision no. 159 dated 05.05.1999 annulled by decision no. 484 dated 15.03.2000; and decision no. 374 dated 03.11.1998, among others.

Considering all of these cases in their entirety, the Joint Chambers of the High Court reach the conclusion that, in the actions of petitioner K. I., in light of the requirements of Article 41/7 of Law no. 8436 dated 28.12.1998 "On the organization of the judicial power in the Republic of Albania," there are evident violations of work discipline, in the form of acts performed in contravention of the proper performance of duties, as well as a lack of professionalism. These actions are incompatible with the role of a judge and constitute systematic breaches in the exercise of judicial functions."²²⁹

From the above analysis, a series of serious violations in the performance of duties by the judge under proceedings are evident, demonstrating significant deficiencies in compliance with the law and in the implementation of prescribed procedures. In his activity as a judge of the Gjirokastra Court of Appeal, this judge engaged in actions that contravened legal requirements, displaying a clear lack of professionalism.

His violations included the improper application of the provisions of the Criminal Code and the Criminal Procedure Code, particularly regarding the trial of minors, as well as the unjustified and legally unsupported application of Criminal Code provisions. In several cases,

229. Decision no. 61 dated 27.06.2001 of the High Court's Joint Chambers.

security measures were imposed or modified in violation of the provisions of the Criminal Procedure Code, revealing a deliberate misinterpretation of the law. In the civil sphere, the violations were so serious that many of these decisions were annulled by the Civil Chamber of the High Court, emphasizing deficiencies in reasoning and in the application of the law. His conduct demonstrated a marked lack of professionalism and an inability to fulfil the responsibilities associated with the high office of a judge. Overall, his actions and conduct were deemed incompatible with the standards required of a representative of the judiciary, ultimately leading to his removal from office.

Other instances, in which a judge repeatedly violated procedural norms across various types of cases, have again been observed in judicial practice, as illustrated in the following case: *“The High Judicial Council adopted the aforementioned decision because Judge B. Ç., during the period 1998–2000, engaged in actions that severely discredited the position of a judge. In adjudicating numerous civil cases, he issued decisions that were manifestly contrary to the law, illogical, and unenforceable. Specifically:*

- *By decision no. 1129 dated 14/12/1999, the High Court annulled decision no. 28, dated 27/10/1999 of the Gjirokastra Court of Appeal, on the grounds that this decision was rendered in violation of the law and was manifestly illogical. In issuing this decision, the guidelines of the High Court were not observed.*

- *By decision no. 56, dated 26.01.2000, the High Court annulled decision no. 12 dated 20/01/1999 of the Gjirokastra Court of Appeal, because it was manifestly illogical and contrary to the evidence submitted in the file.*

- *By decision no. 1133 dated 18.06.1999, the High Court annulled decision no. 246 dated 16/10/1998 of the Gjirokastra Court of Appeal, because the trial was conducted in open violation of the procedures for the disqualification of judges. The claimant requested the disqualification of two judges, appellants B. Ç. and K. I. The third judge, M. H., together with judge K. I., first considered the request to disqualify the appellant judge B. Ç., and decided not to disqualify him. Subsequently, judges B. Ç. and M. H. decided not to disqualify judge K. I., acting in direct violation of Article 75 of the Civil Procedure Code.*

- *By decision no. 729 dated 07.06.2000, the High Court annulled decision no. 210, dated 09/06/1999 of the Gjirokastra Court of Appeal, because the latter failed to analyse the evidence, did not admit decisive evidence requested by the parties to resolve the matter, and admitted documents without probative value, unverified according to the requirements of Article 255 of the Civil Procedure Code.*

- *By decision no. 736 dated 03.06.1999, the High Court annulled decision no. 139, dated 29.07.1998 of the Gjirokastra Court of Appeal, because it was illogical and unenforceable.*

- *By decision no. 47 dated 27.01.2000, the High Court annulled decision no.*

389 dated 09/12/1998 of the Gjirokastra Court of Appeal, because this decision was manifestly unlawful and its reasoning manifestly illogical. The claimant had sued the Sarandë Savings Bank, where he worked as a driver, seeking repayment of 585,000 Lekë, claiming that he had repaired a vehicle after a collision in 1996. His claims were not only legally unfounded, but he also submitted no documents to support them. Under these circumstances, the trial court dismissed his claim, whereas the Gjirokastra Court of Appeal reversed that decision and accepted the claim, in clear violation of the law. The High Court annulled the Court of Appeal's decision and upheld the first-instance ruling.

The appellant has issued other civil decisions that are manifestly contrary to the law and clearly illogical.

In criminal matters, he has similarly rendered decisions manifestly in violation of the law.

Thus, by decision no. 12 dated 16.02.2000, the Gjirokastra Court of Appeal altered decision no. 42 dated 13.02.2000, of the Tepelena District Court, applying Article 51 of the Criminal Code for the second time in favour of defendants accused of armed robbery in collaboration and illegal possession of weapons. Although the Tepelena District Court had applied Article 51 of the Criminal Code both in its reasoning and in the operative part, reducing the sentences of the minor defendants by half, the Gjirokastra Court of Appeal, in open violation of the law, unjustly reduced the sentences further. In this case, the actions of the appellant, judge B. Ç., are compromising to the administration of justice, particularly because the presiding judge had made it clear, having voted in the minority, that the reduction had already been applied once by the trial court and therefore could not be applied a second time.

In several instances, the appellant acted in open violation of the law regarding the imposition and substitution of security measures.

His claim that the High Council of Justice exceeded its authority by assessing the legality and credibility of these final and unchallenged decisions of a lower judicial instance is unfounded because:

These decisions, although final on specific matters, were accompanied by violations that severely discredited the position of the judge and the authority of the judiciary as a whole. They also undermined the credibility of the judicial system in delivering justice. In such cases, the High Council of Justice is not prevented from imposing any disciplinary sanctions on judges, regardless of whether these decisions have become final. Moreover, since the violations identified in these decisions are reviewed, upon the appeal of the dismissed judge, by the Joint Chambers of the High Court - the highest judicial authority in Albania - this provides a safeguard against any misassessment of the violations by the High Council of Justice.

Contrary to the applicant's claim, the High Council of Justice rightly assessed the above actions not as ordinary mistakes arising from the judge's lack

of experience, but as intentional violations that seriously discredit the judicial position. The applicant had substantial experience as a judge in the Court of Appeal, which does not excuse the above violations.

The applicant's claim that the decision regarding the misapplication of Article 51 of the Criminal Code was upheld by the High Court is unrelated to decision no. 12, dated 16.02.2000, of the Gjirokastra Court of Appeal, which was cited as manifestly unlawful. This claim refers to a different decision, no. 53 dated 20.06.2000, upheld by the High Court in decision no. 520 dated 14.12.2000, and is not mentioned in decision no. 109/1 dated 11.05.2001 of the High Council of Justice.

...

The decision regarding the application of Article 406/1 of the Code of Criminal Procedure, concerning an expedited trial, should not be added to the list of decisions containing violations by the applicant, as this decision was upheld due to the prosecutor's appeal being rejected by the High Court. Nevertheless, this case does not affect the applicant judge's removal from office, as these are considered systematic violations in the exercise of judicial duties."²³⁰

As demonstrated above, the violations found, including repeated breaches of procedural norms, are similar to other cases cited, where judges faced disciplinary sanctions for comparable conduct. These deficiencies cannot be justified by lack of experience, given that the subject is a Court of Appeal judge, but are deemed intentional acts seriously undermining judicial authority.

In another case, the High Court found a violation in replacing a security measure from "pre-trial detention" to a much lighter "obligation to appear," by a first-instance judge, shortly after the High Court had approved the lower courts' decision to impose "pre-trial detention" without a time-limit. Specifically, the High Court reasoned that: "Judge A. D., by decision no. 59, dated 15.02.2001, replaced the security measure for defendant K. H. with a lighter measure, from pre-trial detention to an obligation to appear at the judicial police once every two weeks, and ordered his immediate release.

The High Court, by decision no. 63 dated 02.02.2001, had previously upheld decision no. 23 dated 21.02.2001 of the Fier District Court, which imposed pre-trial detention without a time-limit.

Thus, judge A. D., only a few days after the High Court's decision, in open violation of Article 260 of the Code of Criminal Procedure, replaced the security measure, even though none of the circumstances for mitigation had changed.

Considering the high social danger posed by the defendant, who was also accused of other serious crimes, including drug possession under Article 283 and illegal possession of weapons under Article 278 of the Criminal Code, it is evident that this judge acted intentionally in violation of the law.

230. Decision no. 73 dated 27.06.2001 of the High Court's Joint Chambers.

Although the HCJ dismissed the judge only for issuing this decision, this case alone is sufficient to demonstrate a lack of seriousness in performing judicial duties and severely discredits the judicial position.

The fact that the above decision dated 15.02.2001 became final does not mean that the manifestly unlawful violations accompanying it cannot constitute grounds for removal from office.

It is true that final judicial decisions carry the force of law, as long as they have not been overturned or amended by a higher court. However, in cases where these decisions are accompanied by legal violations that severely discredit the judge and undermine the prestige of the judiciary, the HCJ has full authority to impose any disciplinary sanction, regardless of whether these decisions have become final.

*Therefore, the above decision of the HCJ is considered in accordance with Article 147(6) of the Constitution, and the disciplinary sanction chosen is appropriate.*²³¹

In another case, violations of this type were considered, including the retention and prolonged delay of various cases, particularly leaving them without action for an excessively long time. According to the High Court's reasoning, in this case, it was found that: "The HCJ Inspectors conducted an inspection at the Fier District Court in December 2000 and observed that the judge had a significant number of civil cases pending, many of which had remained without action since 1999. Out of 104 cases, 12 belonged to 1999 and others to 2000. In addition to these delays, there were many other cases during the same period where only preparatory steps had been taken, and the cases had not progressed for approximately one and a half years. The violations identified were acknowledged by the judge himself without any contestation, but he attempted to justify them by citing workload or the complexity of the cases. The retention and prolonged delay of cases for an excessively long time is unjustified and demonstrates that the judge did not feel responsible for his duties. He did not monitor the progress of judicial processes to handle them in a timely manner, and according to the inspectors' findings, such delays were not isolated incidents but a continuous pattern of his work, indicating negligence and intentional acts by the judge that contradict proper duty performance and discredit his position.

Contrary to the applicant's claim, his work is not evaluated comparatively with other judges of the same court. The work of each judge is assessed based on legal requirements and its compliance with the function of a judge, and if it is found inadequate, it constitutes grounds for removal from office, as was done in this specific case for him.

Regarding the two criminal decisions concerning the validation of arrest in flagrante and the imposition of a security measure, these were not the only instances cited for violations and actions contrary to the proper performance

231. Decision no. 77 dated 27.06.2001 of the High Court's Joint Chambers.

of duties. Therefore, contrary to the appellant's claim, without assessing their credibility, whatever their merits, their influence was not decisive, because the removal from office of the appellant is primarily based on pronounced delays in adjudication, which, under the circumstances presented, severely discredit the judge's position and justify the measure taken, also in accordance with Article 147(6) of the Constitution of the Republic of Albania."²³²

The above case is a typical example demonstrating the failure of a judge to properly fulfil their duties. It is notable that the actions of this judge are not to be compared with those of her colleagues, but rather evaluated solely in terms of whether such conduct aligns with judicial functions. Considering the extraordinary delays in numerous court cases that were left without action, the decision to remove the judge from office was more than justified.

Failure to fulfil duties has also been found in cases of non-compliance with rules regarding the dismissal of cases, requalification of criminal acts, and imposition of security measures. For instance, it was reasoned as follows: "Specifically, in her role as a judge at Vloa First-Instance Court the, the applicant A. F. was found to have committed clear violations of the requirements of Article 387 of the Criminal Procedure Code, which regulates the circumstances under which a criminal case may be dismissed.

Thus, Vloa First-Instance Court, in which the applicant A. F. was a member of the panel, made decision no. 163 dated 20.07.2001 to dismiss the criminal case against defendant V. Q., accused of armed theft in complicity, under Articles 140 and 25 of the Criminal Code. Upon review, none of the conditions specified in Article 387 of the Criminal Procedure Code, relating to non-initiation or discontinuation of criminal proceedings, or the extinction of the criminal act, were present. The whole 'reasoning' provided by the court did not justify or support the decision to dismiss the case. Furthermore, any conclusions should have been drawn only after judicial examination. Appropriately, following an appeal filed by the prosecutor, the Vloa Court of Appeal, in accordance with Article 428(ç) of the Criminal Procedure Code, annulled the decision and remanded the case for continuation of the proceedings.

Additionally, in a series of other judicial decisions in which the applicant served as presiding or panel judge, manifestly incorrect legal determinations were made in violation of Article 375 of the Criminal Procedure Code.

For example, in several cases involving the narcotic plant "*Cannabis sativa*," the legal classification of the offense was changed from that provided under Article 283/1 to that under Article 285 of the Criminal Code. In these cases, Law no. 7975 dated 26.07.1995 "On narcotic drugs and psychotropic substances" and the European Convention on Narcotic Drugs, which clearly lists the plant as a narcotic substance, were not taken into account. Moreover,

232. Decision no. 86 dated 27.06.2001 of the High Court's Joint Chambers.

the practice of the Criminal Chamber of the High Court regarding the legal classification was ignored.

Even where proper expert reports confirmed the plant as "Cannabis sativa," classified as a narcotic under applicable law and international conventions, the court disregarded these findings without requesting a re-examination or explaining why the conclusions were not accepted.

The application of sentences that did not correspond to the seriousness and social danger of the offense or the offender constitutes another unacceptable legal action. This resulted in minimal penalties, which were almost all later modified by the Court of Appeal. Decisions of this nature include nos. 171 (26.07.2001), 120 (30.05.2001), 138 (26.06.2001), 151 (06.07.2001), 173 (13.09.2001), 174 (14.09.2001), 176 (17.09.2001), and 201 (22.10.2001), all amended by the Vloa Court of Appeal.

The same similar approach is found, but from a different angle, in decision no. 1 dated 05.01.2001 of the Vloa First-Instance Court of Vloa, where the legal classification of an offense was changed - in violation of Article 375 of the Criminal Procedure Code.

In the case of defendant A. Sh., accused of premeditated attempted murder under Articles 78 and 22 of the Criminal Code, an unmotivated request for a new forensic medical examination was made, resulting in a reduced charge of intentional minor bodily harm. This decision, like previous ones, was overturned by the Vloa Court of Appeal.

Finally, violations of Articles 228, 229, and 230 of the Criminal Procedure Code, concerning conditions, criteria, and special requirements for imposing security measures, were observed. Evident violations are found in decision no. 266 dated 30.12.2000, where the applicant, acting as sole judge, imposed the security measure of "house arrest" for defendants F. and A. L., who were searched by the Italian Prosecution Office for narcotics trafficking. Despite reasonable suspicions supported by evidence, the applicant imposed "house arrest" rather than a stricter measure. This decision was subsequently corrected by the Court of Appeal, which imposed "pre-trial detention".

In reviewing all these cases collectively, the Joint Chambers of the High Court concluded that the actions of A. F., in light of Article 47/1 of Law no. 8436 dated 28.12.1998 "On the organization of the judicial power in the Republic of Albania," constituted disciplinary violations, actions contrary to proper performance of duties, and marked lack of professionalism. These actions were incompatible with the judicial function and represent systematic violations in the performance of judicial duties.

...

Secondly, it is claimed that the violations presented in the HCJ materials relate to the judge's internal conviction, and that not every decision overturned by a higher court can serve as grounds for removal from office.

This claim is also unfounded and cannot be accepted. As analysed above, all the cases cited involve actions that are manifestly contrary to the law. When such contraventions are clear and remain unobserved, when decisions regarding the legal characterization of a category of criminal offenses are consistently disregarded by the Court of Appeal, and when the High Court's established practice is clear and different, there is no basis for concluding that these constitute merely the judge's internal conviction. The same conclusion applies to the other claim concerning the brief duration of the judge's tenure."²³³

From the foregoing, it is evident that the judge under disciplinary proceedings exhibited multiple professional shortcomings, which not only undermined legal standards but also discredited her judicial function. Her judicial activity revealed manifest violations of legal principles and provisions, including decisions that bypassed or clearly misinterpreted the norms of the Criminal Procedure Code and the Criminal Code. This is particularly evident in her handling of the dismissal of criminal cases and the alteration of the legal characterization of criminal offenses, especially those related to the trafficking of narcotic substances, where both international and national legal instruments regarding classification were disregarded. In these instances, her approach also contravened the established jurisprudence of the High Court. Her unprofessional conduct was further demonstrated in the imposition of security measures, which were subsequently overturned by the Court of Appeal because they were inadequately justified and not based on "reasonable suspicion grounded in evidence." These practices reflect a consistent pattern of violations, a pronounced lack of professionalism, and conduct incompatible with the standards required of a justice official.

The HCJ and subsequently the High Court maintained the same approach in evaluating the actions of other members of the judicial panel.²³⁴

In another case, the High Court reasoned as follows: *"As evident from the review of the materials contained in the civil file, the claimant has been subjected to disciplinary proceedings on the claim that, in her activities as a judge of the Court of Appeal, she violated the procedural and substantive legal requirements of both criminal and civil law, involving:*

- 1.summary trial;*
- 2.imposition of security measures;*
- 3.imposition of sentences;*
- 4.early releases;*

5.arguments and analysis of facts underlying the court decisions, which the respondent (having the burden of proof) sought to prove during the proceedings.

233. Decision no. 85 dated 20.11.2002 of the High Court's Joint Chambers.

234. Decision no. 88 dated 18.11.2002 of the High Court's Joint Chambers.

In support of the above claims, numerous judicial decisions were presented during the proceedings, which refer to, and thus substantiate, the aforementioned violations. For instance, by decision no. 30 dated 21.07.1998 of the Gjirokastra Court of Appeal, one-third of the sentence imposed on the accused V. B. was reduced, after his request for a plea agreement (summary trial) was denied. Similarly, by decision no. 19 dated 14.04.1999 of the same court, Article 406 of the Criminal Procedure Code was applied, and one-third of the sentence was reduced for the accused K. A., who had been sentenced to 20 years in prison for murder.

The applicant claimed that she was a member of the panel, therefore, she is not to be held liable.

A closer examination of the above decisions shows that the application of Article 406 of the Criminal Procedure Code was contrary to its content. Regardless of her status as a panel member, the applicant was nonetheless responsible for the issuance of the judicial decision, which reflects her intent and judicial will.

Similarly, an examination of the practice regarding conditional early release reveals violations and misapplications of the law. For instance, by decision no. 63 dated 15.02.1999, conditional early release was granted to a defendant convicted of robbery with violence in complicity.

Violations and deficiencies were also observed in civil cases. In these instances, the errors were noted by the High Court (formerly the Court of Cassation), which held that the reasoning of the decisions in many cases was illogical, contradictory, and, consequently, unenforceable.

Considering all of the above cases in their entirety, the Joint Chambers of the High Court concluded that the actions of the applicant, in light of the requirements of Article 47/1 of Law no. 8436 dated 28.12.1998 "On the organization of the judicial power in the Republic of Albania," constitute breaches of work discipline in the form of acts contrary to the proper performance of duties, as well as a marked lack of professionalism. These actions are inconsistent with the role of a judge and constitute grounds for initiating disciplinary proceedings.

Under these circumstances, the measures taken by the defendant were lawful and justified.

The applicant claimed that she was only a member of the judicial panel.

Such a claim does not exempt her from responsibility, as, for the reasons explained above, she participated in issuing the decision and shared the same legal judgment and conscience as the other members of the panel. In the present case, the panel as a whole may have acted contrary to the law. Nonetheless, this does not relieve the applicant of personal responsibility.

Additionally, the argument that some decisions, after being overturned and remanded for retrial by the High Court, had the same outcome, does not absolve the applicant from responsibility. It may be true that the subject of the dispute

ultimately had the same outcome, but the court issued a new decision because the original decision was recognized as erroneous."²³⁵

From the foregoing findings, the problems in the applicant's judicial performance are evident, highlighting numerous violations of the law and a pronounced lack of professionalism. Her actions as a member of judicial panels demonstrate decisions made in contravention of legal provisions, in both criminal and civil matters. The violations include the misapplication of plea agreements, the imposition of preventive measures, and conditional early release, where in some cases sentences were unjustly reduced for defendants accused of serious crimes such as murder and robbery with violence. These decisions were subsequently reviewed, overturned, or modified by higher courts. Importantly, it is emphasized that a judge cannot justify themselves merely by claiming to have been a panel member, as judges bear individual responsibility for their participation in final decisions.

In another case, violations were found contrary to the proper performance of duties, consisting of decisions clearly inconsistent with the law, where the suspension of execution was based on an expert report requested privately and issued long before the judicial decision, as noted in the following reasoning: *"On the basis of decision no. 297 dated 9.12.2002 of the Fier District Court, issued by the appellant as the sole judge, the criminal decision no. 26/99 dated 25.10.1999 of the Criminal Court of Milan, Italy, concerning the convict A. K., was recognized, converting the life imprisonment imposed by that court into a sentence of 21 years in prison. On 23 December 2002, the convict's counsel requested suspension of the execution of the aforementioned decision due to the convict's health condition. The request was accompanied by a psychiatric-forensic expert report dated 27.12.2001, issued by recognized forensic psychiatrists, based on a request from an attorney. The report concluded that the convict suffered from a cyclical psychiatric disorder that required hospital treatment during episodes, and therefore, the individual lacked legal criminal liability.*

Relying on the conclusions of this report and having questioned one of the experts as a witness in court on 26.12.2002, the court ordered the suspension of the execution of the sentence imposed on A. K., pursuant to Article 476 of the Criminal Procedure Code. The police authorities, who arrested the convict in absentia based on this order, immediately released him. From that moment, the detention of A. K. was not possible, and the execution of his prison sentence remained unenforced.

According to the decision of the HCJ and the review of the case materials, the applicant's actions were irregular. The Joint Chambers consider that the acts described in the HCJ decision demonstrate professional inadequacy in the

235. Decision no. 89 dated 11.11.2002 of the High Court's Joint Chambers.

performance of judicial duties.

In this context, the convict's lack of criminal liability, or, in this case, the condemned individual, is closely linked to the timing of the psychiatric-forensic examination. This means that the court, if it had doubts about the convict's condition at the time of trial, should have summoned experts to assess it. In fact, the court relied on an expert report prepared a year prior to the trial and commissioned by a private party, not by the court itself.

Moreover, Article 476 of the Criminal Procedure Code provides for cases in which the execution of a decision may be postponed. It stipulates the suspension of execution as a possible measure until the matter is fully reviewed. This provision links the suspension to a time frame, which may extend at most until the case is examined. Additionally, paragraph 1(a) of this article provides for a period that may extend until the convict is rehabilitated, as it concerns the existence of a medical condition that would prevent execution of the decision. The court conflated the term "illness," as provided in the aforementioned provision, with "psychiatric disorder," for which the Criminal Code establishes specific provisions concerning the imposition of medical measures. These provisions should have been applied only if it had been conclusively established that the convict indeed suffered from such a condition.

Moreover, the court was not faced with the need to postpone the execution of the sentence, as the decision had not yet been enforced. All hearings were conducted in the absence of the convict, including the proceeding regarding the recognition of the criminal judgment issued by the Court of Milan.

It is precisely this evident professional inadequacy that justifies the dismissal of the appellant by the High Council of Justice, pursuant to Article 147(6) of the Constitution of the Republic of Albania, which was accompanied by the corresponding consequences."²³⁶

The above stance of the High Court was confirmed by the Constitutional Court which reasoned that: The High Council of Justice reviewed the matter following the disciplinary procedure initiated by the Minister of Justice, who had verified the irregular actions of the applicant as a judge in the case concerning criminal decision no. 297 dated 09.12.2002. This decision recognized the sentence imposed by the Criminal Court of Milan, Italy, on the Albanian citizen A.K. for serious criminal offenses.

The High Council of Justice is the body empowered by the Constitution to decide on the appointment and disciplinary sanctions of judges, including providing the corresponding reasoning for dismissal, as was done in this specific case. It analysed the actions of the applicant and concluded that these actions not only contravened the proper fulfilment of judicial duties but also caused serious consequences for the authority of the judicial organs, as the convicted person was released from prison due to this decision.

236. Decision no. 30 dated 31.03.2003 of the High Court's Joint Chambers.

It is not within the Constitutional Court's remit to assess whether the facts accepted by the High Council of Justice and the High Court constitute violations and whether these violations are severe. The evaluation of a judge's actions, their consequences, and the disciplinary sanctions to be taken fall within the remit of those bodies themselves; therefore, the applicant's claims of misinterpretation of law or evidence by the aforementioned organs are not subject to review by the Constitutional Court. As such, they cannot serve as grounds for annulling the decisions of the High Council of Justice or the Joint Chambers of the High Court as unconstitutional.

Pursuant to Article 135 of the Constitution, judicial power is exercised by courts based on the principle of hierarchical review of decisions from lower courts by higher courts, which means that while these decisions are in force, no other state organ, including the High Council of Justice, may interfere. However, the Constitution also imposes on judges the obligation to fully respect the Constitution and laws, and to preserve impartiality and integrity to ensure more effective justice. In cases of judicial misconduct, acts or behaviours that seriously discredit a judge's position or professional inadequacy, Article 147(6) of the Constitution empowers the High Council of Justice to take appropriate measures up to dismissal of the judge.

In the present case, the High Council of Justice did not violate the principle of non-interference in the administration of justice or the binding force of final decisions. It identified actions contrary to proper duty performance and the serious consequences arising therefrom, and, within its power, determined the appropriate disciplinary sanction.

*The claim that oversight by the Inspectorate of the Minister of Justice violates the principle of separation of powers is also unfounded. For this, the Constitutional Court reconfirms its earlier position expressed in decision no. 11, dated 27.05.2004.*²³⁷

From the reasoning of the High Court and Constitutional Court, it is clear that suspending a sentence that had not yet been executed, as well as conflating the terms "illness" and "mental illness" when the legislation provides specific regulations for the latter, demonstrates a marked lack of professional competence in the judge's decision-making in this matter, and therefore, disciplinary liability was warranted.

In another case, altering the operative clause of a judicial decision under the pretext of correcting material errors was considered a violation, resulting in disciplinary accountability, as noted in the reasoning: "After reviewing the case in its entirety, the Joint Colleges of the High Court concluded that judge E.K. had permitted, and consequently committed, the violations identified by the High Council of Justice in reviewing two cases. These violations severely undermine the authority and integrity of a judge and must be regarded

237. Decision no. 12 dated 17.06.2004 of the Constitutional Court.

as actions contrary to the proper fulfilment of judicial duties.

In the case concerning the accused A.B., the request for correction of a material error was accepted at a time when the decision had been appealed, and any irregularity or misapplication of law would have been addressed by the appellate court.

Under Article 385 of the Criminal Procedure Code, the court proceeds to correct material errors; however, in this case, the court did not merely correct material errors but altered the dispositive of the decision. Had it only recalculated the sentence according to the specified penalties, the final sentence would have been 3 years, 8 months, and 20 days, instead of 3 years, 2 months, and 10 days, as determined by the court after reducing the 5-year prison sentence originally imposed under Articles 283/1 and 25 of the Criminal Code.

By altering the operative clause, the judge reduced the sentence below the statutory minimum, which the court had failed to justify in the first-instance decision. Furthermore, under Articles 333/2 and 471 of the Criminal Procedure Code, the prosecutor's participation in both cases - correction of material error and the case concerning B.D. - was mandatory, and all necessary procedural steps should have been taken.

These issues regarding the application of legal requirements relate to the enforcement of decisions, as unlawful decisions were executed, leading to unjust benefit for the accused. Under Article 471/4 of the Criminal Procedure Code, hearings in such cases must include the mandatory participation of the prosecutor and defence counsel.

In these circumstances, the violations are evident, have clear legal definition, and therefore were correctly identified as justifying the dismissal of the judge. The gravity of the violations is assessed by the competent body, but in this case, the violations were manifest and failed to guarantee a fair trial.

*Accordingly, the Joint Colleges hold that the appeal lacks legal basis, and the HCJ's decision should remain in force.*²³⁸

While the above examples illustrate cases where disciplinary violations were properly identified, jurisprudence also provides instances where judges were unfairly put under disciplinary proceedings.

Thus, given that during disciplinary proceedings the decision-making approach of the judge was often evaluated, the Constitutional Court has maintained the position that: *"The decision of the High Council of Justice to dismiss the applicant from office was based on the negative assessment made by the team of inspectors regarding eleven judicial decisions issued by him. In doing so, the Council effectively undertook an evaluation of the legality and merit of the judicial decisions issued by the applicant, as these assessments were primarily concerned with the alleged misapplication of the law, the imposition of lenient sentences, the improper assessment of the social danger of the offense,*

238. Decision no. 33 dated 26.09.2003 of the High Court's Joint Chambers.

and the inaccurate evaluation of the offender's personality."

According to Article 135 of the Constitution, judicial power is exercised by the High Court, the Court of Appeal, and the courts of first instance. This power is exercised in a hierarchical manner in accordance with the principle of review, whereby decisions of lower courts are subject to review by higher courts. This means that, as long as a decision has not been overturned or modified by a higher court, no other state body, including the High Council of Justice, has the authority to interfere with such decisions or to hold the presiding judge disciplinarily liable for them.

The only exception to this rule applies in cases where the decisions constitute violations that seriously discredit the position or integrity of the judge. In such instances, the violations must be documented and substantiated before any disciplinary action resulting in the judge's dismissal is taken. The High Council of Justice, upon verifying violations of this nature, may take action to dismiss a judge at any time, irrespective of whether the case has concluded. These conclusions were affirmed by the Constitutional Court in decision no. 29 dated 30.04.2001, concerning the applicant A.K.

In the matter under review, the Constitutional Court observes that the High Council of Justice and the United Chambers of the High Court have not specified the grounds for the disciplinary violations attributed to the applicant. They have not clarified whether these acts or violations were committed intentionally in a manner that seriously undermines the judge's position or reputation, or whether they were minor errors arising from negligence, professional incompetence, or lack of experience in office.

Clarifying these circumstances, which constitutes a constitutional obligation for the High Council of Justice under Article 147 of the Constitution, was particularly necessary, as the applicant was held accountable by the High Council of Justice for violations primarily related to the alleged misapplication of the law or the imposition of lenient sentences.²³⁹

This approach of the Constitutional Court has been reaffirmed in subsequent decisions, wherein it was reasoned that: "The High Council of Justice based its decision to dismiss the applicant on the negative assessments of only six judicial decisions issued by the applicant, either as a sole judge or as a member of a judicial panel. Of these decisions, four had become final, three were not appealed, and one was upheld by higher courts; the remaining two decisions were modified by the Court of Appeal solely with respect to the sentence, and not the nature of the conviction. Generally, the comments regarding these decisions concerned misapplications of substantive law rather than procedural violations. According to the conclusions of the High Council of Justice, such misapplications were primarily reflected in the imposition of lenient prison sentences, one instance of incorrect legal characterization of a criminal offense,

239. Decision no. 11 dated 02.04.2003 of the Constitutional Court.

and one case involving an erroneous resolution of a civil matter. These violations were identified not through citizen complaints, as provided under Article 17 of the Law "On the organization of the judicial power," but via the general review conducted by the Inspectorate attached to the High Council of Justice over the one-year activities of judges at the Tirana District Court. These were consequently deemed disciplinary violations for actions inconsistent with the proper performance of the applicant's duties.

By evaluating the legality and merit of these judicial decisions after they had become final, the High Council of Justice acted in contravention of Article 135(1) of the Constitution.

This provision, which distinguishes judges according to their functions, is intended to detach them from hierarchical dependence and to subject their judicial activity solely to the control of higher courts, in accordance with the rules established in the procedural codes.

Final judicial decisions, with respect to the matters they resolve, have the force of law. This means that, so long as such decisions have not been overturned or modified by a higher court, no other state authority may disregard their content or hold the presiding judge responsible for them.

However, the situation differs in cases where such decisions are accompanied by violations that seriously discredit the position or integrity of the judge and that generally undermine the prestige and authority of the judiciary.

In such instances, the High Council of Justice has full power to impose any disciplinary sanctions against judges, without conditioning such measures on whether these decisions have become final and thereby acquired the authority of res judicata. Indeed, the Council may act against such violations committed in the course of judicial duties at any time, even if the review of the case has not yet concluded.

Nevertheless, in selecting the disciplinary sanction applied to the applicant, the High Council of Justice did not sufficiently consider the requirements of Article 147(6) of the Constitution. According to this provision, dismissal from office may be imposed on a judge only in certain cases, including, among others, various breaches of workplace discipline committed in any of the forms specified under Law no. 8436 dated 28.12.1998, "On the organization of the judicial power".

However, not every violation, even those committed in the form of actions inconsistent with the proper performance of duties, justifies the imposition of this extreme sanction. Its application, in light of the aforementioned constitutional provision, is strictly limited to acts that seriously discredit the judge's position or integrity.

Referring to the case under consideration, the Constitutional Court observes that the High Council of Justice, as well as the Joint Chambers of the High Court, have not articulated the true causes of the violations attributed to

the applicant. In other words, they have not clarified whether these deficiencies in the applicant's work resulted from intentional acts that discredit his position as a judge, or whether they were ordinary errors arising from a lack of experience in office.

Clarifying these circumstances in the present case was essential because the applicant was held accountable primarily for the imposition of lenient sentences or for the misapplication of substantive law in cases most of which had already become final. It remains uncertain whether such violations would have been deemed significant by higher courts had these decisions been subjected to their ordinary judicial review.

Under these circumstances, in addition to the decision of the High Council of Justice, the decision of the Joint Chambers of the High Court, which upheld the outcome of this irregular disciplinary process conducted against the applicant, must also be annulled."²⁴⁰

The above-mentioned decisions were particularly significant, as they established that final judicial decisions, which have not been overturned by higher courts, cannot be subject to review or assessment by prosecutorial authorities or even the High Court when examining appeals against disciplinary sanctions imposed on judges. Based on these conclusions, there was also a reaction from the High Court, which, as observed in its aforementioned rulings, did not consistently distinguish between cases where it was evaluating final judicial decisions and cases where the decisions at issue, for which the judge was being held accountable, had been overturned by higher courts.

Cases relating exclusively to a judge's inner conviction have not been treated as disciplinary violations in judicial practice. This is demonstrated by the following example: "Upon analysing several judicial decisions by the HCJ Inspectorate, the Minister of Justice, and the High Council of Justice concluded that certain decisions were made in violation of legal requirements. The Joint Chambers generally concluded that, in the cases examined, the legal requirements were respected, and higher authorities did not assess violations of the law but rather the internal reasoning of the judge in resolving the matters, and, as such, it cannot be accepted that these constituted acts in violation of the proper performance of duties by Judge A. K.

During deliberations in the Joint Chambers, the representative of the High Council of Justice acknowledged that in the cases judged and alleged to involve decisions contrary to the proper performance of duties by Judge A. K., no legal violations had occurred, a fact which undermines the reasoning that these were disciplinary violations.

Regarding alleged violations concerning the imposition and substitution of preventive measures, the High Council of Justice reviewed decision no. 10

240. Decision no. 29 dated 30.04.2001 of the Constitutional Court.

dated 07.01.1999, in which the accused A. K., charged with the criminal offense of aggravated theft, was assigned a 15-day detention measure, and Decision No. B75 dated 30.12.1999, whereby the security measure for the accused S. K. was replaced from detention to house arrest.

Analysis of the relevant casefiles reveals that the preventive detention of A. K. for 15 days was ordered because there was insufficient evidence to determine that he was the perpetrator. Moreover, the injured party was not presented for identification in a timely manner, and upon later examination, clarified that A. K. was not the perpetrator. Consequently, the case against A. K. was dismissed by the prosecutor on 10.05.1999, and he was released.

The decision to replace the security measure for S. K. relied on a medical certificate, which the court deemed sufficient to lift detention, and the Inspectorate's classification of this as a legal violation was unfounded, because the medical report had to be administered by the prosecution office and not by the court. This conclusion is not grounded in law, since the court is obliged to assess all evidence and materials presented during proceedings.

The decision to replace the security measure for S. K. relied on a medical certificate, which the court deemed sufficient to lift detention, and the Inspectorate's classification of this as a legal violation was unfounded, because the medical report had to be administered by the prosecution office and not by the court. This conclusion is not grounded in law, since the court is obliged to assess all evidence and materials presented during proceedings.

Similarly, conclusions regarding the illegality of early release decisions were unfounded. The High Council of Justice argued that five such decisions were issued contrary to the requirements of Article 64 of the Criminal Code, allegedly ignoring the dangerousness of the act, the offender, and the penalty imposed. However, the casefiles show that the court's decisions were based on its assessment and judgment, in accordance with legal requirements, and there was no evidence that the statutory criteria were not met. Even in these materials, it is acknowledged that the court rendered decisions allegedly contrary to the law. Although it was concluded that the requirements of Article 64 of the Criminal Code had been considered, legal violations are asserted to have occurred because, in certain cases, the court did not take into account that the sentences imposed were lenient, that the convicts had committed serious offenses, and that the objective of rehabilitation was deemed achieved despite the brevity of their time spent in the rehabilitation facilities.

These conclusions are unfounded, and the representative of the High Council of Justice acknowledged that, in the cases of conditional release, there were no instances of non-compliance with any of the requirements prescribed under Article 64 of the Criminal Code, which indicates that the decisions were rendered in accordance with the law.

The conclusions reached regarding the illegality of the decisions on

conditional early release are inconsistent with legal standards, since, under Article 64 of the Penal Code, a convicted person may be released early from the remainder of their sentence if they have served no less than half of the imposed term and have demonstrated through their conduct that the purpose of the sentence, namely their rehabilitation and prevention of recidivism, has been achieved. As noted, in none of the cases of conditional early release was any of these requirements found to be unmet; consequently, such decisions cannot be regarded as having been issued in violation of the law or in contravention of the proper performance of official duties.

Even in the case of the convicted person Sh. M., although it has been treated as a matter resolved by judge A. K. in violation of the proper performance of official duties, this cannot be accepted as such, since, as acknowledged by the representative of the High Council of Justice, the matter was assigned for adjudication based on a lot conducted in accordance with established rules and not at his request.

By decision no. 148, dated 12.03.1999, the defendants I. K. and D. R. were found guilty, and the sentence of 2 years and 6 months was considered lenient and contrary to the law. This assessment is also unfounded, as it is subjective and fails to take into account that the defendants had been sentenced to 5 years of imprisonment each; however, being minors, in accordance with Article 51 of the Criminal Code, they ultimately received half of the sentence, and the Tirana Court of Appeal, which reviewed the prosecutor's appeal, upheld the decision. Under these circumstances, a judicial decision of the district court, appealed by the prosecutor on the grounds of a lenient sentence and upheld by the appellate court, cannot be considered contrary to the law, as it underwent higher judicial review in accordance with the Criminal Procedure Code and was found to be legally sound.

Similarly, the decision no. 10 dated 20.01.1999, by which the defendant P. K. was sentenced for the offense under Article 283/1 of the Criminal Code (sale and production of narcotic substances) to two years of imprisonment, with suspension of execution, has also been treated as unlawful. At the time this decision was issued, judicial practice in the district and appellate courts varied regarding sentences for defendants found to be drug users in possession of less than one gram of narcotics. Such defendants were either acquitted or given a sentence below the statutory minimum, with suspension of execution - a practice followed until the Criminal Chamber of the High Court ruled that even persons in possession of narcotics for personal use must be sentenced, thereby changing the judicial practice.

From the above, the Joint Chambers of the High Court conclude that, in adjudicating cases and issuing decisions, Judge A. K. did not act in violation of the proper performance of official duties, and consequently, the sanction taken against him is unfounded. The Joint Chambers also take into account that during

his tenure as a judge, no disciplinary violations or sanctions were recorded against him. Notably, it was not considered a violation for this judge to act in accordance with the practice prevailing at the time, even if it was later changed by the High Court. Importantly, when the decisions were made, they conformed to contemporary judicial practice."²⁴¹

From the foregoing, it appears that the judge under scrutiny did not engage in actions contrary to the proper performance of official duties. His decisions were within the legal framework and were based on his own interpretation and internal judgment, which constitute an integral part of a judge's work. Moreover, during his judicial career, no disciplinary violations or precedents were identified that would justify his dismissal from office. Notably, it was not considered a violation for this judge to act in accordance with the prevailing judicial practice at the time, even if such practice was later revised by the High Court. Importantly, at the time the decisions were made, they were consistent with the judicial practice then in effect.

Whether the conduct of a particular judge constituted a serious violation led to diametrically opposed reasoning between the High Court and the Constitutional Court. Initially, the High Court held the position that: *"According to the decision, such actions were carried out in the adjudication of the civil case in which the claimant was the Ministry of Education and Science, the respondent was the Property Restitution and Compensation Commission for former-owners in Tirana, and the secondary intervener was the S. family.*

Court hearings were conducted by the applicant A. Ç., presiding as the sole judge, even though the case in question, in accordance with the requirements set forth in Article 35/b of the Civil Procedure Code, should have been adjudicated by a panel of three judges. Moreover, the final decision in the civil case was signed by three judges, whereas the corresponding minutes indicate that two of them did not participate in the proceedings.

A closer examination of the aforementioned actions carried out by the applicant A. Ç., in her capacity as a judge, reveals, among other things, that in the minutes of the court hearing dated 28.06.2002, the judicial panel consisted solely of A. Ç. and R. P. The latter, upon reviewing the casefile, does not appear to have participated in any prior court sessions. Furthermore, by "reasoning" that the claimant did not appear in court without justified cause, the proceedings were adjourned. The final decision, however, was signed by three judges, specifically A. Ç., A. C., and F. O. As evident, while the minutes reflect the presence of only two judges, the decision bears the signatures of three; conversely, while judge R. P. appears in the minutes, she is not listed on the decision itself.

The actions in blatant contradiction with the proper fulfilment of duties, carried out by the applicant A. Ç., also relate to the fact that she accepted to act as

241. Decision no. 15 dated 13.02.2001 of the High Court's Joint Chambers.

the judge rapporteur judge in a civil case, whereas, according to the requirements of Article 73 of the Civil Procedure Code, she should have requested to recuse herself due to serious reasons for potential bias. This conclusion arises from the fact that she had a special relationship with the purchaser of the property awarded by the decision of the PRCC in favour of a party to the case, the secondary intervenor, the S. family, whose member was her spouse. In this case, the complainant also acted in violation of Article 709 of the Civil Code, the Law "On the organization of the judicial power in the Republic of Albania," as well as the Code of Judicial Ethics.

Thus, while negotiations had been ongoing for some time between the primary intervenor, the S. family, and the complainant's spouse S. Z., regarding the purchase of the land beneath the "K." school, returned by a PRCC decision for the construction of a residential building - negotiations which culminated in the contract dated 20.09.2002, the complainant accepted to adjudicate the case in question. As noted above, the very plot of land was the subject of the dispute in that case. Such an action, as is known, violates the provisions of Article 709/c of the Civil Code. According to this provision, ... "judges, prosecutors, bailiffs, notaries, and lawyers cannot directly purchase, via another person, or at auction, items that are subject to disputes before the court in which they serve or exercise their functions, except where they are co-owners."

Furthermore, under Law no. 8436 dated 28.12.1998 "On the organization of the judicial power in the Republic of Albania," ... "judges must preserve their dignity by refraining from actions that compromise their profession, the judiciary, and their public image." In a democratic society, the image of a judge is extremely important; therefore, it is essential that they maintain an objective position, conveying impartiality and justice rather than actions that compromise it. As noted in the decision of the High Council of Justice, the applicant A. Ç. was aware of her spouse's actions to purchase the disputed property and, with full knowledge, did not prevent these actions; moreover, she went further by taking on the case as the judge rapporteur. Such conduct is also inconsistent with the Code of Judicial Ethics Code.

Accordingly, under Articles 3, 4, and 24 of the Code of Judicial Ethics, ... "a judge must not allow family members, relatives, or others to influence their work, must not compromise the prestige of the judicial office for private interests, and must not create the impression that they act in such a manner." Likewise, "a judge must avoid any inappropriate conduct contrary to law, the Code of Ethics, or actions that could harm or cast doubt on their integrity, and must not engage in financial or professional relationships that could be perceived as exploiting judicial functions".

The applicant A. Ç. not only ignored these requirements but acted contrary to them, leaving room for suspicion and compromising the judicial image. Based on the above, the Joint Chambers of the High found her claim regarding the

illegality of the High Council of Justice's decision unfounded.

Furthermore, the decision in question, regarding the dismissal of the applicant A. Ç. from judicial office, is supported by Article 147(6) of the Constitution of the Republic of Albania, which authorizes the High Council of Justice to remove a judge for acts and conduct that seriously discredit their position and image.

From the analysis above, the Joint Chambers of the High Court conclude that the complainant acted contrary to legal requirements and committed actions that discredit the image of the judge.”²⁴²

The High Court considered professional violations in terms of the composition of the judicial panel in a civil process, where it was unclear who the other members were and what judicial acts they signed, as well as her participation in this process when she should have recused herself. However, unlike this court, the Constitutional Court did not accept this approach, reasoning that: *“From the case materials, the applicant is attributed violations, which according to the High Council of Justice, relate to actions contrary to the proper fulfilment of duties, incompatible with judicial functions, and contrary to social morality. The relevant decision documents a series of facts aimed at substantiating disciplinary violations, specifically Articles 34 and 41, paragraphs 1, 6, and 7 of Law no. 8436, dated 28.12.1998, ‘On the organization of the judicial power in the Republic of Albania.’ This reasoning underpins the operative part of the decision, which ultimately imposes the disciplinary sanction of dismissal for actions contrary to the proper fulfilment of duties.*

The reasoning section of the High Council of Justice's decision also references constitutional provisions, stating that ‘the conduct and actions of judge A. Ç. constitute behaviour that seriously discredits the position and image of a judge, within the meaning of Article 147(6) of the Constitution of the Republic of Albania’. During the trial, representatives of the interested party, the High Council of Justice, used this reference to reject the applicant's claims. Constitutional Court jurisprudence emphasizes that acts and behaviours that seriously discredit a judge's position and status are a constitutional requirement for dismissal from office. Therefore, a detailed analysis of these elements is necessary by the disciplinary authority, which assesses their existence on a case-by-case basis. It has been noted that it is the duty of the prosecuting authority to evaluate and analyse the degree of discredit to a judge's position and status, as the constitutional provision allows removal from office only in cases of serious discredit of position and image.

In the case at hand, the Constitutional Court notes that merely referencing the constitutional provision is insufficient to demonstrate and argue the link between disciplinary violations committed by the applicant and the “serious” discredit required by the Constitution for dismissal.

242. Decision no. 15 dated 29.06.2004 of the High Court's Joint Chambers.

From the case materials, it appears that the Joint Chambers of the High Court examined the applicant's appeal against the High Council of Justice's decision and ultimately rejected the request. The Constitutional Court observes that this body also did not consider the constitutional requirement for a judge's dismissal. Both the High Council of Justice and the Joint Chambers of the High Court justify the disciplinary sanction solely based on violations of work discipline, without explaining how these violations resulted in the serious discredit of the judge's position and image.

The Constitutional Court concludes that the above is sufficient to assess that the applicant's right to due process of law was violated by both the High Council of Justice and the Joint Chambers of the High Court."²⁴³

In this case, the Constitutional Court states only that both the HCJ and the High Court failed to demonstrate or connect the identified violations to the constitutional provision, particularly since this provision pertains solely to conduct that "seriously" discredits the judicial office. Accordingly, it appears that, in this instance, the Constitutional Court considers that the decision-making of these two bodies is inadequately reasoned; however, it does not expressly state this in any part of its ruling.

Reflecting the approach of the Constitutional Court, the High Court began to examine the nature of the judicial decisions rendered by the judge under disciplinary proceedings, as well as whether those decisions had become final. Subsequently, depending on the outcome, it could be determined whether the judge bore disciplinary liability, as reflected in the following reasoning: *"In the decision of the High Council of Justice, the violations identified consist of actions deemed contrary to the proper performance of judicial duties and which, according to the HCJ, in themselves constitute acts or conduct that seriously discredit the position and image of the judge. The HCJ cited ten judicial decisions containing substantive or procedural law violations issued during the reviewed period 2001–2004. In two of these cases, judge D. B. served as the judge rapporteur, while in the remaining cases he acted as presiding judge or member of the judicial panel. Of these ten decisions, eight became final because they were not appealed, while two were annulled by the High Court and remanded for retrial before the Tirana Court of Appeal.*

In imposing the disciplinary sanction of dismissal, the High Council of Justice primarily relied on the negative assessment made by the inspection group regarding the incorrect application of substantive or procedural law, the improper evaluation by the appellate court of case circumstances in determining security measures, the unauthorized modification of measures from detention to house arrest, the unjustified dismissal of cases at the appellate court contrary to Article 201 of the Civil Procedure Code, the improper suspension of cases, and other reasons related to the aforementioned decisions.

243. Decision no. 16 dated 27.04.2007 of the Constitutional Court.

Without undertaking a detailed review of each judicial decision, the Joint Chambers of the High Court observed that, in general, and in particular with respect to final decisions, the High Council of Justice engaged in assessing the legality of the judicial decisions rendered by the appellate court.

According to Article 135 of the Constitution, judicial power is exercised by the High Court, appellate courts, and first-instance courts, following a hierarchical structure and the principle of review of lower court decisions by higher courts. Under these circumstances, no other state body, including the High Council of Justice, is entitled to interpret such decisions negatively to impose disciplinary liability on a judge who was part of the judicial panel. These decisions, even if final, may constitute grounds for dismissal only if accompanied by acts or conduct that seriously discredit the judge's image.

These conclusions were drawn and accepted by the Constitutional Court in its decision no. 29 dated 30.04.2001 concerning petitioner A. K., and decision no. 11 dated 02.04.2003 concerning petitioner A. A., in which it annulled as unconstitutional the decisions of the High Council of Justice and the Joint Chambers of the High Court, reasoning that: 'As long as the decisions have not been annulled or modified by a higher court, no other State body, including the High Council of Justice, has the authority to interfere with them or to impose disciplinary liability on the judge for such decisions.'

Furthermore, the Constitutional Court acknowledged that the only exception to the foregoing rule occurs when decisions result from violations that seriously discredit the position or image of the judge - violations that must be identified and substantiated before a disciplinary sanction removing the judge from office is imposed."

Aside from the decisions analysed above, the High Council of Justice, in its ruling, did not identify any instance in which those decisions resulted from violations that seriously discredit the judge's position or image.

The High Council of Justice also did not specify or substantiate any violation on the part of judge D. B. arising from deliberate acts that would seriously discredit his judicial position or image. Therefore, it is concluded that the HCJ failed to fulfil its constitutional obligation under Article 147(6) of the Constitution.

The office of a judge is a constitutional function, and the dismissal of a judge must be grounded solely on the constitutional provision. Such dismissal must rely exclusively on Article 147(6) of the Constitution, as noted above; otherwise, it is deemed unconstitutional in all cases. In the review of the matter in the present case, the High Council of Justice did not present grounds indicating acts or conduct unbecoming of the judicial office, whether committed in the exercise of official duties or otherwise, that adversely affected public trust, the administration of justice, or caused harm to the State or society. Moreover, conduct that seriously discredits the position and image of a judge must be of

such gravity that it diminishes the dignity of the institution represented and renders the continuation of judicial functions impossible, thereby obliging the competent authority to take the sanction of dismissal. Such acts or conduct were neither alleged nor proven in this instance.

In their reasoning and conclusions, the Joint Chambers of the High Court also referred to the Constitutional Court's decision no. 75, dated 19.04.2002, which interprets Articles 128 and 140 of the Constitution of the Republic of Albania. These provisions address the grounds and motives for the dismissal of judges of the Constitutional Court and the High Court.

The interpretation specifically concerns the constitutional phrase "acts or conduct that seriously discredit the position of the judge" and is applied by the Joint Chambers of the High Court because, as a constitutional function, it corresponds to the grounds for dismissal set out in Article 147(6) of the Constitution for judges of first-instance and appellate courts.

In decision no. 75, dated 19.04.2002, the Constitutional Court, upon the request of a group of members of the Albanian Parliament, interpreted Articles 128 and 140 of the Constitution and concluded that the actions or omissions of high-ranking State officials justifying their dismissal "should, in every case, be connected to irregular or improper conduct that these officials perform not only in the exercise of their office and by reason thereof, but also outside of office, involving abuse or violation of public trust, and are primarily related to the harm they cause to society and the State. The acts or conduct must be so serious, and must have so severely discredited the position and image of the judge and diminished the dignity of the institution represented, as to compel the competent authority to take measures for dismissal".

By interpreting Articles 128 and 140 concerning the expression "acts or conduct that seriously discredit the position and image...", the Constitutional Court held that: "It encompasses a range of elements which must be identified on a case-by-case basis by the authority deciding on the dismissal of the judge. They relate to irregular and improper acts and conduct performed during the exercise of office, by reason of office, or outside office. Such acts or omissions, analysed in light of the circumstances of their commission, the subjective intent, and the resulting harm to society and the State, are of such a nature that they make it impossible for these individuals to continue performing constitutional functions."

Based on the above analysis, the Joint Chambers of the High Court concluded that the decision of the HCJ should be annulled as unsupported by Article 147(6) of the Constitution of the Republic of Albania.²⁴⁴

From this reasoning, it is clear that the majority of the judicial decisions for which the judge was under disciplinary proceedings had become final, and therefore, their substantive validity could not be

244 Decision no. 7 dated 07.03.2006 of the High Court's Joint Chambers.

assessed by the HCJ. Even in the other cases, where decisions had been annulled, there were no violations of procedural or substantive law sufficient to give rise to disciplinary liability or to justify the dismissal of the judge.

Maintaining this approach, in another case, the High Court held that: *“Based on the formulation and content of the reasoning, it follows that the decision of the High Council of Justice to dismiss judge P. A. from office was primarily based on Article 42/6 of Law no. 8436, dated 28.12.1998, ‘On the organization of judicial power in the Republic of Albania’.*

Article 42 of the aforementioned law provides that, for disciplinary violations and other acts or conduct that are discrediting, sanctions may be imposed ranging from a warning onward. Paragraph 6 of the same Article also provided for dismissal from office. Drawing upon another case under review, concerning petitioner Th. N. and the High Council of Justice (HCJ) regarding the annulment of a judge’s dismissal, the Joint Chambers of the High Court suspended proceedings in the present case and referred it to the Constitutional Court to rule on the constitutionality of Chapter V of Law no. 8436 dated 28.12.1998 “On the organization of judicial power” which governs the disciplinary liability of judges.

By its decision no. 3 dated 20.02.2006, the Constitutional Court annulled paragraph 6 of Article 42 of Law no. 8436, finding it unconstitutional on the basis that, due to the constitutional nature of the judicial office and the special protection it enjoys, the position of a judge is regulated directly by the Constitution. Consequently, dismissal, the right to appeal such dismissal, and the authority competent to decide thereon are governed exclusively by the Constitution, not by ordinary statutory law.

Article 147(6) of the Constitution provides the grounds for the dismissal of a judge, specifically that the High Council of Justice may dismiss a judge for the conviction for a criminal offense, mental or physical incapacity, acts or conduct that seriously discredit the position and image of a judge, or professional inadequacy.

Accordingly, in reviewing the present case, the Joint Chambers of the High Court relied directly and solely on the constitutional provision, concluding that the decision of the High Council of Justice to dismiss judge P. A. finds no basis in any of the grounds enumerated in Article 147(6) of the Constitution of the Republic of Albania.

In the decision of the High Council of Justice, as violations allegedly contrary to the proper fulfilment of judicial duties, reference is made to two judicial decisions - one of which had become final - as well as to the inaccurate declaration of assets. These violations, according to the respondent authority, constitute breaches incompatible with the proper performance of judicial functions and are grounded on Article 42(6) of Law no. 8436 dated 28.12.1998 “On the

organization of the judicial power in the Republic of Albania”, a provision that has since been annulled by the Constitutional Court. They bear no relation whatsoever to the grounds enumerated in Article 147(6) of the Constitution, which constitute the exclusive constitutional bases upon which a judge may be dismissed from office.

Nevertheless, the Joint Chambers examined the case and analysed the alleged violations from a constitutional standpoint, concluding that they do not fall within any of the circumstances prescribed by Article 147(6) of the Constitution. Regardless of whether the decisions were or were not final, there is no indication that they were accompanied by acts or conduct that seriously discredited the position and image of the judge. Consequently, it was held that the High Council of Justice, in dismissing the judge, failed to meet its constitutional obligations.²⁴⁵

As appears from the foregoing reasoning, the High Court reviewed the matter following the annulment by the Constitutional Court of a statutory provision, thereby fundamentally redefining the legal framework of the case. Adhering to its previously established standard, the Court found that, again, of the two judicial decisions under review, one had become final. Accordingly, a judge cannot be dismissed solely because one of his judicial decisions was quashed by a higher court. Likewise, the issue concerning the verification of the judge’s assets was not substantiated to a degree sufficient to justify his dismissal.

This approach was reinforced through another decision, where the Court reasoned as follows: “1. In the exercise of its functions, the Directorate of Inspection of the Ministry of Justice carried out, during 2003, an inspection at Vloa District Court concerning the legality of criminal judgments related to unlawful trafficking, specifically those decisions subsequently reversed by the Vloa Court of Appeal or the High Court.

Upon completion of the inspection, it concluded that the complainant, in his judicial activity, had allowed violations of substantive and procedural law, consisting of:

A. Violations of substantive provisions - Article 53 of the Criminal Code (2 decisions);

B. Violations of substantive provisions - Article 59 of the Criminal Code (7 decisions);

C. Violations of legal provisions concerning the qualification of the criminal offence (1 decision).

As its legal basis, the HCJ relied upon Article 147(6) of the Constitution, Law No. 8436 (Articles 40, 41, 42), the Law on the Organisation and Functioning of the HCJ, and the Regulation on Disciplinary Proceedings against Judges.

2. By decision dated 23.03.2005, the Joint Chambers of the High Court referred the matter to the Constitutional Court for a constitutional review of Law

245. Decision no. 12 dated 08.03.2006 of the High Court’s Joint Chambers.

no. 8436 - specifically Chapter V on the disciplinary responsibility of judges - in relation to Article 147 of the Constitution.

3. The Constitutional Court, in accepting the referral and annulling point 6 of Article 42 of Law No. 8436, reasoned that judges enjoy special constitutional protection, meaning that they may only be subjected to the disciplinary sanctions expressly provided for in the Constitution (Article 147(6)).

4. Under Chapter V of Law no. 8436, disciplinary responsibility was regulated across several provisions, including Article 40 (grounds of disciplinary liability), Article 41 (disciplinary violations), and Article 42 (disciplinary sanctions), which included, under point 6, the dismissal of a judge. As previously reasoned, this provision was unconstitutional, meaning that only the disciplinary sanctions expressly provided for in the Constitution may be applied to judges. The action of the HCJ in this case was therefore not in compliance with this requirement.

5. The complainant argued that several of the decisions forming the basis of the disciplinary proceedings were final and therefore could not be subject to disciplinary review.

6. The HCJ, with respect to this claim, referred to the practice of the Constitutional Court. However, according to that practice, disciplinary sanctions may be applied only when judicial decisions are accompanied by acts or conduct that seriously discredit the position and image of the judge. In the present case, the claims concerned only judicial decisions, some of which were final, and not conduct or actions that seriously discredited the judicial office. The review of the content of a judicial decision may only be conducted through judicial avenues, i.e., by higher courts in accordance with the judicial hierarchy. Only the judiciary has the constitutional authority to assess the legal correctness of a judge's decision. Accordingly, the HCJ's claim was unsubstantiated, whereas the complainant's objection was well founded and should be upheld.

7. The complainant further argued that, in rendering the decisions, he had generally acted as a member of the judicial panel and not as presiding judge.

A disciplinary sanction is inherently individual, and thus the determination of a violation must aim to identify accurately the specific rules breached and the personal responsibility of the individual concerned. Individual responsibility for a collegial decision - i.e., where the judge acts as part of a judicial panel - does not permit proper individualisation so long as the measure is not taken against all members of the panel. A judge, as an individual, cannot be singled out from the judicial panel for the purpose of disciplinary proceedings. In such cases, the experience and professional conduct of the judge must also be taken into account.

8. The Joined Chambers of the High Court, applying Constitutional Court's jurisprudence, concluded that the disciplinary authority had exceeded its legal authority. Dismissal may be imposed only in the cases explicitly provided for in Article 147(6) of the Constitution. While the HCJ may determine various

disciplinary violations, it lacks the authority to dismiss a judge, given the judge's special constitutional protection.

Accordingly, the complainant's claims were well founded and must be upheld. With respect to the alternative disciplinary allegation - acts or conduct seriously discrediting the position and image of the judge - the claims advanced by the HCJ were neither proven nor substantiated and must therefore be rejected."²⁴⁶

As can be observed in these cases, the High Court has again declined to find a disciplinary violation on the part of the judge with respect to decisions that had become final, unless such decisions were accompanied by conduct that seriously discredited the position and image of the judge. With regard to this latter requirement, the HCJ advanced neither arguments nor evidence capable of supporting its claim. Departing from its earlier approach, the High Court further held that a violation cannot be imputed to a single member of a judicial panel when the entire panel adopted the same position. In such circumstances, if grounds existed for establishing disciplinary responsibility, that responsibility would necessarily have to be collective.

From the analysis of this disciplinary liability, it may be concluded that judicial decision-making must be grounded in constitutional norms, substantive and procedural law, and the evidence administered in the proceedings, with the aim of forming the judge's inner conviction in an independent and objective manner. This approach constitutes the foundation of a fair and impartial judicial system. Consequently, disciplinary sanctions against judges must not be employed as a punitive instrument for the legal interpretation undertaken in the performance of their duties, except in cases where it is clearly established that the judge acted with the intent to misinterpret the law or engaged in conduct in manifest contravention of ethical or professional standards.

Moreover, disciplinary proceedings require that the competent disciplinary bodies distinguish between technical errors or inadvertent mistakes committed in the exercise of judicial duties, and those violations that seriously undermine the integrity and credibility of the judge. This distinction is essential to prevent the unfair penalisation of judges for shortcomings that do not affect their integrity or their judicial function, while ensuring that disciplinary sanctions focus on those instances where the proper functioning of the justice system is genuinely at risk.

It must further be emphasized that judicial decision-making cannot be evaluated by disciplinary bodies, but only by higher courts. Interference, through disciplinary proceedings, with the manner in which a case has been adjudicated constitutes a grave violation of judicial independence and undermines the authority of judicial decisions.

246. Decision no. 11 dated 11.09.2007 of the High Court's Joint Chambers.

8. *Unjustified failure to comply with an imposed disciplinary sanction.* This type of disciplinary violation could be committed by judges only where a disciplinary sanction had previously been imposed, and the judge subsequently refused to comply with it. Among the disciplinary sanctions provided for in this law, and by their nature capable of being disobeyed, were suspension from office; reassignment to a lower position within the court for a period of six months to one year; or transfer to another court. The unjustified failure to comply with such disciplinary sanctions imposed by the High Council of Justice constituted a separate disciplinary offence, as it undermined the authority and proper functioning of that body and diminished the effectiveness of oversight mechanisms. Judges, as key figures in the administration of justice, were obliged not only to adhere to professional rules and duties, but also to comply with the disciplinary sanctions imposed upon them. Failure to implement such measures demonstrated a lack of responsibility and created a dangerous precedent for the authorities responsible for the administration of the judicial system.

With respect to the disciplinary sanctions that could be imposed, the 1998 law - essentially replicating the provisions of the earlier 1998 law - provided for six such measures, specifically:²⁴⁷ 1. Reprimand; 2. Reprimand with warning; 3. Reduction of salary by up to 25 percent for a period of three to six months; 4. Suspension from duty and reassignment to a lower position within the court for a period of six months to one year; 5. Transfer to another court; and 6. Dismissal from office.

The Constitutional Court examined the constitutionality of these disciplinary sanctions in their entirety and held as follows: *“Normative legal theory is fundamentally based on the idea that relations between legal norms are structured according to a hierarchy of superiority and subordination. The legal order is not a collection of norms of equal value, but a hierarchical system composed of different levels of validity, at each of which stands a norm or a group of norms endowed with a corresponding legal force. At the apex of this pyramid of normative acts stands the Constitution, which serves as the source of all other legal acts.*

The Constitution, as the fundamental act of the State, determines the institutions and the conditions under which normative acts are adopted, with the aim of ensuring their stability. As the basis upon which all other normative acts are enacted, the Constitution may also undertake the mission of defining the content of laws to be adopted in the future by the legislature. Accordingly, a characteristic feature of written constitutions is the explicit establishment of certain fundamental principles or the absolute exclusion of certain circumstances deemed unacceptable.

247. Law no. 8436 dated 28.12.1998, Article 42.

The regulatory framework established by the Constitution cannot always be exhaustive or comprehensive. While some issues relating to the organization of the State may be regulated in detail, many aspects of institutional life remain to be governed by laws or other normative acts, as appropriate. Thus, the Constitution does not seek to regulate every aspect of the political and social organization of a country in detail, but rather to set forth the basic principles and criteria upon which such organization must rest. Frequently, the Constitution deliberately leaves regulatory space to the ordinary legislator so as not to hinder political, economic, social, or cultural initiatives. However, the Constitution may also explicitly and exhaustively regulate matters for which no legislative discretion is intended.

In light of the foregoing, the Constitutional Court reiterates that in every instance where constitutional regulation is expressly provided, it must be applied directly. The content of a constitutional provision cannot be circumvented or overridden by giving precedence to legal acts enacted pursuant to the Constitution. This obligation derives from Article 4(3) of the Constitution. Where the Constitution intentionally leaves regulatory space by delegating authority to the ordinary legislator, direct application is not required; in such cases, it is expected that the normative acts adopted will respect the hierarchy of legal norms.

Applying this legal reasoning to the subject matter of the case, the Constitutional Court held that a judge, by virtue of the function performed, is treated by the Constitution as exercising a constitutional office. As such, judges enjoy special constitutional protection. This is evident from the constitutional provision governing the dismissal of judges, which mirrors the standards applied to the dismissal of officials exercising other high constitutional functions. While the Constitution provides identical treatment for such officials, the same approach has not been followed by ordinary legislation governing the organization and functioning of the respective institutions. Specifically, for officials provided for under Articles 128 (judges of the Constitutional Court), 140 (judges of the High Court), and 149 (the Prosecutor-General) of the Constitution, no additional formulations are introduced in their respective organic laws. By contrast, judges of first-instance and appellate courts were subject to differentiated regulation under the Law "On the organization and functioning of the High Council of Justice."

For these reasons, the Constitutional Court concluded that the Constitution did not intend to authorize the legislature to define the grounds for dismissal, as it has already done so expressly in Article 147(6), pursuant to which a judge may be dismissed by the High Council of Justice for: the commission of a crime; mental or physical incapacity; acts or conduct that seriously discredit the position and image of the judge; or professional incompetence. By contrast, with respect to other disciplinary sanctions, Article 147(4) of the Constitution delegates

authority to the ordinary legislator to regulate the grounds and criteria for their application. This conclusion is further supported by Article 46 of the Law on Judicial Power, which provides for an appeal to the High Court against decisions dismissing a judge from office for one of the constitutionally prescribed grounds. The wording employed by the legislature reinforces the position adopted by the Constitutional Court.

From this perspective, the Constitutional Court held that paragraph 6 of Article 42 of the Law on Judicial Power, which provides for the dismissal of a judge for disciplinary violations, is incompatible with Article 147(6) of the Constitution and must therefore be annulled. The dismissal of a judge from office, the right to appeal such a decision, and the authority competent to review it are regulated directly by the Constitution. This constitutes an additional guarantee for judges in light of the constitutional function they perform, and the mission entrusted to them by the State and society.

Dismissal of a judge pursuant to Article 46(6) of the Law, in conjunction with Article 41 thereof, does not correspond to the specific grounds set forth in Article 147(6) of the Constitution. The inclusion of dismissal within the same statutory provision that lists other disciplinary sanctions effectively circumvents the application of Article 147(6) of the Constitution and renders the disciplinary proceedings unconstitutional.

The annulment of this provision does not create a legal vacuum, as Article 147(6) of the Constitution is directly applicable. Guidance for the interpretation of this provision is also provided by the Constitutional Court's jurisprudence interpreting Articles 128, 140, and 149(2) of the Constitution, particularly with regard to the expression "acts or conduct that seriously discredit the image." The Constitutional Court has held that this expression encompasses a range of elements which must be identified on a case-by-case basis by the competent authority deciding on the dismissal of judges of the Constitutional Court, the High Court and the Prosecutor-General. The Constitutional Court further reasoned that such grounds are connected with irregular and improper acts or conduct committed by these high-ranking officials in the exercise of their duties, by reason thereof, as well as outside the scope of their official functions. Such acts or omissions, assessed in light of the circumstances of their commission, the subjective element, and the harm caused to society and the State, must be of such a nature as to render the further performance of their constitutional functions impossible."²⁴⁸

From the foregoing reasoning, it follows that the Constitutional Court identified unconstitutional shortcomings only in respect of one disciplinary sanction, which went beyond the grounds for the dismissal of judges as provided for in the Constitution. By this reasoning, the Constitutional Court adopted a textualist approach, remaining within

248. Decision no. 3 dated 20.02.2006 of the Constitutional Court

the bounds set by the constitutional legislator and refusing to accept any expansion through the introduction of additional grounds. This position also evidences a departure from the stance previously taken by the same Court in cases concerning the removal of judges of the Court of Cassation and the Prosecutor-General, where, through an evolutionary approach, the expansion of the grounds for dismissal of those office-holders had been accepted.

As regards the fifth measure, namely transfer to another court, this provision was reformulated by the 1999 reform so as to provide for transfer to another court of the same level or of a lower level.²⁴⁹ Accordingly, in this context, the reform envisaged not only movement from one court to another, but also demotion from a higher court to a lower court. Since the High Council of Justice was competent only for the disciplinary liability of judges of the courts of appeal and courts of first instance, this new provision applied only to appellate judges, who could be demoted, as a *punishment* for their breaches, to serve in a court of a lower level.

Nevertheless, this provision was later challenged as unconstitutional and the Constitutional Court, upholding the claims raised, reasoned, *inter alia*, as follows: *“The Constitutional Court considers it appropriate to refer to its previous case-law regarding the constitutional function performed by judges, who are entrusted by the Constitution and the law with the administration of justice. The Constitution, in setting an important standard for the protection of judges’ status, has focused only on the regulation of their transfer and dismissal from office, without addressing other disciplinary sanctions. In such cases, the constitutional norm applies directly.*

The constitutional derogation provided for in Article 4(3) of the Constitution implies that constitutional norms may not apply directly where the Constitution has tasked state bodies with adopting laws and other subordinate acts in order to regulate relations in various fields.

Moreover, the Constitutional Court deems it necessary to focus on the wording of Article 147(4) and (5) of the Constitution. Pursuant to paragraph 4 of that Article: “The High Council of Justice decides on the transfer of judges, as well as on their disciplinary liability, in accordance with the law”; while pursuant to paragraph 5: “The transfer of judges may not be carried out without the judge’s consent, except where required by the needs of the reorganisation of the judicial system.” As is evident, this provision sets out two of the High Council of Justice’s key powers (excluding the power to decide on dismissal from office), namely: the transfer of judges and the imposition of disciplinary sanctions.

The Constitution addresses transfer as a necessary tool, which may be used only with the judge’s consent or for the purposes of reorganisation of the judicial

249. Law no. 8546 dated 05.11.1999, Article 12.

system (for which the judge's consent is not required).

In addition, paragraph 4 resolves another important issue by assigning to the High Council of Justice the power to decide also on disciplinary sanctions.

The Constitutional Court has held that this constitutional provision contains the elements of a referential norm, since it delegates to the legislator the regulation of the manner of transfer and disciplinary liability of judges, thereby acknowledging that the legislator has been granted the right, through laws, to regulate in detail only those matters falling within these two specified directions.

It is true that paragraph 4 of Article 147 of the Constitution does not expressly refer to transfer also as a disciplinary sanction; however, on this important issue it refers to the relevant law, whereas Article 42 of Law no. 8436 dated 28.12.1998 "On the organisation of judicial power in the Republic of Albania" provides for the measures that may be taken by the High Council of Justice where circumstances giving rise to disciplinary liability are established pursuant to that law.

Although the same term "transfer" is used, its content does not convey the same meaning, since this is not transfer with the judge's consent nor transfer required by the reorganisation of the judicial system, but rather a type of transfer used as a disciplinary sanction against the judge. In this regard, the legislator could have used a different term, such as assignment to another court, relocation to another court, etc. By requiring, as a rule, the judge's consent for transfer, the Constitution indirectly ensures and safeguards judicial independence. By creating an exception for cases of judicial reorganisation, it balances the judge's personal interests with the public interests directly linked to the non-functioning of a specific court within the system.

However, irrespective of the fact that the Constitution does not prohibit transfer also as a disciplinary sanction (even under a different designation), what is material for the present case is the manner in which the law has conceptualised disciplinary sanctions for judges.

The disciplinary sanctions imposed by the High Council of Justice are temporary in nature, yet they serve the normal functioning of the courts' activity. As such, they also serve the rehabilitation of the sanctioned judge.

The Constitutional Court was obliged to compare this concept with that of transfer, as understood in doctrine and the legislation of the time, including in other countries. In this process, the Court observed that, under the challenged provision, transfer was envisaged as a disciplinary sanction of a permanent character, akin to a new employment relationship of indefinite duration. This is incompatible with the concept of transfer, for which temporariness is one of its essential elements. This requirement is of great importance because it is precisely the presence or absence of temporariness that distinguishes this measure from removal from office.

Furthermore, the law did not provide for the possibility that this measure

could become time-barred after the expiry of a certain period. Unlike what is observed in the legislation of various countries, time-limits are generally established upon the expiry of which disciplinary sanctions in general - and transfer in particular - become time-barred and the judges against whom they were imposed are no longer regarded as sanctioned.

*The Constitutional Court finds that the very fact that transfer has not been conceived in accordance with the proper constitutional standards renders this provision incompatible with the Constitution; therefore, for these reasons, it must be repealed.*²⁵⁰

In drafting the 1998 organic law on the judiciary, the legislator confined itself to reproducing - subject to minor stylistic changes - the provisions contained in the 1997 law, as discussed above. That earlier law, however, had been adopted under a different constitutional basis, which was incomplete in this respect. While it is true that the 1998 Constitution provided that the High Council of Justice would decide on the transfer of judges, this regulation concerned judicial movements necessitated by the reorganisation of the justice system and was not intended to recognise transfer as a disciplinary sanction. Moreover, the absence of temporariness in such a measure entailed consequences for the principle of judicial irremovability, since, by virtue of such a measure, judges could be permanently demoted within the judicial hierarchy or transferred to distant locations. For this reason, the Constitutional Court rightly deemed the provision unconstitutional.

The statutory framework provided that disciplinary sanctions against judges were to be imposed by the High Council of Justice on the basis of an assessment of the type and nature of the breach committed.²⁵¹

In compliance with constitutional principles and international standards, the law provided that, where a judge was dismissed from office on one of the grounds set out in the Constitution, he had the right to appeal to the High Court within 10 days from notification of the High Council of Justice's decision, which would adjudicate in the Joint Chambers.²⁵²

As regards the legal nature of the appeal time-limit, set at 10 days, the case-law has regarded it as a strict (preclusive) deadline, the expiry of which entails the inadmissibility of the claim. This approach has been consistent over time. Initially, the High Court held, *inter alia*, that: *"Irrespective of the grounds advanced by the claimant P.T. against the decision of the High Council of Justice, his action was lodged after the time-limit provided for by law; therefore, for this reason alone it must be dismissed. The case-file*

250. Decision no. 21 dated 07.06.2007 of the Constitutional Court.

251. Law no. 8436 dated 28.12.1998, Article 43.

252. Law no. 8436 dated 28.12.1998, Article 46.

shows that the claimant became aware of the decision of the High Council of Justice on 02.11.2000, while the action seeking annulment of that decision was filed with the High Court on 23.11.2000.

Under Article 46 of Law No. 8436, dated 28.12.1998, a judge dismissed from office on one of the grounds provided for in the Constitution has the right to appeal to the High Court within 10 days from notification of the High Council of Justice's decision; having regard to the above, it is established that the action brought by P.T. was lodged outside the statutory time-limit.

In these circumstances, the Joint Chambers consider that they cannot invest themselves into examining the case on the merits as to the lawfulness of the High Council of Justice's decision, but must dismiss the action solely because it was lodged after the time-limits provided by law."²⁵³

Such a time-limit is linked to the stability of legal relations, including those concerning a judge's status. A judge dismissed by the competent authority, if disagreeing, must react promptly and challenge the decision. This is also why the legislator provided for a 10-day period, which cannot be exceeded.

The same approach and understanding of the provision were subsequently maintained by other constitutional bodies created later. The Special Appeal Chamber reasoned, inter alia, that: "31. *In examining the claims raised by the appellant, the Chamber notes that the time-limit for appealing decisions of the HCJ was provided for in Article 46 of Law No. 8436/1998, which was in force at the time the decision under review was issued. Pursuant to that provision, a judge who is dismissed from office on one of the grounds set out in the Constitution has the right to appeal to the High Court within 10 days from notification of the decision of the High Council of Justice. The 10-day period for lodging the appeal was a preclusive time-limit and was mandatory to observe for the purpose of challenging decisions of the HCJ on any ground whatsoever. The provision of Article 117 of the Administrative Procedure Code, relied upon by the appellant, concerns the right to lodge an appeal with the superior administrative authority and not the right to bring the matter before a court, for which the law provides a specific and distinct regulatory framework*

32. The appellant contends that she did not exercise her right of appeal against decision no. 117 dated 17.09.2001, because she was not notified of that decision. She maintains that she was informed of the decision-making, but not of the decision itself, and that this was the reason why she did not exercise her right of appeal. According to her, notification cannot be deemed to have been effected in the absence of communication of a formal act. She further claims that the notification/communication of the decision by the Minister of Justice was not made to her on an individual basis. In examining these claims, on the basis of the verification of the documents submitted by the High Judicial Council, the

253. Decision no. 17 dated 13.02.2001 of the High Court's Joint Chambers.

Chamber finds that the Minister of Justice, by the same letter prot. no. {***} dated 26.09.2001, simultaneously addressed both the Pogradec District Court and the appellant (Pogradec District Court, Ms M.M.), informing them as follows: "By decision no. 117 dated 17.09.2001 of the High Council of Justice, Ms M.M., a judge at the Pogradec District Court, for having carried out acts in contravention of the proper performance of her duties, is dismissed from office as a judge". This letter was registered with the Pogradec District Court under prot. no. {***} dated 28.09.2001. The letter also bears a note by the head of the court, dated 03.10.2001, addressed to the court registrar, instructing the execution of the necessary actions. From an analysis of its content, the Chamber finds that the letter - which expressly includes the name of judge M.M. and was duly registered with the Pogradec District Court - was forwarded for execution. As a logical consequence, the actions required by that letter concerned the financial arrangements for the termination of the employment relationship, as well as the obligation of the judge to hand over the casefiles and documentation under her responsibility. In light of the foregoing, the Chamber considers that the letter prot. no. {***} dated 26.09.2001, issued by the Minister of Justice and registered with the Pogradec District Court under prot. no. {***} dated 28.09.2001, submitted by the High Judicial Council together with its submissions and also forwarded to the appellant [1ç], constitutes proof that notification was duly effected and that the appellant did not contest this fact in her submissions. Accordingly, it follows that the appellant became aware of the decision-making of the High Council of Justice in October 2001 [2ç], as she herself also acknowledged in the appeal lodged with the Chamber. Having regard to the content of the above-mentioned letter, as well as to the termination of the appellant's employment relationship, the Chamber considers that these elements constitute sufficient facts to conclude that the appellant was effectively aware of the decision of the HCJ dismissing her from office, and that her claims alleging a lack of notification are unfounded.

33. In light of the foregoing, the Chamber finds that, although the appellant was aware of the decision of the High Council of Justice imposing the disciplinary sanction of dismissal from office, she failed to lodge an appeal against that decision within the 10-day period, immediately after the termination of her financial relationship with the Pogradec District Court. The breach of the mandatory and preclusive 10-day appeal time-limit provided for in Article 46 of the designated Law no. 8436/1998 resulted in the loss of the appellant's right to put into motion the High Court. The Chamber further notes that, by alleging that the decision of the HCJ constitutes an administrative act that is absolutely null and void, the appellant seeks to ground and reinstate her application out of time, arguing that, in the case of an absolutely void decision, pursuant to Article 117 of the Administrative Procedure Code, the challenge to such a decision may be brought at any time.

34. Furthermore, the Chamber notes that the appellant has submitted no

evidence whatsoever to demonstrate that, immediately after the issuance of the decision of the High Council of Justice, she made even a single attempt to acquaint herself with it or to obtain a copy thereof for the purpose of challenging her dismissal before the High Court. It emerges from the casefile that only on 19.05.2016, almost 15 years after the decision of the High Council of Justice, did the appellant lodge with the High Court an application seeking a declaration of absolute nullity of decision no. 117 dated 17.09.2001 of the High Council of Justice. The Chamber further finds that, even at the time of filing the application with the High Court, the appellant still did not possess a copy of the decision of the High Council of Justice, which she obtained only following her request dated 28.06.2016 (one month after having lodged the application with the High Court), by way of the reply letter prot. no. {***} dated 11.07.2016, issued by the High Council of Justice. Although the appellant obtained these two documents in 2016, she inexplicably submitted them to the High Court only on 07.10.2022, more than six (6) years after the registration of her application with that court and after having come into possession of those documents.

35. The Chamber observes that the appellant provides no objective reasons to substantiate or justify why she addressed the High Council of Justice for the first time only after almost 15 years, on 28.06.2016, requesting a copy of decision no. 117/2001 of that body, nor why, even after obtaining that decision, she lodged it with the High Court with a delay of six (6) years. These acts/omissions on the part of the appellant, as well as her unexplained and incomprehensible conduct, lead the Chamber to conclude that, for many years, the appellant demonstrated no interest whatsoever in the disciplinary sanction imposed on her by the High Council of Justice and reflect a negligent and indifferent attitude on her part toward exercising her right of appeal and complying with the formal requirements laid down by the designated Law no. 8436/1998 for its exercise.

36. The Chamber considers it necessary to emphasise that, while the right of appeal - being a fundamental right guaranteed by Articles 6 and 13 of the European Convention on Human Rights, as well as by Article 43 of the Constitution of the Republic of Albania - constitutes, in light of legal principles and the spirit of procedural legislation, a guarantee of due process of law, an individual who, by his own will and conduct, fails to exercise that right within the statutory time-limits, in the absence of objective impediments, forfeits the possibility of seeking its enforcement at any time and by any legal or procedural means.

37. In its case-law, the Constitutional Court has affirmed that the rule of law cannot be conceived without recognising individuals' right of access to a court, which encompasses not only the right to initiate proceedings but also the right to obtain a final judicial determination of the dispute. If this right is denied, the proceedings are considered irregular, since access to a court is, first and foremost, a fundamental prerequisite for securing the protection of other individual rights.

Nevertheless, the right of access may be subject to limitations where conditions of admissibility of an appeal are concerned, such as time-limits laid down in the Constitution and in the law. The Court has accepted that constitutional and legal protection of individual rights and freedoms can be realised only when exercised within the time-limits established by the Constitution and the law. The determination of such time-limits does not constitute an end in itself, but serves the principle of legal certainty, as one of the fundamental principles of the rule of law. The absence of such time-limits would lead to a situation in which judicial disputes would never be finally resolved between the parties and their legal situation would remain uncertain, since at any moment a right acquired by a judicial decision could potentially be impaired or affected by a decision rendered by a higher court [3ç].

38. *At the conclusion of its examination of the present appeal, the Chamber finds that the appellant, by her own will, failed to avail herself of the statutory appeal period provided for in the special law and, as a consequence, lost the right to lodge an appeal against the HCJ's decision no. 117 dated 17.09.2001.*"²⁵⁴

From these cases, it emerges that there exists consolidated case-law emphasising that the time-limits for exercising appeals against decisions of the High Council of Justice were preclusive and mandatory, thereby safeguarding the principle of legal certainty. The regulation of such time-limits serves to strike a balance between the right of access to a court and the need for the final resolution of disputes, in compliance with constitutional principles and international standards. Failure by judges to comply with these time-limits, as observed in the present case, deprives them of the opportunity to seek a re-examination of a decision and prevents judicial disputes from remaining open for an indeterminate period.

As a rule, decisions of the High Court were considered final and binding; however, judges, like any individual, also had the possibility of lodging an individual constitutional complaint, which at that time was limited solely to alleged violations of the right to a fair trial. In order to determine the extent of constitutional review in such cases, reference may be made to the practice of the Constitutional Court, which has consistently held that "...it examines only those claims relating to due process and not every claim raised by an individual concerning irregularities in the adjudication of a case. Consequently, it is not the task of the Constitutional Court to assess whether the High Court, as the instance adjudicating appeals against decisions of the High Council of Justice, has gathered or failed to gather all evidence proposed by the parties in order to establish the truthfulness of the facts attributed to the appellant. Nor is it within the authority of the Constitutional Court to review the High Court's assessment as to whether the facts accepted as proven constitute a violation and whether such violation is serious. These matters fall within the

254. Decision no. 3 dated 15.12.2023 of the Special Appeal Chamber.

*exclusive jurisdiction of the High Court, which, in accordance with procedural rules and within the scope of the parties' submissions, gathers and evaluates the evidence it deems sufficient to rule on the appeal and on the lawfulness of the challenged decision of the High Council of Justice. In the specific case of the applicant S. Zh., the Joint Chambers of the High Court, having assessed the claims set out in the applicant's appeal and examined the materials contained in the casefile, concluded that the applicant's actions carried out on 14.09.1998, in light of Articles 29, 34, 40 and 41(1) and (6) of Law no. 8436, dated 28.12.1998, "On the organisation of judicial power in the Republic of Albania", constitute disciplinary breaches justifying the disciplinary sanction imposed on her. Viewed from this perspective, the claims raised by the applicant before the Constitutional Court - concerning an incomplete investigation of the case and the High Court's alleged failure to obtain all the evidence requested by the parties, including the non-administration of the video recording, as well as claims relating to the nature of the breach and its assessment - are unrelated to the right to a fair trial. Consequently, they cannot serve as grounds for declaring the decision of the Joint Chambers of the High Court unconstitutional."*²⁵⁵

As may be observed, constitutional review was limited exclusively to claims of a constitutional nature affecting the elements of the right to a fair trial and could not be regarded as an appellate instance reviewing the decision-making of the High Court.

2. Inspection and discipline under Law no. 8737 dated 12.02.2001 "On the organisation and functioning of the Prosecution Service"

As addressed above, the 1998 Constitution brought about the separation of the Prosecution Service, as a constitutional body, from the judicial power. For this reason, the organisation and functioning of the Prosecution Service had to be regulated on a different legal basis. However, because the legislator prioritised the organisation and functioning of the judiciary - by adopting in 1998 the organic law only for that branch - and with the repeal of Law no. 8265 dated 18.12.1997 "On the organisation of Justice", the organisation and functioning of the Prosecution Service, including the framework for inspection and disciplinary liability, remained in a legislative vacuum. That vacuum was filled only with the adoption by Parliament of Law no. 8737 dated 12.02.2001 "On the organisation and functioning of the Prosecution Service", an act which, at various times, underwent numerous amendments.

Initially, at the time of its adoption, that law provided three distinct

255. Decision no. 18 dated 18.04.2000 of the Constitutional Court.

grounds for the dismissal of prosecutors, namely: (a) conviction by a final court judgment for the commission of a criminal offence; (b) the imposition of a disciplinary sanction for conduct that seriously discredited the prosecutor's image; and (c) a finding of incapacity during the performance-evaluation procedure.²⁵⁶

With the 2003 reform, the termination of prosecutorial status was clarified by specifying as a ground for dismissal the situation where the sanction of dismissal was imposed by the President.²⁵⁷ Thereafter, the legislator intervened again and, with the 2008 reform, expanded the grounds for termination of prosecutorial status by including cases where the prosecutor committed disciplinary breaches relating to the disclosure of investigative secrecy or other confidential data, the performance of acts that seriously discredited the prosecutor's image, as well as acts which, under the law, were incompatible with the functions of a prosecutor.²⁵⁸

The above grounds governing the termination of prosecutorial status do not all pertain to a prosecutor's disciplinary liability. For this reason, through its case-law, the High Court drew a distinction between the termination of prosecutorial status due to dismissal from office and the termination of prosecutorial status due to a finding of incapacity to perform functional duties. In this respect, the High Court reasoned as follows: *"Having regard to the function of the prosecutor under Article 148(2) of the Constitution of the Republic of Albania, as well as to the consequences that prosecutors' discrediting and unlawful conduct may entail for society, the Civil Chamber considers that the discrediting of the image of a judge and of a prosecutor warrants the same treatment.*

In its decision no. 75 dated 10.04.2002, the Constitutional Court, interpreting the constitutional expression 'acts and conduct that seriously discredit the position of a judge', accepted in its conclusions that, 'in every case, the improper and unworthy conduct that judges engage in is connected not only with their duties and by reason thereof, but also with conduct outside their duties, through abuse or violation of public trust, and is primarily linked to the harm they cause to society and the State. Acts and conduct unworthy must be so serious, must have so gravely discredited the image and position of the judge and must have so diminished the dignity of the body they represent, as to compel the competent authority to take the measure of removal from office.'

The same position is reflected in the decision no. 4 dated 07.01.2009 of the Joint Chambers of the High Court, , which, inter alia, emphasises that '... such decisions, even if final, may constitute grounds for dismissal from office only if

256. Articles 27, 32(d) and 42(3) and (4) of Law no. 8737 dated 12.02.2001 "On the organization and functioning of the Prosecution Service".

257. Law no. 9102 dated 10.07.2003, Article 11.

258. Law no. 10 051 dated 19.12.2008, Article 14.

accompanied by acts and conduct that seriously discredit the image of the judge.'

Contrary to the reasoning of the Tirana Court of Appeal, the inspection report concerning the activity of Prosecutor T.D., although listing a series of instances - such as decisions not to initiate criminal proceedings, discontinuance of investigations, changes in legal classification of offences, or delays in the investigation - which the inspection considered contrary to procedural law, contains no element indicating that such decision-making was accompanied by conduct on the part of the prosecutor that would be connected with the discrediting of his professional image, nor by conduct that would have seriously prejudiced the interests of the State. All the instances referred to in the inspection report, according to which: "...in light of the indicators and achievements in the work of Prosecutor T.D., it is observed that, during the period under inspection, shortcomings and deficiencies are identified in his work, both in decisions not to initiate proceedings in discontinued criminal cases and, in particular, in cases referred for trial," fall within the scope of the prosecutor's day-to-day decision-making. Such decisions are, for the most part, subject to judicial review during trial proceedings, and no argument is advanced as to any grave consequences arising therefrom that would justify the competent authority imposing the disciplinary sanction of dismissal from office on that prosecutor.

The breaches mentioned in the inspection report and the proposal submitted by the Prosecutor-General for the claimant's dismissal from office could have constituted grounds for dismissal only if, in application of the regulatory framework set out in Article 42 of the organic law on the Prosecution Service, the prosecutor had been assessed as "incompetent".²⁵⁹

2.1 Inspection and disciplinary proceedings against prosecutors

The law provided that the initiation of disciplinary proceedings could be undertaken by the Prosecutor-General, either ex officio or upon a recommendation from the Prosecutorial Council.²⁶⁰ The 2003 reform established that disciplinary proceedings could be initiated solely by the Prosecutor-General, thereby removing the Prosecutorial Council's right to make recommendations.²⁶¹

The proceedings were required to be based on the findings derived from an inspection, of which the prosecutor subject to the proceedings had to be notified in advance.²⁶² Judicial practice has consistently held that the manner in which this provision was drafted necessarily requires that an inspection be carried out beforehand in order for disciplinary

259. Decision no. 00-2011-2060 (495), dated 03.11.2011 of the High Court's Civil Chamber.

260. Advisory body to the Prosecutor-General.

261. Law no. 9102 dated 10.07.2003, Article 12.

262. Law no. 8737 dated 12.02.2001, Article 28.

proceedings to be initiated. Events, information, or other data which, although potentially related to the specific case, have not been established through a subsequent inspection, cannot serve as grounds for the initiation of disciplinary proceedings. This is reflected in the following reasoning: *“In the correct interpretation and application of these provisions, the Administrative Chamber observes that the Tirana Court of Appeal rightly reasoned that the Prosecutor-General breached the procedure prescribed by Law no. 8737/2001 (as amended), because, in the case of the disciplinary proceedings against the claimant Xh. S., there is no evidence that any inspection was initiated in respect of him, of which he was notified in advance; consequently, the disciplinary proceedings were not based on findings derived from an inspection, as required by Article 28 of that law.*

On the other hand, given that the disciplinary proceedings concerned alleged breaches of ethics in the performance of duties, the defendant authority, the General Prosecution Office, was also required to comply with Articles 10 and 11 of the Code of Professional Ethics for Prosecutors, which provide that the Ethics Commission has exclusive power to deal with ethical violations. In cases of such violations, it is the Ethics Commission that adopts the relevant measures and, where it considers that the breach may give rise to disciplinary proceedings, refers the matter to the Prosecutor-General for further action in the specific case. This procedural requirement was likewise not observed by the defendant authority, namely the Prosecutor-General.

...
Thus, the Court of Appeal reasoned and found it established that the claim of an ethical breach by the claimant Xh. S., allegedly committed during a telephone conversation with the senior prosecutor A. D., could not be unequivocally confirmed as having occurred, nor that the statements attributed to the claimant Xh. S. had in fact been made by him. On the other hand, the Court of Appeal found it established that the claimant’s participation in the meeting held at the Ministry of Justice was wrongly regarded as a breach by the defendant authority, the General Prosecution Office, since it was proven during the proceedings that, on 11.04.2012, at 10:00, a professional event took place at the Ministry of Justice in which the claimant participated not as a representative of the prosecution service, but on the basis of an invitation issued by the organisers and in fulfilment of the statutory obligation to participate in periodic training aimed at enhancing his professional qualifications as a prosecutor.

Consequently, the Administrative Chamber concludes that the Tirana Court of Appeal correctly applied the law when it assessed the statement of claim as being founded in evidence and in law with respect to certain of its claims, and partially upheld it.”²⁶³

263. Decision no. 00-2017-2277 (799) dated 17.10.2017 of the High Court’s Administrative Chamber.

From the foregoing reasoning, it follows that claims raised by a prosecutor within the General Prosecution Office concerning unlawful acts allegedly committed by a head of prosecution office cannot be taken into consideration in the absence of an inspection conducted for the purpose of verifying such claims.

Furthermore, as noted above, prosecutorial legislation required the mandatory observance of a number of procedural steps in order to guarantee prosecutors' right to a fair legal process. From this perspective, any ordered inspection was required to remain within its defined scope and could not be expanded by the inspectors. Failure to comply with these rules has been regarded as undermining the entire disciplinary process, as reflected in the following reasoning:

*"The Civil Chamber of the High Court reaches the above conclusion because, from the documents contained in the casefile, it appears that, in the disciplinary proceedings against the claimant, the requirement set out in Article 28 of Law no. 8737 dated 12.02.2001 'On the organisation and functioning of the Prosecution Service in the Republic of Albania', was not observed. That provision stipulates that '... the proceedings shall be based on the findings derived from the inspection, of which the prosecutor subject to the proceedings has been notified in advance'. In the present case, the order of the Prosecutor-General 'On the initiation of disciplinary proceedings against ...' refers only to criminal case no. 1126, whereas, with regard to the other case no. 1187 dated 01.12.2003, there is no indication that the claimant was notified of, or served with, the documentation of the proceedings initiated against him, as required by Article 29 of Law no. 8737 dated 12.02.2001. ... Since the arguments raised by the claimant in the appeal on points of law are well founded and based on Law no. 8737 dated 12.02.2001, the Civil Chamber considers that an error was committed by the officials of the General Prosecution Office (but not by the Prosecutor-General) in adding, among the alleged breaches under consideration, another case in respect of which there had been neither any inspection previously communicated to the claimant nor any order of the Prosecutor-General to include that case in the disciplinary proceedings. In these circumstances, the Civil Chamber of the High Court finds that the claimant's right to be heard and to defend himself in relation to case no. 1187 was not respected, as core elements guaranteeing everyone's constitutional right to a fair legal process, and, as a consequence, that case must be excluded from the alleged breaches."*²⁶⁴

In this case, as emerges from the above reasoning, the courts decided not to include as findings the alleged breaches relating to a criminal proceeding in respect of which no inspection had been ordered. In that context, judicial practice found a violation of prosecutors' right to a due process of law.

264. Decision no. 668 dated 01.06.2006 of the High Court's Civil Chamber.

The High Court has not regarded as a breach of procedural rules cases in which the material serving as the basis for initiating disciplinary proceedings resulted from thematic inspections carried out at the relevant time by the Prosecutor-General. Thus, according to the High Court: *“As established during the proceedings, the General Prosecution Office carried out an inspection of the Kurbin Prosecution Office for the period 2006 - 2008, on the basis of Order no. 281 dated 28.10.2008 of the Prosecutor-General ‘On the inspection of the activity of prosecutors at the Kurbin Prosecution Office’.*

At the conclusion of this inspection, the Directorate of Inspection and Human Resources drew up on 29.01.2009, a report entitled ‘Inspection Act’ (page 58 of the casefile).

That inspection act expressly states that, ‘in the activity of prosecutor T. D., during the period under inspection, shortcomings and deficiencies are identified, particularly in cases referred for trial. It should be emphasised that disciplinary proceedings were also initiated against this prosecutor in 2006 for breaches identified during the inspection carried out in 2005. In that instance, the Prosecutor-General imposed the disciplinary sanction of a warning with a caution of dismissal from office.

In light of the above, it is our view that disciplinary proceedings should be initiated against this prosecutor for the imposition of a disciplinary sanction.”

Following the proposal of the Directorate of Inspection and Human Resources set out in the inspection act, and on the basis of Article 28 of Law no. 8737 dated 12.02.2001 ‘On the organisation and functioning of the Prosecution Service’, the Prosecutor-General decided by Order no. 111 dated 15.05.2009 to initiate disciplinary proceedings against prosecutor T. D. for the imposition of a disciplinary sanction. The above order was to be immediately communicated to prosecutor T. D., who was granted a period of 10 days to submit his written observations to the Directorate of Inspection and Human Resources.”

...

The Directorate of Inspection and Human Resources, on the basis of Order no. 111 dated 15.05.2009, prepared a report ‘On the disciplinary proceedings against prosecutor T. D.’

Considering that the breaches identified in the inspection act concerning the activity of prosecutor T. D. were of such a nature that the organic law provided for the imposition of the disciplinary sanction of dismissal from office, the Prosecutor-General, by proposal dated 31.07.2009, requested the President of the Republic to impose the sanction of dismissal from office on prosecutor T. D.

On the basis of that proposal, the President of the Republic, by decree no. 6227 dated 02.09.2009, decreed that “Mr T. D., prosecutor at the Kurbin Prosecution Office, is dismissed from office.”

...

As regards the claimant’s claim that he was subjected to an unfair legal

process, the Civil Chamber of the High Court finds that this claim is unfounded and that it was correctly and lawfully addressed by the Tirana Court of Appeal.

It has been established that the General Prosecution Office, acting in accordance with the powers conferred upon it by the provisions of the organic law, organised a thematic inspection of the work of prosecutors of the Kurbin Prosecution Office and concluded that, in the exercise of his duties, the defendant had committed acts which, in the assessment of the head of that authority, were characterised as violations of the law. The entire procedure relating to the initiation of disciplinary proceedings, the verification of the claimant's claims, his right to have access to the material and to be heard, was carried out in compliance with the requirements of Law no. 8737 dated 12.02.2001 "On the organisation and functioning of the Prosecution Service in the Republic of Albania."²⁶⁵

From the passages of this decision, it is clear that a thematic inspection is likewise considered an "inspection" and, accordingly, where findings emerge within the framework of such an inspection that may serve as grounds for initiating disciplinary proceedings, they are valid and may be relied upon.

The law also provided for limitation periods, whereby disciplinary proceedings became time-barred and could not be initiated if more than six months had elapsed from the moment the breach was identified, and more than three years from the moment the breach was committed.²⁶⁶ With regard to the nature and significance of these time-limits, the High Court reasoned as follows: "22. From a literal interpretation of Article 28(2) of Law No. 9737, it follows that the commencement of the six-month period for initiating disciplinary proceedings is contingent upon: (a) a six-month period from the moment the breach is identified by the inspection group; and (b) a three-year period from the moment the breach is committed by the prosecutor. The Chamber considers that these time-limits are preclusive in nature and that their expiry extinguishes the right to initiate administrative disciplinary proceedings against the prosecutor. As regards the nature of the time-limits provided for in Article 28 of Law no. 9737/2001, it appears that the same position has been adopted in similar cases by the case-law of the High Court (see decision no. 341 dated 28.06.2012 of the Civil Chamber of the High Court).

23. The Chamber considers that the ratio of the temporal limitation laid down by Law no. 9737/2001 for the initiation of disciplinary proceedings against prosecutors is justified by the need to safeguard prosecutorial independence in the exercise of their functions. These time-limits are deemed to be mandatory and preclusive in nature and, as such, pursuant to the principle of legality, are binding on the public authority conducting the disciplinary procedure. Their

265. Decision no. 00-2011-2060 (495) dated 03.11.2011 of the High Court's Civil Chamber.

266. Law no. 8737 dated 12.02.2001, Article 28.

expiry extinguishes the right to initiate disciplinary proceedings.

24. *In addition to the clear literal interpretation of Article 28 of Law No. 9737/2001, a teleological interpretation of that provision dictates that the starting point of the six-month period is the initial moment at which the administrative breach is ascertained during the inspection process, and not the moment when the report on the findings identified during the inspection is drafted. Were the opposite interpretation to be accepted, the prosecutor would remain indefinitely exposed to the potential initiation of disciplinary proceedings, a situation that would create serious grounds for undermining prosecutorial independence in the performance of duties. The six-month period provided for in Article 28 of Law no. 9737/2001 thus constitutes a guarantee that the results of an inspection carried out against a prosecutor are not used against him for an unlimited period of time.*

25. *The Chamber further considers it necessary to emphasise that the issuance of an administrative act beyond the six-month time-limit provided for in Article 28 of Law no. 9737/2001 for the initiation of administrative disciplinary proceedings is in manifest breach of the rule enshrined in Article 116(c) of Law no. 8485/1999. Consequently, the finding of such a breach entails the absolute nullity of the decree of the President of the Republic.*

26. *The Chamber also finds that the ground relied upon in the recourse by the respondent authority, the General Prosecution Office, concerning the application of the regulation - specifically Article 13(3) of Regulation no. 78 dated 16.04.2010 of the General Prosecution Office - is unfounded in law. Pursuant to the rule laid down in that provision, "the moment of ascertainment of the breach shall be deemed to be the date of the drafting of the final inspection report by the prosecutors of the Directorate of Inspection and Human Resources, in which the breach is addressed."*

27. *The Chamber stresses that Regulation no. 78 dated 16.04.2010 "On the conduct of inspections and the initiation of disciplinary proceedings," is a subordinate regulatory act of an internal nature, binding on the subjects to whom it is addressed only from the time of its entry into force. It appears that the regulation entered into force after the disciplinary proceedings against the claimant had already been initiated. Specifically, the regulation entered into force on 16.04.2010 (pursuant to Article 23 thereof), whereas the disciplinary proceedings against the claimant were initiated by Order no. 242 dated 19.11.2009. Accordingly, at the time the disciplinary proceedings were initiated, the regulation was not yet in force and, therefore, could not be applied to the case under examination."²⁶⁷*

As emerges from the foregoing reasoning, the purpose of the limitation periods is to guarantee prosecutorial independence by

267. Decision no. 00-2021-3 dated 11.01.2021 of the High Court's Administrative Chamber.

preventing prosecutors from remaining vulnerable to disciplinary investigations that may extend over an excessively long period of time. In other words, a prosecutor should not be placed in a position of uncertainty whereby a past course of conduct may trigger the initiation of disciplinary proceedings long after the relevant acts were committed. On the other hand, these time-limits also require the authority empowered to initiate disciplinary proceedings to act promptly and diligently, rather than allowing such matters to remain dormant; accordingly, they impose an obligation on the Prosecutor-General to act actively and without undue delay.

For the purpose of guaranteeing the right to a due process of law, , upon completion of the inspection process the prosecutor subject to the proceedings was provided in advance with the documentation relating to the disciplinary proceedings initiated against him, as well as with a time-limit of not less than 10 days to prepare a defence. The prosecutor was also informed of the date on which the materials would be examined, namely the time at which the hearing would take place.²⁶⁸

In compliance with constitutional guarantees, the law expressly recognised the prosecutor's right to be heard and to defend himself or herself by appearing in person before the Prosecutorial Council, which was under a legal obligation to hear the prosecutor and to verify the claims raised.²⁶⁹ With regard to the role of this body, case-law has consistently held that: *"25. ... The Chamber considers that the Prosecutorial Council is the competent auxiliary body responsible for assessing the performance of prosecutors and for analysing disciplinary breaches committed by them. The Council issues opinions on the disciplinary sanctions to be applied, but only after the strict observance of a disciplinary procedure in which the prosecutor concerned is duly informed of the established violations and is afforded the right to be heard and to express his views in relation thereto (Articles 33(3) and 42 of Law no. 8737, dated 12.02.2001)."*²⁷⁰ This passage clearly highlights the significant role of this body, which, after having strictly complied with the procedure prescribed by law, delivered its professional opinion on whether findings existed that gave rise to the prosecutor's disciplinary liability and, if so, on the disciplinary sanction to be imposed, taking into due account the principle of proportionality.

This provision, as originally formulated, indicated that the prosecutor could defend himself or herself only in person before the Prosecutorial Council, presumably on the assumption that, as a highly

268. Law no. 8737 dated 12.02.2001, Article 29.

269. Law no. 8737 dated 12.02.2001, Article 30.

270. Decision no. 00-2024-1235 (74) dated 26.02.2024 of the High Court's Administrative Chamber.

trained legal professional, the prosecutor possessed all the necessary skills to conduct his own defence. However, with the reform of 2008, the legislator introduced the possibility for the prosecutor to be represented and defended by a lawyer in such proceedings.²⁷¹ This reform provided an additional safeguard, taking into account that disciplinary proceedings fall within the sphere of administrative law, whereas prosecutors are ordinarily specialised in criminal law and criminal procedure.

As regards the obligation of the Prosecutorial Council to verify the claims raised by the prosecutor subject to disciplinary proceedings, judicial practice has clarified that this obligation could not be of a merely formal nature, but constituted an essential duty of the Council itself, the breach of which entailed the invalidity of the disciplinary procedure.²⁷²

In order to prevent abuse, the law further provided that the unjustified failure of the prosecutor to appear did not prevent the Prosecutorial Council from examining the case and drawing the relevant conclusions.²⁷³

Upon completion of its proceedings, the Council submitted its recommendation to the Prosecutor-General, who was required to decide within 15 days, providing reasons for his position.²⁷⁴ The decision of the Prosecutor-General was final with regard to the imposition of disciplinary sanctions, with the exception of dismissal from office, which - as will be examined below and in accordance with constitutional provisions - remained within the power of the President of the Republic. In such cases, the Prosecutor-General transmitted to the Head of State the reasoned decision together with the objections submitted by the prosecutor concerned.²⁷⁵ This regulatory framework indicates that no oral hearing was held before the President; rather, the right to be heard was exercised exclusively on the basis of written submissions, a procedural option recognised by the Administrative Procedure Code in force at the relevant time.²⁷⁶

271. Law no. 10051 dated 19.12.2008, Article 16.

272. Decision no. 668 dated 01.06.2006 of the High Court's Civil Chamber.

273. Law no. 8737 dated 12.02.2001, Article 30.

274. Law no. 8737 dated 12.02.2001, Article 31.

275. Law no. 8737 dated 12.02.2001, Article 33.

276. Law no. 8485 dated 12.05.1999 "Administrative Procedure Code", Article 96(2)(a): 2. *The authority conducting the investigative procedure may also decide not to allow the interested parties to present their views in the following cases: a) where the interested parties have already had the opportunity to express their opinions on the matters relevant to the adoption of the decision during the course of the proceedings and on the basis of the evidence available.*"

2.2 Disciplinary liability and sanctions

The organic law on the prosecution service also contained specific provisions regulating acts or omissions deemed to constitute disciplinary breaches, as well as the disciplinary sanctions that could be imposed. Accordingly, the following were classified as disciplinary breaches: (a) refusal to take the oath or breach thereof; (b) serious or systematic delays in proceedings or in the performance of other assigned duties, or failure to perform duties; (c) disclosure of the secrecy of investigations or of other confidential information; (ç) absence from work for more than five days without justification; (d) conduct that seriously discredits the image of the prosecutor; and (dh) conduct which, under the law, is incompatible with the functions of a prosecutor.²⁷⁷

Regarding the disciplinary breach classified as “failure to perform duties,” the High Court, in one case, held as follows: *“Concerning the claimant’s removal from office as a Prosecutor, the Decree of the President of the Republic merely cites the legal reference, namely Article 32(b) of Law no. 8737 dated 12.02.2001. From the materials contained in the casefile, it appears that the claimant was removed on the grounds of ‘failure to perform duties.’ However, a review of the casefile does not reveal which specific and manifest breach committed by the claimant constitutes ‘failure to perform duties’ in criminal case no. 1126.*

In that case, the claimant acted as prosecutor in proceedings concerning the ‘imposition of security measures’ and applied the provisions of the Criminal Procedure Code relating to the ‘special criteria for ordering pre-trial detention’. Under those provisions, ‘pre-trial detention may be ordered only where any other measure is inadequate due to the particular dangerousness of the offence and of the defendant’. Pursuant to Article 25(3) of the Criminal Procedure Code, the prosecutor participating in the hearing is independent in his assessment and submissions, based on the evaluation of the facts and their conformity with the requirements of the law.

The documents in the casefile show that the criminal proceedings against the defendant E. Xh., and the other defendants were concluded with findings of guilt and the imposition of fines. From this perspective, the security measure of ‘pre-trial detention’ would not have been proportionate to such penalties and does not appear to have produced serious consequences, either for the case itself or otherwise.”²⁷⁸

In practice, the issue has arisen as to whether the same factual circumstance - namely, the same finding - should be classified as a single

277. Law no. 8737 dated 12.02.2001, Article 32.

278. Decision no. 668 dated 01.06.2006 of the High Court’s Civil Chamber.

disciplinary breach or may be classified as multiple breaches. In this regard, the High Court reasoned as follows: “29. *The lower court errs in concluding that the same fact cannot constitute the manifestation of several disciplinary breaches. It suffices, for example, to examine the content of the oath formula under Article 22(1) of Law no. 8737/2001 and to compare it with Article 32(a) and (d) of the same law, to understand that, for instance, the breach of the oath to preserve the integrity of the prosecutor’s image constitutes a breach both under letter (a) and under letter (d) of Article 32 of Law No. 8737/2001. This said, the Chamber notes that Article 32 of Law no. 8737/2001 was not intended to draw a rigid or artificial separation between forms of prosecutorial conduct classified as disciplinary breaches, but rather to provide basic guidance for disciplinary bodies when assessing whether particular facts amount to disciplinary violations. In principle, a prosecutor’s conduct - whether in the exercise of official duties or outside them - may be qualified as more than one disciplinary breach under Article 32 of Law no. 8737/2001. Accordingly, the argument advanced by the Administrative Court of Appeal is unfounded and cannot constitute sufficient grounds for annulling the disciplinary sanction of dismissal imposed on the claimant. Therefore, the contention that ‘serious or systematic delays in proceedings or other assigned duties, or failure to perform duties’ (Article 32(b)) cannot simultaneously amount to ‘conduct that seriously discredits the image of the prosecutor’ (Article 32(d)) is not supported by a proper interpretation of the provision in question.*

30. *If the interpretation of the Administrative Court of Appeal were to be accepted, also in light of Article 27(3)(b) of Law no. 8737/2001, a prosecutor could, in practice, continuously and seriously delay proceedings with the ‘guarantee’ that such conduct would never constitute grounds for dismissal from office, leaving the disciplinary body ‘with its hands tied’ and able only to impose lighter disciplinary sanctions under Article 33(1)(a), (b), and (c), without ever being able to apply Article 33(1)(c) of Law no. 8737/2001. The claimant had previously been subjected to disciplinary sanctions (albeit subsequently extinguished) in relation to breaches committed in the performance of duties, yet continued to act in the same manner. The Administrative Court of Appeal erred in reasoning that the defendants were wrong to refer to the two prior disciplinary sanctions imposed on the claimant in 2012 and 2014, on the grounds that, having been extinguished, they should not have been included in the file. In this case, the court failed to grasp the essence of the defendants’ position, which is precisely that, as explained above, a prosecutor does not enjoy immunity from ‘serious delays in proceedings’ committed continuously, repeatedly, and without reflection. Where serious delays have previously led to a reprimand being imposed on a prosecutor (within a short time frame), and notwithstanding the extinguishment of that measure the prosecutor continues to act in the same or an even worse manner, this may rightly be assessed by the defendants as conduct that seriously discredits*

the image of the prosecutor, also within the meaning of a breach of the principle of legality of prosecutorial activity under Article 4 of Law no. 8737/2001 (as amended).

31. *The Chamber considers that the analysis carried out by the Administrative Court of Appeal is also flawed with regard to the distinction drawn between the breach under letter (b) of Article 32 and that under letter (d) of the same provision, when assessed by reference to the “public perception” standard. This is so, first of all, because Article 32(d) of Law no. 8737/2001 does not refer to conduct that seriously discredits the prosecutor’s image in public, as the expression “in public” is absent from the wording of the provision. Secondly, the delay of 118 criminal proceedings during the period 2012 - 2014, which resulted in the failure to prosecute reported or ex officio suspects, even when assessed through the lens of public perception, cannot fail to constitute grounds for dismissal from office, insofar as such delays were serious, systematic and, above all, directly attributable to the claimant’s inaction rather than to external factors beyond his control. For example, according to the disciplinary report, the claimant had delegated procedural actions in a significant number of criminal files to the relevant Judicial Police Officers (JPO); however, although he had drafted the relevant orders, he failed to transmit them to the GPO and instead kept them in his office for several months. This conduct reveals unlawful, irregular and unjustifiable behaviour, as the failure to forward the casefiles to the JPO cannot be justified by the claimant. The fact that those files did not concern detained persons does not, a priori, mitigate the claimant’s disciplinary liability.*

32. *The Chamber further notes that the competent authorities convincingly substantiated the necessity of proceeding to the imposition of the most severe disciplinary sanction on the claimant, whereas the latter acknowledged the breaches but sought to justify his conduct. The reasoning of the Administrative Court of Appeal does not identify any element capable of justifying its decision, given that the breaches were established, were serious and systematic, and could simultaneously constitute violations under Article 32(b) and (d) of Law no. 8737/2001, since the claimant’s continuous failure to perform basic procedural acts in the management of cases seriously discredited the image of the prosecutor in all dimensions of that concept. The Administrative Court of Appeal did not demonstrate that the claimant’s dismissal from office was based on the same breaches and the same casefiles for which a prior disciplinary sanction of reprimand had already been imposed; therefore, this circumstance cannot constitute grounds for annulling the disciplinary sanction of dismissal under the principle of ne bis in idem. Moreover, the reasoning concerning the claimant’s professional evaluations over the years, rated as “good” or “sufficient,” is irrelevant to the resolution of the case on the merits, as it does not demonstrate any particular diligence in the performance of duties, while, notwithstanding such evaluations,*

the claimant gravely delayed proceedings for reasons independent of his will."²⁷⁹

From the entirety of this reasoning, it follows that the same factual finding may be classified as one or as several disciplinary breaches, depending on the circumstances of the case. Since such a classification was not expressly prohibited by the legislature, the principle of *ne bis in idem* could not apply. Accordingly, where the relevant conditions are met, the same factual finding may be classified as two or more disciplinary breaches.

As regards the types of disciplinary sanctions, it appears that there were four such sanctions, namely: (a) a reprimand; (b) a reprimand accompanied by a warning of dismissal from office; (c) suspension from office and transfer to another lower position within the institution for a period ranging from six months to one year; and (d) dismissal from office. The first three sanctions could be imposed, at the conclusion of the disciplinary proceedings, by the Prosecutor-General. The fourth, namely dismissal from office, could be imposed exclusively by the President of the Republic.²⁸⁰

The existence of multiple categories of disciplinary breaches, the differentiation of competent authorities according to the type of sanction to be imposed, and the conditions under which the disciplinary sanction of dismissal - entailing the loss of prosecutorial status - could be applied, generated a degree of confusion. This issue has also been examined in judicial practice, which has held as follows: *"As emerges from the materials administered in the proceedings, following the conclusion of the inspection into the activity of prosecutor T.D., the Prosecutor-General, by letter no. 2336 dated 31.07.2009, submitted to the President of the Republic a proposal for the dismissal from office of prosecutor T.D.*

Although the Prosecutorial Council, in the documentation transmitted to the Prosecutor-General, had classified the breaches under letter 'd' of the law, namely conduct that seriously discredits the image of the prosecutor, in the explanatory report accompanying the proposal for dismissal, the Prosecutor-General stated that: 'On the basis of the foregoing, pursuant to Article 149(3) of the Constitution of the Republic of Albania, Article 32(b) and Article 33(1) (ç), paragraph 3 of Law no. 8737 dated 12.02.2001 "On the organisation and functioning of the Prosecution Service of the Republic of Albania", I propose the dismissal from office of prosecutor T.D.'

This request submitted by the Prosecutor-General should not have been upheld by the President of the Republic, as it was in manifest contradiction with Article 27(3)(b) of Law no. 8737 dated 12.02.2001, which provides that:

279. Decision no. 00-2024-1235 (74) dated 26.02.2024 of the High Court's Administrative Chamber.

280. Law no. 8737 dated 12.02.2001, Article 33.

“A prosecutor shall be dismissed from office ... when a disciplinary sanction is imposed pursuant to letters ‘c’, ‘d’ and ‘dh’ of Article 32 of this Law”.

However, it appears that by decree no. 6227, dated 02.09.2009, the President of the Republic ordered the dismissal of prosecutor T.D., citing as the legal basis Article 32(b) of the organic Law no. 8737, dated 12.02.2001 - a provision which does not envisage dismissal from office as an applicable disciplinary sanction.

The dismissal of a prosecutor from office on grounds not provided for by law led the Civil Chamber of the High Court to conclude that the act by which such dismissal was ordered, namely the Presidential decree no. 6227 dated 02.09.2009, must be annulled, in accordance with the obligations set out in Article 118(1) of the Administrative Procedure Code.”²⁸¹

In the present case, it emerges that although the proposal concerned the dismissal of the prosecutor, the grounds invoked in support of that proposal were different from the grounds ultimately relied upon by the President in approving the dismissal by decree. The legal reference relied upon in the decree of the Head of State concerned a different disciplinary ground for which the organic law did not provide for the imposition of the sanction of dismissal from office.

With the 2003 reform, the disciplinary sanctions of suspension from office and transfer to a lower position were amended, providing that, as a disciplinary sanction, a “transfer to another lower position within the prosecution system” could be imposed.²⁸²

This provision became part of judicial debate in a case where the Prosecutor-General imposed the disciplinary sanction of “transfer to another lower position within the prosecution system, namely appointment as a Judicial Police Officer at the Berat Prosecution Office for a period of 18 months. This period was set from 15.10.2012 until 15.04.2014”. Thus, in this case, by considering the judicial police sections at the prosecution offices as part of the prosecution system, the Prosecutor-General decided to transfer a prosecutor to the duties of a Judicial Police Officer. In examining this case, the majority of the High Court’s judicial panel confined itself solely to the assessment of the procedural violations that had occurred, without expressing any position on the substance of this situation. The other two dissenting judges of the panel held that “On the other hand, the majority of the Administrative Chamber did not consider it appropriate to grant the claim raised in the lawsuit and subsequently in the recourse on points of law by the claimant, Xh. S., concerning the alleged lack of legal basis for the type of disciplinary sanction imposed on him by the respondent, the General Prosecution Office, namely the transfer to another lower position within the prosecution system,

281. Decision no. 00-2011-2060 (495) dated 03.11.2011 of the High Court’s Civil Chamber.

282. Law no. 9102 dated 10.07.2003, Article 13.

specifically that of a judicial police officer at Berat Prosecution Office for a period of 18 months. This disciplinary sanction was based on the interpretation that the judicial police and the sections established within prosecution offices form part of the 'prosecution system'; therefore, a prosecutor may be disciplinarily sanctioned by being temporarily assigned to work as a police officer within the prosecution offices, since this remains within the prosecution system as required by law.

In contrast to the rest of the Administrative Chamber, we are of the view that, on the basis of the interpretation of Articles 148 and 149 of the Constitution, the provisions of Law no. 8737/2001 "On the organization and functioning of the Prosecution Service in the Republic of Albania," and Law no. 8677/2000 "On the organization and functioning of the Judicial Police," the claim raised by the claimant Xh. S., both in the lawsuit and in the recourse to challenge the decision of the Court of Appeal, concerning the unlawfulness of the very type of disciplinary sanction imposed on him, is supported by the Constitution and by law. Therefore, in order to reach the conclusion that the lawsuit should be partially upheld, as decided by the Court of Appeal and confirmed by this Administrative Chamber of the High Court, the courts should have confined themselves to, and been satisfied with, this legal ground alone.

With regard to the position of the Prosecution Service within our state organization and the special constitutional and legal status of prosecutors in our constitutional system, Articles 148 and 149 of the Constitution clearly and unequivocally provide, leaving no room for any alternative interpretation, that:

"Article 148

1. The Prosecution Service exercises criminal prosecution and represents the charges before the courts in the name of the State...

2. Prosecutors are organized and operate within the judicial system...

Article 149

.....

3. "Other prosecutors are appointed and dismissed by the President of the Republic upon the proposal of the Prosecutor-General."

These constitutional provisions define the constitutional mission and the essential power of the Prosecution Service and of prosecutors, namely the exercise of criminal prosecution and the representation of the accusation before the courts - a mission and function that may not be exercised by anyone other than those constitutional office-holders who meet the required conditions, have been duly appointed, and perform the functions of a prosecutor. For this reason, save for any specific or exceptional elements, the Constitution authorizes the legislature to regulate in greater detail the status and career of prosecutors, as constitutional office-holders, in a manner equivalent to that of judges.

First, contrary to the position adopted by the Court of Appeal and by the other judges sitting on the Administrative Chamber, we take the view that the Constitution does not provide for any substantive legislative reservation with

regard to the status of prosecutors. Prosecutors have not only the obligation but also the constitutional right to exercise independently and without interference their constitutional function of conducting criminal prosecution and representing the charges before the courts, from the moment their prosecutorial career begins and until the time when the exercise of that function ends or the prosecutor is dismissed from office. This means that a prosecutor may neither be deprived of nor hindered in the exercise of the prosecutorial function within any level of the organizational structure of the Prosecution Service, once he has been appointed as a prosecutor (i.e. has commenced a prosecutorial career), and until he leaves that function or is dismissed in accordance with the law. Likewise, by way of exception, a prosecutor may be temporarily prevented from exercising his constitutional function only where the measure of suspension from office is imposed; however, even this interim measure is temporary in nature and applicable only under specific circumstances.

Second, the exercise of the constitutional function of a prosecutor is carried out exclusively within, and at one of, the levels of the organizational structure of the Prosecution Service, namely: the General Prosecution Office, the Prosecution Office at the Serious Crimes Court of Appeal, the Prosecution Office of Appeal, the District Prosecution Offices, and the Serious Crimes Prosecution Office (Articles 3/a and 13 - 15 of Law no. 8737/2001). It is precisely these bodies that constitute the "prosecution system". Likewise, the hierarchical level within the Prosecution Service is determined by the prosecutorial body to which the prosecutor is assigned in order to exercise his constitutional function (Article 3/b of Law no. 8737/2001). Promotion to a higher position or demotion to a lower position of a prosecutor (Articles 24, 25 et seq.) is also inextricably linked to the assignment of the prosecutor to exercise the prosecutorial function within one of the structures of the Prosecution Service provided for under Articles 3/a and 13 - 15 of Law no. 8737/2001.

Naturally, within each of the structures of the Prosecution Service, judicial police sections may be established and may operate; however, without any room for alternative interpretation, these sections are composed of judicial police officers who come from the ranks of the police forces provided for by law or are jurists assigned to this legal function by the Prosecutor-General. Therefore, there is no legal, constitutional, or juridical rationale for judicial police officers, for a fixed or indefinite period, to be, or to be appointed, seconded, or required to perform the duties of prosecutors, or vice versa. The career and status of a prosecutor derive from and are guaranteed by the Constitution and bylaws enacted in accordance with it. The career and status of a prosecutor may not be impaired or interrupted in any manner other than in cases where the prosecutor is dismissed from office (Article 27(2)), leaves the prosecutorial career (Article 27(1)), or is temporarily suspended from office in the cases expressly provided for by law (Article 26). By contrast, judicial police sections and judicial police officers are structures and

officials who perform the duties assigned by law in support of the prosecutorial bodies and have no connection whatsoever with the career of a prosecutor.

Third, in light of the reasoning set out above, the disciplinary sanction provided for under Article 33(1)(c) of Law no. 8737/2001 may be imposed on prosecutors only by assigning them to exercise the function of a prosecutor within a lower level (structure) of the Prosecution Service, or by transferring them from the special prosecution office to the general jurisdiction prosecution office at the same level.

Article 33(1)(c) of Law no. 8737/2001 provides for the disciplinary sanction of “transfer to another lower office within the prosecution system”. Thus, by the term “prosecution system,” within the meaning of this provision, only the levels (structures) of the Prosecution Service should and may be understood, namely: the General Prosecution Office, the Prosecution Office at the Serious Crimes Court of Appeal, the Prosecution Offices of Appeal, the District Prosecution Office and the Serious Crimes Prosecution Office.

Besides, this provision determines, leaving no room for any alternative interpretation, that a prosecutor may be sanctioned by a disciplinary sanction involving assignment to a “lower position,” but not to “another position” different from that of a prosecutor, such as that of a judicial police officer. Judicial police officers are persons who exercise judicial police powers within criminal proceedings, which are entirely distinct from the constitutional function of a prosecutor.

If a different interpretation and position were to be accepted, such as those upheld by the Tirana Court of Appeal and by the other members of the Administrative Chamber, this would fundamentally undermine the constitutional and legal status of the Prosecution Service and of prosecutors. It would be equivalent to a judge being disciplinarily sanctioned by being required, even for a limited period, to perform functions of the judicial administration, such as those of a court clerk, and the like. In addition, such disciplinary sanctions imposed on a judge or a prosecutor, requiring them - by way of disciplinary punishment - to perform duties outside their constitutional function, bear no relation to the existence and functioning of a democratic system and the rule of law. These are sanctions that were applied during the period of the former constitutional regime, which has since been overthrown in the Republic of Albania.”²⁸³

This approach adopted by these judges appears more sound, as it preserves the status, dignity, and prestige of the prosecutorial function, which under no circumstances may be downgraded or equated with that of a judicial police officer, while at the same time maintaining the status of a magistrate.

The determination of these sanctions and their ranking by the

283. Concurring opinion of the judges Artan Zeneli and Ardian Dvorani in the decision no. 00-2017-2277 (799) dated 17.10.2017 of the Administrative Chamber of the High Court.

legislator from the lightest to the most severe does not necessarily mean that their application must be gradual, as the High Court has rightly observed when reasoning that: *“28. Referring to the arguments on which the lower court based its decision to uphold the claimant’s action, the Chamber finds that the view adopted by that court - namely, that Article 33(1) establishes a mandatory sequence for the imposition of disciplinary sanctions on prosecutors, in the sense that progression from the lightest measure to the most severe constitutes an obligatory path for the Prosecutor-General and the President of the Republic - is unfounded. This is so not only because such a requirement is not expressly provided for by law, but also because the mechanical application of such a rule would be devoid of meaning. Indeed, in certain cases, a single particularly serious breach may suffice to justify the dismissal of a prosecutor from office, just as, in other cases, a prosecutor may commit several minor breaches and be sanctioned with the lightest disciplinary sanction, namely a warning. The law entrusts the careful assessment and judgment of the gravity of the violations – first to the Prosecutorial Council and subsequently to the Prosecutor-General and the President of the Republic – in order to determine whether the nature and seriousness of the breaches are such as to justify the measure of dismissal from office.”*²⁸⁴

Thus, depending on the type of violation identified and proven, the competent authority is not required to apply disciplinary sanctions sequentially, but may impose directly even the most severe measure, namely dismissal from office, provided that its reasoning and assessment are sufficiently substantiated and not manifestly abusive.

As regards the right to appeal, the Law provided that disciplinary sanctions imposed by the Prosecutor-General could be challenged before the Tirana Court of Appeal, while it categorically prohibited judicial review of the President’s decree dismissing a prosecutor from office.²⁸⁵ This dual-standard approach, whereby the most severe measure, dismissal, which directly affected the termination of a prosecutor’s status, could not be contested, appeared to be grounded in the theory of preserving the integrity of the acts of the Head of State, so that his decision-making would not be subject to judicial scrutiny.

This statutory provision was challenged before the Constitutional Court, which, inter alia, reasoned as follows: *“The Constitutional Court considers that the contested provision is not consistent with the content and the spirit of the Constitution and of the international instruments ratified by the Albanian State. In reaching such a conclusion, the Court has taken into account the reasons set out below:*

284. Decision no. 00-2024-1235 (74) dated 26.02.2024 of the High Court’s Administrative Chamber.

285. Law no. 8737 dated 12.02.2001, Article 34.

The Constitution has expressly provided, as a fundamental individual right, under Article 42 thereof, the individual's right to have recourse to the courts for the protection of constitutional and legal rights, in view of its particular importance. The right of appeal is also recognised as a fundamental right by the European Convention on Human Rights (Article 13), and the exercise of this right is unrestricted.

The Constitutional Court considers that the prosecutors' right to lodge an appeal derives from the Constitution and, as such, should have been materialized by the law "On the Prosecution Office". The restriction imposed by the statutory provision on this right, in relation to the measures taken against them by the President of the Republic, finds no support in Article 17 of the Constitution. Pursuant to this provision, restrictions may be imposed only where there is a public interest and where the rights of other subjects are protected. In addition to the above, this constitutional provision lays down the conditions that any restriction must be proportionate to the situation that has dictated it, must not impair the essence of rights and freedoms, and must in no case exceed the limitations provided for in the European Convention on Human Rights.

By referring as a whole to the contested provision, Article 34 of the Law "On the Prosecution Office", it is necessary to emphasize that, with regard to the right to appeal against disciplinary sanctions, it establishes two distinct standards. Whereas, in respect of the measures of "warning with admonition" and "suspension from office", which are imposed by the Prosecutor-General, the law provides for an appeal before the Court of Appeal (Article 34(1)), in the case of the measure of dismissal from office, which is imposed by decree of the President of the Republic, prosecutors are denied the right of appeal.

Three characteristics may be identified in the provision under review,.

First, the constitutional right of appeal is not entirely denied; however, with respect to the same subject, it is fragmented without any constitutional basis.

Second, the law contains an inconsistency, in that it allows appeals against less severe measures while denying them in respect of more severe ones.

Third, and most importantly, the law makes the right of appeal dependent on the qualities of the authority that adopts the measure.

Regarding the latter characteristic, the Constitutional Court considers it appropriate to dwell briefly on the nature of the acts adopted by the President of the Republic in such cases.

From the content and spirit of the Constitution of the Republic of Albania, it clearly emerges that the President of the Republic, as Head of State, although institutionally separated from the principal bodies exercising State powers, performs certain functions that bear the nature of those powers. For this reason, in the exercise of his functions, alongside acts that are the result and expression of political direction, the President of the Republic also adopts individual acts of an administrative nature. Such administrative acts include decrees on the

dismissal of prosecutors from office, as a disciplinary sanction. Having such characteristics, the decree, pursuant to the constitutional provisions referred to above and in harmony with the spirit and content of the legislation and established judicial practice, must be subject to appeal and judicial review.

Further support for the unconstitutionality of the contested provision may also be found in the distinction made with regard to prosecutors in comparison with other categories of subjects. Thus, although the Prosecution Office is organised and operates within the judicial system, prosecutors do not enjoy the right to appeal against dismissal from office, a right which is recognised by the Constitution for judges (Article 147). Prosecutors also differ from other civil servants with regard to the right of appeal. Such distinctions, as described above, infringe the spirit and the content of the Constitution of the Republic of Albania.”²⁸⁶

The above-mentioned decision of the Constitutional Court resulted in the legislator, through the 2003 reform, providing for two distinct situations. Thus, in respect of the imposition of disciplinary sanctions not involving dismissal from office, prosecutors were entitled to lodge an appeal before the Tirana Court of Appeal, whereas prosecutors attached to that court could appeal before the geographically nearest Court of Appeal. With regard to the disciplinary sanction of dismissal from office, the provision stipulated that the prosecutor could lodge an appeal before the Tirana Court of Appeal, while prosecutors at that level could appeal before the nearest Court of Appeal. Where the court found that the dismissal from office was unfounded in law, the prosecutor was entitled to receive salary compensation for up to one year of employment, to be paid by the Prosecution Office.²⁸⁷ This latter provision equated the status of the prosecutor with that of employees governed by the Labour Code, insofar as it did not provide for the possibility of reinstatement to office, but only for compensation amounting to up to one year’s salary.

The continuous process of legislative change - initially characterised by the absence of clear legal provisions identifying the competent court to examine challenges brought by prosecutors against their removal from office, and subsequently by the designation, through a specific law, of the Tirana Court of Appeal - also led to confusion in judicial practice concerning the examination of such claims, as well as the legal relevance of various procedural requests initially submitted before courts of first instance. By way of illustration, reference may be made to a decision of the High Court, which contains the following reasoning: *“The claimant A. C. brought a lawsuit before the first-instance court, seeking the annulment of Decree no. 2318 dated 19.02.1999 of the President of the Republic, concerning*

286. Decision no. 25 dated 13.02.2002 of the Constitutional Court.

287. Law no. 9102 dated 10.07.2003, Article 14.

his removal from office as a prosecutor, and the payment of salary for the period during which he remained unemployed.

During the proceedings at first instance, the claimant withdrew the claim relating to salary, and the court discontinued the proceedings in that respect, while upholding the claim as to the remainder and ordering the annulment of the Decree.

Upon the relevant appeal, the Tirana Court of Appeal examined the case on 23.10.2003, when Law no. 9102 dated 10.07.2003, 'On certain additions and amendments to Law no. 8757, dated 12.11.2001 On the organisation and functioning of the Prosecution Office', entered into force. This law provides for the prosecutor's right to appeal against dismissal before the Court of Appeal."

The Tirana Court of Appeal, after examining the claim concerning the annulment of the Decree, correctly reasoned that the claimant could not seek judicial annulment of the Decree of the President of the Republic, referring to the relevant decision of the Joint Chambers of the High Court, and decided to discontinue the proceedings.

As regards the claim concerning salary, the Court of Appeal, reasoning on the basis of the claimant's withdrawal of that claim, without re-examining or rehearing the party in relation thereto - including the withdrawal itself - discontinued the proceedings in their entirety, including this claim.

Pursuant to the above-mentioned specific law, Article 34(2) provides that the appellant may also seek judicially, before the same level of jurisdiction, compensation for damages resulting from the loss of salary or other benefits.

Accordingly, the Court of Appeal, which directly examines the appeal lodged, is under a legal obligation to hear the parties in relation to the claims submitted, and to rule on everything that is claimed, and only on what is claimed, in accordance with Articles 6 and 18 of the Civil Procedure Code.

Pursuant to Article 17 of the Civil Procedure Code, the court invites the parties to provide explanations from a legal standpoint, which it deems necessary for the resolution of the dispute.

Although the court heard the arguments of the appealing party concerning the claim for annulment of the Decree, neither the content of the hearing minutes nor the reasoned decision indicates that the claimant was heard by the competent court with regard to the other claim, namely the salary claim, including the withdrawal thereof, if requested by the party. Instead, the court relied on a declaration made before a court lacking jurisdiction to adjudicate this matter.

Upon re-examination, after applying the above and concluding, following judicial investigation, that the dismissal from office was unfounded, the prosecutor, if so requested, is entitled to compensation for salary for up to one year of employment."²⁸⁸

This situation changed with the 2008 reform, whereby the legislator

288. Decision no. 214 dated 08.02.2005 of the High Court's Civil Chamber.

provided that, in cases concerning the disciplinary sanction of “dismissal from office”, where the court found that the measure was unfounded in law, it would order the reinstatement of the prosecutor to the prosecution office attached to the court where he had served at the time the disciplinary proceedings were initiated, and, where deemed necessary, could also award the prosecutor fair compensation.²⁸⁹

The above-mentioned legal provisions - under which three bodies were vested with the authority to decide on the disciplinary sanction of “dismissal from office”, together with the possibility of judicial appeal - have frequently given rise in practice to debate as to the extent to which the court may assess the reasoning of these three bodies. According to the High Court in this respect: “26. *The Panel considers that, in the review of administrative acts of this nature, the court, when examining the merits of the administrative act, must focus on the procedural guarantees of the process and must not seek to assume the role of the disciplinary authority, as this would otherwise amount to interference with the activity and discretion of the competent State body responsible for the dismissal of prosecutors.*

27. *The Panel considers that Articles 28, 29 and 30 of Law no. 8737 dated 12.02.2001, as amended, confer discretion upon the Prosecutor-General, after having obtained the opinion of the Prosecutorial Council, in assessing disciplinary violations committed by prosecutors. Article 7 of the Administrative Procedure Code (applicable Law No. 8485/1999), entitled ‘Discretionary power (discretion)’, provides that ‘the discretionary power of public administration shall be understood as the right of the latter to exercise public authority for the achievement of a lawful objective, even in the absence of explicit authorisation by law.’ In compliance with Articles 149 and 150 of the Administrative Procedure Code, acts or assessments of a discretionary nature are also subject to judicial review; however, in such cases, the court must always bear in mind the standard of whether or not there has been an abuse of jurisdiction by the State body vested with the authority to assess and weigh the importance of a given fact within disciplinary proceedings. Indeed, although the exercise of discretionary administrative activity (for example, the assessment of the seriousness of a disciplinary violation) is not immune from review, the court may not substitute its own assessment for that of the disciplinary authority merely on the basis of its legal power to annul or invalidate the administrative decision. Where the court sets aside the disciplinary authority’s assessment of the seriousness of the facts, it is required to analyse, one by one, the reasons why that assessment is unlawful or arbitrary. In the absence of an arbitrary assessment of facts by the disciplinary authority, the court may not replace that assessment with another which it considers more reasonable, as doing so would risk assuming a role that does not belong to it. If the decision-making of the administrative authority is*

289. Law no. 10051 dated 19.12.2008, Article 17.

not arbitrary, disproportionate, or contrary to the spirit of the law, it cannot be judicially interfered with solely on the basis of considerations of expediency by the court. Under Law no. 8737/2001, the assessment of the appropriate disciplinary sanction in respect of prosecutors fell within the power of the President of the Republic, the Prosecutor-General, and the Prosecutorial Council. In cases of dismissal of a prosecutor, all three authorities interacted and adopted a chain of acts, exercising discretion in assessing the seriousness of the established violations in relation to the types of disciplinary sanctions provided for under Article 33(1) of Law no. 8737/2001."²⁹⁰

The above decision, although delivered at a very late stage, demonstrates that judges may not substitute their own assessment for that of the disciplinary bodies. In such cases, the courts verify solely the procedure followed and whether any breaches of that procedure have occurred which have infringed the procedural rights of the prosecutor. As regards the substantive aspect, the courts may examine whether a violation has occurred; however, where a violation is established, their authority to determine the type of disciplinary sanction to be imposed is limited. Judicial intervention is permissible only where the disciplinary sanction is manifestly disproportionate, but not to the extent of conducting a full assessment of proportionality.

3. Inspection under Law no. 8811 dated 17.05.2001 "On the organization and functioning of the High Council of Justice"

Pursuant to the Constitution of Albania, which entered into force on 28.11.1998, the High Council of Justice was regarded as the body responsible for the disciplinary liability of judges. With a view to further detailing this power, the legislator adopted Law no. 8811 dated 17.05.2001 "On the organisation and functioning of the High Council of Justice", which represented a significant regulatory framework for the structuring and operation of judicial power in Albania. In essence, this law was intended to regulate the duties, powers, and organisation of the High Council of Justice (HCJ), which was entrusted with responsibility for the appointment, transfer, evaluation, and disciplinary proceedings of judges.

The law provided for a clear structure of the High Council of Justice, defining its composition, as well as regulating the mandate and status of its members, by establishing criteria for selection, incompatibility, and duration of office.

290. Decision no. 00-2024-1235 (74) dated 26.02.2024 of the High Court's Administrative Chamber.

One of the most significant aspects of this law was the regulation of disciplinary procedures against judges. The law defined the powers of the Minister of Justice and of the Inspectorate of the High Council of Justice to investigate and pursue potential disciplinary violations committed by judges, thereby establishing a system for the verification, examination, and adjudication of disciplinary sanctions.

The law also addressed the internal organisation and functioning of the High Council of Justice, including its administrative structure and the collegiate decision-making processes.

As a primary regulatory measure, the law provided for the establishment of an Inspectorate within the High Council of Justice, composed of a Chief Inspector and inspectors. They were appointed and dismissed by the High Council of Justice upon the proposal of the Deputy Head of the High Council of Justice. Inspectors were selected following a public call, from among judges who met the criteria for appointment as judges of the Courts of Appeal, and, in the absence thereof, from among jurists who had served as judges for no less than five years. The activity of the Inspectorate was directed by the Deputy Head of the High Council of Justice, while the Chief Inspector organised and was responsible for the day-to-day activity of the Inspectorate.²⁹¹

With the 2014 reform, it was established that the Chief Inspector and the inspectors were to undergo professional and ethical evaluation no less than once every two years, in accordance with the criteria and procedures determined by the High Council of Justice itself. Furthermore, with a view to enhancing accountability, it was provided that, within the first quarter of each year, the Inspectorate, through the Chief Inspector, was required to submit to the High Council of Justice a report on its activities during the preceding year, reflecting the issues addressed and the results of its work.²⁹²

Inspectors were appointed to this position for a five-year term, with the right to reappointment, and this period was recognised as judicial seniority for the purposes of professional career requirements. Judges who served as inspectors were, upon their own request, reappointed as judges without undergoing a competitive selection procedure.²⁹³

Article 16 of this law set out the duties of the Inspectorate, specifying that it was vested with several powers, the primary one being to verify and forward to the Minister of Justice, for further handling, complaints submitted by citizens and other entities to the High Council of Justice concerning actions of judges assessed as being contrary to the proper

291. Law no. 8811/2001, Article 14.

292. Law no. 101/2014, Article 8.

293. Law no. 8811/2001, Article 15.

performance of their duties. The Inspectorate verified only those complaints which could not be resolved through judicial appeal or through the exclusion of members of the adjudicating panel. Furthermore, the Inspectorate examined complaints submitted by citizens and other entities to the Minister of Justice, which the latter deemed appropriate to be handled by the Inspectorate.

The law provided that verification could be carried out only after the judge had been previously informed. The Inspectorate assessed whether the complaints contained facts and circumstances that could constitute legal grounds for disciplinary proceedings, as well as for the moral and professional evaluation of judges. Where legal grounds for disciplinary proceedings were identified, the explanatory report and the relevant documentation were immediately forwarded, through the Deputy Head of the High Council of Justice, to the Minister of Justice for a decision on whether to initiate disciplinary proceedings. The Inspectorate also carried out verifications in relation to disciplinary proceedings proposed by the Minister of Justice, in cases where this was deemed appropriate and requested by the High Council of Justice. The report prepared by the Inspectorate was submitted to the High Council of Justice by the Deputy Head.

In addition, the Inspectorate collected and processed, in accordance with the criteria established by law, the data necessary for the professional evaluation of judges, and prepared assessments of judges' professional competence. Prior to their examination by the High Council of Justice, the documentation relating to a judge's professional evaluation was communicated to the judge in advance, who was entitled to submit his written opinion together with the relevant supporting arguments.

A further specific power of this Inspectorate was the verification and identification of matters relating to assets declared by judges, as well as the assessment of the compatibility of their activities and conduct with the requirements laid down by law.

The law further provided that, in the performance of its duties, the Inspectorate would request and cooperate with the Ministry of Justice in the verification of specific issues, in the exercise of its functions. This Inspectorate could also carry out other tasks assigned to it by the HCJ.

In implementation of the statutory provisions, the High Council of Justice drafted and adopted the Regulation on the organisation and functioning of the Inspectorate of the High Council of Justice. The Regulation defined the scope of the Inspectorate's activity as the collection of data concerning the activity of courts and judges, through the verification of complaints, inspection of courts, inspection of judges, and the evaluation of their professional abilities, on the basis of which

the High Council of Justice exercised its statutory responsibilities. It also provided for the identification of the existence of disciplinary violations or grounds for the dismissal of judges, and their documentation through verifications and inspections, on the basis of which the competent authority could initiate disciplinary proceedings against judges.²⁹⁴

The Inspectorate was organised and operated within the High Council of Justice and was directly subordinate to it. The activity of the Inspectorate was organised and directed by the Deputy Head of the High Council of Justice, who, in the exercise of this function, issued orders and instructions. As regards the Chief Inspector, who was also authorised to issue orders, he organised and was responsible for the day-to-day activity of the Inspectorate, including the planning and optimal allocation of work, as well as the adoption of measures to ensure the availability of the logistical means necessary for the performance of its duties.

The total number of inspectors was determined by the High Council of Justice, upon the proposal of the Deputy Head of the High Council of Justice.²⁹⁵ The Inspectorate was divided into three sections: inspection, complaints, and professional and ethical evaluation. The allocation of inspectors among the sections was carried out by the Deputy Head of the High Council of Justice, upon the proposal of the Chief Inspector.²⁹⁶

While, with regard to the appointment of inspectors, the Regulation essentially reiterated the statutory provisions,²⁹⁷ as concerns the selection of the Chief Inspector it provided that the Deputy Head was responsible for assessing the candidatures and was also entitled to hold a hearing with them. For each candidate deemed to meet the statutory criteria, the Deputy Head identified and assessed the following indicators: (a) results of undergraduate or postgraduate studies; (b) length of professional experience as a jurist and as a judge; (c) performance indicators and work evaluations; (ç) participation in various training courses or specialisations; (d) information on completed studies or publications in the legal field; (dh) information regarding moral integrity; (e) information on disciplinary sanctions; (f) any other information demonstrating the superiority of the respective candidate over the other candidates.²⁹⁸

The HCJ was entitled to assign tasks directly to the Chief Inspector as well as to the inspectors and to require that they report directly to it. The Chief Inspector, for the performance of day-to-day activities, was accountable to the Deputy Head. The latter was also entitled to assign tasks directly to the inspectors, who in such cases were directly accountable

294. Regulation, Article 1.

295. Regulation, Article 3.

296. Regulation, Article 2.

297. Regulation, Articles 4 dhe 5.

298. Regulation, Article 6.

to him, notwithstanding the fact that, as a rule, communication was conducted through the Chief Inspector.²⁹⁹

Like any other public official, the Chief Inspector and the inspectors could be subject to disciplinary proceedings for violations of the law and of ethical standards, which were considered breaches of work discipline.³⁰⁰ The Regulation itself classified disciplinary breaches into three categories, namely: minor, serious, and very serious.

The following were considered very serious disciplinary breaches: (i) the deliberate and repeated failure to comply with formal work discipline, where this had resulted in negative consequences for the day-to-day activity of the Inspectorate; (ii) unjustified absence from duty for more than seven days; (iii) the repeated and unjustified refusal to comply with lawful orders and duties; (iv) a persistent lack of commitment and motivation in the proper performance of duties; (v) the deliberate and continuous performance of acts contrary to the proper fulfilment of official duties; (vi) the commission of acts or conduct, or the manifestation of unethical behaviour, which seriously discredited the standing of the Chief Inspector or an inspector, or of the High Council of Justice itself.

The Regulation classified the following as serious disciplinary breaches: (i) the repeated failure to comply with formal work discipline, where this resulted in the creation of inappropriate or unjustified situations; (ii) unjustified absence from duty for more than three days; (iii) the unjustified refusal to comply with lawful orders and duties; (iv) a lack of commitment and motivation in the proper performance of duties; (v) the performance of acts contrary to the proper fulfilment of official duties; (vi) the commission of acts or conduct, or the manifestation of unethical behaviour, of a lesser degree of gravity than those provided for under Article 10(2)(f) of this Regulation, which discredited the standing of the Chief Inspector or an inspector, or of the High Council of Justice itself.

Any breach that was not classified as very serious or serious was considered a minor disciplinary breach.³⁰¹

The initiative to initiate a verification process lay with the Deputy Head and could be carried out either by him personally or by a member appointed by the High Council of Justice. Where a member was appointed, he was required, upon completion of the verification, to inform the Deputy Head of the facts and circumstances established, upon which the Deputy Head would decide whether to archive the case or propose the

299. Regulation, Article 8.

300. Regulation, Article 9.

301. Regulation, Article 10.

initiation of disciplinary proceedings against the Chief Inspector or an inspector.³⁰²

Disciplinary proceedings could be initiated within three months from the date on which the breach was identified, but no later than two years from the date on which it was committed. The Deputy Head had the right to propose both the initiation of disciplinary proceedings and the disciplinary sanction, taking into account the type and nature of the breach committed or permitted.³⁰³

Disciplinary proceedings were examined by the High Council of Justice no earlier than ten days from the date on which the Chief Inspector or the inspector subject to the proceedings had been acquainted with the case file. The hearing commenced with the preliminary hearing of the Deputy Head and was subsequently followed, as appropriate, by the hearing of the Chief Inspector or the inspector against whom disciplinary proceedings had been initiated. The latter were entitled to defend themselves personally or through legal counsel, and to submit to the Council evidence which they considered necessary to substantiate their claims. Such evidence was subject to examination, in the same manner as the evidence submitted in support of the disciplinary proceedings, with neither category of evidence having predetermined probative value.³⁰⁴

In conclusion, where the High Council of Justice found that a disciplinary breach had occurred, it could impose, as appropriate, the following disciplinary sanctions: (i) a reprimand; (ii) a reprimand with warning; and (iii) dismissal from office.³⁰⁵ The latter measure could be imposed only in cases of very serious disciplinary breaches, or where the subject had previously been disciplined for serious disciplinary breaches and, in a subsequent proceeding, was again found to have committed the same category of disciplinary breach.³⁰⁶ Disciplinary sanctions became time-barred upon the lapse of two years.³⁰⁷

In the exercise of its functions, the HCJ Inspectorate verified complaints submitted by citizens and other entities to the High Council of Justice, as well as cases reported in the media, with the aim of identifying factual situations relating to the activity of specific judges. In this context, it issued recommendations for addressing the identified issues or prepared the relevant explanatory reports concerning actions of judges assessed as being contrary to the proper performance of their duties. The Inspectorate also, in all cases, examined concerns or

302. Regulation Article 11.

303. Regulation Article 12.

304. Regulation, Article 13.

305. Regulation, Article 14.

306. Regulation, Article 15.

307. Regulation, Article 16.

information conveyed by court heads, and verified complaints submitted by citizens and other entities to the Minister of Justice which the latter deemed appropriate to be followed up by the Inspectorate, preparing the relevant explanatory reports or issuing corresponding recommendations. Its duties further included carrying out verifications at the request of the High Council of Justice in relation to disciplinary proceedings proposed by the Minister of Justice, and, upon completion, preparing the relevant report. Within the scope of its functions, the Inspectorate also carried out verifications and cooperated with the High Inspectorate for the Declaration and Audit of Assets in relation to matters concerning assets declared by judges, in accordance with the requirements laid down by law. The Inspectorate identified and highlighted issues relating to the compatibility of judges' activities with the requirements established by law, cooperated with the Ethics Commission of the National Judicial Conference on matters concerning the compatibility of judges' conduct with statutory requirements, and could also perform other tasks assigned to it by the High Council of Justice.³⁰⁸

In the conduct of its activities, the Inspectorate was guided by and based its actions on the principles of legality; the participation of the judge in the procedure, through prior notification, the right to be heard, and the verification of his claims; the formalisation of procedures; the prohibition of reopening a procedure previously examined; the presumption of innocence; the classification of violations; and equal and non-discriminatory treatment.³⁰⁹

For the purpose of documenting its activities, the Inspectorate maintained several registers, including registers of complaints, inspections of judges, inspections of courts, and disciplinary proceedings. The Inspectorate could also maintain other specific registers in accordance with the rules established by the Deputy Head.³¹⁰

As mentioned above, one of the duties of the Inspectorate was to carry out verifications of complaints concerning the activity of judges. This activity was defined as a process of identifying and confirming the accuracy of claims or concerns relating to facts and circumstances connected with the activity of specific judges, and was conducted through the collection, gathering, analysis, and comparison of concrete data. The verification of complaints could be carried out both in relation to the judicial activity and the extra-judicial activity of judges. A complaint could serve as a basis for conducting a general inspection of a judge's activity only in cases where such inspection was decided by the High

308. Regulation, Article 21.

309. Regulation, Article 22.

310. Regulation, Article 54.

Council of Justice. The Inspectorate could not, without justification, refrain from examining a complaint it had received.³¹¹

The subject matter of the verification of complaints could include: (i) facts or circumstances relating to the improper functioning of the judge's office; (ii) facts or circumstances that could be regarded as breaches in relation to the judge's judicial duties, which generally concerned formal non-compliance with the law, failure to observe due solemnity during judicial proceedings, deficiencies in the planning and organisation of work, as well as the conduct of the judge during or outside judicial proceedings, which, in turn, had resulted in or clearly indicated unjustified delays in the proceedings, a lack of professional ethics in communication, insufficient diligence in the legal reasoning of judicial decisions, or a manner of acting with adverse consequences for the parties to the judicial process; and (iii) facts or circumstances that could be regarded as breaches in relation to the rules of conduct and ethics applicable to judges, as formalised in law or in other acts of a general nature.

On the other hand, the following did **not** constitute the subject of complaint verification: (i) claims concerning facts or circumstances that could be resolved through judicial review by way of appellate proceedings initiated by the parties, thus excluding from the scope of verification those alleged facts or circumstances relating to the interpretation and application of the law by the judge in a specific case; (ii) requests or complaints relating to the recusal of a judge from the adjudication of a specific case; (iii) the judge's conduct in his private life, except where such conduct had generated widespread public attention, was connected with the judicial office, and was assessed as discrediting the standing of the judge.³¹²

Verification could be initiated on the basis of a complaint filed with the High Council of Justice, or on the basis of any complaint or concern otherwise made public through the media. Complaints addressed to the High Council of Justice could be submitted either through the postal service or directly to the Protocol Office. Such complaints were immediately forwarded to the Chief Inspector for further handling.

Complaints filed, as well as those made public through the media, were recorded in the Register of Complaints, which was maintained by the Chief Inspector and was required to contain the identity of the complainant, the court or judge against whom the complaint was directed, the subject matter of the complaint, the type of alleged breach, the date of issuance of the verification order, the inspector assigned to carry out the verification, the date on which the complaint and the verification order

311. Regulation, Article 23.

312. Regulation, Article 24.

were received by the inspector, the date of submission of the verification file by the inspector, and the manner in which the handling or verification was concluded.³¹³

Complaints addressed to the High Council of Justice were required to be submitted in written form and to contain material information on facts and circumstances that could constitute legal grounds for the issuance of recommendations aimed at resolving problematic situations or for the initiation of disciplinary proceedings, on the basis of which the need to conduct a verification could be assessed. The format of such an application was determined by the High Council of Justice upon the proposal of the Deputy Head and was required, at a minimum, to include the fully identified complainant, the alleged breach or specific circumstances invoked, the time of occurrence of the alleged breach, and the specific court or judge alleged to have committed the breach. Where applicable, the complaint was required to be accompanied by documents or evidentiary sources supporting the alleged facts or circumstances. The absence of these elements resulted in the non-initiation of verification actions.³¹⁴

In every case, after examining the complaint and the materials attached thereto, the Chief Inspector assessed whether there were grounds to carry out a verification. The Chief Inspector reported his assessment to the Deputy Head and, with the latter's approval, ordered either the archiving of the complaint or the conduct of its verification. Where a complaint was assessed as inappropriate in terms of form or substance and its archiving was ordered, the complainant was immediately notified by the Chief Inspector, with the reasons and grounds for the decision not to carry out a verification being set out. A repeated complaint was archived without verification, except where the subsequent complaint set out new facts and circumstances of relevance for verification. Where it was determined that there were grounds to verify the complaint, the Chief Inspector, by order, assigned one or more inspectors to carry out the verification. Where deemed appropriate, the Deputy Head could personally assign the verification of a complaint to the Chief Inspector.³¹⁵

As noted above, given that two inspectorates exercised oversight in relation to judges, namely, the Inspectorate of the High Council of Justice and the Inspectorate within the Ministry of Justice, it was necessary for their work to be organised in such a manner as to avoid duplication in the verification of complaints with the Inspection Directorate of the Ministry of Justice. Where the same complaint concerning the activity of judges

313. Regulation, Article 25.

314. Regulation, Article 26.

315. Regulation, Article 27.

was submitted to both the High Council of Justice and the Ministry of Justice and was deemed to warrant verification, the verification was, as a rule, carried out by the Inspectorate of the High Council of Justice. Where the same complaint was submitted to both institutions but also concerned the activity of the judicial administration and was deemed to warrant verification, the process was, as a rule, to be carried out by the Inspection Directorate of the Ministry of Justice. The Inspectorate of the High Council of Justice undertook, through simplified procedures, to enable the provision and exchange of data from the register of complaints with the Inspection Directorate of the Ministry of Justice.³¹⁶

Where it was decided that verification was warranted, the Chief Inspector issued an act entitled “verification order”, which was required to specify: (i) the inspector or group of inspectors assigned to carry out the verification; (ii) the subject matter of the verification; (iii) the verification tasks; and (iv) the time-limit for carrying out the verification.³¹⁷ For justified reasons, the Chief Inspector could order the replacement of one or more inspectors in a verification procedure. Actions carried out by the replaced inspector or inspectors were considered valid, provided that the justified reason for their replacement was not directly related to those actions.³¹⁸

In all cases, regardless of the tasks assigned in the Verification Order, the inspector was required to verify the accuracy of the claims raised by the complainant and, *ex officio*, any matter relating to the normal functioning or activity of the judge that was apparent and could be considered by law as a disciplinary breach. In every verification, the inspector was required to notify in advance the court head and the judge concerned, acquainting them with the complaint and the Verification Order. By derogation, by order of the Deputy Head or the Chief Inspector, the judge might not be informed of the content of the complaint where it was considered that such disclosure could give rise to an inappropriate situation; however, in all cases, the judge was required to be informed of the complainant’s claims. Where it was established that the complaint related to judicial proceedings that were still pending, the inspector was required to take all necessary measures and make all appropriate efforts to ensure that his activity did not affect the independence of the judge or judges dealing with that specific case. In such cases, the verification was limited solely to claim relating to the undue delay of the judicial proceedings or to issues concerning the judge’s ethics.³¹⁹

316. Regulation, Article 27/a.

317. Regulation Article 28.

318. Regulation, Article 29.

319. Regulation, Article 30.

The verification actions carried out by the inspector were documented in official records (minutes), which could include, *inter alia*, minutes of taking statements, minutes of findings, minutes of on-site inspections, etc. The minutes were required to contain: (i) the inspector assigned to carry out the verification; (ii) the date on which the relevant action was carried out; (iii) the case subject to verification; (iv) the object of that specific action and the persons participating therein; (v) a detailed description of the action carried out; and (vi) the signature, at the end of each page, of the inspector and of the persons participating in the verification action. In all cases, the inspector was required to prepare a detailed report on the verified case, which was required, at a minimum, to include: (i) the inspector who carried out the verification; (ii) the subject matter of the verification; (iii) the claims raised by the complainant; (iv) the possible claims or reasoning of the judge concerned; (v) the presentation of the basic data of the verified case (including the moment of case registration, the preparatory hearing, the judicial hearings, the reasons for adjournments, the moment of completion of the proceedings, the filing of the reasoned decision with the court registry, any appeal lodged against the decision, the decisions of the higher courts, and the conclusions drawn therefrom), including both the issues raised by the complainant and those identified *ex officio*; (vi) reasoned conclusions regarding the existence, in the specific case, of violations of the law, as well as the formulation of reasoned conclusions as to whether such established violations constitute breaches of discipline within the meaning of the law; and (vii) a proposal concerning the further handling of the verification.³²⁰

The procedure for verifying a complaint, including the submission of the inspector's report to the Chief Inspector, was required to be completed no later than 30 days from the date of its registration in the Register of Complaints. This time-limit could be extended by the Chief Inspector, upon the inspector's request, only for justified reasons.³²¹

The verification of a complaint could conclude with the archiving of the case where, as a result of the verification, no facts or circumstances were identified or confirmed that were significant for the initiation of a specific procedure, or where such facts or circumstances were insufficient or inappropriate. In such cases, a reply was sent to the complainant setting out the results of the verification and the absence of grounds and reasons for further verification of the case or for the undertaking of other initiatives. Where archiving was decided, the judge concerned was also notified of this decision. In contrast, where material was obtained that could give rise to disciplinary liability on the part of the judge, an

320. Regulation, Article 31.

321. Regulation, Article 32.

explanatory report was prepared and transmitted to the Minister of Justice, through the Deputy Head, for the initiation of disciplinary proceedings. It should be emphasised that the Regulation provided that the manner in which the verification was concluded was determined by the Deputy Head following the presentation of the case by the Chief Inspector. where material was obtained that could give rise to disciplinary liability on the part of the judge, an explanatory report was prepared and transmitted to the Minister of Justice, through the Deputy Head, for the initiation of disciplinary proceedings. It should be emphasised that the Regulation provided that the manner in which the verification was concluded was determined by the Deputy Head following the presentation of the case by the Chief Inspector.³²²

Where appropriate, depending on the manner in which the verification of the complaint was concluded and on the results obtained, the Inspectorate, either ex officio or by order of the Deputy Head, prepared recommendations addressed to courts, to specific judges, or to any other authority, where such action was deemed appropriate for the resolution of an irregular situation. Furthermore, also by order of the Deputy Head, the Inspectorate prepared reports for the High Council of Justice requesting the ordering of a general or thematic inspection of the judicial activity of a specific judge, where the verification established or confirmed facts or circumstances indicative of judicial activity that was not fully proper or professional.

Where, at the conclusion of the recommendation process, it was considered that the verified case was insufficient, or that the established breach was not of such a substantive nature as to require the initiation of disciplinary proceedings, the attention of the judge concerned was drawn in writing. Such written notice formed an integral part of the judge's evaluation file and could be used solely for the purposes of his professional and ethical evaluation.³²³

The inspection of a judge was carried out by decision of the High Council of Justice,³²⁴ with the aim of assessing the effectiveness of the judge's activity or of identifying and documenting any disciplinary breaches that may have been committed by him.³²⁵ Such an inspection could be either general or thematic.³²⁶

The inspection of a judge for the purpose of gaining knowledge of his activity was carried out on the basis of an established work schedule proposed by the Deputy Head, with the aim of inspecting all judges of the

322. Regulation, Article 33.

323. Regulation, Article 34.

324. Regulation, Article 35.

325. Regulation, Article 36.

326. Regulation, Article 37.

courts of first instance and the courts of appeal within a three-year period. Such inspection also included a review of activity in cases that were still pending, but in such instances only to the extent of verifying compliance with statutory time-limits, in conjunction with an analysis of the workload.

The inspection of a judge for the purpose of identifying and documenting disciplinary breaches was ordered by the High Council of Justice, on the proposal of the Deputy Head, where, in more than one instance of judicial activity, the verification of complaints had led to the conclusion that the judge had committed or allowed breaches or manifest non-compliance with the law, thereby giving rise to suspicions of problematic legal conduct. Another situation in which this type of inspection was ordered arose where, at the conclusion of the professional competence evaluation, the judge was assessed as "incompetent". In such cases, the inspection of the judge was mandatory. This type of inspection was also ordered on the proposal of a member of the HCJ in cases of disciplinary proceedings proposed by the Minister of Justice, where it was considered necessary to obtain more comprehensive information concerning the activity of the judge subject to the proceedings. The final circumstance provided for as grounds for initiating this type of inspection, upon the proposal of any member of the High Council of Justice, was where, following the inspection of a court, it was concluded that the judge had committed or allowed breaches or manifest non-compliance with the law. This type of inspection extended over a period of no more than three years and included the review of activity in cases that were still pending, unless otherwise provided by the Regulation.³²⁷

For the inspection of a judge, the Chief Inspector assigned one or more inspectors from the Inspection Section, who, upon completion and after also examining any written submissions made by the judge, prepared a written report, depending on the nature and type of the inspection. The inspection of the judge was to be carried out within 30 days from the date of the decision of the High Council of Justice. Upon the inspector's request, the Deputy Head could extend this time-limit only for justified reasons. In carrying out this procedure, the inspector was required to establish contact with the head of court in which the inspection was to be conducted. The inspector was also required to take into account the data contained in the judge's personal file.³²⁸

At the conclusion of the inspection of a judge, the Inspectorate was required to prepare the relevant report, which was required, at a minimum, to contain: (i) statistical data on the quality and workload of the judge's work; (ii) data on the judge's work performance and

327. Regulation, Article 38.

328. Regulation, Article 39.

compliance with reasonable time-limits in adjudication, in accordance with the provisions of procedural laws or the standards established by the High Council of Justice; (iii) data on the planning and organisation of work; (iv) any other data deemed significant for assessing the judge's effectiveness and professional competence; (v) conclusions regarding the effectiveness of the judicial service provided by the judge; (vi) where applicable, observations and recommendations aimed at improving the judge's activity; (vii) where necessary, a description of the judge's activities in which breaches of the law were identified and considered to constitute disciplinary breaches. This report was submitted to the High Council of Justice by the Deputy Head and became an integral part of the judge's personal file.³²⁹

Where, as a result of the inspection of a judge, additional cases or other judicial activities were identified in which the judge was found to have allowed or committed breaches of the law constituting disciplinary breaches, improper performance of duties, or professional inadequacy, the Chief Inspector prepared the relevant explanatory report, which was transmitted to the Minister of Justice through the Deputy Head for the purpose of deciding on the initiation of disciplinary proceedings.³³⁰

In cases of disciplinary proceedings proposed by the Minister of Justice, on the basis of a decision of the High Council of Justice, the Inspectorate carried out the verification of the proposed disciplinary proceedings and of the claims raised by the judge. The verification procedure of the proposed disciplinary proceedings was required to be completed within 15 days, at the end of which the Chief Inspector prepared and submitted the relevant report to the Deputy Head. Furthermore, where the High Council of Justice assessed the need to obtain more comprehensive information regarding the activity of the judge subject to the proceedings, it ordered the inspection of the judge, a procedure which, as a rule, was required to be completed within 30 days.³³¹

For the verification of assets declared by judges, the Inspectorate acted in accordance with and took into account the requirements laid down in the legislation on the prevention of conflicts of interest in the exercise of public functions, as well as the Memorandum of Cooperation and Understanding concluded for this purpose between the High Council of Justice and the High Inspectorate for the Declaration and Audit of Assets. In cases where the High Inspectorate for the Declaration and Audit of Assets submitted official information concerning violations

329. Regulation, Article 40.

330. Regulation, Article 41.

331. Regulation, Article 42.

of the conflict-of-interest legislation by specific judges, the Inspectorate carried out the relevant actions for the collection and documentation of the disciplinary case. Upon completion, the Chief Inspector prepared the relevant explanatory report, which was transmitted, through the Deputy Head, to the Minister of Justice for a decision on the initiation of disciplinary proceedings.³³²

As regards the verification of incompatibility between a judge's activity or conduct and the judicial function, this was carried out on the basis of a filed complaint or pursuant to a decision of the High Council of Justice itself. Any activity expressly prohibited by law was considered incompatible with the judicial function. Where the existence of an activity incompatible with the judicial function was established, the Chief Inspector prepared the relevant explanatory report, which, together with the accompanying materials, was transmitted, through the Deputy Head, to the Minister of Justice for a decision on the initiation of disciplinary proceedings.³³³

Another type of inspection concerned the inspection of courts, which was carried out on the basis of a decision of the High Council of Justice. Through this type of inspection, data were collected which, together with the analysis of observations or recommendations made during previous inspections, served to identify the effectiveness of the institution, with a view to issuing observations and recommendations for improving future performance or adopting effective measures to eliminate identified irregularities.³³⁴

Court inspections were, in all cases, of an informational nature³³⁵ and could be either general or thematic.³³⁶ The initiation of a general or thematic inspection was decided by the High Council of Justice on the basis of a preliminary work schedule proposed by the Deputy Head, with the aim of inspecting all courts of first instance and courts of appeal within a two-year period. Another circumstance in which this type of inspection could be ordered was the existence of a serious problematic situation, of which the HCJ could be informed by any of its members or through information received by it. The inspection of a court extended over a period of one year and included the review of cases that were still pending, but in such instances only with regard to compliance with procedural time-limits and workload. By way of exception, the High Council of Justice could decide that the inspection period of a court

332. Regulation, Article 44.

333. Regulation, Article 45.

334. Regulation, Article 46.

335. Regulation, Article 47.

336. Regulation, Article 48.

should differ from the general rule.³³⁷

For the conduct of court inspections, the Chief Inspector prepared an inspection plan, which was approved by the Deputy Head.³³⁸ Upon completion of the inspection, and on the basis of the inspectors' findings, the Chief Inspector prepared the relevant report, which was required to contain: (i) information on the organisation of the court and the adequacy of infrastructure, as well as of judicial and auxiliary staff; (ii) statistical data concerning workload and the speed of delivery of judicial services by the court; (iii) statistical data concerning the quality of the court's activity; (iv) information on negative practices or phenomena identified in the activity of the court, including its judicial activity; and (v) recommendations for improving legislation, organisation, and infrastructure, taking into account the standards to be pursued or those established by the High Council of Justice. The court inspection report was submitted to the High Council of Justice for review by the Deputy Head.³³⁹

Where the inspection report identified information calling into question the organisational and managerial capacities of the court head, the High Council of Justice entrusted the Chief Inspector with carrying out an assessment of such capacities, in accordance with the Decision of the Council "On the managerial functions of the court". Where the inspection report identified information casting doubt on the professional competence or effectiveness of specific judges, the High Council of Justice tasked the Inspectorate with conducting an inspection of their judicial activity, whether general or thematic. In cases where weaknesses, negative phenomena, or adverse practices were identified, the High Council of Justice ordered the adoption of measures aimed at eliminating them in the future, or initiated actions for the improvement of legislation, organisation, and court infrastructure.³⁴⁰

In every case where, following a verification or inspection, recommendations were issued for judges or courts, within a reasonable time-limit and by order of the Deputy Head, the Inspectorate verified their implementation. Upon completion of such verifications, the Deputy Head informed the High Council of Justice of the results achieved.³⁴¹

By the first quarter of each year, the Inspectorate, through the Chief Inspector, submitted to the High Council of Justice a report on its activities during the preceding year, reflecting the issues addressed and the results achieved.³⁴²

337. Regulation, Article 49.

338. Regulation, Article 50.

339. Regulation, Article 51.

340. Regulation, Article 52.

341. Regulation, Article 52/a.

342. Regulation, Article 55.

Judicial practice shows that the question was raised as to whether an inspection could be initiated only by subjects entitled to lodge complaints, or also ex officio. The response of the High Court was unequivocal, reasoning as follows: *“Regarding the other arguments raised by the appellant in the appeal, such as the case of disciplinary proceedings against judges, where the appellant claims that the initiative for the proceedings was taken in breach of the law, namely Article 16(1)(a) of Law no. 8811 dated 17.05.2001 ‘On the organisation and functioning of the High Council of Justice’, on the grounds that in the present case there was no complaint by any citizen or entity triggering the action of the High Council of Justice, this argument is unfounded. The verification for disciplinary proceedings against these judges was initiated and carried out following complaints made public by the print and broadcast media. Precisely Article 21(1) of the Regulation ‘On the organisation and functioning of the Inspectorate of the High Council of Justice’ provides that the Inspectorate verifies complaints of citizens and other entities addressed to the High Council of Justice, as well as those published in the media.”*³⁴³ Accordingly, in such cases, information made public may serve as grounds for initiating a disciplinary inspection, notwithstanding the absence of a formal complaint submitted by any subject.

Furthermore, in its jurisprudence, the High Court also examined the manner in which the inspection was conducted, initially by the Inspectorate of the High Council of Justice and subsequently by the Minister of Justice, concluding as follows: *“24. The Joint Chambers of the High Court, having regard to the legal and sub-legal acts cited above, the evidence administered in the judicial file submitted by the parties, and their submissions and claims, deem it necessary to analyse below, in this decision, the actions and procedural acts carried out by the above-mentioned institutions during the development of the disciplinary proceedings against the appellant, with the aim of verifying whether these institutions respected the principle of due legal process in respect of the appellant and whether his rights were infringed during such proceedings.*

25. It appears that, following the inspection carried out by the High Council of Justice at the Durrës District Court (initiated by the complaint of the head of that court, dated 24.09.2009), on 08.03.2010 this body drafted the relevant explanatory report concerning the violations identified during the exercise of the appellant’s judicial activity, related to his delayed submission of 60 judicial case files (reasoned decisions issued and submitted late), recommending the initiation of disciplinary proceedings against him. It appears that at that time no subsequent action was taken by the responsible institutions.

26. Following reports in the print and broadcast media concerning the criminal case in respect of which Decision no. 98 dated 09.02.2011, had been

343. Decision no. 4, dated 07.01.2009 of the High Court’s Joint Chambers.

rendered, as explained above in the section 'Circumstances and Facts' of this decision, it appears that the HCJ Inspectorate³⁴⁴ issued a verification order dated 14.09.2012 for the exercise of judicial functions by judges of the Durrës First-Instance Court and the Durrës Court of Appeal. This document was issued pursuant to Article 16 of Law no. 8811 dated 17.05.2001 'On the organisation and functioning of the High Council of Justice', as well as Articles 28 and 31 of the Regulation 'On the organisation and functioning of the Inspectorate of the High Council of Justice'.

...

27. It appears that the appellant, by letter dated 17.09.2012, was notified of the commencement of the verification of his judicial activity in relation to the above-mentioned case (notification of the same date recorded by the inspectors of the Inspectorate of the High Council of Justice, Q. Z. and Zh. P., signed by the appellant and the Head of the Durrës District Court), in compliance with the provisions of Article 16(b) of Law no. 8811 dated 17.05.2001, and Article 30(2) of the Regulation 'On the organisation and functioning of the Inspectorate of the High Council of Justice', which expressly provides: 'In every case of verification, the inspector shall notify in advance the court head and the judge concerned, acquainting them with the complaint and the Verification Order'.

28. On 19.09.2012, the HCJ inspectors drafted a report entitled 'Information', which contained the violations identified in relation to the appellant concerning the failure to reason and the delayed submission of Criminal Decision no. 98 dated 09.02.2011. This report expressly states that the inspectors 'were unable to contact Mr N. T., as he was absent that day for health reasons, but notification of the verification had been carried out by the court bailiff' (p. 27 of the document entitled 'Information').

29. Within the framework of this inspection, the HCJ inspectors also verified and reviewed the judicial activity of the two other members of the adjudicating panel who rendered Decision no. 98 dated 09.02.2011, and obtained statements from the head of the Durrës District Court.

30. On 21.09.2012, the inspectors of the Inspectorate of the High Council of Justice drafted the document entitled 'Supplementary Information', in which, after obtaining clarifications from the head of the Durrës District Court and the members of the adjudicating panel, and after verifying the relevant facts, it was established that: (i) the appellant had consistently been problematic with regard to the submission of judicial decisions within reasonable time-limits; (ii) the court head had informed the High Council of Justice of this issue by letter; the appellant had been repeatedly requested in writing by the court chancellery to submit the reasoned decisions (the letters are cited in the document 'Supplementary Information'); (iii) the appellant had been repeatedly warned about this issue during morning meetings organised with the judicial panel by the court head;

344. Inspectorate of the High Council of Justice.

(iv) the members of the adjudicating panel who participated in the criminal case against I. Xh. had offered assistance to the appellant in drafting the decision, but he had led them to believe that the reasoning had been completed, and the file submitted to the registrar office.

31. It appears that, following the above actions, on the basis of the acts cited above and the initial explanatory report dated 08.03.2010, the Inspectorate of the High Council of Justice, pursuant to Article 16 of Law no. 8811 dated 17.05.2001, 'On the organisation and functioning of the High Council of Justice', and Articles 31–33 of the Regulation 'On the organisation and functioning of the Inspectorate of the High Council of Justice', drafted the final explanatory report dated 24.09.2012, which, together with the accompanying materials, was submitted to the High Council of Justice. This report sets out the results of the inspection of the appellant's judicial activity in relation to the criminal case in respect of which Decision no. 98 dated 09.02.2011, was rendered, as well as the appellant's repeated violations concerning the delayed submission of reasoned judicial decisions, which had also been reflected in the earlier explanatory report dated 08.03.2010.

32. After the Chief Inspector of the HCJ established that the appellant's activity was proven to involve breaches of the law, breaches which, pursuant to Article 32 of Law no. 9877 dated 18.02.2008, 'On the organisation of the judicial power in the Republic of Albania, are regarded as "breaches of discipline", it was suggested that the materials be transmitted to the Minister of Justice for consideration as to the initiation of disciplinary proceedings against him.

33. This act was approved by the Deputy Head of the HCJ, as indicated by the note at the top of the document, and by HCJ letter prot. no. 1459 dated 24.09.2012, together with the other materials, it was forwarded to the Minister of Justice on the same date, 24.09.2012, under prot. no. 6026. It appears that the above procedure was carried out in full compliance with Article 34(1) of Law no. 9877, dated 18.02.2008, which provides that the Minister of Justice is the authority entitled to initiate disciplinary proceedings against a judge before the HCJ. The Minister exercises this right after examining the reports of the HCJ Inspectorate concerning inspections of judges' activity, in accordance with the rules laid down both in the above-mentioned law and in the relevant secondary legislation.

34. The documents administered in the judicial file suggest that the Minister of Justice addressed the appellant - by letters prot. no. 6026/2 dated 25.09.2012, prot. no. 6127/1 dated 04.10.2012, and prot. no. 6024/4 dated 08.10.2012 - notifying him of the irregularities identified by the HCJ in his activity, of the results of the HCJ Inspectorate's inspection, and of the possibility of initiating disciplinary proceedings.

35. It appears that the appellant was duly informed of the Minister of Justice's letter prot. no. 6026/2 dated 25.09.2012. This is evidenced by the

appellant's undated letter addressed to the Minister of Justice, registered with the Ministry of Justice under incoming prot. no. 6026/3 dated 05.10.2012, in which he states that letter no. 6026/2 had been served upon him, but that the accompanying documents cited therein had not been attached.

36. *It further appears that, by letter prot. no. 6024/4 dated 08.10.2012, the Ministry of Justice - after noting that the appellant had been sent several notifications for this purpose - ordered once again that complete copies of the two HCJ Inspectorate's explanatory reports be made available to him, and requested that, should he have any objections, claims, or possible evidence in relation to the foregoing, he submit them by 13.10.2012.*

37. *The fact that the appellant was regularly informed of all actions and procedural acts carried out by the HCJ Inspectorate, the HCJ, and the Minister of Justice was also acknowledged by his representative during the hearing before the Joint Chambers of the High Court, thereby confirming once again that these bodies scrupulously respected the appellant's rights, as enshrined in Article 35 of Law no. 9877, dated 18.02.2008, as well as in the Regulation "On the organisation and functioning of the HCJ".*

38. *On 26.10.2012, by request no. 6127/16, the Minister of Justice sought the initiation of disciplinary proceedings and the imposition of the disciplinary sanction "dismissal from office of judge N. T."³⁴⁵*

The above reasoning demonstrates that the inspection procedure and, subsequently, the disciplinary proceedings were conducted in full compliance with the legal provisions and the relevant regulations governing the activity of the Inspectorate of the High Council of Justice and the Ministry of Justice. Accordingly, it was established that the appellant had been duly notified of all actions and procedural acts undertaken against him and that he had been afforded the opportunity to submit his arguments. The competent institutions rigorously adhered to the principle of due process, respecting all of the appellant's rights. The above example demonstrates how the inspection process ought to have functioned at that time.

This law, in Chapter V, Articles 31–34, regulated the disciplinary proceedings against judges. Under these provisions, the Minister of Justice was designated as the sole authority responsible for deciding upon and conducting disciplinary proceedings against judges.³⁴⁶ The law provided that the Minister of Justice carried out inspections pursuant to specific thematic or territorial programmes, prepared ex officio or in execution of tasks assigned to him by the High Council of Justice, following the process of verifying complaints lodged by citizens and legal entities, and on the basis of information of which he became aware ex officio or through

345. Decision no. 4, dated 07.01.2009 of the High Court's Joint Chambers.

346. Law no. 8811/2001, Article 31, paragraph 1.

the Inspectorate of the High Council of Justice.³⁴⁷ These provisions were challenged as unconstitutional; however, as addressed and evidenced above, they were deemed constitutional by the Constitutional Court in its decision.³⁴⁸

When the procedure for verifying complaints or for inspecting a judge was initiated, the judge concerned had to be notified.³⁴⁹ Upon completion of the administrative inquiry, the Minister of Justice could decide not to initiate the disciplinary procedure, explaining to the High Council of Justice the reasons for such decision.³⁵⁰ Otherwise, where sufficient material existed, upon completion of the inspection and on the basis of its results, the Minister would propose to the High Council of Justice that disciplinary proceedings be instituted against the judge, submitting the relevant documentation.³⁵¹ The request for disciplinary proceedings was also required to include a proposal regarding the type of disciplinary sanction which, in the Minister's assessment, should be imposed on the judge subject to disciplinary proceedings.³⁵²

Where the Minister of Justice, in initiating the disciplinary proceedings, had not been set in motion on the basis of a request from the Inspectorate of the High Council of Justice, the High Council of Justice could assign verification tasks to that Inspectorate, which was obliged to carry out such verifications within 15 days and submit the relevant report.³⁵³

The verification to be carried out by the High Council of Justice was of particular importance, especially where the subject of the proceedings submitted circumstances, facts, other evidence, or raised various claims. In such cases, the HCJ could not disregard them and rely solely on the findings of the Minister of Justice, as the High Court reasoned in a case, stating inter alia: *"17. The Joint Chambers of the High Court consider it appropriate to note that the High Council of Justice, as the body conducting the disciplinary procedure against a judge, was under a legal obligation not to confine itself solely to the data submitted by the body which initiated the procedure. Since, during the course of this procedure, the interested party submitted other claims and facts which, according to him, had influenced the breaches for which the disciplinary procedure was being conducted, the High Council of Justice was required to verify them.*

18. Acting in protection of the public interest and, at the same time, in

347. Law no. 8811/2001, Article 31, paragraph 2.

348. Decision no. 11, dated 11.05.2004 of the Constitutional Court.

349. Law no. 8811/2001, Article 32, paragraph 1.

350. Law no. 8811/2001, Article 31, paragraph 6.

351. Law no. 8811/2001, Article 31, paragraph 3.

352. Law no. 8811/2001, Article 31, paragraph 4.

353. Law no. 8811/2001, Article 31, paragraph 5.

order not to impair the lawful rights and interests of the subject against whom the disciplinary procedure was conducted, this state authority had the legal means to verify all facts so as to reach a fair decision.

19. The obtaining and verification of all claims and facts, using lawful methods of proof, is connected with the application of the rules required by law for the taking of evidence.

19.1. The use of means and methods of proof by the authority conducting the procedure entails proof as an obligation, since, in this case, the disciplinary procedure began on its initiative. In such cases the authority conducting the procedure has the right and the duty to verify data and facts, because they will form part of the reasoning of the final decision. The obligation to use means of proof is linked to the obligation to strictly observe the legal procedures required for the issuance of the decision and for the formulation and reasoning thereof. Otherwise, failure to comply affects the validity of the decision and renders it vulnerable, as is the case with Decision no. 45 dated 15.04.2014 of the High Council of Justice, which has been appealed.

19.2. From the examination of the case at the hearing, it follows that the High Council of Justice: (i) did not fully clarify the circumstances and facts relating to the disciplinary procedure against Judge A.Ç., which is the subject-matter of the adjudication; (ii) did not conduct an administrative inquiry in accordance with the requirements of Law no. 9877/2008, Law no. 8811/2001 and the Administrative Procedure Code, which led it to an inaccurate qualification of the facts and actions related thereto; (iii) its conclusion is not the result of a comprehensive and objective analysis of the evidence obtained during the disciplinary procedure and, in particular, during their review at the meeting of 15.04.2014.

20. The appealed decision cites a number of legal provisions; however, the Joint Chambers consider that, in the present case, merely citing the legal provisions does not constitute reasoning of the decision.

20.1. Reasoning constitutes an essential element of the form and content of a decision of the High Council of Justice and affects its validity. The reasoning must be clear, must include the legal and factual basis and argumentation, and must avoid illogicality (Article 108 of the Administrative Procedure Code).

20.2. The inconsistencies and contradictions contained in the appealed decision, in its reasoning, as well as the facts and circumstances that have been overlooked, constitute sufficient grounds to consider the decision unreasoned and, consequently, vulnerable.

21. In observance of the principle of justice, the decision-making body, the High Council of Justice, must ascertain the true factual situation.

21.1. In administrative disciplinary proceedings, the correct state of affairs must be established and, for this purpose, all facts relevant and material to the issuance of a lawful and fair decision must be proved.

22. Furthermore, the Joint Chambers consider that decision no. 45 dated 15.04.2014, does not contain the specification of all procedural actions necessary to address the appellant's claims, nor does it contain the legal analysis of all issues raised.

23. The High Council of Justice did not reason whether the appellant's/ judge's acts or omissions were intentional in such a manner as to render the performance of his functional duties impossible, and whether they resulted from his organisational incapacity or from other causes, such as health-related reasons and/or workload.

24. It is established that the High Council of Justice did not set out the true causes of the breaches attributed to the appellant. Thus, it does not appear that the decision reasons whether the deficiencies in the appellant's work performance are the result of intentional acts or omissions that seriously discredit his position as a judge, or whether they are errors that may have arisen as a consequence of his health condition or workload.

25. Clarification of these circumstances is necessary because the appellant is charged with responsibility primarily for submitting decisions beyond the statutory time-limits, in accordance with the provisions of the Criminal Procedure Code and the Civil Procedure Code.

26. The Joint Chambers of the High Court note that decision no. 45 dated 15.04.2014, of the High Council of Justice, in its reasoning, is contradictory as regards the causes constituting very serious breaches by judge A.Ç.

26.1. The Council states that "...the judge's delays in reasoning and submitting judicial decisions are considered disciplinary breaches within the meaning of Article 32(1)(a) and Article 32(2)(c) of Law no. 9877, dated 18.02.2008, and entail disciplinary liability because: (i) such delays are continuous, repeated and unjustified; (ii) such delays have entailed consequences for the constitutional rights of the parties in proceedings or for the administration of justice; (iii) such delays are outside any reasonable and objective time-limit; (iv) such delays have impaired the image of justice and reduced public trust in the judiciary."

26.2. On the other hand, it is the High Council of Justice itself that has found that "...judge A.Ç. is effectively unable to normally perform his duties. The illness causes the judge physical incapacity, which necessarily reflects on his work, an illness which has clear indications that it will be ongoing, thereby continuously affecting his work."

26.3. Thus, although the decision acknowledges the existence of a health-related cause affecting the course of judge A.Ç.'s activity, it does not appear that the Council verified, pursuant to the above-mentioned legal provisions, the appellant's claim that the determining cause of the delays in reasoning and submitting judicial decisions was his poor health condition, an illness which is alleged to have consequences for his concrete activity.

27. Verification of this claim, within the legal framework of the administrative

investigation, and a legal analysis of the facts and evidence in their entirety, in light of Article 147(6) of the Constitution of the Republic of Albania and the other legal provisions applicable to the case at hand, would have clearly and accurately elucidated the reasons for the delays, namely, whether they constitute “acts and conduct that seriously discredit the position and standing of the judge,” or whether the situation instead concerns “mental or physical incapacity.”

28. *The fact of the applicant’s impaired state of health, as set out ut supra, was established and acknowledged by members of the Council, as well as by the Minister who initiated the disciplinary proceedings, some of whom expressly pointed out the absence of a more in-depth investigation into this circumstance.*

29. *It is further evident that the High Council of Justice failed to address the applicant’s claim regarding his exceptionally heavy annual caseload in comparison with other judges of the same court. Without referring to specific figures, it appears that in 2012 the applicant, together with one other colleague, had the highest number of cases pending adjudication.*

29.1. *In these circumstances, the High Council of Justice had a legal obligation to verify and assess whether, and to what extent, the workload, combined with the applicant’s health condition, had an impact on the delays in the reasoning and submission of judicial decisions.*

30. *Likewise, the decision states, by way of conclusion, that “the conduct of the judge has seriously discredited his position and standing and has demonstrated his inability to cope with his daily workload”; however, no fact constituting “incompetence” within the meaning of Article 147(6) of the Constitution is identified or analysed.*

31. *The decision sets out, in general terms and using statutory terminology, the consequences of the delayed reasoning and submission of decisions by the applicant, but fails to substantiate or reason them.*

31.1. *Thus, the High Council of Justice states that “...the judge’s delays in reasoning and submitting judicial decisions are considered disciplinary breaches within the meaning of Article 32(1)(a) and Article 32(2)(c) of Law no. 9877 dated 18.02.2008, and entail disciplinary liability because: such delays are continuous, repeated, and unjustified; (i) they have resulted in consequences for the constitutional rights of the parties to the proceedings or for the administration of justice; (ii) they fall outside any reasonable, logical, and objective time-limit; and (iii) they have impaired the image of justice and reduced public confidence in the judiciary.”*

31.2. *The Joint Chambers consider that these expressions constitute general stipulations concerning the consequences for the constitutional rights of the parties to the proceedings, the administration of justice, and the impairment of the image of justice.*

32. *The decision does not reflect the concrete consequences (facts and/or circumstances) arising from the delays in the delivery of reasoned judicial*

decisions, which, on the one hand, amount to a discrediting of the position and image of the judge and, on the other hand, constitute an impairment of the standing of justice and an erosion of public trust in the justice of the decisions rendered by judge A. Ç., in particular, and in the justice system as a whole.

33. The Joint Chambers of the High Court draw attention to the fact that, in cases where a judge's activity is subject to review - and even more so where he is held disciplinarily liable - the decision must necessarily set out and reason not only the facts and evidence supporting the alleged violations, but must also argue and reflect the concrete consequences for the constitutional rights of the parties to the proceedings, as well as the specific impairment of the judge's image, which in turn constitutes an impairment of the image of justice.

34. In light of the above, with regard to the resolution of the specific case, the Joint Chambers of the High Court consider that decision no. 45 dated 15.04.2014, of the High Council of Justice lacks legal basis and, as such, must be annulled; furthermore, given the absence of a full and comprehensive administrative investigation, the case must be remitted for reconsideration."³⁵⁴

From the above reasoning, it is understood that the decision-making of the High Council of Justice was unlawful and flawed, due to the lack of a full and comprehensive administrative investigation. The Court found that the disciplinary proceedings had been conducted without clarifying and analysing all relevant facts and evidence, while disregarding essential elements, such as the impact of the judge's health condition and workload on the alleged violations. Moreover, the High Court held that the decision of the High Council of Justice suffered from serious deficiencies in its reasoning, as it failed to clearly reflect the concrete consequences of the violations and their impact on the constitutional rights of the parties or on the image of justice. For these reasons, the decision was annulled and the case remitted for reconsideration, emphasising the need for disciplinary investigative actions to be carried out as thoroughly as possible, in compliance with the right to due process of law.

The judge subject to disciplinary proceedings had the right to be acquainted with the documentation of the proceedings.³⁵⁵ In any event, upon completion of the verification or inspection process, the Minister of Justice or the HCJ Inspectorate was required to invite the judge concerned to submit his claims in writing, which they were obliged to reflect in the final documentation.³⁵⁶

Article 33 of the said law further provided that, at the meeting of the HCJ, the judge against whom disciplinary sanctions were to be examined had to be mandatorily summoned and was entitled to defend himself

354. Decision no. 4 dated 13.10.2014 of the High Court's Joint Chambers.

355. Law no. 8811/2001, Article 32, paragraph 2.

356. Law no. 8811/2001, Article 31, paragraph 7.

or herself also through legal counsel. Notification had to be effected in one of the ways provided for by the Administrative Procedure Code. Failure to appear, without justified reasons, did not prevent the HCJ from examining the case and deciding on the measure.

In relation to this provision, the situation has been debated where the subject under proceedings repeatedly submitted requests for adjournment of the hearing session on health grounds. In this respect, in one case the High Court held as follows:

47. The Joint Chambers of the High Court find unfounded the applicant's claim that, by continuing the meeting in his absence, the HCJ violated the principle of due process of law, on the grounds that he was not given the opportunity to be heard in these proceedings and to exercise his right of defence. It clearly emerges from the repeated adjournments of the meetings that the applicant was given and afforded the opportunity to participate therein, as well as to exercise his right to effective defence. It was the applicant himself who had assured the HCJ that, should he be unable to attend the next meeting, he would allow the examination of the request of the Minister of Justice through representation by his lawyer. The fact that the applicant sent a lawyer to the meeting of the HCJ with a limited power of representation (solely for submitting a request to suspend the examination), and not with a full power of representation, at a time when the latter had full knowledge of the materials of the proceedings and of the request submitted by the Minister of Justice, is considered to mean that: the applicant was aware of the proceedings but did not wish to participate in that meeting (attendance of the applicant at the meeting is not an obligation; the obligation lies solely in notifying him of the meeting), or that he waived his representation for the remainder of the disciplinary proceedings, which were conducted in his absence.

48. The above actions of the applicant did not result in a violation of the principle of due process of law, particularly given that the applicant, by virtue of his professional knowledge, is well aware of the procedural rules governing judicial or 'quasi-judicial' proceedings, the consequences deriving therefrom, and the scope of the parties' rights and obligations. Parties, just as they have rights, also have obligations in judicial or administrative proceedings. It is now well-established practice that parties must avoid unjustified adjournments of proceedings or tactics aimed at creating delays, which implies that they should exercise restraint in submitting requests that lead to the prolongation of the examination of the case and must take all measures to ensure the swift conclusion of the proceedings. It is important to emphasise that, alongside the parties' right 'to participate in an administrative/judicial process in order to defend and be represented', the administrative body and/or the court have the obligation to respect the fundamental principle 'of concluding proceedings within a reasonable time'. Both rights are integral components of due process of

law and must operate in harmony with one another.

49. The claim that the applicant was unable to attend the meeting of the HCJ on that day due to poor health does not in any way infringe the principle of due process of law as conducted by this institution, since, first, no document was filed with the HCJ on that day to substantiate such a fact (the certificate issued by the Durrës Regional Hospital, Emergency Department, dated 03.12.2013, was submitted by the applicant during the proceedings before the Joint Chambers of the High Court); and second, insofar as the meeting of the HCJ had been adjourned several times and the applicant had guaranteed his participation in that meeting either personally or through his representative, by sending the latter, this clearly demonstrates that he was represented to the extent he so wished. He was afforded all opportunities to be represented and to defend himself, rights which he exercised in accordance with his own assessment.

50. Following the manner of appearance chosen by the applicant, it fell within the discretion of the HCJ to decide whether or not to proceed with the meeting, having verified that all legal requirements in respect of the applicant had been complied with. The above is clearly provided for in Law No. 8811, dated 17.05.2001, Article 33, which expressly states: "Disciplinary proceedings before the High Council of Justice shall be conducted as follows: 1. At the meeting of the High Council of Justice, the judge against whom the imposition of disciplinary sanctions is to be examined shall be mandatorily summoned and shall have the right to defend himself/herself also through a lawyer. Notification shall be effected in one of the ways provided for by the Administrative Procedure Code. Failure to appear, without justified reasons, shall not prevent the High Council of Justice from examining the case and deciding on the measure."³⁵⁷

From the above passages, it is understood that the decision of the High Council of Justice to continue the examination of the disciplinary proceedings against the judge, notwithstanding his physical absence from the meeting, was considered lawful. This position was based on the fact that the applicant had been duly notified and had been afforded every opportunity to participate and to be represented, either personally or through a lawyer. His failure to appear without reasonable justification, as well as the absence of documentation substantiating alleged health impediments, could not prevent the competent authority from pursuing the proceedings within reasonable time-limits. The Court emphasised the importance of striking a balance between the party's right to be heard and to defend himself and the obligation of the administrative authority to ensure proceedings that are concluded within a reasonable time. Consequently, the actions of the High Council of Justice were deemed lawful and in compliance with the principles of due process of law.

As regards the conduct of the hearing session, the procedure further

357. Decision no. 4 dated 07.01.2009 of the High Court's Joint Chambers.

provided that, at the outset, the Minister of Justice, or, as the case may be, the Deputy Chairperson, would be heard, presenting to the HCJ the grounds for the disciplinary proceedings. Thereafter, the judge subject to disciplinary proceedings would be heard, and could also be questioned by the members of the HCJ in order to clarify issues requiring further explanation. The final deliberations and the vote on the imposition of disciplinary sanctions proposed by the Minister of Justice were conducted in the absence of the judge concerned.

The 2014 reform determined that the examination of disciplinary proceedings had to be completed within one month from the date of submission of the relevant documentation by the Minister of Justice to the HCJ.³⁵⁸ Moreover, where the HCJ rejected the disciplinary sanction proposed by the Minister of Justice, it could also decide to impose a more lenient disciplinary sanction.³⁵⁹

Regarding this addition, i.e., the requirement that the examination of disciplinary proceedings be completed within one month from the date of submission of the relevant documentation by the Minister of Justice to the HCJ, the nature of this time-limit and the consequences of its expiry became a matter of debate in judicial practice. In this respect, the High Court reasoned as follows: *“As regards the appellant’s claim that the proceedings for the imposition of a new disciplinary sanction should be considered excessively lengthy and, consequently, devoid of legal effect, given that they relate to the period during which the appellant served at the Tirana District Court, based on Law no. 8811 dated 17.05.2001, ‘On the organisation and functioning of the High Council of Justice’, which, pursuant to Article 33 paragraph 2/1 provides that ‘the examination of disciplinary proceedings shall be carried out within one month from the date of submission of the relevant documentation by the Minister of Justice to the High Council of Justice’, the Joint Chambers find that this claim is unfounded. This is because the duration in question resulted from the verification and examination of the numerous claims raised by the appellant, which required a certain period of time to be assessed. Moreover, this claim is unfounded also for the reason that, based on a systematic interpretation of this legal provision, it is not set out in Article 32 of the same law, which in fact governs the rights of the judge subject to disciplinary proceedings. The effects of the time-limit provided for by this provision are of an organisational nature and not of a mandatory character. Thus, the purpose of providing a time-limit for the examination of disciplinary proceedings under this provision is to expedite the examination of the merits of the request for disciplinary proceedings against the judge, without providing for any consequences in the event that this time-limit - being expeditious rather than sanctioning - is exceeded. Accordingly, the*

358. Law no. 101/2014, Article 14.

359. Law no. 101/2014, Article 11.

provision aims to guarantee that the procedure is conducted within a reasonable time."³⁶⁰

The above decision clearly clarified that the one-month time-limit provided for the examination of disciplinary proceedings by the High Council of Justice, following the submission of the relevant documentation by the Minister of Justice, was of an organisational nature and not a preclusive deadline. The High Court emphasised that the purpose of this provision was to ensure that the procedure was conducted within a reasonable time and to avoid unnecessary delays; however, non-compliance with this time-limit did not affect the validity or legitimacy of the disciplinary proceedings. In the specific case, the extension of the examination period resulted from the need to verify and address the numerous claims submitted by the appellant, rendering the duration of the process justified and consistent with the principle of due process of law. Accordingly, the expiry of this time-limit did not entail any legal consequences for the disciplinary proceedings.

As regards appeals against the HCJ decisions, this law - unlike the 1998 law on the judiciary - provided that an appeal against a decision of the High Council of Justice concerning the dismissal of a judge from office, as well as against any other disciplinary sanction, could be lodged by the judge concerned before the High Court within ten days from receipt of notification of the Council's decision.³⁶¹ This provision was challenged by the High Court as constituting an overextension of its jurisdiction as defined by the Constitution of the Republic of Albania, pursuant to which the High Court was competent to examine only appeals against the disciplinary sanction of dismissal from office. In this case, the Constitutional Court reasoned as follows: *"In the case under examination, the Constitutional Court considers that particular importance must be attached to the analysis of the hierarchy of legal norms. The normativist understanding is based on the legal hierarchy and on the supremacy of the constitutional norm over lower-ranking acts, which in constitutional doctrine is known as the principle of the supremacy of the Constitution. The Constitution, as the fundamental law of the state, obliges all public authorities to exercise their powers solely within the framework and on the basis of constitutional norms, which constitutes another fundamental principle, that of functional constitutionality.*

Based on these principles, the activity and functions of all State bodies are grounded in the Constitution. It is both the norm-making activity of the bodies authorised by the Constitution, as well as the nature and content of the laws and sub-legal acts they adopt, that determine the position of those acts within the hierarchy of legal norms. From this derives the requirement and the principle

360. Decision no. 1 dated 05.10.2015 of the High Court's Joint Chambers.

361. Law no. 8811/2001, Article 34, paragraph 1.

according to which lower-ranking legal acts must be consistent with higher-ranking legal acts, both in formal and in substantive terms.

The provisions of the Constitution are applied directly, except in cases where the Constitution provides otherwise. This is a fundamental principle enshrined in Article 4(3) of the Constitution of the Republic of Albania, pursuant to which, where a constitutional rule is expressly provided for, it may neither be set aside nor exceeded, but must be applied directly. The constitutional exception provided for in this provision implies that constitutional norms may also not be applied directly where the Constitution has expressly entrusted the relevant state bodies with the task of adopting laws and other sub-legal acts, for the purpose of regulating relations in various fields and in accordance with the hierarchy of norms.

Thus, the Constitution contains provisions that regulate its application either directly or indirectly, leaving the legislature greater or lesser regulatory discretion, except in cases where the Constitution itself provides otherwise. Viewed from this perspective, it is the Constitution that authorises the legislature, while respecting constitutional concepts and principles, to determine the limits of regulatory discretion through the adoption of legal norms.

In order to resolve the application submitted, the Constitutional Court considers it necessary to focus on the manner in which Article 147(4) and (6) of the Constitution is formulated. Pursuant to paragraph 4 of this Article: "The High Council of Justice decides on the transfer of judges, as well as on their disciplinary liability, in accordance with the law." The wording of this provision falls within those exceptional cases where constitutional norms cannot be applied directly, as it envisages the possibility of regulating the relevant relationship by law. This constitutional provision contains the elements of a referential norm, inasmuch as it delegates to the legislature the regulation of the manner of transfer of judges and their disciplinary liability. By the above provision, the legislature has been granted the authority, through laws, to regulate in detail matters falling solely within these two directions.

By contrast, the wording of Article 147(6) is different, as it shows that the Constitution has not authorised the legislature, but has itself undertaken to regulate both the object of the appeal and the competent body entrusted with its examination. In this way, this constitutional norm presents itself as an exceptional and restrictive provision and, as such, must be interpreted strictly. The Constitution, leaving no room for ambiguity, has provided that only appeals against the disciplinary sanction of dismissal from office imposed by the High Council of Justice are examined by the Joint Chambers of the High Court.

On the basis of the interpretation resulting from this analysis, the Constitutional Court considers that Article 34(1) of Law no. 8811 dated 17.05.2001 "On the organisation and functioning of the High Council of Justice", which provides for the right to appeal to the High Court against any other disciplinary sanction, constitutes an تجاوزت (overstepping) of the content

of the constitutional provision in two respects: first, by extending the scope to other disciplinary sanctions, and second, by exceeding the jurisdiction of the High Court.

The standard accepted by the Constitution for the protection of a judge's status is focused on, and applies to, the disciplinary sanction of dismissal from office, and not to other disciplinary sanctions. Dismissal, as a severe disciplinary sanction, brings a judge's career to an end and therefore directly concerns his constitutional status. The Constitution does not prohibit intervention in the disciplining of judges with regard to aspects related to the exercise of their functions. These considerations explain why the High Council of Justice has been vested, by law, with the authority to institute disciplinary proceedings against judges and to impose disciplinary sanctions upon them. The type and nature of disciplinary sanctions, as well as the procedure for their imposition, fall within the discretion of the legislature, with the sole exception of the measure of dismissal from office, for which the Constitution has provided a specific and distinct regulation.

It is precisely this distinct regulation that is provided for in Article 147(6) of the Constitution, which treats the measure of dismissal in a special manner and affords it enhanced guarantees as compared to all other disciplinary sanctions, by entrusting its review to the Joint Chambers of the High Court. Not without purpose, the Constitution has expressly provided, in paragraph 6 of Article 147, both the right of appeal against the measure of dismissal from office and the body competent to examine such an appeal, separating it from paragraph 4 of the same Article, which leaves the regulation of cases of judges' disciplinary liability to the discretion of the legislature.

At the same time, another aspect of the unconstitutionality of the legal provision under review lies in the conferral of a legal power upon the High Court that exceeds its constitutional jurisdiction. Pursuant to Article 147(6) of the Constitution, a judge has the right to appeal against a dismissal decision to the Joint Chambers of the High Court. The Constitution itself defines the jurisdiction of the High Court. Article 141 of the Constitution provides that this court has original and review jurisdiction and recognises its authority to unify or amend judicial practice.

The Constitutional Court does not consider it necessary to examine an extended constitutional interpretation of the High Court's review jurisdiction under Article 141, insofar as the matter of appeals against the dismissal of judges, as well as the body competent to examine such appeals, is expressly and specifically regulated by the Constitution in another provision.

Furthermore, the Constitution has not left any scope to the legislature to include, under the guise of strengthening the standard of protection of judges, the review of appeals against other disciplinary sanctions within the constitutional jurisdiction of the High Court. Exceeding the standard of protection of judges

cannot serve as an argument to extend the constitutional jurisdiction of that body.

The issue of positive standards is a concept that is generally permitted by the Constitution; however, it cannot have unlimited scope, particularly with regard to public officials. Article 17 of the Constitution, as well as the positions adopted in judicial jurisprudence, recognise the theory of positive standards when it concerns fundamental rights of individuals, but not with respect to senior State officials.

The dismissal of a judge from office constitutes an impeachment-type procedure, which applies to officials who exercise aspects of state sovereignty and, as such, cannot be equated with procedures applicable to ordinary individuals. The right of access to a court is an aspect of the rights of every individual; however, 'this is not an absolute right. It may be subject to lawful limitations.'

Nevertheless, in this respect, the Constitution has gone a step further than the European Convention on Human Rights by accompanying the measure of dismissal of a judge with the guarantee of an appeal before the High Court. Extending this concept to other disciplinary sanctions would be contrary to the Constitution. From this perspective, Article 147(6) of the Constitution, being conceived as a provision of an exceptional nature, cannot be interpreted expansively.

Relying on these arguments, Article 34(1) of the Law "On the organisation and functioning of the High Council of Justice", which extends both the object of judges' appeals to other disciplinary sanctions and the jurisdiction of the High Court, has exceeded the limits set by the Constitution. Since the Court is faced with a legal provision that is not grounded in constitutional principles and regulations, but rather in extra-constitutional overreach, both in form and in substance, the Constitutional Court considers that the principle of the hierarchy of norms has been violated. This constitutes a consolidated position of the Constitutional Court in several analogous cases, in which it has emphasised that 'what the Constitution has not intended to do cannot be done by law; therefore, it cannot be accepted that the Constitution has omitted to address such cases.'

On the basis of all the arguments set out above, the Constitutional Court concludes that the provision under review must be repealed as unconstitutional, insofar as it provides for the right of judges to appeal to the High Court also against other disciplinary sanctions."³⁶²

Rightly so, as emerges from the above reasoning, the Constitutional Court clarified that the provisions of the organic law on the HCJ which allowed judges to appeal to the High Court against disciplinary sanctions other than dismissal from office were contrary to the Constitution of the Republic of Albania. The Constitutional Court emphasised the importance of the hierarchy of legal norms and the prevalence of the Constitution over statutory and sub-statutory acts. By analysing Article 147 of the

362. Decision no. 29 dated 09.11.2005 of the Constitutional Court.

Constitution, the Court concluded that the jurisdiction of the High Court in disciplinary matters was limited exclusively to the examination of appeals against the measure of dismissal from office, and not to all disciplinary sanctions that could be imposed by the High Council of Justice. The Constitutional Court determined that extending the right of appeal to include other disciplinary sanctions constituted an overreach of the High Court's constitutional jurisdiction and, consequently, the provision was partially annulled as unconstitutional.

In these circumstances, the High Court subsequently decided to terminate all cases pending before it that concerned decisions of the HCJ through which disciplinary sanctions other than dismissal from office had been imposed on certain judges.³⁶³

363. See decisions no. 6 dated 08.03.2006; no. 7 dated 08.03.2006; no. 10 dated 08.03.2006 and no. 11 dated 08.03.2006 of the High Court's Joint Chambers.

CHAPTER IV

IV. DISCIPLINARY PROCEEDINGS AFTER THE 2016 JUSTICE REFORM

The justice system in Albania had been the subject of criticism in the reports³⁶⁴ of international organisations for high levels of corruption, promotions not based on objective criteria and meritocracy, low disciplinary accountability, and related concerns.

Against this backdrop, Parliament undertook a profound constitutional, legislative, and structural reform with the aim of improving the justice system. Within the framework of this reform, Law no. 76/2016 was adopted, which almost entirely amended Part Nine (Judicial Power) and Part Ten (Prosecution Service) of the Constitution of the Republic of Albania.

This reform represents one of the deepest and most transformative interventions in the constitutional and institutional history of the country. It brought not only a reorganisation of the judicial structure and the prosecution system, but also introduced a new philosophy regarding the independence, accountability, and integrity of the justice system.

At the institutional level, the constitutional amendments laid the foundations for a new institutional architecture aimed at insulating the judiciary and the prosecution from political influence and significantly strengthening mechanisms of internal and external oversight. One of the key innovations was the establishment of two new constitutional bodies: the High Judicial Council (HJC)³⁶⁵ and the High Prosecutorial Council (HPC).³⁶⁶ These two bodies replaced the High Council of Justice with regard to the judiciary, and the Prosecutor-General with regard to powers related to the status of prosecutors, including appointments, promotions, transfers, evaluations, and disciplinary sanctions.

The reform also brought into being two new structures with special jurisdiction for the fight against corruption and organised crime: the Special Court against Corruption and Organised Crime and³⁶⁷ the

364. Progress Report: Justice reform, a prerequisite to opening the negotiations with the EU. Last accessed on 02.05.2015.

365. Constitution, Articles 147 - 147/ç.

366. Constitution, Articles 149 - 149/ç.

367. Constitution, Article 135, paragraph 2.

Special Prosecution Office, which, together with the National Bureau of Investigation, are widely known as SPAK³⁶⁸ (Special Structure against Corruption and Organised Crime). These bodies are subject to a special regime governing the selection, appointment, and supervision of the work of their judges and prosecutors, including asset verification, integrity checks, and periodic monitoring of bank accounts and communications.

The innovation further extended to the modalities for the selection of senior figures within the system, such as the Prosecutor-General³⁶⁹ and judges of the High Court,³⁷⁰ where procedures were designed on the basis of objective criteria, transparency, and a separation of powers among different institutions, in order to avoid the concentration of power in a single authority.

Another new institution of major importance established as a result of this reform is the High Inspector of Justice (HIJ).³⁷¹ This body is responsible for examining complaints and initiating disciplinary proceedings against judges and prosecutors at all levels, as well as against members of the HJC, the HPC, and the Prosecutor-General. The High Inspector of Justice is also responsible for the institutional inspection of courts and prosecution offices. For the first time, an independent investigative body for the ethics and conduct of judges and prosecutors was created, introducing oversight external to the self-governing structures of the system. Until July 2016, the control of magistrates had been exercised by three separate institutions: the Minister of Justice, the High Council of Justice (for judges), and the Prosecutor-General (for prosecutors). With the establishment of the HIJ, judicial inspection was reorganised into a single, monocratic institution.

Regarding discipline and accountability, the Constitution now provides that judges and prosecutors may be dismissed in cases of serious professional or ethical misconduct that discredits their position, or where they are convicted of having committed a criminal offence.³⁷² This constitutional provision has been regarded by the jurisprudence of the High Judicial Council as self-executing, even in the absence of detailed statutory regulation. Accordingly, since Article 104 of Law no. 96/2016 "*On the status of judges and prosecutors*", which detailed this provision, was repealed by the Constitutional Court,³⁷³ the High Judicial Council argued that the constitutional norm was directly applicable.³⁷⁴ The same

368. Constitution, Article 148/dh.

369. Constitution, Article 148/a.

370. Constitution, Article 136.

371. Constitution, Articles 147/d – 147/ë.

372. Constitution, Articles 140 dhe 148/d.

373. Decision no. 34, dated 10.04.2017 of the Constitutional Court.

374. Decisions no. 529 dated 27.10.2020; no. 92 dated 17.03.2021; no. 223 dated 02.06.2021 and no. 462 dated 11.10.2021 of the High Judicial Council.

position, albeit with reference to Article 148/d of the Constitution, was also adopted by the High Prosecutorial Council.³⁷⁵

Disciplinary sanctions are imposed by the HJC and HPC in accordance with a procedure prescribed by law, which must guarantee the right to due process of law.

The new constitutional provisions also define the role of the Constitutional Court, which, upon a request submitted by the High Inspector of Justice, decides whether or not to dismiss members of the High Judicial Council,³⁷⁶ members of the High Prosecutorial Council, as well as the Prosecutor-General.³⁷⁷ Judges³⁷⁸ and prosecutors³⁷⁹ who are dismissed by their respective Councils have the right to appeal that measure before the Constitutional Court. As will be further addressed below, appeals against other disciplinary sanctions are lodged by judges and prosecutors with the Administrative Court of Appeal and, eventually, with the Administrative Chamber of the High Court.

However, these arrangements are currently suspended, since the transitional provisions stipulate that, until the expiry of its mandate, the constitutional body entrusted with examining all appeals of judges and prosecutors is the Special Appeal Chamber,³⁸⁰ a body established primarily to review appeals lodged by judges, prosecutors, and public commissioners in the context of the transitional re-evaluation process.

1. Inspection of judges and prosecutors

The 2016 constitutional reform marked a departure from previous legal traditions by establishing a new constitutional institution dedicated exclusively to the inspection of judges and prosecutors in Albania. This constitutional body is the High Inspector of Justice. Pursuant to the fundamental law of the State, the High Inspector of Justice is responsible for verifying complaints, conducting ex officio investigations into violations, and initiating disciplinary proceedings against judges and prosecutors of all levels, members of the High Judicial Council, members of the High Prosecutorial Council, and the Prosecutor-General, in accordance with the procedure established by law. The High Inspector of Justice is also responsible for the institutional inspection of courts and prosecution offices. The High Inspector of Justice is elected

375. Decision no. 81 dated 31.03.2021 of the High Prosecutorial Council.

376. Constitution, Article 147/c.

377. Constitution, Article 149/c.

378. Constitution, Article 140, paragraph 4.

379. Constitution, Article 148/d, paragraph 3.

380. Constitution, Article 179, paragraph 7.

by three-fifths of all members of Parliament for a non-renewable nine-year term, from among distinguished jurists with at least fifteen years of professional experience and with high moral and professional integrity. The candidate must not have held political office in public administration or leadership positions in political parties during the ten years preceding the candidacy. The High Inspector of Justice is selected from a list of five candidates shortlisted and ranked on the basis of merit by the Justice Appointments Council, following a transparent and public procedure. If Parliament fails to secure a three-fifths majority for any of the candidates within thirty days from the submission of the list, the candidate ranked first is deemed appointed. The first High Inspector of Justice was elected by the Parliament of Albania by Decision no. 2 dated 20.01.2020.³⁸¹

The Constitution provides for special treatment of this office by establishing that the High Inspector of Justice enjoys the status of a judge of the High Court.³⁸² An integral part of the status of the High Inspector of Justice is the principle of incompatibility, which provides that holding this position is incompatible with any other political or state activity, as well as with any remunerated professional activity, with the exception of teaching, academic, or scientific activities, in accordance with the law.³⁸³

In order to further safeguard the status of the High Inspector of Justice, the Constitution exhaustively enumerates the cases in which his mandate may terminate, namely: (a) reaching retirement age; (b) expiry of the nine-year term of office; (c) resignation; (d) dismissal in accordance with constitutional provisions; (e) verification of conditions of ineligibility or incompatibility in the exercise of the function; (f) verification of the impossibility to perform the duties of office. The establishment of any of these grounds leading to the termination of the mandate of the High Inspector of Justice is declared by a decision of the joint meeting of the High Judicial Council and the High Prosecutorial Council. In cases where the High Inspector of Justice reaches retirement age or where the nine-year mandate expires, he remains in office until a successor is appointed, in order to ensure that the position does not remain vacant in these two circumstances.³⁸⁴

As regards disciplinary proceedings and the possibility of dismissal of the High Inspector of Justice, the Constitution initially lays down the general rule that the High Inspector of Justice bears disciplinary liability in accordance with the law. It further provides that claims relating to disciplinary violations committed by the High Inspector of Justice are

381. Winning candidate received 98 votes.

382. Constitution, Article 147/d

383. Constitution, Article 147/ë.

384. Constitution, Article 147/dh.

investigated by a parliamentary investigative committee, in compliance with his right to due process of law. Where the investigative committee establishes the existence of violations, it proposes to the Constitutional Court the dismissal of the High Inspector of Justice, in accordance with the law.³⁸⁵

385. Further elaborating this constitutional provision, Law no. 115/2016 “*On the governance bodies of the justice system*” as amended, provides that Parliament investigates alleged disciplinary violations committed by the High Inspector of Justice in accordance with the rules and procedures set out in the Law “*On the organisation and functioning of Parliamentary Investigative Committees*” and in the Rules of Procedure of Parliament. The statute of limitations for initiating an investigation into a disciplinary violation committed by the High Inspector of Justice is five years from the moment the violation is completed. Once the investigation has been initiated, the limitation period no longer runs. The limitation period is interrupted if the High Inspector of Justice commits another violation of the same type within that period; in such a case, the limitation period is calculated starting from the moment of completion of the new violation. Where the disciplinary violations also constitute a criminal offence, the statute of limitations applicable to criminal offences under the Criminal Code shall apply, provided that the limitation period set out in the Criminal Code is longer than five years. Disciplinary proceedings are suspended where, in respect of the same facts committed by the same person, criminal, civil, or administrative judicial proceedings have been initiated, until the final resolution of the case. The decision on suspension is not subject to appeal. During the period of suspension, no procedural actions in the disciplinary proceedings may be carried out. Once the ground for suspension ceases to exist, the disciplinary proceedings resume from the procedural stage at which they were suspended. In investigating disciplinary violations of the High Inspector of Justice, Parliament takes into account the facts established by a court decision. A final court decision in favour of the High Inspector of Justice does not constitute an obstacle to the continuation of disciplinary proceedings by Parliament. At the conclusion of the parliamentary investigation, the parliamentary investigative committee shall decide either to discontinue the disciplinary proceedings where the evidence is insufficient to establish a disciplinary violation, where the matter has been the subject of a prior disciplinary proceeding concluded by a final decision, where the claim is time-barred, or where the High Inspector of Justice is no longer in office, or, alternatively, to request the Constitutional Court to dismiss the High Inspector of Justice.

On the basis of these provisions, it clearly follows that, in this case, the initiating subject before the Constitutional Court is an internal body of Parliament (and not Parliament itself), which submits a request to the Constitutional Court. If the Constitutional Court finds the request to be well-founded, it proceeds to dismiss the High Inspector of Justice where he has committed serious professional or ethical violations, which, pursuant to Law no. 115/2016 “*On the governance bodies of the justice system*”, are specified in detail in: (a) serious negligence in the performance of official duties; (b) manifest disregard of the law and of the facts in the performance of official duties, as a result of serious and unjustified negligence; (c) serious negligence in the management of the Office of the Inspector and in the supervision of the activity of inspectors; (ç)

The Constitution also provides for a special status for the inspectors serving within this institution, stipulating that appeals against decisions concerning disciplinary sanctions imposed on them are examined by the Constitutional Court.³⁸⁶

Further regulation of the organisation and functioning of this institution is provided by Law no. 115/2016 *“On the governance bodies of the justice system”*, as amended, and more specifically by Part IV, entitled *“High Inspector of Justice”*, Articles 193 - 216. These provisions define the scope of activity of the High Inspector of Justice, who is the state authority responsible for verifying complaints, investigating disciplinary violations, and initiating proceedings for disciplinary sanctions against judges and prosecutors of all levels, including the highest officeholders, such as members of the High Judicial Council, the High Prosecutorial Council, and the Prosecutor-General.³⁸⁷ The same provisions also set out the modalities through which the High Inspector of Justice may be set into motion, namely: upon a complaint lodged by any person; upon a request by the Minister of Justice, the Prosecutor-General, or members of the High Judicial Council or the High Prosecutorial Council; as well as ex officio, where there are publicly available data or findings arising from institutional inspections.³⁸⁸

One of the cornerstones of the functioning of the High Inspector of Justice is his or her independence, whereby any form of interference - direct or indirect - in investigative or inspection activities is prohibited.³⁸⁹ This independence, as a fundamental concept of the reform, is accompanied by

engagement in an activity which is considered by law to be incompatible with the official function; (d) unlawful disclosure, through serious negligence, of confidential information obtained in the course of exercising the official function; (dh) conduct that seriously discredits the dignity of the institution, such as the undue receipt, directly or indirectly, of gifts, benefits, promises, or preferential treatment of any kind, granted - even through lawful acts by reason of the office or as a consequence of the exercise of the function, as well as other violations of the law, including those committed through negligence, in particular those related to the obligation to declare assets and conflicts of interest.

Another case in which the Constitutional Court decides on dismissal is where the High Inspector of Justice has been convicted, by a final court judgment, of having committed a criminal offence.

The Constitutional Court may suspend the High Inspector of Justice from office where: (a) a personal security measure of “pre-trial detention” or “house arrest” is imposed on him for the commission of a criminal offence; b) he acquires the status of an accused person in respect of a serious intentional criminal offence; c) disciplinary proceedings are initiated, in accordance with the law.

386. Constitution, Article 147/d, paragraph 6.

387. Law no. 115/2016, Article 194, paragraph 1.

388. Law no. 115/2016, Article 194, paragraphs 2 dhe 3.

389. Law no. 115/2016, Article 196.

a carefully designed framework governing the financing of this institution. The High Inspector of Justice is allocated a separate budget, independent from the budgets of other justice institutions, and is authorised to independently defend his or her draft budget before Parliament.³⁹⁰

Further detailing the constitutional provisions concerning the status of the High Inspector of Justice, this law provides that he enjoys the same financial treatment as a judge of the High Court.³⁹¹

In the performance of his or her duties, the High Inspector of Justice is vested with broad powers, which include not only the institutional representation of this body, but also the preparation of annual inspection plans, the issuance of administrative guidelines, the drafting of annual reports to Parliament, and the approval of draft decisions prepared by inspectors. These powers are regulated in a manner intended to ensure effectiveness and accountability within the institution itself, including the possibility of delegating powers in writing.³⁹²

Similarly to the High Inspector of Justice, the law regulates in detail the status and functions of the inspectors of the Office of the High Inspector of Justice. Half of the inspectors must be magistrates, seconded by the High Judicial Council or the High Prosecutorial Council, while the remaining inspectors are selected by the High Inspector of Justice through an open and competitive procedure. Distinct criteria concerning professional experience, integrity, and incompatibility are established for each category.³⁹³ Magistrate inspectors benefit from the same treatment as judges of the Court of Appeal, whereas non-magistrate inspectors enjoy the status of senior civil servants.³⁹⁴

The professional and ethical evaluation of inspectors is carried out by a dedicated body within the Office, designated as the Appointment and Evaluation Commission (AEC), composed of inspectors who meet strict criteria relating to integrity and performance.³⁹⁵ Disciplinary sanctions against inspectors are imposed by a Disciplinary Commission, likewise composed of inspectors who have received positive evaluations.³⁹⁶ In the exercise of their duties, inspectors enjoy full access to the premises and documentation of courts and prosecution offices, as well as the right to obtain any information necessary for ongoing verifications or inspections.³⁹⁷

390. Law no. 115/2016, Article 197.

391. Law no. 115/2016, Article 198.

392. Law no. 115/2026, Article 204.

393. Law no. 115/2016, Article 209.

394. Law no. 115/2016, Article 210.

395. Law no. 115/2016, Article 212.

396. Law no. 115/2016, Article 213.

397. Law no. 115/2016, Article 214.

The law further provides for the functioning of the administration of the Office of the High Inspector of Justice, composed of civil staff under the direction of a Secretary-General,³⁹⁸ and defines responsibilities for the maintenance and use of information technology systems and data, with the aim of ensuring efficient and transparent case management.³⁹⁹

From the foregoing, it is evident that this law establishes a new, detailed, and structured system of control and accountability within the justice system in Albania. The High Inspector of Justice and his or her inspectors constitute an essential structure for the development of a reliable, impartial, and sustainable judicial and prosecutorial system. What stands out in this legislative framework is the combination of independence with effective oversight, professionalism with accountability, and transparency with institutional mechanisms for filtering and sanctioning ethical and legal violations.

2. Disciplinary liability of the members of the High Judicial Council, High Prosecutorial Council and Prosecutor-General

For the purpose of enhancing the effectiveness of the justice reform, ensuring the integrity, professionalism, and accountability of the members of the justice system's governance institutions has become one of the fundamental pillars of this initiative. This has required new constitutional and legislative arrangements which not only restructure justice institutions, but also establish a system of disciplinary accountability for senior justice officials, including members of the High Judicial Council and the High Prosecutorial Council, as well as the General Prosecutor.

The Constitution of the Republic of Albania, as the foundational act of the legal order, has for the first time expressly set out constitutional provisions regulating the disciplinary liability of the members of these Councils and of the General Prosecutor. Article 147/c of the Constitution provides that a member of the High Judicial Council bears disciplinary liability and that his or her dismissal may be decided exclusively by the Constitutional Court where he has committed serious professional or ethical violations, or has been convicted by a final court judgment for the commission of a criminal offence. The Constitution further provides for suspension from office as a precautionary measure in cases where a personal security measure of "pre-trial detention" or "house arrest" has been imposed, where the individual has acquired the status of an accused person for serious intentional crimes, or where disciplinary

398. Law no. 115/2016, Article 215.

399. Law no. 115/2016, Article 216.

proceedings have been initiated.⁴⁰⁰

An identical provision is set out in Article 149/c of the Constitution with regard to the General Prosecutor and the members of the High Prosecutorial Council, reflecting the same regulatory logic governing institutional and individual accountability. This alignment of constitutional provisions demonstrates a deliberate effort to establish a uniform standard of accountability for all those exercising institutional authority within the justice system.

The implementation of this constitutional framework has also been concretised at the statutory level, which regulates the disciplinary procedure applicable to members of the High Judicial Council and the High Prosecutorial Council. The legislation provides that the investigation of disciplinary violations committed by members of the High Judicial Council is conducted by the High Inspector of Justice (HIJ), in accordance with the applicable legal provisions.⁴⁰¹ In this manner, the investigative power of the HIJ extends also to the governing bodies of the judicial system, positioning this institution as a centralised and impartial mechanism for the initiation and conduct of disciplinary proceedings within the justice system.

In the jurisprudence of the Special Appeal Chamber (SAC), it has been considered determinative that disciplinary proceedings against members of the High Judicial Council may be initiated exclusively by the High Inspector of Justice, and that neither the SAC nor any other institution may impose measures against them.⁴⁰²

Upon completion of the investigation, final decision-making lies with the Constitutional Court, which conducts the disciplinary proceedings itself and decides on the suspension or dismissal of the member concerned.⁴⁰³ The same procedure applies to members of the High Prosecutorial Council, pursuant to Article 104 of the relevant law.⁴⁰⁴

As regards the General Prosecutor, the procedure followed is the same as that applicable to other prosecutors, with the sole difference that the request is subsequently submitted to the Constitutional Court rather than to the High Prosecutorial Council.

Another innovation introduced by this reform concerns the regulation of the right to appeal against decisions of the HIJ to archive a complaint or to close an investigation. This power has been vested in the Constitutional Court, thereby positioning it as an institutional guarantor

400. Constitution, Article 147/c.

401. Law no. 115/2016, Article 6

402. Decision no. 3, dated 20.12.2021 of the Preliminary Review Chamber of the Special Appeal Chamber.

403. Law no. 115/2016, Article 6

404. Law no. 115/2016, Article 104.

not only of the lawfulness of disciplinary sanctions, but also of the lawfulness of decisions not to impose sanctions, in order to prevent any deviation from the principles of objectivity and transparency in decision-making.⁴⁰⁵

However, the SAC which currently exercises the powers of the Constitutional Court pursuant to the constitutional transitional provisions, in reviewing a challenge against a decision to archive a complaint concerning a member of the High Judicial Council, has taken the position that: *“The Preliminary Review Panel has ascertained that, on the official website of the High Judicial Council, by decision no. {***} dated 13.12.2021 of the High Judicial Council, the termination of the mandate of the member of the High Judicial Council, Mr. I. T., has been declared. This decision entered into force immediately, and Mr. I. T. has no longer exercised his function as a member of the High Judicial Council as of 13.12.2021.*

In light of the above, the Preliminary Review Panel considers that, in examining the request, it must take into account this new circumstance, established after the registration of the case before the Special Appeal Chamber.

*The applicant submitted to the Special Appeal Chamber a request for the annulment of Decision prot. no. {***} dated 26.05.2021 of the High Inspector of Justice. In that decision, the High Inspector of Justice decided: ‘1. To archive, following the preliminary review, the joined complaints of the complainant, Mr. E. K., registered under prot. no. {***} dated 25.01.2021, and prot. no. {***} dated 12.04.2021, concerning the activity of the member of the High Judicial Council, Mr. I. T.*

The reasoning and operative clause of the decision of the High Inspector of Justice concern the examination and assessment of the applicant’s complaint regarding the activity of Mr. I. T. in his capacity as a member of the High Judicial Council.

*The Preliminary Review Panel finds that, following the termination of the mandate of the member of the High Judicial Council, Mr. I. T., decision prot. no. {***} dated 26.05.2021 of the High Inspector of Justice constitutes an individual administrative act whose legal effects have ceased.*

The applicable legislation (Law no. 96/2016 ‘On the status of judges and prosecutors in the Republic of Albania’ and Law no. 115/2016 ‘On the governance bodies of the justice system’) does not provide for the extension of disciplinary liability to a former member of the High Judicial Council after the termination of his mandate. In the absence of a statutory provision, any complaint concerning the activity of a former member of the High Judicial Council cannot be subject to review by the bodies provided for within the framework of disciplinary jurisdiction.

For the above reasons, given that the decision of the High Inspector of

405. Law no. 115/2016, Articles 6 dhe 104.

Justice has ceased to produce legal effects, the applicant's request, Mr. E. K., for its annulment has become devoid of subject-matter and cannot be examined by the Special Appeal Chamber."⁴⁰⁶

These new institutional and procedural arrangements reflect a fundamental shift in the conceptualisation of accountability within the justice system. Previously, figures such as members of the former High Council of Justice, as well as the General Prosecutor, were subject to a limited form of accountability, often governed by unclear procedures. Under the new framework, with a clear separation between the investigative body (the High Inspector of Justice), the decision-making body (the Constitutional Court), and the laws defining standards of conduct and procedure (the law on the status of judges and prosecutors), new and more clearly articulated rules governing institutional accountability within the justice system have been established.

These arrangements ensure not only the protection of the independence of judges and prosecutors from external interference, but also the establishment of an effective internal oversight mechanism, grounded in the highest standards of ethics and professionalism. This regulatory logic is clearly reflected in the obligation to follow standardised procedures and in the involvement of the highest constitutional instance in disciplinary decision-making, which further strengthens the legitimacy and objectivity of the process.

The changes introduced by this reform constitute a clear expression of the effort to move away from an informal and fragmented model of disciplinary control towards a consolidated institutional model that is transparent and balanced between independence and accountability..

3. Disciplinary inspection under Law no. 96/2016 "On the status of judges and prosecutors"

The constitutional and legal reform of 2016 once again aligned the status of judges and prosecutors, which, with minor differences, is now largely identical. This alignment also extends to their disciplinary liability. Accordingly, the fundamental law of the state contains identical provisions governing the disciplinary responsibility of judges and prosecutors, as it first establishes that both categories are subject to disciplinary liability in accordance with the law. It is the High Inspector of Justice who examines, verifies, and investigates claims of disciplinary violations and, where such violations are established as a result of the

406. Decision no. 5 dated 27.01.2022 of the Preliminary Review Chamber of the Special Appeal Chamber.

investigation, proposes disciplinary sanctions to the High Judicial Council if the magistrate under investigation is a judge, or to the High Prosecutorial Council if the magistrate is a prosecutor. Under the law, there are six such disciplinary sanctions: confidential reprimand, public reprimand, temporary reduction of salary (up to 40 per cent for a period not exceeding one year), demotion from a higher to a lower position, suspension from office for a period ranging from three months to two years, and dismissal from office.⁴⁰⁷

The Councils decide on the measure proposed by the High Inspector of Justice, by accepting it, modifying it, or rejecting it. Judges and prosecutors are dismissed, as the case may be, by the High Judicial Council or the High Prosecutorial Council when they commit serious professional or ethical violations that discredit the position and standing of the judge or prosecutor in the exercise of office, or when they have been convicted by a final court judgment of having committed a criminal offence. A judge or prosecutor may be suspended by the respective Council where a personal security measure of “pre-trial detention” or “house arrest” is imposed in relation to the commission of a criminal offence, where he acquires the status of an accused person for a serious intentional crime, or where disciplinary proceedings are initiated, in accordance with the law.⁴⁰⁸

Pursuant to this objective of the constitutional legislator, the ordinary legislator, in drafting Law no. 96/2016 “*On the status of judges and prosecutors*”, as amended, similarly provided that the disciplinary proceedings and disciplinary liability of judges and prosecutors would be identical.

As regards disciplinary proceedings, this law establishes from the outset several important principles that must be observed by the HIJ and the Councils,⁴⁰⁹ specifically:

a) the right to due process of law, including the rendering of a decision within a reasonable time

This principle constitutes the foundation of any disciplinary process. It requires that every magistrate be informed of the charges brought against him, be afforded the right to effective defence, and that the matter be resolved within a reasonable time. This principle is closely linked to the right to a fair and impartial trial and aims both to protect the magistrate from abuse of public authority and to ensure that disciplinary investigations are not used as instruments of pressure or arbitrary punishment.

407. Law no. 96/2016, Article 105.

408. Constitution, Articles 140 and 148/d.

409. Law no. 96/2016, Article 100.

This provision also underpinned the practice of the High Judicial Council in a case where it decided to provide a copy of the disciplinary case file to one of the subjects under proceedings, who, claiming that he had tendered his resignation (which he asserted had been tacitly accepted)⁴¹⁰ and being in a state of “pre-trial detention” had refused to acquaint himself with the acts of the proceedings. In this respect, the High Judicial Council stated: “14. At the hearing of 20.10.2020, in fulfilment of the proper and balanced application of the principles governing disciplinary proceedings, as provided for in Article 100(1) of the Status Law, as well as in order to guarantee the right to due process of law, the Council proceeded to make available to the representative of the magistrate Sh. M. a copy of all acts submitted to the Council by the Inspector. This procedural step was deemed necessary, given that the magistrate, during the investigation phase, did not appear to have been acquainted with the investigation report or with the investigative file, which, from a formal standpoint, also marked the commencement of disciplinary proceedings against him.”⁴¹¹

The same position was also adopted in cases where the magistrate himself claimed that he had not been acquainted with the acts of the disciplinary proceedings during the period of the administrative investigation conducted by the HIJ.⁴¹²

b) the principle of legality, in the sense that the competent authority is under an obligation to investigate whether there are sufficient grounds to believe that a disciplinary violation has occurred, as well as the principle of “no punishment without law”

The application of this principle requires that no magistrate be subjected to disciplinary proceedings in the absence of a clear and foreseeable legal basis. It places on the investigative authority the obligation to undertake investigations only where there are sufficient indications of a disciplinary violation, thereby avoiding unfounded actions or those motivated by political or subjective considerations. The HIJ has also publicly specified the application of this principle: “*The HIJ preliminarily assesses that the facts (acts or omissions of the magistrate) which may constitute a disciplinary violation under the stipulations of Law no. 96/2016 ‘On the status of judges and prosecutors in the Republic of Albania’, as amended, are not limited to those set out on the basis of public information, but are those analysed by the High Inspector of Justice or assessed through a process of verification or disciplinary investigation. On the basis of public information, a set of facts may be presented which are alleged to have occurred and to constitute a disciplinary violation; however, the High Inspector of Justice may carry out an*

410. Investigation report of the High Inspector of Justice, p. 6.

411. Decision no. 529 dated 27.10.2020 of the High Judicial Council.

412. Decision no. 633 dated 10.12.2020 of the High Judicial Council.

accurate or different legal characterisation of the facts and actions related to the alleged disciplinary violation, without being bound by the qualification that may be claimed in such public information.” In a concrete case, following an ex officio verification initiated on the basis of information made public by the media concerning a serious event that occurred in Tirana on 1 March 2023 - where, as a result of the actions of a citizen who had been released on parole and subsequently caused three fatalities - the HIJ, after carrying out the relevant verifications, archived the case, reasoning as follows: *“The analysis of the documentation administered suggests that, with regard to the legal procedures followed during the investigation, trial, or enforcement phase of the criminal case registered in 2022 in the name of citizen D. H. for the criminal offence of ‘domestic violence’ provided for in Article 130/a of the Criminal Code, as well as the legal procedures followed during the investigation, trial, or enforcement phase of any other possible criminal cases registered in the name of D. H., no acts or omissions by magistrates were identified which would give rise, for the High Inspector of Justice, to a reasonable suspicion justifying the initiation of disciplinary proceedings pursuant to Article 122(1) of Law no. 96/2016 ‘On the status of judges and prosecutors in the Republic of Albania’, as amended.”*⁴¹³

c) the principle of accusation, in the sense that any state institution or official must act ex officio and submit a complaint where there is sufficient evidence to believe that a disciplinary violation has occurred

This principle establishes the standard that any institution entrusted with disciplinary oversight must act with institutional responsibility and initiate proceedings only where convincing evidence of a violation exists. It prohibits unfounded investigations and sets a clear threshold for the initiation of proceedings, thereby preserving the integrity of the process and protecting magistrates from unnecessary public exposure. In a specific instance, the High Inspector of Justice publicly justified the application of this principle in response to public statements made by a representative of the executive branch, stating that: *“The High Inspector of Justice notes with concern that the failure to respect the independence of magistrates in the exercise of their duties, as well as of independent justice institutions, is becoming a practice whenever public calls are made for the attribution of responsibility.”*... *“The Office of the High Inspector of Justice is open to receiving complaints from any institution concerning the conduct of magistrates. Where conduct constituting disciplinary liability is identified, the High Inspector of Justice, insofar as he has acted to date, has proposed the imposition of the necessary disciplinary sanctions in cases where acts or conduct*

413. Press release on the archiving of an ex officio initiated case. <https://ild.al/sq/2023/05/16/njoffim-per-media-3/>

constituting disciplinary violations have been established."⁴¹⁴

ç) principle of equality before the law

This principle affirms that every magistrate, regardless of position, experience, or function exercised, is subject to the same legal and ethical standards. It is fundamental to maintaining public trust in the justice system and to avoiding any perception of inequality or privileged treatment in the handling of violations.

The High Judicial Council has addressed this provision through the lens of the principle of equality of arms, taking the position that: "14.2 On the other hand, the principle of equality before the law implies that anyone who is a party to proceedings must have equal opportunities to present his or her case and that a fair balance must be struck between the parties. The right to participate in proceedings should not be regarded as a merely formal right, whereby parties are guaranteed only physical presence during the process; rather, procedural legislation, and subsequently the adjudicating body during the proceedings, must afford the parties equal opportunities to present arguments and evidence in defence of their interests."⁴¹⁵

The above reasoning of the HCJ, although intended to apply the principle of equality, does not appear to be appropriate in this case, as the Council is in fact referring to the principle of equality of arms, which constitutes one of the elements of the right to due process of law. The principle of equality in disciplinary proceedings should instead be understood as requiring identical outcomes for identical or similar cases.

d) the presumption of innocence

The application of this principle places the burden of proof on the investigative authorities and requires that the magistrate be considered innocent until his or her guilt has been established by clear and compelling evidence. This is a universal principle of criminal law which the legislator has extended to this type of disciplinary procedure in order to safeguard the individual against hasty or one-sided decision-making.

dh) the principle of doubt in favour of the magistrate subject to disciplinary proceedings;

This principle constitutes a logical continuation of the presumption of innocence and provides that, where - after the conclusion of the investigation - reasonable doubt remains as to the magistrate's guilt, such doubt must be interpreted in his or her favour. It represents an additional safeguard that helps preserve the professionalism of the investigation and prevents unjust sanctions.

By way of illustration, reference may be made to a case in which the

414. Press release following the statement of the Minister of Interior. <https://ild.al/sq/2021/06/28/njoftim-per-shtyp/>

415. Decision no. 529, dated 27.10.2020 of the High Judicial Council.

HIJ applied this principle in disciplinary proceedings against magistrate E. K.: *“On the other hand, taking into account the fact that, following the publication in the media of the videos posted on the social network ‘TikTok’ under the account ‘...’, the account on which they were published was subsequently closed; that the magistrate subject to disciplinary investigation denied being the author of their publication; her claim that the videos may have been uploaded by her children; the fact that the videos were published on different dates, 14, 17, and 20 May; and the fact that the account allegedly opened by the children was closed by her - despite these circumstances rendering her statements implausible, nevertheless, in application of the principle that any doubt must be resolved in favour of the magistrate, it is assessed that the violation initially attributed to the magistrate in the disciplinary investigation decision, provided for under paragraph 9(k) of the Code of Judicial Ethics, namely the obligation of self-restraint in the use of media and social networks, remains unproven.”*⁴¹⁶

e) the principle of proportionality;

This principle provides that any disciplinary measure imposed must be proportionate to the gravity and the specific circumstances of the violation. It requires a fair balancing between the interest of the justice system in upholding ethical standards and the need to avoid unjustified harm to the magistrate’s career or professional dignity. The application of this principle excludes sanctions that are disproportionate to the misconduct in question.

ë) the principle of independence and impartiality of disciplinary institutions and respect for judicial independence;

This principle is essential to ensuring the integrity of the procedure. It requires that disciplinary and investigative bodies be free from internal and external influence and exercise their functions objectively. This principle underpins the very essence of the rule of law, according to which justice cannot exist without an impartial decision-making body.

f) the principle of open justice

This principle concerns the transparency of the procedure and the public’s right to be informed of its progress and outcomes. It strengthens public confidence in the justice system and reminds institutions of their duty of accountability. However, it is not absolute and must be balanced against other competing principles.

g) the principle of confidentiality, the right to private life, and the protection of personal data

This principle places limits on the principle of transparency by protecting the magistrate from public exposure where claims are unfounded or have not been proven. It is closely linked to the protection

416. Disciplinary investigation report of the HIJ against magistrate E. K., (2021), p. 13.

of the magistrate's dignity and reputation and requires that any publication or disclosure of information relating to the case be carried out with caution and in accordance with the need to safeguard privacy and personal data.

In balancing open justice and the protection of confidentiality, there exists an obligation to take into account both the preservation of the magistrate's reputation against unfounded claims⁴¹⁷ and the importance of informing the public about substantiated cases of legal violations, with a view to strengthening accountability and public trust in the justice system.⁴¹⁸ This balance is delicate and requires a high degree of institutional sensitivity on the part of the HIJ and the Councils with regard to public opinion dynamics and the protection of individual rights. The HIJ has consistently applied this principle in practice, particularly in its communications with other entities when information is requested by the media, citizens, or institutions. By way of example, in a specific case: *"Regarding the information requested on the magistrate... who serves as a judge at the General Jurisdiction Court..., we inform you that, in the course of administrative proceedings, the High Inspector of Justice attaches particular importance to the public's right to information, in accordance with the requirements of Law no. 119/2014 'On the right to information', as amended. At the same time, it must ensure the protection of the integrity and reputation of the subjects of administrative proceedings, the protection of the lawful interests of third parties, and must take care that, in the management of data or documents, it does not compromise the ongoing functioning and purpose of its activity, in accordance with the requirements of Law no. 96/2016, 'On the status of judges and prosecutors in the Republic of Albania', as amended."*⁴¹⁹

However, the publication of information by the body that had requested the initiation of a disciplinary investigation before the HIJ has not been considered a violation of this principle, as evidenced by the following reasoning: *"12.4 As regards the appellant's claim that the General Prosecutor infringed one of the fundamental principles of the disciplinary process guaranteed by Article 100(1)(g) of Law no. 96/2016 'On the status of judges and Prosecutors in the Republic of Albania', as amended, namely, the principle of confidentiality, the right to private life, and the protection of personal data, through the publication on 21.05.2021 on the official website of the General Prosecution Office of a notice concerning the request addressed to the High Inspector of Justice for the initiation of inspection proceedings against her, for the investigation of individual violations allegedly committed in the exercise of*

417. Law no. 96/2016, Article 100, paragraph 2, letter "a".

418. Law no. 96/2016, Article 100, paragraph 2, letter "b".

419. Extract from the response of the Commission for the Right to Information and Protection of Personal Data.

office, following the identification of acts that could constitute serious procedural delays and violations of mandatory provisions of the Criminal Procedure Code, the Panel considers that such a claim does not affect the factual or legal soundness of the decision of the High Prosecutorial Council under appeal and, consequently, is irrelevant to the Chamber's decision-making."⁴²⁰

Law no. 96/2016 "On the status of judges and prosecutors" as amended, expressly provides in Article 101 for disciplinary violations, by establishing the principal standards for identifying conduct that may qualify as a disciplinary breach and by setting out a range of criteria for assessing the gravity and nature of such liability.⁴²¹

In essence, the provision stipulates that a magistrate may incur disciplinary liability both for intentional acts and for acts committed through negligence, insofar as they constitute a failure to comply with professional or ethical duties. This encompasses not only conduct occurring in the exercise of official functions, but also conduct outside the exercise of office, to the extent that it discredits the magistrate's standing or undermines public trust in the justice institutions. The provision goes further by expressly classifying the failure to comply with the facts and the law in the exercise of functions as a disciplinary violation, particularly where such failure occurs intentionally or as a result of gross negligence, as well as in cases where the magistrate demonstrates manifest professional incompetence.

This provision is designed not only to sanction specific deviations, but also to safeguard the integrity and independence of the justice system as a whole. It reflects the institutional conviction that any conduct capable of undermining public confidence in an independent judiciary warrants examination from a disciplinary perspective, thereby establishing a direct link between the individual ethical conduct of the magistrate and institutional credibility.

420. Decision no. 2 (DJ) dated 24.10.2023 of the Special Appeal Chamber...

421. Law no. 96/2016, Article 101: 1. *A magistrate commits a disciplinary violation, either intentionally or as a result of negligence, where: (a) he performs acts or omissions that constitute a failure to fulfil official duties, or professional or unethical conduct, whether in the exercise of office or outside it, which discredit the position and image of the magistrate or undermine public confidence in the judicial or prosecutorial system; (b) in the exercise of official functions, he fails to adhere to the law or the facts, either intentionally or as a result of gross negligence, or where there is manifest professional incompetence.* 2. *When determining whether an act, omission, or conduct of a magistrate constitutes a disciplinary violation, or is merely related to professional activity, the following shall be taken into account: (a) the degree of negligence; (b) the frequency of the act, omission, or conduct; (c) the experience and position of the magistrate within the system; (c) the damage caused, the potential for damage, or the extent of the consequences that have arisen or may arise from the act or omission; and (d) any circumstance beyond the magistrate's control that may be related to the malfunctioning of the judicial or prosecutorial system.*

However, judicial practice has not regarded as discriminatory the failure to keep a register of internal communications concerning the circulation of correspondence, acts, or investigative materials between the head of the office and the case prosecutors, particularly where such failure occurred due to staff shortages and the temporary transfer of the head of the office.⁴²²

In order to avoid a mechanical and uniform approach to all types of violations, the law, as a continuation of this provision, also sets out a series of criteria that must be taken into account in the course of the disciplinary assessment. These criteria include the degree of negligence, the frequency of the conduct, and the experience and position of the magistrate. With regard to the latter, limited professional experience has been accepted as a mitigating factor justifying a magistrate's delay in submitting acts to the court, even of up to 12 days after the expiry of pre-trial detention time-limits.⁴²³

Other criteria to be taken into consideration relate to the damage caused or likely to be caused by the magistrate's conduct, as well as any factors beyond the magistrate's control that may have influenced the action or omission in question.

Compliance with these criteria situates disciplinary proceedings within a framework of reasonable proportionality and rationality, allowing sanctions to be tailored to the specific circumstances of each case.

In particular, the inclusion of circumstances beyond the magistrate's control as mitigating factors constitutes a progressive element of this regulatory framework, linking personal liability to the structural conditions under which the judicial or prosecutorial system operates. This reflects a broader and more equitable understanding of the institutional context and helps to avoid unjust attribution of blame in situations of a systemic nature. In this regard, case law has recognised as such circumstances an excessively high caseload, the effects of the COVID-19 pandemic, and the impact of the transitional re-evaluation process.⁴²⁴

Overall, Article 101 does not function solely as a punitive mechanism, but rather as an instrument for preserving and strengthening the professional and ethical standards of the magistracy. It strikes a balance between rigor and sensitivity to the realities of the system and serves a dual function: a preventive one, through institutional guidance on proper conduct, and a corrective/punitive one, through mechanisms of accountability. In every investigation report issued by the High Inspector of Justice, the purpose of the disciplinary sanction is expressly

422. Decision no. 31, dated 24.02.2022 of the High Prosecutorial Council.

423. Decision no. 31, dated 24.02.2022 of the High Prosecutorial Council.

424. Decision no. 15, dated 30.01.2025 of the High Prosecutorial Council.

specified, accompanied by the following reasoning: *“The essential purpose of a disciplinary sanction is the protection of the public interest through the acknowledgment of the magistrate’s disciplinary responsibility for the disciplinary violation committed, and the adoption of active measures aimed at educating the magistrate, where such education is possible. At the same time, the disciplinary sanction imposed on the magistrate also fulfils two preventive objectives: (i) special prevention, in the sense of preventing the magistrate from committing further disciplinary violations in the future; and (ii) general prevention, in the sense that other magistrates understand that inappropriate conduct must not be engaged in, as it is punishable by disciplinary sanction.”*

As regards disciplinary violations related to the exercise of judicial or prosecutorial functions, Law No. 96/2016, *“On the status of judges and prosecutors”*, as amended, provides in Article 102 a comprehensive and detailed list of such situations that may arise.⁴²⁵ This provision seeks to

425. Law no. 96/2016, Article 102: 1. *Disciplinary misconducts during the exercise of the function are, in particular, but not limited to the acts, omissions or behaviours of the magistrate, as follows: a) Failure to submit a request for recusal from the proceedings or from the trial of the case, when it is mandatory under the law, if the magistrate is aware or should have been aware of such circumstances; b) Filing a request for recusal from proceeding or trial of the case, if this action is: (i) not based on reasons provided by law; (ii) done aiming at creating unfair benefit for the parties and third parties or aiming at shirking the legal responsibility to review the case or aiming at creating the possibility of assigning the case to another magistrate; (iii) Non-submission of the request immediately after getting aware about the cause; c) Interference or unfair influence on the exercise of the function of another magistrate; c) unjustified or repetitive non- fulfilment of the investigative or judicial functions; d) repeated delays or delays which cause serious consequences or unjustified procrastinations of the actions and/or procedural acts; dh) the action, omission or behaviour of the magistrate, which create unfair benefits or damages to the parties of a trial or investigation procedure, in violation of the law; e) Engagement of other persons in performing the duties assigned by law to the magistrate or delegation of the duties or activities related to the exercise of the function of the magistrate; ë) Repeated and unjustified delay of the start of the hearing or procrastination of the investigations. f) Unjustified absence in duty in accordance with the provisions of this law, for more than 3 working days per year; g) Serious or repeated infringement of legal and sublegal provisions that govern the organization and functioning of the courts or prosecution office; gj) Unjustified failure to implement decisions issued by the Council or refusal to implement the disciplinary sanction imposed against the magistrate; h) Unjustified failure to comply with the obligation to participate in continuous training without justification, under the conditions and criteria set by the Law; i) Failure of the magistrate to notify the chairperson and the Council, as well as the competent authorities under the law, on interferences or other forms of influence by other magistrates, lawyers, political officials, public officials or other subjects; j) Breaching the rules of confidentiality and non-disclosure of information provided for by the legislation into force, for which they are informed due to the function of the magistrate or resulting from an investigation or trial, being in process or completed; k) obstruction of the Council, the High Justice Inspector, or any other public body in the performance of their functions, according to law; l) failure of the chairperson to fulfil the obligations set forth in the law, in particular, the tasks connected to the case management system;*

define the conduct, actions, or omissions that are incompatible with the professional and ethical standards required within the justice system, thereby reinforcing the functional accountability of magistrates.

In essence, the provision sets out an extensive catalogue of violations, serving as clear illustrations of breaches of functional duties. These include conduct that compromises the impartiality and integrity of proceedings, such as the failure to seek recusal where required by law, interference in the work of colleagues, unjustified delays in procedures or court hearings, breaches of confidentiality and of rules governing the dignity and solemnity of proceedings, as well as the abuse of office for improper purposes or personal gain. The significance of this provision lies not only in identifying deviant conduct, but also in reaffirming the role of the magistrate as the holder of a special public responsibility, whereby any deviation in the exercise of office translates into an infringement of justice as a fundamental constitutional value.

Thus, the method of calculating a request for sentence reduction, including the period of pre-trial detention, has been considered an undue benefit. In this case, it was emphasised that the existence of a widespread practice in the application of legal provisions in such a manner does not

ll) disclosure of opinions that are given by the magistrate himself or other magistrates during the process, which have not yet taken the form of an act available for the public; m) making public statements in the media on cases, except communications of the press, of the magistrate within the limits of his office; n) failure to notify the Council for the existence of reasons that constitute a case of termination of the mandate; nj) failure of the chairperson to notify the High Justice Inspector regarding facts in their knowledge that may constitute a disciplinary misconduct of the magistrate; o) failure of the chairperson to notify the Council, regarding the existence of reasonable doubt of cases of incompatibility, restrictions of the function, and in relation to issues for which the law provides the termination of the mandate of the magistrate. p) Violation of the rules on incompatibility or on prevention the conflict of interest, according to the provisions of the legislation in force. 2. Subject to provisions of letter "b", paragraph 1 of Article 101 of this Law, the disciplinary misconducts during the exercise of function as a magistrate are, in particular, but not limited to the action, omission or behaviour of the magistrate, as follows: a) serious or repeated disregard of material and procedural legislation or erroneous implementation of the material and procedural legislation, when established by a higher court; b) apparent, distorted presentation of facts and circumstances in the issued acts; c) issuance of unreasoned acts or acts containing in the reasoning only conclusions on the applicable law without presenting the circumstances of the fact, in all those cases where the law requires the issuance of the act in the reasoned form. ç) Issuance of acts whereby the descriptive and reasoning part provides circumstances that are openly contrary to the ordering part of the act or have no connection to it; d) taking deliberately unreasoned decisions, as a result of a personal interest or malice. dh) Repeated or serious infringement of the rules of solemnity and rules of conduct in relations with the parties, other subjects involved in the process, as well as with the chairperson, other magistrates and court administration staff.

exclude the disciplinary liability of magistrates.⁴²⁶

The provision does not confine itself to an external definition of violations, but delves more deeply into the very nature of judicial decision-making, also encompassing the substantive aspects of judicial acts. These include, inter alia, the failure to comply with the rules on reasoning, the deliberate distortion of facts, an open contradiction between the reasoning part and the operative part of decisions, or the issuance of decisions for improper motives. Such provisions aim not only to safeguard the technical and legal quality of judicial decisions, but also to ensure that every act of a magistrate reflects genuine and transparent justice for the parties and for society at large.

Among the violations expressly provided for is also the situation of serious or repeated non-compliance with procedural and substantive legislation, or the incorrect application of such legislation, as established by a higher court. Case law has clarified that, in such circumstances, the magistrate bears disciplinary responsibility for the manner in which the law has been interpreted and applied, provided that, on the basis of both objective and subjective circumstances, it emerges that his or her actions may have been intentional and in open and flagrant contradiction with the law or with the unifying case law of higher courts. In such cases, the magistrate's "inner conviction"⁴²⁷ cannot be invoked as a justification. This dynamic of inner conviction has also been addressed in an Investigation Report of the HIJ concerning magistrate M. K., where it was stated that: *"...the duties of a magistrate must be exercised with fairness This implies that such duties must be performed according to inner conviction, based on an objective assessment of the proven facts, alongside the correct application of the law in force. Duties must be exercised properly, which entails the requirement of fair, uniform, and consistent resolution of cases brought for adjudication. Likewise, the magistrate must exercise his or her duties with due care, taking measures to avoid errors in the assessment of facts and the application of the law. Under these conditions, it is concluded that the acts/omissions of the magistrate ... have undermined his or her fundamental values and, as a consequence, the trust that he must convey to the public in fulfilling the mission and role of dispensing justice."*⁴²⁸

Included within this framework is also the situation in which a magistrate assumes a quasi-legislative role, by altering or supplementing the content of a legal provision.⁴²⁹ Such conduct has likewise been found in cases of non-compliance with the statutory criteria governing the

426. Decision no. 267 dated 19.07.2022 of the High Judicial Council.

427. Decision no. 208 dated 18.04.2024 of the High Judicial Council.

428. Disciplinary investigation report of the HIJ against magistrate M. K., (2020) p. 26.

429. Decision no. 464 dated 13.10.2021 of the High Judicial Council.

application of the institution of “conditional release,” as provided for in Article 64 of the Criminal Code.⁴³⁰

Similarly, the provision qualifies as disciplinary violations the failure to comply with the obligations of court heads and heads of prosecution offices, such as the failure to notify the relevant Council of situations concerning incompatibility, the expiry of a mandate, or the failure to notify the HIJ of disciplinary violations committed by other magistrates.⁴³¹ This dimension illustrates the heightened institutional responsibility of court heads and heads of prosecution offices, as well as the close link between individual accountability and systemic management.

A particularly significant aspect is the prohibition on publicly disclosing positions expressed during deliberations before they take the form of a final act. This prohibition reflects the need to shield the internal decision-making process from external pressure and to safeguard confidence in the independence of judicial decisions. Likewise, the prohibition of public statements on judicial matters outside the institutional framework serves to avoid perceptions of bias or the political instrumentalization of judicial functions.

Another category of violations concerns ethical conduct in relations with other magistrates, parties, and judicial or prosecutorial administration. Conduct involving repeated unethical behaviour and pressure exerted on judges, statements concerning the filing of criminal complaints against them or auxiliary staff, inappropriate communication in the presence of parties, and demonstrative behaviour revealing a tendency to abuse office for purposes of intimidation or coercion, has been classified as a very serious disciplinary violation.⁴³²

Overall, Article 102 constitutes a central pillar of the disciplinary mechanism, linking the judicial function not only to technical accuracy and compliance with the law, but also to high standards of public conduct, management, and institutional communication. Through this framework, the law seeks not merely to sanction deviations, but also to promote the continuous education of magistrates regarding the weight and nature of the functions they exercise.

The legislator has further provided, in Article 103 of Law no. 96/2016 “*On the status of judges and prosecutors*”, as amended, for disciplinary violations committed by magistrates outside the exercise of their official functions.⁴³³ This provision establishes that conduct occurring in private

430. Decision no. 633 dated 10.12.2020 of the High Judicial Council.

431. Law no. 96/2016, Article 102, paragraph 1, letter “nj”.

432. Decision no. 1 (DJ) dated 20.02.2023 of the Special Appeal Chamber.

433. Law no. 96/2016, Article 103, “Disciplinary misconducts outside of the exercise of the function are in particular but not limited the actions, omissions and behaviours of the magistrate, as follows: a) violation of the rules on incompatibility

life which is contrary to public ethics and undermines the integrity of the magistrate's standing may also constitute a disciplinary violation, insofar as it affects public confidence in the justice system.

Basically, the legislator has provided that the ethical responsibility of a magistrate is not confined solely to the courtroom or the prosecutor's office, but also extends beyond the institutional sphere, reflecting the expectations that society places upon the magistrate as the holder of a high public office. Such conduct includes, *inter alia*, breaches of rules on incompatibility and functional limitations, the use of office for personal gain, engagement in external activities without the approval of the relevant Council, unjustified association with persons involved in criminal activities, or the acceptance of gifts and improper benefits by reason of office.

This provision conveys the idea that a magistrate is not judged solely by the decisions he renders, but also by integrity and personal conduct as a representative of an independent branch of power. Inappropriate behaviour, even in private circumstances, may discredit the magistrate's position and seriously undermine public perception of justice. For these reasons, this regulation strengthens the moral and public accountability of the magistrate as a figure expected to embody the highest standards of civic and institutional conduct. Put simply, a magistrate must behave as such at all times, twenty-four hours a day.

The legislator has also provided for disciplinary violations arising from the commission of a criminal offence, regulated by Article 104 of Law no. 96/2016 "*On the status of judges and prosecutors*", as amended. According to this provision, disciplinary violations resulting from the commission of a criminal offence consist of acts, omissions, or conduct for which the magistrate has been convicted by a final court judgment of a criminal offence and which, by their nature, discredit the position and standing of the magistrate or seriously undermine public confidence

with the function of the magistrate, or due to function constraints, as provided in Articles 6 to 7 of this Law; b) use of the status as magistrate with the aim of achieving benefits for him/herself or for others; c) exercise of remunerated extra office activities, without the Council's preliminary approval; ç) associating with persons who are under criminal investigation or subject to criminal proceedings or with convicted and not rehabilitated persons, when they are not in close relationship with the magistrate by blood or by law, or the establishment of improper business relations with such persons; d) benefiting unfairly, directly or indirectly gifts, favours, promises or preferential treatment of any kind, which are given because of the exercised function or due to the use of his/her position as a magistrate, even in the case when they are formalized through a legal act; dh) other cases of behaviour that discredits the position and the figure of the magistrate and damage the public trust in the judicial or prosecution system, carried out outside of the exercise of duty".

in the judicial or prosecutorial system, on the basis of the facts and circumstances established by the court. Disciplinary violations arising from the commission of a criminal offence also include acts, omissions, or conduct, irrespective of whether the offence has been extinguished, criminal prosecution cannot be initiated or continued, or the magistrate has been rehabilitated or has benefited from pardon or amnesty. The disciplinary sanction of dismissal from office is imposed only where the final conviction has been rendered for the commission of a crime. In such cases, during the disciplinary proceedings, the provisions of this law are applied to the extent necessary.

Case law has established that: *“Where a disciplinary violation is identified with the commission of a crime for which the magistrate has been convicted by a final court judgment, such violation is considered so serious as to render the magistrate unfit or unworthy to continue exercising his or her function, to such an extent that the application of any lighter sanction is deemed by the Constitution and the law themselves to lack any educational effect. In such circumstances, the disciplinary sanction of dismissal from office protects the public interest by removing the magistrate from office and constitutes, for the magistrate, a measure of exclusion from the judicial system of a permanent nature.”*⁴³⁴

For the above violations, the legislator has provided for two categories of disciplinary sanctions: principal measures and ancillary measures. Their determination, however, is subject to a set of criteria that must be observed by the High Inspector of Justice and the respective Councils. More specifically, Article 115 of Law no. 96/2016 *“On the status of judges and prosecutors”*, as amended, plays a fundamental role in the individualisation of the disciplinary sanction that may be imposed on a magistrate, by setting out a series of criteria to be taken into account by the competent Councils.⁴³⁵ This provision requires a comprehensive

434. Decision no. 268 dated 29.05.2024 of the High Judicial Council.

435. Law no. 96/2016, Article 115: *“1. In determining the seriousness of the disciplinary misconduct and the type of disciplinary sanction, the Councils shall consider the following factors: a) Nature and circumstances of the conduct; b) Degree of culpability and the motive; c) Effects of a misconduct; ç) Professional data, disciplinary cases and criminal record of the magistrate; d) Extent of any dangers posed by the misconduct; dh) All the relevant circumstances of the misconduct; e) Circumstances related to the health status of the magistrate; ë) The magistrate’s behaviour following the misconduct and after initiation of investigation; f) The magistrate’s attitude during and in relation to the disciplinary proceedings; and g) Any other matter that the Council considers relevant. 2. In imposing disciplinary sanctions, a Council must: a) Substantiate the principle of proportionality, and b) Take into account any mitigating or aggravating factors. 3. Mitigating circumstances in accordance with paragraph 2 of this Article are: a) The misconduct is a first incident for the magistrate; b) The magistrate acted under the influence of a third person guided by loyalty or fear; c) The magistrate’s misconduct played a minor part taking account of the overall circumstances; ç) The magistrate*

and balanced assessment of the violation, based on factors such as the nature of the conduct, the degree of fault, the motive, the consequences of the conduct, and the magistrate's behaviour before, during, and after the investigation.

An analysis of the case law highlights the importance of this provision as a mechanism to avoid disproportionate sanctions and to justify each disciplinary sanction on the basis of a contextual assessment of where, when, and how the violation occurred. A central element in this framework is the application of the principle of proportionality, expressly provided for in Article 115(2). This principle requires that the sanction imposed must not be more severe than is necessary to address the violation. In cases where the magistrate cooperates, acknowledges responsibility, or mitigates the consequences of the conduct, case law shows a tendency to recognise mitigating circumstances and to impose lighter sanctions—such as a warning or a public reprimand—rather than demotion or dismissal. In essence, Article 115 functions as a compass guiding institution toward a fair and balanced assessment of each case, ensuring that decision-making is not arbitrary but grounded in clear and reasoned criteria. The application of this provision by the HIJ, the HCJ, the HPC and the SAC reinforces the legitimacy of the disciplinary system, promotes accountability, and supports the fundamental objective of protecting the public interest by guaranteeing high standards of integrity and professionalism among magistrates. The High Inspector of Justice consistently reflects this assessment in every investigation report. By way of illustration: *“In analysing the criterion ‘the magistrate’s conduct after the commission of the violation and after the initiation of the investigation’ or ‘the magistrate’s conduct during the investigative/disciplinary proceedings and the stance adopted toward them’, it emerges that the magistrate’s conduct was uncooperative, as evidenced by his refusal to sign the decision expanding the scope of the investigation, despite having been informed of this several times*

cooperated in the investigation and disciplinary proceedings, including where relevant by providing admissions and helpful information for the investigation and disciplinary proceedings; d) The magistrate has repaired damage caused by the misconduct or has actively assisted in obliterating or alleviating the consequences; dh) The time elapsed since the misconduct occurred; e) Any other circumstance existing, that in the opinion of the Council deserving leniency. 4. Aggravating circumstances in accordance with paragraph 2 of this Article are: a) Misconduct being committed more than once, or the misconduct is committed after a disciplinary sanction was imposed for a previous misconduct; b) Misconduct has been continuous; c) The misconduct was committed due to discriminatory motives; ç) The misconduct was committed due to other weak motives; d) Instigating others to a misconduct or unlawful behaviour; dh) The misconduct was committed by way of exploiting weaknesses or vulnerabilities of others; e) Upon the existence of any other circumstance, wherefore the Council deems aggravating the committed misconduct.

by the administrative staff of the prosecutor's office. This conduct constitutes a continuation of the same behaviour that Prosecutor ... has exhibited and continues to exhibit with regard to documentation/acts/materials related to his function as a prosecutor at the Prosecution Office of...⁴³⁶. In contrast, in analysing the criterion 'the magistrate's conduct after the commission of the violation and after the initiation of the investigation' or 'the magistrate's conduct during the investigative/disciplinary proceedings and the stance adopted toward them', it emerges that the magistrate's conduct was cooperative, in that she submitted her written observations within the statutory deadline and also appeared before the HIJ when her questioning was requested."⁴³⁷

Going back to disciplinary sanctions, the principal ones are listed in Article 105 and further detailed in Articles 106 - 111 of Law no. 96/2016 "On the status of judges and prosecutors", as amended.

The first principal disciplinary sanction provided for is the *confidential reprimand*, which is a non-public disciplinary sanction, known only to the magistrate to whom it is imposed, and which attests to the commission of inappropriate conduct by the magistrate. The confidential reprimand is included in the magistrate's personal file and is taken into account in the event of similar future disciplinary violations or for ethical and professional evaluation purposes. It is imposed for minor violations in which the public has not been involved or made aware.⁴³⁸

The second principal disciplinary sanction is the *public reprimand*, which constitutes a form of public disciplinary sanction that publicly declares the commission of inappropriate conduct by the magistrate. The public reprimand is recorded in the magistrate's personal file and is imposed for minor violations that have become public.⁴³⁹

This measure has also been applied in cases where procedural legislation was not complied with, but where, upon analysis of other circumstances, no serious consequences were found, and the magistrate's level of experience was taken into account.⁴⁴⁰ Its application has been decided, for example, where a magistrate drafted a request for trial seeking the discontinuance of criminal proceedings but failed to transmit the acts to the court and failed to notify the victim's heirs of the closure of the investigation, doing so only seven months later. In that case, the HIJ took into account the limited experience of the newly appointed magistrate, the unintentional nature of the conduct, and the magistrate's cooperation during the disciplinary investigation, qualifying the violation as minor; however, given that the case had been widely reported in the visual and

436. Investigation report of the HIJ against magistrate Sh. K., p. 140.

437. Investigation report of the HIJ against magistrate A. Xh., p. 30.

438. Law no. 96/2016, Article 106.

439. Law no. 96/2016, Article 107.

440. Decision no. 464 dated 13.10.2021 of the High Judicial Council.

print media, the imposition of a public reprimand was proposed, which the High Prosecutorial Council found appropriate and upheld. Another instance of the application of this measure concerned a prosecutor who had failed, for a prolonged period, to issue an order for the execution of a court judgment. This violation, however, occurred as a result of the fact that there was only one prosecutor in the enforcement sector, without any supporting staff, such as a secretary or judicial police officers.⁴⁴¹ A further case involved a prosecutor who failed to comply with court decisions ordering the conduct of additional investigations. In that instance, the Council assessed the situation as an isolated case and took into account the prosecutor's workload, the consequences of the COVID-19 pandemic, and the effects of the transitional re-evaluation process.⁴⁴² This measure has also been imposed in cases where procedural legislation was not respected, but where the analysis of other circumstances showed that no serious consequences had arisen, and the magistrate's age was likewise taken into consideration.⁴⁴³

The third principal disciplinary sanction is the *temporary reduction of salary*, pursuant to which the relevant Council may decide to temporarily reduce the magistrate's salary by up to 40 per cent, on the basis of the criteria set out in Article 115 of Law no. 96/2016 "*On the status of judges and prosecutors*", as amended, for a period not exceeding one year. Alternatively, the competent Council may also impose a fine in an amount equivalent to the temporary salary reduction, having regard to the seriousness of the case and all the circumstances thereof. The temporary reduction of salary is imposed in three specific situations, namely: (a) where the magistrate has previously been subject to a confidential reprimand or a public reprimand for prior disciplinary violations; (b) where lighter disciplinary sanctions are inappropriate in view of the circumstances of the disciplinary violation; (c) where the circumstances of the violation do not amount to a very serious disciplinary breach and the imposition of a more severe disciplinary sanction would not be appropriate.⁴⁴⁴

It appears that this measure has been imposed, *inter alia*, in a case where a head of a prosecution office removed cases from the on-call prosecutor and used unethical language towards her.⁴⁴⁵ In 11 cases, the HIJ proposed the imposition of this measure before both Councils; however, in several instances, a lighter measure than that requested by the HIJ was ultimately imposed.

The fourth principal disciplinary sanction is *demotion*, which may

441. Decision no. 228 dated 29.10.2024 of the High Prosecutorial Council.

442. Decision no. 15 dated 30.01.2025 of the High Prosecutorial Council.

443. Decision no. 464 dated 13.10.2021 of the High Judicial Council.

444. Law no. 96/2016, Article 108.

445. Decision no. 65 dated 10.04.2025 of the High Prosecutorial Council.

take the form of transferring a magistrate from a higher court to a lower court, or from a position within the Special Court for the adjudication of criminal offences of corruption and organised crime or within the Special Prosecution Office, to a court of general jurisdiction or to another prosecution office. This disciplinary sanction is imposed where the violation committed by the magistrate is serious, or where the magistrate displays conduct indicating that his or her abilities are not suitable for a higher court or a specialised court, while the violation does not render the magistrate unfit to continue exercising the function of a magistrate. In the event of demotion, the magistrate receives the salary corresponding to the downgraded position.⁴⁴⁶

The fifth principal disciplinary sanction is *suspension from office*, pursuant to which the magistrate is suspended from duty, with the right to receive the minimum salary, for a period ranging from three months to two years. This measure is imposed only in two situations: first, where the violation committed by the magistrate is very serious; or second, where the Council considers that, although the nature and circumstances of the violation do not render the magistrate unfit or unworthy to exercise the function, the seriousness of the violation and the damage caused to the magistrate's image require that the magistrate be suspended for a specified period.⁴⁴⁷

This measure appears to have been applied through a joint agreement acknowledging the disciplinary violation, which consisted of irregular conduct, following which the imposition of the measure of *suspension from office*, with the right to receive the minimum salary, for a period of six months" was agreed upon and subsequently confirmed.⁴⁴⁸ Another case concerned situations in which judicial practices established by the Court of Appeal of the jurisdiction to which the court belonged - where the judge exercised his functions at the time the decision was rendered - were considered. The disciplinary assessment focused on the non-systematic application by the magistrate of those practices, in breach of the law, materialised solely through the issuance of the judicial decision that was the subject of the disciplinary proceedings, as well as on the factual consequences produced by that decision, particularly with regard to the sentence imposed on the convicted person and the impact of that decision on the type of benefits that could accrue to the convicted person in the future. Ultimately, a suspension from office for a period of three months was imposed.⁴⁴⁹ In several other cases, one magistrate

446. Law no. 96/2016, Article 109.

447. Law no. 96/2016, Article 110.

448. Decision no. 6 dated 17.01.2022 of the High Judicial Council.

449. Decision no. 267 dated 19.07.2022 of the High Judicial Council.

was sanctioned with suspension from office for three months, two other magistrates were sanctioned with suspension for six months, while the HIJ proposed, in two separate disciplinary proceedings, two suspensions from office for a period of two years against the same magistrate. The proceedings concerning that magistrate were subsequently terminated by the HJC following his dismissal from office by the SAC.

The sixth principal disciplinary sanction, and the most severe one, is *dismissal from office*. This sanction is imposed where, first, the disciplinary breach is assessed as very serious, and where the competent Council finds that the nature and circumstances of the breach render the magistrate unfit or unworthy to continue exercising his or her functions. This may occur, in particular, where the magistrate has been convicted by a final court decision of a criminal offence, where there is serious and manifest professional incapacity, or where the conduct - committed at least with gross negligence - openly violates the fundamental values of the judicial and prosecutorial system. The legislator has also provided for a specific aggravating circumstance applicable to magistrates serving in the Special Court for the trial of corruption and organised crime offences or in the Special Prosecution Office. Under this provision, where such a magistrate discloses sensitive information, whether through gross negligence or intent, or commits another serious disciplinary breach, the applicable disciplinary sanction is dismissal from office.⁴⁵⁰

This measure has been applied by the High Judicial Council, following proposals contained in the Investigation Reports of the HIJ, in cases where a judge had been convicted by a final court decision,⁴⁵¹ as well as in cases involving failure to comply with the legal conditions governing conditional release of convicted persons.⁴⁵² As regards the High Prosecutorial Council, it has likewise applied this sanction, as proposed by the High Inspector of Justice, in cases involving breaches of the rules governing the examination of requests for conditional release and the failure to lodge appeals in such cases⁴⁵³, where the magistrate demonstrated negligence, omissions, unjustified delays, and the leaving of numerous proceedings without handling or final resolution,⁴⁵⁴ as well as in cases where the magistrate had been convicted by a final court decision of a criminal offence.⁴⁵⁵

As noted above, alongside the principal disciplinary sanctions, the legislator has also provided for supplementary disciplinary sanctions in

450. Law no. 96/2016, Article 111.

451. Decisions no. 529 dated 27.10.2020; no. 223 dated 02.06.2021; no. 462 dated 11.10.2021; no. 180 dated 09.04.2024 and no. 268 dated 29.05.2024 of the High Judicial Council.

452. Decisions no. 663 dated 10.12.2020 and no. 92 dated 17.03.2021 of the High Judicial Council.

453. Decision no. 81 dated 31.03.2022 of the High Prosecutorial Council.

454. Decision no. 20 dated 31.01.2022 of the High Prosecutorial Council.

455. Decision no. 31 dated 30.01.2023 and no. 284 dated 17.07.2023 of the High Prosecutorial Council.

Articles 112 - 114 of Law no. 96/2016 “*On the status of judges and prosecutors*”, as amended. These sanctions constitute an important auxiliary instrument for the High Judicial Council and the High Prosecutorial Council, aimed not merely at punishment, but at correction and the proper functioning of the judicial and prosecutorial systems. Unlike the principal disciplinary sanctions, which pursue the proportional sanctioning of improper conduct, supplementary measures are closely linked to the need for professional and organisational improvement, in the interest of safeguarding public trust and the quality of justice services.⁴⁵⁶ Up to the time of completion of this study, it appears that there has been only one case in which a supplementary disciplinary sanction has been imposed by the High Prosecutorial Council, following a proposal submitted by the High Inspector of Justice. In that case, the Council reasoned as follows: “293. *Regarding the provisions of Article 112(2) and Article 114 of Law no. 96/2016 ‘On the status of judges and prosecutors’, as amended, the Council*

456. Pursuant to Article 112, the law preserves the possibility that, in conjunction with less severe disciplinary sanctions (such as a warning, reprimand, demotion, etc.), additional corrective measures may also be imposed. Two such sanctions expressly provided for are the mandatory participation in professional training programmes and removal from the position of court head.

The first supplementary measure is regulated in detail under Article 113 and is intended to intervene through the professional training of the magistrate where the breach is not sufficiently serious to justify dismissal or suspension, but nonetheless reveals significant deficiencies in knowledge, professional attitude, or the application of judicial practice. In such cases, the relevant Council determines the content and duration of the training programme, with the aim of ensuring that the improper conduct is corrected through education rather than merely through punitive measures.

This measure does not necessarily imply unfitness to serve as a magistrate, but rather reflects the assessment that the continuation of managerial functions is either no longer possible or no longer justified, due to mismanagement, inappropriate conduct in leadership roles, or failure to uphold the moral and institutional standards required of a head of office.

The second supplementary measure, provided for under Article 114, grants the Councils the authority, where the violations are linked to the exercise of managerial functions, to remove the magistrate from the managerial position and reassign him to the ordinary position of judge or prosecutor. This measure does not necessarily imply unfitness to serve as a magistrate, but rather reflects the assessment that the continuation of managerial functions is either no longer possible or no longer justified, due to mismanagement, inappropriate conduct in leadership roles, or failure to uphold the moral and institutional standards required of a head of office. In relation to this latter sanction, the High Prosecutorial Council applied it in a specific case in which it held that: “292. *Supplementary measures do not constitute an end in themselves; rather, they intervene where the violation directly affects the manner in which specialised or particularly important functions are exercised, such as the function of heading a prosecutorial body. In this context, removal from the position of head is a measure that does not affect the magistrate’s status as such, but determines that he may no longer continue to exercise managerial functions, due to the failure to meet the required standards*”.

is entitled to decide on the removal from office of a head of prosecution where, following an analysis of the circumstances of the case, it is established that the conduct or omission of the magistrate has undermined the level of trust that a managerial position must enjoy within the body of prosecutors, other institutional bodies, and public opinion. The measure in question is distinctive in nature, as it seeks to preserve the independence, impartiality, efficiency, and the high moral and professional standards required for the leadership of a prosecutorial body.

294. Removal from the position of head does not constitute an ordinary sanction, but rather an intervention aimed at protecting the integrity of the institution. It is imposed in cases where, although dismissal from the office of magistrate is not necessary, the continuation of that magistrate in a managerial position would be incompatible with the expectations that society and the justice system place upon senior judicial office-holders."

295. In the specific case of magistrate K. Ll., based on the information collected during the disciplinary investigation and the analysis of the evidence, it emerges that his conduct, in his capacity as Head of the Saranda Prosecution Office, failed to meet the expectations inherent in a managerial function. In particular, the manner in which on-call duties and the allocation of cases were managed, his institutional relations with the body of prosecutors, as well as the differentiated and non-standard treatment of the prosecutor who lodged the complaint, revealed a lack of due care, objectivity, and leadership founded on equality and respect for institutional obligations.

296. The Council considers that these behaviours do not merely constitute individual shortcomings, but rather reflect a breach of the standards of institutional leadership, resulting in the erosion of the indispensable trust that must exist between a head of office and the body of prosecutors under his authority.

297. In this context, the Council finds that not only the imposition of a principal disciplinary sanction is justified, but also the application of the supplementary measure of removal from the position of head, as a mechanism to restore standards of institutional leadership and to ensure that the direction of a prosecutorial body is exercised by individuals who demonstrate integrity, impartiality, and marked organisational abilities.

298. For these reasons, and in accordance with Article 114 of Law no. 96/2016, the supplementary disciplinary sanction of removal from the position of head is deemed justified, proportionate, and consistent with the nature of the violations established in the present case.

299. The Council reiterates that this position represents the highest figure at the local or specialised level of the prosecutorial body and has a direct impact on public confidence in the justice system. The Head of the Prosecution Office is not merely a manager of the institution he leads, but a representative figure who bears responsibility for the organisation, efficiency, and transparency

of the prosecution office; who is responsible for safeguarding ethical and legal standards, both within the institution and in relations with third parties; and who is subject to continuous scrutiny by the media and the public.

300. Certain forms of conduct that lead to an erosion of public trust include:

- Interference in the allocation of cases, through circumvention of the random assignment system or the selective designation of prosecutors;*
- Interference in prosecutors' decision-making in specific cases, particularly in matters of high public sensitivity;*
- Unequal or denigrating treatment of prosecutors, which generates internal conflicts and exposes a lack of impartiality;*
- Unethical public statements that undermine the integrity of the institution, etc.*

301. If a head of office exhibits any of the above-mentioned conduct or carries out actions that run counter to professional integrity and the standards of conduct that he is required to uphold both within and outside the prosecution office he represents, the damage caused to the image of the prosecution service is serious and public trust in justice is undermined.

302. The High Prosecutorial Council observes that the conflict between the head of office and magistrate B. S. has already taken on broader dimensions, as it has become known to judicial police officers, the prosecution administration, the Sarandë police commissariat, the Gjirokastra Prosecution Office and Court, the HIJ and the HPC. It is therefore not a momentary conflict that was resolved immediately, but one that has persisted over time and has involved multiple actors. For this reason, the High Prosecutorial Council considers that the proposal of the ILD to impose the supplementary disciplinary sanction of "removal from the position of head", provided for under Article 112(2)(b) of Law no. 96/2016 "On the status of judges and prosecutors", as amended, is well-founded, since the existence of two disciplinary sanctions in force and the conflictual situations with Magistrate B. S. during the period 2023–2024 are incompatible with the position of Head of the Prosecution Office."⁴⁵⁷

From the above reasoning, it is clear that the High Prosecutorial Council adopted the legal position that the supplementary disciplinary sanction of removal from the position of head is not an ordinary punishment, but a necessary intervention to protect the integrity of the institution in cases where the conduct of a magistrate in a managerial role undermines the standards of impartiality, objectivity, and internal and public trust in the leadership function. In the present case, the manner of institutional management, the strained relations, and the repeated exclusionary and unethical conduct towards a magistrate and the prosecutorial staff constituted a serious deviation from the standards required of a head of office and justified the imposition of this measure.

457. Decision no. 65 dated 10.04.2025 of the High Prosecutorial Council.

According to the Council, this measure was proportionate and justified, aimed at restoring proper leadership standards and safeguarding public confidence in an independent and professional justice system.

In essence, these supplementary measures serve to preserve the balance between the need for integrity and the need for the continuous development of the justice system. They provide the possibility of graduated and proportionate intervention, without resorting immediately to severe and exclusionary sanctions, thus embracing a modern disciplinary philosophy that goes beyond punishment - one that prioritises improvement, capacity-building, and sustainable institutional leadership. This approach also reflects the legislator's aim to promote quality and self-regulation within the justice system, as a fundamental basis for public trust and the professionalism of magistrates.

3.1 Disciplinary investigation

In Chapter II of this Part, the legislator regulated the investigative procedure in Articles 117 - 137 of Law no. 96/2016 "*On the status of judges and prosecutors*". For such a procedure to be initiated, the law recognises two modalities which trigger into motion the HIJ: first, through the submission of a complaint; and second, ex officio, on the initiative of the High Inspector of Justice.

Regarding the first modality, Article 119 of this law provides, as a general rule, that the High Inspector of Justice examines complaints submitted by any natural or legal person. In its case law, the High Prosecutorial Council has been required to address a claim raised by a magistrate subject to disciplinary proceedings, who argued that the magistrate who had lodged the complaint could not be considered a "natural person" and, consequently, that the HIJ should not have been put into motion. Rejecting this claim, the Council reasoned that the expression "any natural person", used in Article 119(1) of Law no. 96/2016, also encompasses magistrates themselves. This is because a magistrate, as an individual endowed with legal personality, is simultaneously a natural person and, as such, enjoys the right to lodge a complaint, particularly where he is directly affected in the exercise of functions or rights. The law does not establish any restriction on the category of natural persons entitled to submit complaints to the HIJ, and excluding magistrates would therefore amount to an arbitrary interpretation, unsupported by the wording of the provision. Moreover, in cases where information transmitted by a magistrate serves as an indication for the initiation of an investigation, what is relevant is the substance of the information, rather

than the formal status of the complainant.⁴⁵⁸

The law expressly provides for an obligation incumbent upon certain public authorities to submit complaints to the High Inspector of Justice when there are credible indications that a magistrate has committed a disciplinary breach. These authorities include the Minister of Justice, a single member of the High Judicial Council or of the High Prosecutorial Council, as well as the head of a court or the head of a prosecution office. This provision does not leave the submission of a complaint to the discretion of these actors, but rather establishes a legal duty to act.⁴⁵⁹

These subjects may submit their complaints in person, by regular mail, by electronic mail, or by fax.⁴⁶⁰ The law further requires that the complaint contain evidence and sources of information relating to the alleged facts and circumstances.⁴⁶¹ Accordingly, complaints must be serious in content and supported by evidence. In order to facilitate the submission of complaints, the law obliges the High Inspector of Justice to publish a standard complaint form on the official website of the institution.⁴⁶² The HIJ has further facilitated this, enabling submission of complaints online, through the institution's official website.⁴⁶³

A complaint submitted in written form, must include: (a) the personal details and address of the complainant, as well as whether the complainant requests confidentiality of his or her identity; (b) a description of the factual circumstances alleged to have occurred; (c) the name and surname of the magistrate, and the court or prosecution office where the magistrate exercised his or her functions at the time the alleged breach occurred; (d) an indication as to whether the alleged breach occurred within five years prior to the submission of the complaint.⁴⁶⁴

458. Decision no. 65 dated 10.04.2025 of the High Prosecutorial Council.

459. Law no. 96/2016, Article 119, paragraph 2.

460. Law no. 96/2016, Article 119, paragraph 5.

461. Law no. 96/2016, Article 119, paragraph 7.

462. Law no. 96/2016, Article 119, paragraph 8.

463. On the official website of the HIJ, under the section "Complaint Form," the information is periodically updated with concrete, illustrative guidance for complainants regarding the legal conditions for the admissibility of a complaint, its procedural course, archiving, appeal mechanisms, and, where applicable, its progression to investigation and disciplinary proceedings. This information is accompanied by a graphical illustration of the entire procedural path followed by a complaint once it is submitted to the HIJ. The website also provides a standard complaint form, together with detailed instructions for its completion, as well as a sample completed form for guidance purposes. In addition, it specifies four alternative methods for submitting a complaint to the High Inspector of Justice: electronically via mobile phone or computer; by e-mail; by regular mail; or by physical submission at the institution's premises. The complainant is free to choose the method of submission he prefers.

464. Law no. 96/2016, Article 120, paragraph 2.

In practice, situations have arisen in which a complaint was submitted by a public authority (the Minister of Justice) that also specified the disciplinary sanction which, in the complainant's view, should be imposed. This possibility is not provided for by law and was raised as a form of influence over both the HIJ and the HJC. However, this claim was deemed unfounded by the Special Appeal Chamber, which held that this fact alone cannot be regarded as interference with the activity of constitutional bodies, unless accompanied by additional evidence demonstrating a real influence over these institutions. The mere indication of the type of disciplinary sanction sought does not render the complaint invalid, since it remains within the discretion of the High Inspector of Justice to determine which disciplinary sanction to propose, and within the power of the relevant Council to decide which measure to impose in the final instance.⁴⁶⁵

The High Inspector of Justice is obliged to examine complaints, with the exception of anonymous complaints. The complainant has the right to request that his or her identity remain confidential. The High Inspector of Justice must acknowledge receipt of the complaint within five days of its submission. Likewise, the High Inspector of Justice must notify the complainant, within five days of the relevant decision, of any decision to archive the complaint, initiate an investigation, expand or amend the scope of the investigation, or close the investigation. The complainant has the right to appeal decisions on archiving and on the closure of the investigation.⁴⁶⁶

The withdrawal of a complaint by the complainant does not result in the archiving of the complaint where the High Inspector of Justice considers that the claims disclose sufficient grounds to proceed with an investigation *ex officio*, nor does it lead to the termination of an investigation that has already been initiated.⁴⁶⁷

The initiation of such procedure is, in the first place, subject to the existence of statutory limitation periods. This institution, enshrined in Article 117 of Law no. 96/2016 "On the Status of judges and prosecutors" as amended, constitutes an important element of legal certainty and of protection against unlimited disciplinary prosecution over time for magistrates in respect of potentially sanctionable conduct. In this regard, jurisprudence has held that: "14.6.1 ... *The Panel considers that the statute of limitations, as a legal institution resulting in the loss of the right to pursue disciplinary proceedings against a magistrate, is provided for as one of the admissibility criteria for a complaint examined by the High Inspector of Justice*

465. Decision no. 3, dated 07.12.2022 of the Special Appeal Chamber.

466. Law no. 96/2016, Article 119, paragraph 4.

467. Law no. 96/2016, Article 119, paragraph 6.

under Article 120 of Law no. 96/2016 and is directly linked to the statute of limitations of disciplinary proceedings provided for in Article 117(1) of the same law."⁴⁶⁸ Basically, the statute of limitations aims to ensure stability in the magistrate's relationship with his or her office and to prevent the erosion of legal certainty, by allowing disciplinary proceedings to be pursued only within a reasonable period of time from the commission of the alleged violation.

Article 117 regulates this institution in detail, providing that any disciplinary violation is time-barred after five years from the moment it was committed. This constitutes the general rule, which excludes the verification or investigation of alleged violations after the expiry of that period. Consequently, the High Inspector of Justice is not authorised to act on a complaint or information brought to his attention where the alleged violation has already become time-barred. The legislature has clearly stipulated that the limitation period runs from the moment the violation is committed, regardless of when it is discovered or becomes the subject of institutional review.

However, the legal provision also establishes exceptions to this general rule. The first concerns the extension of the limitation period in cases where, within the initial five-year period, the magistrate commits another disciplinary violation of the same nature. In such cases, the limitation period is extended by one additional year, with the aim of safeguarding the integrity of the investigative process and preventing the evasion of responsibility through the repetition of similar conduct within a short timeframe.

The purpose of this provision appears to be the disciplining of situations where the alleged violation is continuous or repetitive in nature. It is precisely in order to address such conduct in its entirety that the law allows for a one-year extension of the limitation period. At the same time, disciplinary bodies cannot claim that, because the alleged violation is continuous, the limitation period has not begun to run. On the contrary, the wording of the provision indicates that, for the same type of conduct, even if repeated and continuous over time, the starting point of the limitation period must be considered the moment when the first alleged violation occurred, and that this period may be extended only by one additional year, beyond the general five-year limitation period.

The second exception concerns cases in which the disciplinary violation simultaneously constitutes a criminal offence, in which case the legal provision seeks to align the limitation period applicable to administrative and disciplinary proceedings with the statute of limitations for criminal prosecution. More specifically, the rule provides that where

468. Decision no. 1 (DJ) dated 20.02.2023 of the Special Appeal Chamber.

the Criminal Code establishes limitation periods longer than five years, the longer criminal limitation period shall apply. Thus, if the criminal offence is time-barred in less than five years, the five-year limitation period provided for under Law no. 96/2016 *“On the status of judges and prosecutors”* as amended, shall apply. Conversely, if the limitation period under the Criminal Code exceeds five years, that longer period shall also apply to the administrative and disciplinary proceedings. The purpose of this exception is to ensure that violations of heightened gravity and of a criminal nature do not remain unsanctioned solely due to a formal statutory time-limitation.

This issue has also been addressed in the jurisprudence of the HJC, which has held as follows: *“13.1.1 According to the provisions of Article 117 of the Status Law, a disciplinary violation becomes time-barred within five years. Notwithstanding this provision, where the disciplinary violation also constitutes a criminal offence, the limitation periods shall be calculated in accordance with the provisions of the Criminal Code, where that Code provides for limitation periods longer than five years. Based on the data contained in the investigative file and the investigation report, it resulted that the alleged disciplinary violation simultaneously constituted a criminal offence under Article 319/ç of the Criminal Code, which provides for a term of imprisonment from three to ten years. Taking into account the date of initiation of the disciplinary investigation and the limitation period applicable to the alleged disciplinary violation, which is ten years pursuant to Article 66(1) of the Criminal Code, it was established that the ex officio initiation of the disciplinary investigation by the Inspector occurred within the applicable limitation period.”*⁴⁶⁹

In conclusion, the purpose of the statute-of-limitations provisions in disciplinary law is to ensure a fair balance between the need to sanction inappropriate conduct by magistrates and the need to respect their right to legal certainty, by limiting disciplinary liability in time. The law establishes a clear and general five-year limitation period, which, in specific circumstances, may be extended by one year or replaced by the criminal statute of limitations in cases where the violation also has a criminal character. This interconnected mechanism serves as a guarantee of legality in disciplinary investigations and contributes to maintaining trust in disciplinary processes.

With the aim of ensuring that investigative proceedings are conducted within reasonable time-limits, the legislature, through Article 118 of Law no. 96/2016 *“On the status of judges and prosecutors”* as amended, has established a number of time-limits binding on the High Inspector of

469. Decision no. 529 dated 27.10.2020 of the High Judicial Council. See decisions no. 199/2 dated 12.05.2021, no. 223 dated 02.06.2021 and no. 462 dated 11.10.2021 of the High Judicial Council.

Justice. These time-limits constitute an essential element of the formal and substantive safeguards of disciplinary proceedings against magistrates, by setting temporal boundaries within which the High Inspector of Justice, as a rule, must exercise his powers in relation to the examination of complaints and the conduct of disciplinary investigations. The purpose of these deadlines is to guarantee the development of a regular, foreseeable procedure free from unjustified delays, in the interest of safeguarding both the rights of the magistrate under investigation and the public interest in an efficient and accountable justice system.

Unlike the above-cited Article 117 which regulates the substantive limitation periods for disciplinary prosecution, i.e. the objective temporal bar to pursuing a specific past conduct, Article 118 governs the formal time-limits of the disciplinary administrative procedure. These are internal procedural deadlines that limit the time available to the HIJ to act at each stage of the process, following the receipt of information or a complaint.

More specifically, this provision sets out four distinct time-limits, the first of which is the “three-month time-limit for the preliminary examination of the complaint.” This period begins to run from the moment the complaint is received by the HIJ and, as a rule, within this time frame the Inspector must decide whether to archive the complaint or to initiate an investigation into the alleged disciplinary breach. This deadline is intended to prevent undue delays in the examination of submitted complaints and to safeguard the complainant’s right to receive a timely response.

However, the exceeding of this time-limit has not been considered problematic by the jurisprudence, which, in responding to objections raised, has held as follows: *“First, in light of the principle of ex officio investigation pursuant to Article 77 of Law no. 44/2015, the HIJ enjoys discretion to determine what is necessary to be examined for the purposes of assessing the facts and circumstances subject to disciplinary investigation and for resolving the case. With reference to the dates of the complaints for which the disciplinary investigation was initiated, strict compliance with the three-month time-limit would have excluded from examination the complaint registered on 08.03.2021, with the possible consequence of duplicating procedures that the HIJ would otherwise have had to undertake, thereby negatively affecting the efficiency and effectiveness of the administrative disciplinary proceedings.*

Second, Article 109(b) of Law no. 44/2015 does not distinguish between mandatory procedural provisions, providing instead that, in principle, all procedural rules have equal importance. The failure to comply with the three-month procedural time-limit set by law for archiving the complaint or initiating

*disciplinary proceedings did not result in any deterioration of the magistrate's legal position and, consequently, did not infringe his or her lawful rights, nor did it affect the substantive outcome of the procedure. No appeal was lodged against this decision, and during the hearing no claim was made regarding any resulting prejudice. Moreover, the Panel notes that the administrative procedure followed its normal course and was concluded with a decision of the HIJ within a period shorter than the time-limit prescribed by law. Law no. 96/2016, Article 138(4), provides that: 'The Council examines all factors relevant to the case and, within the meaning of this provision, the loss of a statutory deadline due to objective reasons and without consequences for the party or for the conduct of the proceedings is not relevant, as compared to the fact that the disciplinary investigation was concluded within a period shorter than the statutory one.'*⁴⁷⁰

As emerges from this reasoning, it may be concluded that the three-month time-limit provided for in Article 118(1) of Law no. 96/2016 "On the status of judges and prosecutors" as amended, is of an organisational and indicative nature rather than a sanctioning one. It serves as a benchmark for the conduct of an efficient procedure within a reasonable time, without entailing the invalidity of the act or affecting the legality of the investigation in the event of non-compliance. Provided that no concrete prejudice has been caused to the magistrate's position and the procedure has followed its regular course, the failure to observe this time-limit does not constitute a breach capable of undermining the lawfulness of the disciplinary process.

The next time-limit provided for by the legal provision is the "six-month time-limit for the completion of the investigation." Following the decision to initiate disciplinary proceedings, the HIJ is required, within six months, to adopt either a decision to close the investigation or to finalise the investigation report and submit it to the competent Council (HJC or HPC). This time-limit is calculated from the date on which the decision to initiate the disciplinary investigation is taken, and not from the date of submission of the complaint nor from the moment when the alleged disciplinary breach was committed.

With regard to compliance with this time-limit, the case law has reasoned as follows:

*"12.4.1. As regards this claim, the Chamber notes that, by decision no. {***} (DJ) dated 16.07.2020, the High Inspector of Justice decided to initiate disciplinary proceedings against magistrate B.M., setting a four-month time-limit for the conduct of the disciplinary investigation and the drafting of the report. By decision no. {***} (DJ) dated 11.11.2020, following a request by the inspector in charge of the case, the High Inspector of Justice decided to extend the duration of the disciplinary investigation by a further two months, a decision*

470. Decision no. 1 (DJ) dated 20.02.2023 of the Special Appeal Chamber.

which was notified to magistrate B.M. and his legal representatives by letter no. {***} (DJ) dated 11.11.2020. The Chamber notes that the decision extending the disciplinary investigation is supported by Article 92 of the Administrative Procedure Code, which does not provide for any exception with regard to the extension of time-limits for administrative investigations, particularly since Article 92 of the Administrative Procedure Code forms part of the chapter governing the conclusion of administrative proceedings, a chapter which does not distinguish between proceedings initiated *ex officio* and those initiated upon request.

In conclusion, it appears that the HIJ complied with the six-month time-limit for the disciplinary investigation provided for in Article 118 of Law no. 96/2016 'On the status of judges and prosecutors in the Republic of Albania'. Moreover, the extension of the investigation did not entail any adverse consequence for the magistrate concerned; on the contrary, it afforded him additional time to prepare his defence before the competent bodies in the framework of the disciplinary proceedings.⁴⁷¹

On the basis of this decision, it follows that the six-month time-limit for the completion of the disciplinary investigation is flexible, allowing the investigation to be structured into shorter periods and extended within the overall six-month limit, provided that this is done through a reasoned decision and in compliance with Article 92 of the Administrative Procedure Code. Failure to strictly observe this time-limit does not result in the nullity of the proceedings, particularly where no adverse consequences have arisen for the magistrate and the procedure has been conducted fairly and effectively.

The legislator has deliberately avoided an overly rigid approach and has allowed for an additional *three-month extension*. This extension may be granted only in exceptional cases and for duly justified reasons, such as the complexity of the case, the extension or modification of the subject-matter of the investigation, or the illness or inability of the magistrate to participate in the proceedings. This extension is discretionary, but strictly limited and must be duly reasoned, and in any event may not exceed a maximum period of three months.

The legislator has also provided for the reopening of the investigation after the expiry of procedural time-limits as a mechanism for pursuing alleged disciplinary violations committed by a magistrate. Although the governing principle is that the procedure must be concluded within the time-limits set out above, the law permits the reopening of the investigation only where new evidence emerges that justifies the exercise of this power, provided that the limitation periods prescribed under Article 117 of Law no. 96/2016 "On the status of judges and prosecutors",

471. Decision no. 1 (DJ) dated 30.05.2022 of the Special Appeal Chamber.

as amended, have not elapsed. This interconnection between procedural time-limits (Article 118) and substantive limitation periods (Article 117) establishes a dual system of safeguards, whereby it is not sufficient that the actions of the HIJ fall within the procedural timeframe for conducting the investigation, but it must also be ensured that the alleged violation has not become time-barred in an objective sense under disciplinary or criminal law.

Moreover, Article 118 grants the magistrate a specific remedy in cases where the HIJ fails to comply with the procedural time-limits referred to above, by allowing the magistrate to lodge an appeal with the competent Council. This provision enhances the accountability of the HIJ and safeguards the magistrate against unduly prolonged or indeterminate proceedings. In such cases, the respective Council may issue directions by setting binding deadlines within which the HIJ must carry out its actions, or may even order the closure of the investigation.

In conclusion, the procedural time-limits established for the HIJ do not constitute mere technical requirements, but rather procedural guarantees aimed at maintaining a fair balance between the effectiveness of disciplinary investigations and the magistrate's rights of defence. While Article 117 sets the temporal limits of disciplinary liability (limitation periods), Article 118 governs the manner and duration within which such liability may be pursued in practice by the disciplinary investigative authority. These harmonised provisions are essential to upholding the rule of law in the field of magistrates' disciplinary accountability.

In light of the above, a complaint shall be deemed admissible where: (a) it is submitted in the prescribed form, in accordance with the legal requirements; (b) it refers to facts that occurred within the limitation period applicable to disciplinary investigations; (c) it does not contain abusive elements, is not manifestly unfounded, and is not repetitive, having been submitted by the same complainant; (ç) it concerns conduct of a magistrate who was in office at the time the alleged violation occurred; (d) it relates to conduct of the magistrate that was classified as a disciplinary violation under the law in force at the time of the alleged conduct; (dh) it concerns conduct which, if proven, would constitute a disciplinary violation as provided for by law.⁴⁷²

The High Inspector of Justice initially examines whether the complaint is admissible, in accordance with the requirements and criteria outlined above. Following this preliminary assessment, the HIJ proceeds with verification and may decide in one of three ways: first, to archive the complaint, where it fails to meet one or more of the above-mentioned

472. Law no. 96/2016, Article 120, paragraph 1.

criteria;⁴⁷³ second, to verify the complaint; or third, to initiate disciplinary investigation proceedings. Where a decision is taken to archive the complaint, the reasoned decision is notified to both the complainant and the magistrate within the time-limit provided for in Article 119(4) of this Law. The complainant has the right to appeal this decision before the competent Council within one week from the date of receipt of the reasoned decision.⁴⁷⁴

The second option available to the HIJ is to verify the complaint.⁴⁷⁵ This course of action applies where the High Inspector of Justice finds that the complaint lacks sufficiently clear information and therefore seeks to determine whether adequate factual grounds exist to justify the initiation of an investigation. For this purpose, the HIJ may request the complainant to submit additional documents or to provide clarifications regarding the manner and circumstances in which the alleged violation occurred. The High Inspector of Justice may also obtain any other relevant information from the competent Council, court, or prosecution office. Following these actions, if the HIJ determines that there are insufficient facts to justify the initiation of an investigation, the complaint shall be archived. The reasoned decision to archive the complaint is notified to the complainant and to the magistrate against whom the complaint was submitted. The complainant has the right to appeal this decision before the competent Council within one week from receipt of the notification of the reasoned decision.⁴⁷⁶

The third possibility is the initiation of a disciplinary investigation.⁴⁷⁷ The High Inspector of Justice initiates a disciplinary investigation where there are reasonable grounds to suspect that a disciplinary violation may have been committed, based on the facts and evidence collected which justify the opening of the investigation. Practice of the High Inspectorate of Justice shows that where the alleged violation relates to cases pending before a court or a prosecution office, the investigation must be conducted in such a manner as not to interfere with the magistrate's independence in adjudicating or investigating those cases, nor to be perceived as undue interference. In such circumstances, the High Inspector of Justice suspends the investigation; however, where the alleged violation concerns facts that are unrelated to those to be decided in the criminal, civil, or administrative proceedings, the disciplinary investigation may continue.⁴⁷⁸

473. Law no. 96/2016, Article 121, paragraphs 1 dhe 2, letter "a".

474. Law no. 96/2016, Article 121, paragraph 3.

475. Law no. 96/2016, Article 121, paragraph 2, letter "b".

476. Law no. 96/2016, Article 122.

477. Law no. 96/2016, Article 121, paragraph 2, letter "c".

478. Law no. 96/2016, Article 130.

The reasoned decision to initiate the investigation is notified to the complainant, the magistrate, and the respective Council, and must contain at least: (a) the names of the inspectors assigned to the investigation; (b) the subject matter of the investigation, indicating the alleged violation; (c) a description of the alleged factual circumstances; (c) the evidence collected; (d) the relevant time period covered by the investigation; (dh) a statement of the magistrate's rights in connection with the disciplinary investigation, as well as the right of both the magistrate and the complainant to submit written observations and supporting documents within three weeks from receipt of the decision.

In this context, jurisprudence has emphasised that the magistrate must take an **active role** by submitting requests and substantiating which evidence should and may be collected by the HIJ.⁴⁷⁹ Where the alleged violation concerns **repeated conduct or actions**, the subject matter of the investigation shall include the magistrate's conduct in other cases relating to the same situation within the time period specified in the decision initiating the investigation, in order to verify whether such conduct has occurred repeatedly.⁴⁸⁰

Another possibility for initiating a disciplinary investigation is *ex officio*, on the initiative of the High Inspector of Justice. In such cases, the investigation is initiated on the basis of essential factual information derived from reliable sources, giving rise to reasonable suspicion that a violation may have been committed. Information obtained from the media or from anonymous sources may serve as *indicia* for initiating an *ex officio* investigation, provided that the admissibility criteria applicable to

479. Decision no. 2 (DJ) dated 24.10.2023 of the Special Appeal Chamber: 12.1.2

*In light of the foregoing, the Panel finds that the magistrate's claim concerning the failure of the HIJ's to collect evidence ex officio during the disciplinary investigation is not supported by the facts, given that two of the five orders to which this claim refers were included in the disciplinary investigation file and were also available to the HPC for the purposes of its decision-making in the context of the disciplinary proceedings initiated against the magistrate. As regards the remaining three orders, which were submitted for the first time before the Chamber together with the appeal lodged against the HPC's decision no. 20 (DJ) dated 31.01.2023, it was not established that these documents had been requested to be admitted as evidence, nor that their admission as evidence had been refused by either the HIJ or the HPC. Under these circumstances, and taking into account also the fact that the notification act issued by the High Inspector of Justice in relation to his decision prot. no. {***} (DJ) dated 28.08.2021 'On the initiation of disciplinary proceedings against magistrate B.Z., prosecutor at [...]', complied with the legal requirements set out in Article 123(3)(dh) of Law no. 96/2016, as amended, by duly informing Magistrate B.Z. of her rights throughout this procedure, including the right to submit written observations and supporting documents. Accordingly, the Panel found her allegation concerning the failure of the High Inspectorate of Justice to collect evidence ex officio during the disciplinary investigation to be unfounded in fact.*

480. Law no. 96/2016, Article 123.

complaints submitted by the various subjects, as outlined above, are met. The High Inspector of Justice decides, by means of a reasoned decision, to initiate the investigation on his or her own initiative, setting out the verifiable factual circumstances and issuing the corresponding decision containing the elements specified above.⁴⁸¹

This right to initiate disciplinary investigations ex officio has also been acknowledged by case law, which has taken the position that:

“12.3 Regarding the magistrate’s claim that this investigation should not have been initiated, on the grounds that substantive law restricts the commencement of such proceedings because the conduct under review does not constitute an infringement under substantive Law no. 96/2016, the Chamber finds that the magistrate’s claim is unfounded. This is because the initiation of the investigative procedure carried out by the HIJ is expressly provided for in Article 124 of Law no. 96/2016, which stipulates that the High Inspector of Justice initiates an investigation on his or her own initiative, on the basis of essential factual data derived from reliable sources, giving rise to a reasonable suspicion that a disciplinary breach may have been committed. Information obtained from the media or from anonymous complainants may serve as indicia for the initiation of an ex officio investigation, provided that the criteria set out in Article 120(1)(b), (ç), (d) and (dh) are met. Consequently, the High Inspector of Justice possessed full power and a proper legal basis to initiate disciplinary proceedings against the complainant B.M.”⁴⁸²

Although this was not initially provided for under Law no. 96/2016 “*On the status of judges and prosecutors*”, as amended, the previous legislation on judicial organisation had envisaged the possibility of verifying assets within the framework of disciplinary proceedings, as noted above. For this reason, the 2020 reform introduced Article 124/1, entitled “*Verification of Assets and Integrity*”.

Pursuant to this provision, within one week from the decision to initiate an investigation, whether following a complaint or ex officio, the High Inspector of Justice requests information from the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest, the prosecution service, the State Police, tax and customs authorities, the financial intelligence unit, the National Bureau of Investigation, state intelligence services, any disciplinary body that has exercised oversight over the magistrate’s employment relations, as well as any other institution competent to verify assets and integrity in relation to any other alleged disciplinary breach. The High Inspector of Justice may also

481. Law no. 96/2016, Article 124.

482. Decision no. 1 (DJ) dated 30.05.2022 of the Special Appeal Chamber.

request additional information from these institutions, as well as from any other public institution or private entity. Every public institution or private entity is required to comply with the High Inspector of Justice's requests for information, documentation, or other materials relating to an investigation within the reasonable statutory time-limit specified by the High Inspector of Justice in the request, except in cases expressly limited by law. Where, as a result of the verification of assets and integrity, reasonable suspicions arise regarding the commission of another disciplinary breach - other than cases where the conduct constitutes a criminal offence - the High Inspector of Justice shall decide to expand or amend the scope of the investigation.⁴⁸³ These provisions make it clear that the verification of assets and integrity may only be carried out after a decision has been taken to initiate disciplinary proceedings. Where the findings disclose elements indicative of a criminal offence, the High Inspector of Justice is obliged to file a criminal report. Where the findings instead indicate additional disciplinary breaches, the HIJ shall expand or modify the subject matter of the disciplinary investigation accordingly.

In the above-mentioned case, as well as in other cases that do not concern the verification of assets and integrity during a disciplinary investigation, where reasonable suspicions arise that an additional disciplinary breach may have occurred, the High Inspector of Justice adopts a decision to expand or amend the scope of the investigation. In such cases, the High Inspector of Justice acts *ex officio*, and the decision taken should, insofar as possible, contain the same data and elements required in cases where the initiation of a disciplinary investigation is decided, as discussed above.⁴⁸⁴

During this procedure, the High Inspector of Justice orders the suspension of the disciplinary investigation when a criminal investigation or a criminal, administrative, or civil judicial proceeding is pending, provided that two cumulative conditions are met: *first*, that one of the parties to those proceedings is the magistrate who is subject to the disciplinary investigation; and *second*, that the alleged disciplinary breach concerns the same facts on which a decision is to be rendered in those proceedings.⁴⁸⁵ These two conditions cannot be treated as alternative, as either of them, taken separately, does not fully satisfy the aim of suspension. The legislator's intent is not merely to suspend a disciplinary investigation due to the existence of another judicial proceeding in which the magistrate is a party, but rather to avoid the risk of premature decision-making or of divergent and conflicting decisions

483. Law no. 96/2016, Article 124/1.

484. Law no. 96/2016, Article 125.

485. Law no. 96/2016, Article 126, paragraph 1.

based on the same factual grounds.

If the first condition alone (namely, that the magistrate is a party to another proceeding) were sufficient, the institute of suspension could be misused as a formal instrument to delay or obstruct the disciplinary investigation, even where the facts under review bear no connection to that proceeding. In contrast, if it were sufficient that the alleged breach relates to the same circumstances, but the magistrate is not a party to that proceeding, the essential element of the risk of procedural conflict or of impairment of the right of defence, central to the rationale for suspension, would be absent.

Only the concurrence of both criteria (namely, that the magistrate is a party to another proceeding and that such proceeding is based on the same factual grounds as the disciplinary investigation) justifies the temporary suspension of the investigation. Only under this configuration does there arise a real risk of violating the principle of *non bis in idem* (not being tried twice for the same matter), of conflicts between different decisions, or of one proceeding improperly influencing the substance or outcome of another.

Consequently, the statutory wording requiring the simultaneous fulfilment of both conditions is not incidental, but rather establishes a dual safeguarding standard, which presupposes the cumulative existence of both criteria and serves to strike a balance between the magistrate's right to defence and the public interest in the prompt and effective pursuit of disciplinary accountability.

The law provides that the investigation shall be suspended until a final decision is rendered by the competent authority. The complainant, the magistrate, the court, the prosecution office, and each of the Councils shall be notified in writing of the decision to suspend the investigation. The court, the competent prosecution office, or other relevant institutions shall, without delay, transmit to the High Inspector of Justice any decision adopted during the investigation or the related proceedings. The High Inspector of Justice shall rely solely on the facts upon which the final court decision is based. A final court decision rendered in favour of the magistrate does not preclude the High Inspector of Justice from continuing the investigation in order to determine the magistrate's disciplinary liability. In order to prevent suspension from being used as a means to evade disciplinary responsibility, the law provides that the suspension of the investigation interrupts the running of limitation periods applicable to the High Inspector of Justice. This decision falls within the discretion of the High Inspector of Justice and is not subject to appeal.⁴⁸⁶

At any stage of the investigative procedure, the High Inspector

486. Law no. 96/2016, Article 126, paragraphs 2 - 6.

of Justice shall inform the relevant Council of facts giving rise to the mandatory suspension of the magistrate, or may itself request the suspension of the magistrate, in accordance with the legal provisions addressed below.⁴⁸⁷

During the disciplinary investigation phase, the High Inspector of Justice shall join proceedings where it establishes that complaints or initiated investigations concern the same facts or the same magistrate.⁴⁸⁸ Jurisprudence has clarified that this provision covers all situations, including those in which different facts relating to the same magistrate arise through different channels, such as complaints or thematic inspections. More specifically, the Special Appeal Chamber has held that: *“32.4 Under these circumstances, the Chamber considers that, notwithstanding the fact that the disciplinary investigation may have been initiated following a complaint lodged by one of the subjects entitled to do so, the legislation does not preclude the High Inspector of Justice, on the basis of further information and evidence, from joining the proceedings ex officio. Article 128 of Law no. 96/2016 provides that ‘the High Inspector of Justice shall join proceedings where it establishes that complaints or initiated investigations concern the same facts or the same magistrate’. The use of information deriving not only from the complaint of the Minister of Justice, but also from the results of a thematic inspection, does not constitute a violation of any right of the magistrate, provided that, with respect to all findings, the magistrate is subject to a disciplinary investigation during which he enjoys all the rights provided by law. The Chamber considers that the law leaves to the discretion of the High Inspector of Justice the basis upon which to initiate a disciplinary investigation, with the aim of enabling that body to exercise all its statutory powers in order to ensure the identification and disciplinary prosecution of magistrates who are found to have violated the law in the course of their activity.”*⁴⁸⁹

During the disciplinary investigation, the magistrate is a party to the proceedings from the moment the investigation is initiated and is guaranteed access to the investigation file, to the extent compatible with the subject matter of the investigation. The High Inspector of Justice may request from the magistrate any information, documents, or evidence necessary for the investigation. The High Inspector of Justice shall notify the magistrate concerned or his or her representative of the decision to archive the complaint, to initiate the investigation, to extend or amend its scope, or to close the investigation, within five days of the adoption of the relevant decision.⁴⁹⁰

487. Law no. 96/2016, Article 127.

488. Law no. 96/2016, Article 128.

489. Decision no. 3 (DJ), dated 07.12.2022 of the Special Appeal Chamber.

490. Law no. 96/2016, Article 129.

These rights of the magistrate and the corresponding obligations incumbent upon the HIJ during the disciplinary investigation also extend to the obligation to make available the investigation report in cases where a request for disciplinary proceedings is submitted. Jurisprudence has reasoned in this respect that:

“34.3 In this regard, the Chamber draws attention to the fact that, although the provisions of Law no. 96/2016 do not expressly provide for an obligation on the part of the HIJ to place the Investigation Report at the disposal of the magistrate, Article 129(1) of the law guarantees the magistrate, as a party to the proceedings, access to the investigation file from the moment the investigation is initiated and to the extent compatible with its subject matter. Acquaintance/access of the magistrate with the investigation file - namely, with all evidence and documentation upon which the initiation of the investigation and the proposal of a disciplinary sanction are based- is essential for ensuring equality of arms in a due process of law. The Investigation Report itself, notwithstanding the absence of an explicit statutory obligation to notify it, forms part of the investigation documentation and, as the final act of the investigation, must be made available to the magistrate, who is entitled to be informed of the results of the investigation in order to ensure an effective defence in the subsequent disciplinary proceedings.”⁴⁹¹

As regards the conduct of the disciplinary investigation, the legislation grants the High Inspector of Justice the authority to summon witnesses and to collect data, documents, and evidence from courts, prosecution offices, public institutions, private entities, witnesses and/or the magistrate, as well as to undertake any actions necessary to investigate and determine whether the alleged disciplinary violation has occurred. Where the alleged violation relates to cases pending before a court or a prosecution office, the investigation must be conducted in such a manner as not to infringe upon the magistrate’s independence in adjudicating or investigating those cases, nor be perceived as undue interference. In such circumstances, the High Inspector of Justice shall suspend the investigation; however, where the alleged violation concerns facts that are unrelated to those to be determined in the criminal investigation or in criminal, civil, or administrative proceedings, the disciplinary investigation shall continue.⁴⁹²

The law also regulates the manner in which the magistrate, witnesses, or other persons of relevance to the investigation are examined. In such cases, the High Inspector of Justice shall notify them of the time and place of the examination and is required to ensure that the questioning hearing is audio-recorded, in compliance with the following requirements: (a)

491. Decision no. 3 (DJ), dated 07.12.2022 of the Special Appeal Chamber

492. Law no. 96/2016, Article 130.

the person being questioned must be informed that the hearing will be audio-recorded; (b) the recording must include the personal details of the persons summoned for questioning; (c) in the event that the questioning hearing is interrupted before the completion of the audio recording, the time and reason for the interruption, as well as the time of resumption of the hearing, shall be recorded; (ç) upon completion of the hearing, the person questioned may clarify any statements made and add any further information deemed relevant. At the request of the person questioned, the recording shall be played back, and any corrections or explanations relating to previous statements shall be recorded. At the end of the questioning hearing, the time of its conclusion shall be recorded. The audio recording of the questioning hearing shall be summarised in minutes and may also be transcribed. The magistrate shall sign the minutes of the questioning and the transcription of the audio recording, where such transcription has been prepared. The audio recording, its transcription (if available), and the minutes of the questioning hearing shall form part of the case file.⁴⁹³

Regarding the collection of evidence held by other institutions, the law provides that any public body, natural person, or legal entity shall comply with the requests of the High Inspector of Justice for information, documents, or other evidence related to the investigation, within the reasonable time-limits specified by the Inspector in the relevant request, except where disclosure is restricted by law. Where, during the disciplinary investigation of a magistrate, there are essential and specific needs to obtain documents, information, telephone records, or other evidence protected by confidentiality safeguards or personal data protection rules, the High Inspector of Justice may request the Special Court for the adjudication of criminal offences of corruption and organised crime to issue an order for the disclosure of the requested information relating to the magistrate. The request must set out the existence of reasonable suspicion that the magistrate has committed the violation, as well as the necessity of the requested information for determining whether the violation has occurred. The High Inspector of Justice shall reiterate the request where the person or entity to whom it is addressed fails to comply within the prescribed time-limit, and, in the case of a legal entity, shall also notify its head. If the person or entity concerned fails to comply with the reiterated request within the specified time-limit, the High Inspector of Justice may impose a fine of up to 100,000 Lekë and shall notify the competent disciplinary authority. The order imposing the fine constitutes an enforceable title, and its enforcement shall be carried out by the bailiff service. An appeal against the decision imposing the fine may be lodged

493. Law no. 96/2016, Article 131.

with the competent Council within 24 hours of notification.⁴⁹⁴ As may be observed, this time-limit is particularly short, but it is intended to ensure the effectiveness and expediency of the investigative procedure conducted by the HIJ.

Furthermore, the legislation in force provides that every investigative action carried out by the HIJ must be duly and thoroughly documented in formal minutes, which shall contain identifiable details such as the name of the inspector, the date of the action, the subject matter and object of the action, the participants, a description of the action undertaken, and the relevant signatures.⁴⁹⁵ Upon completion of the investigation, the HIJ shall prepare the Investigation Report, which must include not only a summary of the investigative actions carried out and the statements obtained, but also a legal analysis of the facts, an assessment of the evidence, and a reasoned proposal either for the closure of the case or for the initiation of disciplinary proceedings, including the determination of the appropriate disciplinary sanction.⁴⁹⁶

The legislation also regulates the formal closure of the investigation in cases where the allegations are not founded, or the evidence collected does not support the initiation of disciplinary proceedings. The law specifies the concrete circumstances in which an investigation must be closed, such as the absence of sufficient evidence, the fact that the matter has already been adjudicated, the expiry of the limitation period, or where the magistrate has lost his or her status or has deceased.⁴⁹⁷ The decision of the HIJ to close the investigation must be reasoned and notified to the parties concerned, including the magistrate, the complainant, and the competent Council, and must expressly indicate the complainant's right to lodge an appeal within one week.⁴⁹⁸

The law also provides for a specific rule in cases where a magistrate retires, requiring the preparation of a final informative report. This report must contain a summary of the allegations of disciplinary misconduct, the evidence collected, and the conclusions reached; however, no disciplinary proceedings are pursued.⁴⁹⁹ Finally, facts that do not rise to the level of a disciplinary violation, but nevertheless have relevance for the purposes of ethical or professional evaluation, must be forwarded to the competent Council for the further assessment of the magistrate.⁵⁰⁰

At this stage, the legislator has provided the magistrate with the

494. Law no. 96/2016, Article 132.

495. Law no. 96/2016, Article 133, paragraphs 1 and 2.

496. Law no. 96/2016, Article 133, paragraph 3.

497. Law no. 96/2016, Article 134, paragraph 1.

498. Law no. 96/2016, Article 134, paragraph 2.

499. Law no. 96/2016, Article 134, paragraph 3.

500. Law no. 96/2016, Article 134, paragraph 4.

possibility of reaching an agreement with the High Inspector of Justice. This instrument, known as the “Joint Admission Agreement” provided for under Article 135 of Law no. 96/2016 “*On the Status of judges and prosecutors*” as amended, constitutes a voluntary procedural mechanism that enables both the High Inspector of Justice and the magistrate, at any moment during the disciplinary investigation or disciplinary proceedings, to agree on the acknowledgment of the disciplinary violation and on the disciplinary measure to be imposed on the magistrate. This mechanism aims to expedite, streamline, and enhance the efficiency of the disciplinary process, while avoiding a lengthy and highly formal disciplinary procedure in cases where the parties accept the facts and the legal assessments without contestation.

This agreement is drawn up in writing, signed by both parties, and must mandatorily include a summary of the facts and of the admitted violation; the proposed disciplinary sanction; as well as an express and informed statement by the magistrate acknowledging that the agreement is subject to approval by the competent Council.⁵⁰¹ Evidently, the agreement does not produce direct legal effects, but must be approved, as the case may be, by the High Judicial Council or the High Prosecutorial Council. The latter conducts an independent review to verify whether the agreement has been duly executed and contains all the required formal elements; whether the magistrate has fully understood its content and has expressed his or her free and informed consent; and whether the proposed disciplinary sanction complies with the applicable legal provisions.⁵⁰² The purpose of this review is twofold: on the one hand, to ensure that magistrates do not admit liability for alleged violations without their free and informed consent; and, on the other hand, to prevent magistrates from evading disciplinary responsibility in cases of serious misconduct by entering into an agreement with the HIJ, admitting liability while securing disproportionately lenient sanctions in relation to the gravity of the violation committed.

Either Council has the authority to reject the agreement where it finds that the above-mentioned conditions are not met, where the agreement is inconsistent with the evidence of the case, or where there are grounds to suspect that it was reached under pressure or in a manner lacking genuineness or good faith.⁵⁰³

Referring to the established practice, it appears that in one case the agreement was duly drafted by the parties, incorporating all the required formal elements and clear declarations of the free and informed will

501. Law no. 96/2016, Article 135, paragraph 4.

502. Law no. 96/2016, Article 135, paragraph 5.

503. Law no. 96/2016, Article 135, paragraph 6.

of magistrate E. K.⁵⁰⁴ The agreed sanction - suspension from office for a period of six months with entitlement to the minimum salary - was assessed as being in compliance with the law, the nature of the violation, and the criteria set out in Articles 110 and 115 of Law no. 96/2016 *“On the status of judges and prosecutors”* as amended. The High Judicial Council verified that there was no inconsistency between the evidence and the magistrate’s declarations and that the agreement was not the product of pressure; consequently, it approved the agreement, which thereby took the form of a final and binding decision.⁵⁰⁵

Regarding the nature of this agreement, the Special Appeal Chamber has taken the view that: *“30.7 From the content of the provision, as well as from its placement within the chapter on investigative procedures, it follows that the joint admission agreement is a procedure primarily available during the disciplinary investigation phase. The provision set out in paragraph 9 of Article 135 of Law no. 96/2016 likewise links the refusal of such an agreement to actions carried out in the course of the disciplinary investigation. At this stage, the role of the HJC is that of a ‘certifying authority,’ having assessed the fulfilment of the formal and legal requirements. However, the wording of paragraph 1 of Article 135 - ‘the parties may reach an agreement at any time’ - when interpreted broadly, allows, by mutual consent of both parties, for such an agreement to be concluded at later stages as well, during the course of the disciplinary proceedings.*

504. According to the investigation report, the High Inspector of Justice, having taken into consideration a number of circumstances which did not exist at the time of the initial disciplinary proceedings, and which warranted the agreement upon and signing of a joint admission agreement between magistrate E.K. and the High Inspector of Justice, specifically: 1. The submission of a request by the magistrate subject to the disciplinary investigation for the negotiation and signing of a joint admission agreement, in accordance with the requirements of Article 135 of Law no. 96/2016 *“On the status of judges and prosecutors in the Republic of Albania”*, as amended; 2. The admission by the magistrate subject to the disciplinary investigation of having committed the disciplinary violation provided for in Article 103(1)(dh) of Law no. 96/2016 *“On the status of judges and prosecutors in the Republic of Albania”*, as amended, as well as violations of the Code of Judicial Ethics approved by the High Judicial Council by decision no. 171, dated 22.04.2021, Section *“C”*, *Principle of Integrity*, letters *“a”* and *“b”*; Section *“Ç”*, *Principle of appropriate conduct and self-restraint*, paragraph 9, letter *“c”*; 3. The expression of consent and the reaching of agreement on the joint admission agreement between magistrate E.K. and the High Inspector of Justice with regard to the factual circumstances, the nature of the disciplinary violation, the seriousness of the disciplinary breach, and the type of disciplinary sanction to be imposed, decided to sign the joint admission agreement, which contains all the mandatory elements provided for in Article 135(4) of Law no. 96/2016 *“On the status of judges and prosecutors in the Republic of Albania”*, as amended.

505. Decision no. 6 dated 17.01.2022 of the High Judicial Council.

30.8 As regards the formalisation of a request for a joint admission agreement, the Chamber considers that the party seeking the agreement - namely the appellant and her legal representative - should have submitted a formal written request to the HIJ. Such a request, in accordance with the elements set out in Article 135(4) of Law no. 96/2016, should have contained a summary of the facts and violations admitted by the magistrate, her position with respect to those violations, as well as a proposal regarding the disciplinary sanction. Irrespective of the procedural stage at which the examination of the case stood, the appellant and her legal representative should, in parallel, have addressed the HIJ with a formal request for the submission of a proposal for an agreement. Having failed to take steps to formalise the request themselves, the appellant cannot claim a failure to observe procedural steps or a lack of ethical conduct in relations between the parties to the proceedings, based on the rejection of her request for an agreement.

30.9 In conclusion, the Chamber finds that the appellant's claim that the failure to take into consideration her request for an agreement infringed the standard of due process is unfounded. The admission agreement constitutes an option afforded by law to the magistrate in order to simplify the disciplinary proceedings against him, with the aim of ensuring a faster and more effective administrative procedure. However, the joint admission agreement is likewise an act that requires and reflects the mutual will of both parties - the HIJ and the magistrate. The absence of agreement on such an arrangement does not affect the magistrate's rights with regard to compliance with due process standards, provided that due process is ensured in all its elements throughout all phases of the disciplinary investigation and proceedings. Furthermore, the Chamber emphasises that the conclusion of an agreement between the parties does not result in the magistrate's evasion of disciplinary liability, as the terms of the agreement must be determined in accordance with the principle of proportionality and in compliance with the provisions of Law no. 96/2016.⁵⁰⁶

The above reasoning demonstrates that the use of this instrument constitutes an option afforded to the magistrate, but not an obligation for the HIJ or the Councils. Furthermore, although this instrument formally pertains to the disciplinary investigation phase, there is no legal impediment to its application during the disciplinary proceedings phase as well.

In conclusion, the joint admission agreement represents a mechanism through which a disciplinary process may be concluded with an agreed outcome, while preserving high standards of legality, free will, and proportionality. Each of the Councils plays a fundamental role as the guarantor of the lawfulness and objectivity of this mechanism.

The agreement described above constitutes an exception to the

506. Decision no. 2 (DJ) dated 31.05.2022 of the Special Appeal Chamber.

ordinary course of proceedings, according to which, once the HIJ establishes the existence of a violation, it proceeds by submitting a request for disciplinary proceedings. However, where, during the disciplinary proceedings, reasonable suspicions arise concerning a different violation from that for which the investigation was initially initiated, the HIJ requests the Council before which the request has been lodged to suspend the disciplinary proceedings and to remit the case file to the HIJ. In such circumstances, the HIJ reopens the disciplinary investigation, decides on the addition or modification of the subject matter of the investigation, carries out the necessary investigative actions, and submits the supplementary investigation report to the competent Council within one month from the suspension of the proceedings. Alternatively, where further investigative activities are not required, after obtaining the views of the parties, the HIJ may request the competent Council to add to or amend the subject matter of the investigation. A further possibility is that the competent Council itself, before which the request for disciplinary proceedings has been submitted, identifies such a situation *ex officio* and decides in one of the two manners described above.⁵⁰⁷

The law further requires the establishment and administration by the HIJ of a case management system, aimed at ensuring a transparent and traceable process at every stage of the disciplinary investigation. This system must contain identifying data relating to the magistrate and the complainant, the subject matter and progress of the investigation, the relevant decisions taken, and information concerning the final disciplinary decision. For the operation of this system, the HIJ adopts detailed regulations defining the format, categories of data, rules on data retention and access, as well as the boundaries between publicly accessible information and information accessible solely to the magistrate under investigation. In all cases, the processing of data shall be carried out in full compliance with the legislation on the protection of personal data.⁵⁰⁸

3.2 Disciplinary proceedings

Upon completion of the disciplinary investigation, where the High Inspector of Justice has reasonable grounds to suspect that the magistrate has committed a disciplinary violation, the investigation is concluded by means of an investigation report requesting the initiation of disciplinary proceedings. The report, together with the investigative file, is submitted to the HJC or the HPC, as the case may be. It appears that the legislator

507. Law no. 96/2016, Article 136.

508. Law no. 96/2016, Article 137.

has deliberately adopted different terminology to describe this stage of the process. Once the request is submitted to the Councils, the matter enters the phase of disciplinary proceedings, during which, as a general rule, the HIJ no longer carries out investigative actions, unless expressly requested to do so by the relevant Council.

Following the submission of the request by the HIJ, either Council undertakes a number of preliminary actions. The first action is of a verificatory nature and serves to assess whether the disciplinary proceedings may lawfully continue or whether any legal impediments exist. Accordingly, pursuant to the applicable legal provisions, the Council shall decide to terminate the disciplinary proceedings without holding a hearing, *first*, where the disciplinary violation was already time-barred at the moment the investigation was initiated. Another ground for terminating the disciplinary proceedings is the application of the principle of *res judicata*, which the legislator has expressly extended to administrative disciplinary proceedings against magistrates; namely, where the matter has already been the subject of disciplinary proceedings resolved by a final decision.⁵⁰⁹

In its analysis of the effects of the termination of a magistrate's status in the context of the interaction between the transitional re-evaluation process and disciplinary liability, the High Judicial Council has clarified that, in the specific case of a former magistrate, the termination of status due to resignation during the transitional re-evaluation process precludes the continuation of disciplinary proceedings under Law No. 96/2016 "*On the status of judges and prosecutors*" as amended.

In this case, the former magistrate, who was subject to the transitional re-evaluation process pursuant to Article 179(b) of the Constitution and Article 3(16) of Law no. 84/2016 "*On the transitional re-evaluation of judges and prosecutors*," submitted his resignation from office prior to the completion of that process. As a consequence, the High Judicial Council decided to declare the termination of his status and notified the Independent Qualification Commission. The latter, by a subsequent decision, terminated the re-evaluation process and, on the basis of the Constitution and the legislation governing transitional re-evaluation, imposed on the subject a prohibition on reappointment to other public offices for a period of fifteen years.

In this context, the Council observed that, insofar as the termination of status was established through a specific constitutional procedure, there was no longer any legal basis for conducting disciplinary proceedings under Law no. 96/2016 "*On the status of judges and prosecutors*" as amended. This is because the application of disciplinary provisions is intrinsically

509. Law no. 96/2016, Article 139.

linked to the existence of magistrate status, which, in the present case, no longer existed. At the same time, the High Judicial Council considered the decisions adopted by the transitional re-evaluation bodies to be final and binding. Ultimately, the Council reasoned that, within the current constitutional and legal framework, there is no legal basis allowing for the review or re-imposition, for a second time, of a measure that has already been imposed by a final decision. In this regard, reference was made to Article 67 of Law no. 84/2016 “On transitional re-evaluation,” which provides solely for the possibility of restoration of the time-limit for lodging an appeal, and not for the reopening or review of final decisions.⁵¹⁰

In this case, the IQC decided to terminate the transitional re-evaluation proceedings against the magistrate concerned, on the basis of the resignation that had been accepted by the High Judicial Council. The HJC regarded this decision of the IQC as amounting to a *disciplinary sanction*, insofar as the former magistrate is thereby deemed to have been removed from the judicial system.⁵¹¹

However, notwithstanding the fact that a magistrate’s resignation constitutes one of the grounds for the termination of magistrate status,⁵¹² the legislator has provided that, where such resignation is tendered after the submission of a request for the initiation of disciplinary proceedings, its filing and even its acceptance shall not preclude the commencement or continuation of the disciplinary proceedings.

In its case law concerning the effects of a magistrate’s resignation in the context of disciplinary liability, the High Judicial Council has taken the position that the submission of a resignation request does not prevent either the initiation or the continuation of a disciplinary investigation or disciplinary proceedings against a magistrate, where circumstances exist that constitute a direct ground for dismissal under the Constitution.⁵¹³

What draws attention in this line of reasoning is the fact that, although the resignation request had been submitted in due time, the HJC did not undertake any action, instead awaiting the establishment of the competent disciplinary body, namely the High Inspector of Justice. At

510. Decision no. 199/2 dated 12.05.2021 of the High Judicial Council.

511. Decision no. 529 dated 27.10.2020 of the High Judicial Council.

512. Law no. 96/2016, Article 65: 1. *The magistrate may request the termination of his status by submitting a resignation to the competent Council.* 2. *The resignation shall be made in writing and need not be reasoned. The resignation shall take effect at the end of the month following the date on which the Council receives the written declaration of resignation. The termination of the magistrate’s status shall be declared by a decision of the Council no later than two weeks from the date on which the status ends.* 3. *In justified cases, upon a reasoned request and with the approval of the Council, the resignation may take effect earlier than the time-limit provided for in paragraph 2 of this Article.*

513. Decision no. 529 dated 27.10.2020 of the High Judicial Council.

the time the resignation was submitted, although the office of the High Inspector of Justice was prescribed by the Constitution and the applicable legislation, it had not yet been established. This position has likewise been upheld in the subsequent case law of the High Judicial Council.⁵¹⁴

As a final - yet extreme - ground for the termination of disciplinary proceedings by the Councils, the law provides for cases in which the investigation report accompanying the request for the initiation of disciplinary proceedings has been submitted without reasoning. In such circumstances, the legislator has not granted the Councils any discretion or possibility to request that the HIJ remedy this deficiency; rather, the law is categorical in requiring the termination of the disciplinary proceedings.

The law provides categorically that, where the Council terminates the disciplinary proceedings, it must issue a reasoned decision in writing, in which the grounds for termination are analysed in detail; such decision shall also be notified to the parties to the proceedings.⁵¹⁵

If it is established that the case does not fall within the situations requiring the termination of the disciplinary proceedings, but that the proceedings must continue with the holding of a hearing, each of the Councils proceeds with further procedural steps. These include setting the date of the hearing, which must be scheduled within one month from the date on which the case file is received from the High Inspector of Justice, as well as notifying the parties of the hearing date at least 15 days in advance.⁵¹⁶ Evidently, with a view to ensuring the effectiveness of the disciplinary procedure, the legislator has also established time-limits within which the Councils are required to act. These time-limits may be extended by up to two months for serious reasons, which must be made public. This situation may be illustrated by the disciplinary proceedings against magistrate Sh. K., in which the High Prosecutorial Council requested an additional two-month period due to the voluminous investigative material submitted by the High Inspector of Justice.

Regarding compliance with the time-limits established under Law no. 96/2016 *“On the status of judges and prosecutors”* as amended, the jurisprudence has reasoned as follows: *“14.3.1 On the other hand, the Chamber notes that the administrative procedure followed its normal course and was concluded by a decision of the HIJ within a period shorter than that prescribed by law. Law no. 96/2016 provides in Article 138(4) that ‘the Council examines all factors that are relevant to the case and, within the meaning of this provision, the review of the failure to comply with a statutory time-limit, for*

514. Decision no. 223 dated 02.06.2021 of the High Judicial Council.

515. Law no. 96/2016, Article 139.

516. Law no. 96/2016, Article 138/b

objective reasons and without consequences for the party or for the conduct of the proceedings, is not relevant, in light of the fact that the disciplinary investigation procedure was concluded within a shorter period than that provided by law."⁵¹⁷

According to this position, strict compliance with these time-limits is not required, provided that no procedural rights of the parties have been infringed. Consequently, the judicial approach to these time-limits is consequence-based, meaning that their impact must be assessed on a case-by-case basis.

During the hearing, the law requires the Councils to examine all factors relevant to the case, granting them the possibility to admit additional evidence, including the summoning of witnesses.⁵¹⁸

The taking of additional evidence in disciplinary proceedings constitutes an important instrument for ensuring a comprehensive and fair process. Such a need may arise during the adversarial debate between the parties or as a result of questions and observations raised by the members of the Council themselves. For this reason, the decision to admit additional evidence may be taken either *ex officio* by the Council or upon the request of the parties involved in the proceedings.

However, the fundamental principle governing this process is that of the organic link between the evidence sought and the subject matter of the disciplinary proceedings. This means that any additional evidence requested must have a direct and material relevance to the facts under examination in the disciplinary proceedings. In the absence of such a link, the request for additional evidence must be rejected.

As guidance for each of the Councils, both in deciding whether to summon experts directly or to assign this task to the High Inspector of Justice, as well as in cases where further investigative actions are deemed necessary, the provisions of the Administrative Procedure Code concerning administrative assistance apply. Under this institution, a public authority, in this case, the Council conducting the disciplinary proceedings, may request administrative assistance from another public authority, here the High Inspector of Justice, for the performance of one or more actions necessary within the framework of an administrative procedure. Such actions are considered necessary where: *first*, for legitimate reasons, the requesting authority cannot carry them out itself; *second*, the performance of the actions by the requesting authority would not be effective or would entail significantly higher costs compared to their performance by the other authority; and *third*, there is a need to access documents, facts, or other means of evidence held by the other

517. Decision no. 1 (DJ) dated 20.02.2023 of the Special Appeal Chamber.

518. Law no. 96/2016, Article 138.

authority.⁵¹⁹ Although all three situations may arise in the context of disciplinary proceedings, the most frequently applicable scenario is the second one, relating to effectiveness or cost considerations, where the actions can be more efficiently carried out by the High Inspector of Justice. In such cases, the Council assigns this task to that institution, which, unlike the general provisions of the Administrative Procedure Code,⁵²⁰ may not refuse to comply.

It may occur that, in respect of the same magistrate, the HJI submits two or more requests for the initiation of disciplinary proceedings. In such cases, with a view to ensuring the most effective conduct of disciplinary proceedings, the legislator has provided for the possibility that these proceedings may be joined and examined jointly by the competent Council.⁵²¹ This provision is intrinsically linked to, and derives from, the application of the principle of *de-bureaucratisation* and *efficiency*, as provided in the Administrative Procedure Code.⁵²²

The primary condition for the application of this mechanism is that the disciplinary proceedings must, *first*, refer to the same facts and, *second*, concern the same magistrate. While the second condition is straightforward - requiring that the different requests for disciplinary proceedings be lodged against the same magistrate, and not against different magistrates - the first condition requires closer analysis. For disciplinary proceedings to be joined, the relevant requests must be grounded in the same factual circumstances. This possibility is also recognised by the Administrative Procedure Code as one of the preliminary procedural measures to be undertaken in such cases.⁵²³ The term *fact* is not defined either by the legislation governing the status of judges and prosecutors or by the Administrative Procedure Code. Its legal definition is found in the Civil Procedure Code, which, under Article 7, provides that “*a fact is any human conduct, social event, or natural phenomenon to which the law attaches a legal consequence.*” On the basis of this legal definition, the condition in question is satisfied only where the different requests for disciplinary proceedings relate to the same conduct

519. Administrative Procedure Code, Article 71.

520. Administrative Procedure Code, Article 72.

521. Law no. 96/2016, Article 140, paragraph 1.

522. Administrative Procedure Code, Article 18: 1. *The administrative procedure shall not be subject to any specific form, unless otherwise provided by law.* 2. *The administrative proceeding shall be conducted as expeditiously as possible, and no later than the deadline provided for by law for it, with as less costs for the public organ and parties as possible, in order to achieve what is necessary for a lawful outcome.*

523. Administrative Procedure Code, Article 65, letter “ç”: 1. *In the beginning of the administrative procedure, the public body shall make the following verifications... ç) whether the request of a party for the initiation of an administrative proceeding may be examined together with the requests of other parties if based on the same facts and legal basis.*

of the magistrate. According to the practice of the Councils, no cases of formal joinder of disciplinary proceedings have been identified to date. However, there have been several instances in which more than one request for disciplinary proceedings has been submitted against the same magistrate. By way of illustration, before the HJC, the HIJ submitted three separate requests for disciplinary proceedings against the same judge, at different points in time and in relation to different courts in which the judge had served, concerning similar violations. Similarly, two requests were submitted before the HJC in different years against the same magistrate. A comparable situation has also arisen before the HPC, where two requests were lodged against the same magistrate, relating to different periods and to conduct while the magistrate held different positions.⁵²⁴

Another interesting scenario, envisaged as a possibility for the joinder of disciplinary proceedings, arises where a judge and a prosecutor are involved in the same disciplinary breach. In such cases, the Councils may decide to join the proceedings. However, given that this concerns different magistrates, falling under the competence of different Councils, the law requires those bodies to adopt joint rules governing the joinder of proceedings.⁵²⁵ To date, such joint rules do not appear to have been drafted or approved. An analysis of the practice of both Councils indicates that there have been situations in which this provision could have been applied, specifically, in the disciplinary proceedings against two magistrates - one serving as a judge and the other as a prosecutor - who were subject to disciplinary action for violations identified in the examination of complaints concerning conditional release. Nevertheless, these two proceedings were not joined.⁵²⁶ Instead, each magistrate was heard separately by the respective Council, and both were ultimately sanctioned with the same disciplinary sanction proposed by the HIJ, namely *dismissal from office*.

Once the HIJ notifies the magistrate who is the subject of the disciplinary investigation of the decision concluding the investigation, and transmits to the competent Council the investigation report together with the documentation gathered during the investigation, the law obliges each Council, upon continuing with the disciplinary proceedings,

524. See decision no. 15 dated 30.01.2025 of the High Prosecutorial Council, which concerns the disciplinary proceedings against a magistrate in relation to the period during which he served as a prosecutor at Vlora Prosecution Office, as well as decision no. 65 dated 10.04.2025 of the High Prosecutorial Council, which addresses the disciplinary proceedings against the same magistrate in his capacity as Head of Saranda General Jurisdiction Prosecution Office.

525. Law no. 96/2016, Article 140, paragraph 2.

526. See decision no. 92 dated 17.03.2021 of the High Judicial Council and decision no. 81 dated 31.03.2021 of the High Prosecutorial Council.

to notify the magistrate that disciplinary proceedings have been initiated against him. At the same time, the Council must inform the magistrate of the rights he enjoys in the context of these proceedings, namely: the right to submit written observations within the prescribed time-limit; the right to participate in the hearing; the right to call witnesses who may testify on facts relevant to the case; the right to submit documents; the right to take other measures for the submission of evidence in support of the defence; the right to be represented, in accordance with the provisions of the Code of Administrative Procedures; and the right to compensation of reasonable legal expenses, in cases where no disciplinary sanction is ultimately imposed.

The exercise of the above rights by the magistrate does not prevent the Council, where it deems it necessary, from requesting the magistrate to submit information, documents, or any other form of evidence, or from requiring the magistrate to appear at the hearing and/or to be represented by defence counsel.

Given that, in the course of disciplinary proceedings, several interim decisions may be adopted with a view to ensuring the proper conduct of the process, the law provides that the parties must be notified of any decision of the Council within five days of its adoption.⁵²⁷

Finally, the law provides for the mandatory holding of a public hearing. In view of the important functions exercised by magistrates, as well as the need to safeguard their prestige and independence, the legislator has excluded the possibility of conducting disciplinary proceedings without a hearing. In this respect, the law does not recognise the alternative foreseen in the Administrative Procedure Code, which allows, in certain circumstances, for the exclusion of the parties from this right.⁵²⁸

Disciplinary proceedings against a magistrate invariably entail a public interest. The public therefore has the right to be informed as to whether magistrates have properly discharged their duties. For this reason, the law provides that hearings in disciplinary proceedings are public. However, this rule is not absolute and may be subject to limitations. Accordingly, a hearing may be held in camera where the publicity of the

527. Law no. 96/2016, Article 141.

528. Administrative Procedure Code, Article 89: *An administrative procedure may be terminated without notifying and giving to the party the opportunity to be heard, only in the following cases: a) there is an urgency to issue a final decision, due to the damage which could be caused to the public interest as a result of the delay; b) the parties have presented their opinions, comments, and full explanations during the course of the administrative procedure; c) during the course of the administrative procedure it is evident that the decision will be entirely in the party's favour; ç) in an administrative which is based on a public competitive proceedings; d) that is explicitly provided by law.*

hearing could harm public morals or lead to the disclosure of classified information in the interest of national security, where so required by the competent authorities; where it is necessary to protect the right to private life or the personal data of the magistrate or of another person; or where conduct on the part of the public disrupts the orderly conduct of the hearing. Over the five years of activity of the High Inspector of Justice, there has been only one instance in which hearings in a magistrate's disciplinary proceedings were held behind closed doors. This occurred in the context of proceedings conducted before the High Prosecutorial Council.⁵²⁹

At the hearing, as a rule, the proceedings begin with the submission of the HIJ, who presents the arguments supporting the finding that a disciplinary breach has been committed and proposes the disciplinary sanction to be imposed. The hearing then continues with the magistrate concerned or his legal representative, who present the defence arguments. In order to ensure the effectiveness of the hearings, the law provides that the content of the written submissions shall not be repeated orally during the hearing.⁵³⁰

If, during the conduct of the hearing, either at the request of the parties or ex officio, it is deemed necessary to take additional evidence, the hearing may be adjourned; however, such adjournment may not exceed one month.⁵³¹

Where, on the basis of the debate developed during the disciplinary proceedings, the evidence submitted, or additional evidence obtained, the relevant Council considers that the case cannot be resolved in a fair and proper manner without examining one or more additional allegations of disciplinary misconduct against the same magistrate, it has the authority to order the High Inspector of Justice to amend or expand the subject matter of the disciplinary proceedings, in accordance with the law, and to investigate such additional claims, at least within a one-month period. Alternatively, where further investigation is not necessary, the Council may decide on the amended or expanded allegations after hearing the parties to the proceedings.⁵³² This possibility does not exclude the right of the HIJ to request, on his initiative, the amendment or expansion of the subject matter of the disciplinary proceedings, in accordance with the provisions of the law, as discussed above. In such cases, however, it is the respective Council that assesses and decides on the amendment or expansion of the subject matter of the investigation, and the HIJ is bound to act in accordance with the Council's decision.

529. Decision no. 65 dated 10.04.2025 of the High Prosecutorial Council.

530. Law no. 96/2016, Article 142.

531. Law no. 96/2016, Article 143.

532. Law no. 96/2016, Article 144.

During the conduct of disciplinary proceedings, it may occur that the Councils, as well as the HIJ, are confronted with the existence of other parallel proceedings. In such cases, the Councils are entitled, on the basis of the legal grounds set out in Article 126 of the Law on the Status of Judges and Prosecutors, to decide on the suspension of the disciplinary investigation in specific circumstances, namely where it is established that a criminal investigation or criminal, administrative, or civil judicial proceedings are pending, in which the magistrate is a party, or where the alleged misconduct is connected to the same facts that are the subject matter of those proceedings.⁵³³

Although the High Inspector of Justice has expressed opposition to such an approach,⁵³⁴ the practice of the Councils has extended the applicability of these provisions also to situations in which a magistrate is simultaneously subject to the transitional re-evaluation process. The first

533. Law no. 96/2016, Article 145; HPC Regulation on the functioning of the disciplinary commission in conducting the disciplinary proceedings against prosecutors, Article 35/1; Regulation "On the disciplinary proceedings at the High Judicial Council", Article 40/1.

534. Minutes of the Meeting of the High Judicial Council, Tirana, 16.09.2021 (Item 5), pp. 56–57: *"In the present case, as is also established from the content of Decision no. {...} dated 30.04.2021 of the Independent Qualification Commission concerning the evaluation component of Ms. {...}, the two disciplinary proceedings do not concern the same facts relating to the alleged disciplinary breach of magistrate {...}. Pursuant to Articles 145 and 126 of Law no. 96/2016, the suspension of disciplinary proceedings may be ordered where a criminal investigation or a criminal, administrative, or civil judicial proceeding is pending, in which the magistrate is a party, and the alleged breach relates to the same facts on which a decision will be rendered. On page 31 of decision no. {...}, it is reasoned as follows: 'The adjudicating panel, taking into account the fact that the subject has not reported to perform her duties as a judge at the Tirana Court of Appeal since 01.04.2020, and having regard to the legal provisions governing the vetting period, finds that the disciplinary breach relating to ethics, which occurred after that period, falls within the assessment competence of the HJC'. In the present case, the suspension of the disciplinary proceedings does not appear to constitute a procedural mechanism for resolving a set of issues that might arise from a relationship of dependency or potential prejudicial effect between two disciplinary proceedings. The two disciplinary proceedings are not interconnected, nor does the manner in which the re-evaluation bodies dispose of or decide their case directly affect the resolution of the disciplinary proceedings that are the subject of the present discussion. The existence of another disciplinary proceeding, pursuant to the provisions of Law no. 84/2016, with a subject matter entirely different from that of the present disciplinary proceedings and based on different facts, does not constitute a prerequisite for the examination of the issues to be addressed in the disciplinary proceedings currently pending before the HJC. As long as the magistrate {...}, who is the subject of the disciplinary proceedings, retains the status of magistrate, and given that the proposal by the HIJ for the imposition of the disciplinary sanction of 'dismissal from office' may differ from the decision ultimately adopted by the Council, or from any measure imposed by the vetting bodies through a decision that is not final and is subject to appeal, such circumstances cannot dictate or determine the course of the present disciplinary proceedings."*

instance of such a suspension occurred before the High Judicial Council, which interpreted the provisions of Article 145 of Law no. 96/2016 *“On the status of judges and prosecutors”*, as amended, by undertaking a detailed analysis of the relationship between disciplinary proceedings and the re-evaluation process. The HJC reasoned that, although the vetting process is not expressly listed in Article 126 of the Law as one of the grounds requiring the suspension of disciplinary proceedings, its nature as a temporary and extraordinary constitutional measure necessitates special treatment. In this context, the Council considered that the transitional re-evaluation process constitutes an administrative procedure with a direct impact on the magistrate’s status, and consequently on the feasibility of continuing disciplinary proceedings. In the specific case under consideration, given that the magistrate had been dismissed by the IQC and that an appeal against that decision was pending, the Council emphasised that the retention of magistrate status constitutes a legal prerequisite for the continuation of disciplinary review. If the magistrate’s status were to be definitively terminated by a final decision, the disciplinary proceedings would become devoid of object. In contrast, should the ground for suspension cease to exist (for instance, if the dismissal decision were overturned), the disciplinary proceedings would be resumed. The HJC further noted that the existence of separate and independent proceedings (re-evaluation and disciplinary liability), conducted by different bodies, combined with the absence of a legal mechanism for their joinder, justified the need for suspension. It also underlined that the Law on the Status of Judges and Prosecutors does not permit the parallel conduct of multiple disciplinary proceedings against the same magistrate concerning the same facts, and that suspension does not preclude the continuation of disciplinary proceedings where the magistrate’s status is preserved. In conclusion, the HJC determined that the suspension of disciplinary proceedings under such circumstances was legally justified and necessary in order to uphold the principles of legal certainty, procedural effectiveness, and the proper functioning of the justice system.⁵³⁵

It is essential, in order to guarantee the right to a fair trial, that - particularly when procedural requests are rejected or when the admission of new evidence is refused - the Councils provide clear and reasoned grounds for such decisions.⁵³⁶

535. Decision no. 463 dated 11.10.2021 of the High Judicial Council.

536. Decision no. 3 (DJ) dated 07.12.2022 of the Special Appeal Chamber: *“41.2 From the content of the decision, it follows that the HJC, acting within the discretion vested in it as a constitutional-administrative body, in accordance with Article 146 of Law no. 96/2016, assessed the applicant’s requests and decided to dismiss them, providing the relevant reasoning. According to the Chamber, the alleged lack of completeness in the reasoning is linked to the*

Law no. 96/2016 “*On the status of judges and prosecutors*”, as amended, provides in Article 116 for “measures to prevent delays.” Although this provision appears, at first glance, to be focused on the procedural aspects of disciplinary proceedings, in substance it constitutes a mechanism aimed at safeguarding the integrity and efficiency of disciplinary procedures against magistrates, by establishing tools to prevent unnecessary delays and procedural obstructions. It reflects a balanced and proportionate approach to two interrelated objectives: on the one hand, the protection of the magistrate’s procedural rights, and on the other, the preservation of the authority and effectiveness of the disciplinary process through the imposition of reasonable consequences for obstructive or abusive conduct.

Paragraph 1 of this provision stipulates that, where a magistrate fails to appear at a hearing, the conduct of the disciplinary proceedings may be based on the relevant provisions of the Criminal Procedure Code, in particular Article 351, which governs proceedings conducted in absentia, insofar as those rules are applicable in the disciplinary context. This rule ensures that disciplinary proceedings are not brought to a standstill solely due to the magistrate’s absence, while at the same time guaranteeing that all opportunities for participation and defence have been fully respected.

In the case-law of the High Judicial Council, and in particular in decision no. 92 dated 17.03.2021, this provision was applied in a concrete manner in a case involving a magistrate who was subject to the measure of pre-trial detention on criminal charges. In that case, the Council, acting in accordance with Article 116 of Law no. 96/2016 and Article 351 of the Criminal Procedure Code, requested the detention authorities to ensure the magistrate’s participation in the disciplinary hearing. Following the receipt of the magistrate’s written declaration appointing legal counsel to represent her, the Council assessed that all legal requirements concerning notification and the right to defence had been duly satisfied. At the subsequent hearing, although a request was made to adjourn the proceedings in order to enable the magistrate’s personal appearance, the Council rejected the request, finding that all her procedural rights had been respected and that her absence was intentional and voluntary. In this manner, the HJC gave practical effect to Article 116, ensuring the continuity of the proceedings and preventing the abuse of procedural

case-by-case assessment carried out by the HJC of the entirety of the requests submitted by the applicant throughout the disciplinary proceedings, as well as to the significance of those requests for the resolution of the merits of the case under examination. While it is established that the above-mentioned decision of the HJC is accompanied by reasoning which the body has considered at a level that does not render the decision unreasoned, the Chamber concludes that the applicant’s claim is unfounded insofar as it alleges that the decision of the HJC contains no reasoning and provides no explanation as to why his requests were dismissed.”

rights aimed at delaying the disciplinary process.

Meanwhile, paragraph 2 of Article 116 focuses on conduct that deliberately obstructs the normal course of the proceedings. This provision stipulates that disciplinary authorities may issue a warning and subsequently impose a fine of up to 100,000 Lekë on any magistrate, witness, expert, or interpreter who undermines the dignity of the adjudicating body or engages in actions aimed at delaying the proceedings. Furthermore, if such conduct persists, it may also lead to the initiation of disciplinary or criminal investigations. This provision is particularly important for safeguarding the authority of the proceedings and preventing disciplinary proceedings from being transformed into a tactical instrument by the subjects involved in order to evade responsibility. In practice, however, these legal mechanisms have not been applied by the Councils, even though in one case a magistrate against whom the HIJ had submitted three requests for disciplinary proceedings to the HJC, managed - through the submission of medical certificates - to postpone eight hearing sessions in the first disciplinary proceeding, four sessions in the second, and four sessions in the third proceeding.

During the hearings, representatives of the HIJ requested that, due to the magistrate's non-appearance, an ex officio lawyer be appointed to safeguard his rights, with the aim of enabling the continuation of the proceedings, alongside an assessment of the magistrate's condition. At the eighth postponed hearing, the HIJ representatives pointed out that the HJC had still not taken any decision regarding the requests submitted by them. They stated: *"Our position as an institution remains the same as in previous hearings: we seek for the proceedings that have been initiated to be effective and comprehensive, depending on the results that will emerge following the appointment of a defence counsel/representative in accordance with the Administrative Procedure Code, and thereafter the continuation with the documentation and examination of the findings identified by the HIJ. Nevertheless, we fully and respectfully abide by the decision that has already been taken regarding the assessment of the professional condition of magistrate {...}."*⁵³⁷

*Under these circumstances, we reiterate the requests previously submitted before the Council, since the objective inability of Mr. {...} to appear in the proceedings has been continuous. For this reason, we again request the appointment of a legal representative, pursuant to Article 36(3)(c) of the Administrative Procedure Code."*⁵³⁸

537. Minutes of the meeting of the High Judicial Council, on 21.06 2023 (items 1, 2, and 3), p. 6.

538. Minutes of the meeting of the High Judicial Council, on 19.07 2023 (items 1, 2, and 3), p. 6.

At the meeting held on 19.07.2023, the HJC, having established from the medical documentation that the magistrate had been granted full disability status, decided to suspend all three disciplinary proceedings for a period of one year (disciplinary procedure no. 3/2022, disciplinary procedure no. 1/2023, and disciplinary procedure no. 2/2023). A few days later, on 28.07.2023, the Independent Qualification Commission⁵³⁹ dismissed the magistrate from office; similarly, he had failed to appear before that institution as well, and the competent Council consequently concluded the disciplinary proceedings without adopting a final decision.

Following the administration and examination of the facts and evidence submitted, the Councils may decide in one of two ways: first, they may dismiss the request for disciplinary proceedings, finding that the alleged facts did not occur or do not constitute a disciplinary violation; or, second, they may uphold the request and impose one or more disciplinary sanctions on the magistrate.

In their decision-making, the Councils are not bound by the proposal made by the High Inspector of Justice regarding the type and severity of the disciplinary sanction. They are free to decide independently, provided that they give a full and reasoned justification for their position. The final decision must be rendered in writing and be duly reasoned, and it must be issued within a maximum period of two weeks from the conclusion of the hearing.⁵⁴⁰

3.3 Right to appeal against disciplinary decisions

Upon the adoption of a final decision by the Councils, the applicable legal framework provides, at different levels, for the right of appeal. At the constitutional level, judges and prosecutors are granted the right to appeal only against one disciplinary sanction, namely dismissal from office, and such an appeal is lodged with the Constitutional Court.⁵⁴¹

On the other hand, Law no. 96/2016 *“On the status of judges and prosecutors”*, as amended, provides in Article 147 only that: *“1. A magistrate has the right to appeal a decision imposing a disciplinary sanction before the competent court. 2. The High Inspector of Justice has the right to appeal any decision of the Council on disciplinary matters before the competent court”*. Thus, the law limits itself to granting both parties to the administrative disciplinary proceedings the right to appeal decisions of the Councils.

In order to complete this framework, reference must also be made to Law no. 115/2016, *“On the governance bodies of the justice system’*, as

539. IQC decision no. 692 dated 28.07.2023.

540. Law no. 96/2016, Article 146.

541. Constitution, Articles 140, paragraph 4 and 148/d, paragraph 3.

amended. Regarding the acts of the High Judicial Council, Article 100(1) thereof provides that *“an appeal against an individual administrative act of the Council may be lodged, within 15 days from the date of notification, before the Administrative Court of Appeal, unless otherwise provided by law. Individual administrative acts imposing disciplinary sanctions on judges are appealed before the Constitutional Court”*. In an entirely identical manner, with respect to the High Prosecutorial Council, the same law provides in Article 192(1) that *“an appeal against an individual administrative act of the Council may be lodged, within 15 days from the date of notification, before the Administrative Court of Appeal, unless otherwise provided by law. Individual administrative acts imposing disciplinary sanctions on prosecutors are appealed before the Constitutional Court”*. According to publicly available data, five appeals have been lodged before the Special Appeal Chamber by three prosecutors and two judges, who challenged the disciplinary sanction of *dismissal from office* proposed by the HIJ and upheld by the HPC and the HJC, which were dismissed by the Special Appeal Chamber, which concluded that the disciplinary sanction of dismissal imposed on those magistrates was proportionate to the seriousness of the violations committed, thereby confirming the professional standards applied by the HIJ and, subsequently, by the Councils.

It follows that these provisions, as well as others, do not restrict magistrates' right to appeal against disciplinary sanctions other than dismissal. For this reason, on the basis of the right of access to a court as an element of the right to a fair trial guaranteed by Article 42 of the Constitution, it results that such measures may also be subject to judicial review in respect of other disciplinary sanctions.

However, clarification is required, since Law no. 115/2016 *“On the governance bodies of the justice system”*, as amended, in Articles 100(1) and 192(1), generally provides for appeals against disciplinary sanctions (in the plural) before the Constitutional Court, whereas the Constitution itself, in Articles 140(4) and 148/d(3), provides that only the disciplinary sanction of dismissal may be appealed before the Constitutional Court. Evidently, this constitutes an excess of statutory regulation over constitutional provisions.

As addressed above, a similar situation had arisen in the past, when Article 147(7) of the Constitution, prior to the 2016 reform, provided that judges had the right to appeal against the measure of dismissal before the Joint Chambers of the High Court. On the other hand, Law no. 8436, dated 28.12.1998 *“On the organisation of judicial power”*, Article 42(6), provided that judges could appeal to the Joint Chambers of the High Court against any disciplinary sanction imposed on them by the High Council of Justice. Precisely this extension of the jurisdiction of the High

Court by the legislator was annulled by the Constitutional Court through its decision no. 3, dated 20.02.2006, as incompatible with the Constitution.

In these circumstances, the situation may be resolved in two ways. The first, and more traditional, would require that this statutory provision be challenged once again before the Constitutional Court, which - on the basis of the clear wording of the Constitution and its established case-law - would annul such legal provisions as unconstitutional.

The second approach would be that of conforming interpretation. By interpreting these provisions as a whole, in accordance with the jurisprudence of the Constitutional Court, and considering that disciplinary sanctions are individual administrative acts, it follows that all disciplinary sanctions - except for dismissal - may and should be appealed by magistrates before the Administrative Court of Appeal, and eventually, through a further appeal on points of law (recourse), may also be reviewed by the Administrative Chamber of the High Court. Where the parties substantiate compliance with the relevant constitutional and legal requirements, they may also put into motion the Constitutional Court through an individual constitutional complaint.

As regards the disciplinary sanction of dismissal, since it is provided directly by the Constitution, the appeal lies with the Constitutional Court. It appears that the legislator has determined that this measure, given its extreme nature as it extinguishes the status of magistrate, should be reviewed by the highest constitutional judicial instance in the country, also in light of the constitutional status enjoyed by judges and prosecutors.

As to the time-limits, in all cases the appeal period is 15 days and runs from the moment the reasoned decision is notified to the parties.

From a constitutional perspective, Article 147(2) of Law no. 96/2016 *“On the status of judges and prosecutors”*, as amended, also recognises the right of the High Inspector of Justice to challenge before the courts the decisions of the Councils concerning disciplinary sanctions.

However, the above provisions are not applicable, for the time being and until the completion of this study, because the constitutional legislator, through the 2016 reform, provided in Article 179(7) of the Constitution that *“during their 9 year mandate, the judges of the Appeal Chamber under Article 179/b shall have disciplinary jurisdiction over all Constitutional Court judges, the members of High Judicial Council, the High Prosecutorial Council, the Prosecutor-General, and the High Justice Inspector. The Appeal Chamber shall also have jurisdiction on the appeals against decisions of the High Judicial Council, High Prosecutorial Council as well as High Justice Inspector, imposing disciplinary sanctions respectively against judges, prosecutors and other inspectors.”*

The Special Appeal Chamber is a constitutional institution whose establishment, organisation, and functioning are regulated by Articles 179(7), 179/b(5), (6), (8), and (9) of the Constitution, as well as by articles “B”, “C”, “Ç”, “Ë”, and “F” of the Annex to the Constitution. Pursuant to these provisions, it constitutes a special body with a nine-year mandate, whose primary function is to adjudicate appeals arising from the transitional re-evaluation process of judges and prosecutors. Nevertheless, the constitutional legislator has also entrusted it, during its existence, with the review of disciplinary sanctions imposed on various officials of the justice system, including disciplinary sanctions imposed by the Councils on magistrates.

With regard to the right of appeal before this institution, these provisions have been analysed by the SAC itself, which has held as follows: *“3.2.8 Upon analysis of these two provisions, we conclude that the competent court for reviewing appeals lodged by a magistrate/prosecutor against disciplinary sanctions imposed by the Council is the Constitutional Court. Pursuant to this reasoning, and in application of Article 5(3) of Law no. 84/2016 ‘On the transitional re-evaluation of judges and prosecutors in the Republic of Albania’, which provides that: ‘[...] the Special Appeal Chamber, during its mandate, in accordance with the Constitution, the Law “On the organisation and functioning of the Constitutional Court”, and the legislation governing the justice system, has jurisdiction to examine: [...] appeals against decisions of the High Judicial Council, the High Prosecutorial Council, and the High Inspectorate of Justice imposing disciplinary sanctions on judges, prosecutors, and other inspectors,’ it is concluded that the Special Appeal Chamber is the competent court to review appeals against decisions of the Councils imposing disciplinary sanctions on magistrates throughout its nine-year mandate, including all types of disciplinary sanctions provided for in Article 105 of Law no. 96/2016.”*⁵⁴²

As regards the procedure to be followed by the SAC, it has further held: *“3.1.2 ... In light of this provision, the Chamber considers that the procedure for examining all appeals or applications submitted to and registered with the Special Appeal Chamber within the scope of its Disciplinary Jurisdiction, as provided by the Constitution, shall be conducted in accordance with the provisions of the Law ‘On the organisation and functioning of the Constitutional Court’, as regards the nature and procedure of adjudication, treating it as constitutional adjudication, which is distinct in nature from the adjudication carried out by the Special Appeal Chamber when exercising its Re-evaluation Jurisdiction, which bears the characteristics of a process combining administrative and constitutional elements. 3.1.3 In these circumstances, the preliminary review panel of the appeal subject to these proceedings shall apply Article 31 of Law no. 8577 dated 10.02.2000 ‘On the organisation and functioning of the Constitutional Court’,*

542. Decision no. 2 (DJ) dated 21.06.2018 of the Special Appeal Chamber.

pursuant to which constitutional adjudication in plenary session is preceded by a preliminary examination of the application/appeal by a preliminary review panel, which includes the rapporteur of the case. This panel preliminarily verifies the general admissibility criteria set out in Articles 31 and 31/a of Law no. 8577, as amended, as well as the specific criteria laid down in Articles 71 and 71/a of the same law concerning individual constitutional complaints. The verification of these criteria is regarded by this Chamber as the first step to be undertaken before the matter falling within Disciplinary Jurisdiction is submitted for examination on the merits by the plenary session of the Special Appeal Chamber, composed of all its judges."⁵⁴³

Furthermore, case-law has clarified the situation where the subject against whom a disciplinary sanction has been imposed fails to appear, despite having been duly notified, as reflected in the following reasoning: "27. *The Special Appeal Chamber observes that the applicant T.D., although having been aware of the examination of the case before the Chamber since its transfer for jurisdiction from the Administrative Court of Appeal, has not submitted any application or written submissions regarding the subject matter of the proceedings and his claims. The applicant was duly notified of, and became regularly aware of, the scheduling of the public plenary hearing, yet he neither appeared nor filed a request for adjournment on any reasonable grounds. In light of the above factual circumstances, the Chamber considers that, by failing to appear, the applicant has demonstrated a lack of will to submit the adjudication of this case to the constitutional jurisdiction of the Special Appeal Chamber. Consequently, this initial assessment, also linked to the absence of any formal act addressed to the Chamber - explained above as having occurred due to circumstances intertwined with the procedural choices of the party and the decision of the Administrative Court of Appeal - leads the Chamber to conclude that the described factual situation must be treated as a withdrawal of the application, within the meaning of Article 31/b(1) of Law no. 8577/2000. Assessing the case in this manner, and in application of Article 31/b(1) of Law no. 8577/2000, which provides that 'the applicant may withdraw the application prior to the commencement of its examination by the Constitutional Court. In such a case, the Constitutional Court shall decide to terminate the examination of the case', the Chamber concludes that the proceedings before the Special Appeal Chamber must be terminated.*"⁵⁴⁴

As noted, the Special Appeal Chamber applies in such cases the procedures provided for in Law no. 8577 dated 10.02.2000 "On the organisation and functioning of the Constitutional Court", as amended. This follows from the fact that the Chamber itself has been established as a special chamber within the Constitutional Court. Conversely, failure to

543. Decision no. 2 (DJ) dated 21.06.2018 of the Special Appeal Chamber.

544. Decision no. 1 (DJ) dated 20.07.2020 of the Special Appeal Chamber.

lodge an appeal within the prescribed time-limit before this institution, or the absence of demonstrated interest by opting instead to pursue appellate remedies before the ordinary judicial system, results in the definitive loss of this right.

It should be underlined that, as regards the appeal time-limit, it remains fifteen days, commencing from the moment of notification of the decision, in accordance with Articles 100(1) and 192(1) of Law no. 115/2016 *“On the governance bodies of the justice system”*, as amended.

ANNEX
AUTHENTIC DOCUMENTS FROM THE STATE ARCHIVE
ON THE DISCIPLINARY PROCEEDINGS AND ON THE
ORGANIZATION OF JUSTICE

- Neni 54. Gjyqtaret nuk mund të bëjnë tregëti dhe nuk mundën në asnjë pjesë në administratën e q'ësë shqiptare tregtare.
- Neni 55. Gjyqtaret ekceptionisht pashohen kur në ligje të posaçme suprimohet het gjyqi dhe agushkohet qarku gjyqësor.

Pjesa e III.

Transferimi i Gjyqtarëve.

- Neni 56. Gjyqtaret e q'ësë rangut sikur u tregue dhe në nenin 54 të kësaj ligje janë të pa tundeshme dhe nuk transferohen pa dashirë por vendimin e komisionit për zgjedhjen e gjyqtarëve disiplinist ose për arrazje administrative të forta, mund të degradohen. Transferohen gjyqtaret në rastin që sblidhen në një vend dy gjyqtarë të afërme në gjak për në shkallë të katërta, ose janë bashkëmak, dhander, vjehër, kunat.

Pjesa e V.

Levdërimi e gradën e Gjyqtarëve.

- Neni 57. Në mbarrim të q'ësë vjetit Ministria e Drejtësisë tue marrë para syeshë statistikën e raportat e inspektorit dhe hetimet tjera po të shohi se gjyqtaret i kanë krye detyrat e tyre në mënyrë ligjave vepruese, u dorëzon nga një letër levdat tue ju shënujë keto dhe në jetëshkrimin e tyre.
- Neni 58. Gradimi i gjyqtarëve bëhet në kur asht tregue në nenin 58 të kësaj ligje, tue ju marrë para syeshë notësija e mirënjohëllja e tyre. Gradimi bëhet tue ndjekë radhën e rangut.

Pjesa e V.

Mesazhimi disiplinor i Gjyqtarëve.

- Neni 59. Gjyqtaret janë të detyruar të vashdojnë rregullisht në detyrë e të mos cenojnë detyrën në as një mënyrë që gjith ashtu janë të shtrënguar të ruajnë e të mos cenojnë dinjitetin gjyqësor shprehur nën e jashtë kryes.
- Neni 60. Dënimet disiplinore janë keto :
- a) Qortim në shkëmbim.
 - b) Të përnudit e një sasisë së rrogës deri dy muaj.
 - c) Të shpërbënit e gradës.
 - d) Pushim definitiv nga puna.
- Neni 61. Dënimet disiplinist të shpërbënit shpërbënit në mënyrë rëndësishme të veprave të gjyqtarëve.

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- Neni 59. Prensini i shqiptarëve në krye është i ndaluar. Ata gjyqtarë që veprojnë kundër kësaj dispozite meritojnë ndeshkin disiplinuar.
- Neni 60. Ndeshkimi disiplinor shpeshohet në jetëshkrimin e të dënuarëve.
- Neni 61. Ata që degradohen disiplinisht shken të shpërblehen me marrëveshje të shpërblehjes së shpirtit.
- Neni 62. Prokurorët janë të detyruar të listojnë pa vonës Ministrin e Drejtësisë për fajet disiplinore të lejuara në qarkun e tyre dhe të tregojnë qoftë se ata i mungojnë kësaj detyre, donohen dhe ata si abas rëndësia të fajit.
- Neni 63. Gjyqtarët janë të detyruar të bëjnë sekret veprimet e shprehura të tyre që nuk rrethohen botërisht.
- Neni 64. Kështu një gjyqtarë i prishen prej gjykatës në të kalte në tëper se gjyqësor e shpesh absolute të gjyqtarëve të tjerë, ose shpesh e të prishurave dhe e atyre që "ka" përshpirtit për shkak të kaluar gjyqësor e shpesh të gjyqtarëve, Ministrin e Drejtësisë marrë masat disiplinore ndaj atij gjyqtari dhe e pushon nga detyra.

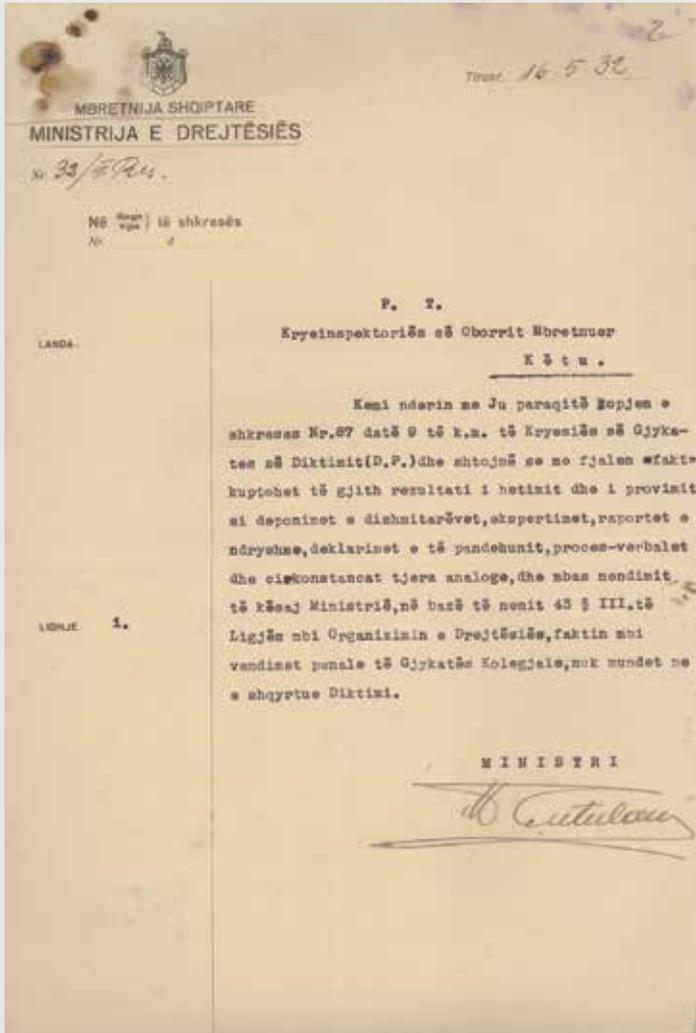
Pjesa e VI.

Hierarkia e Gjyqtarëve.

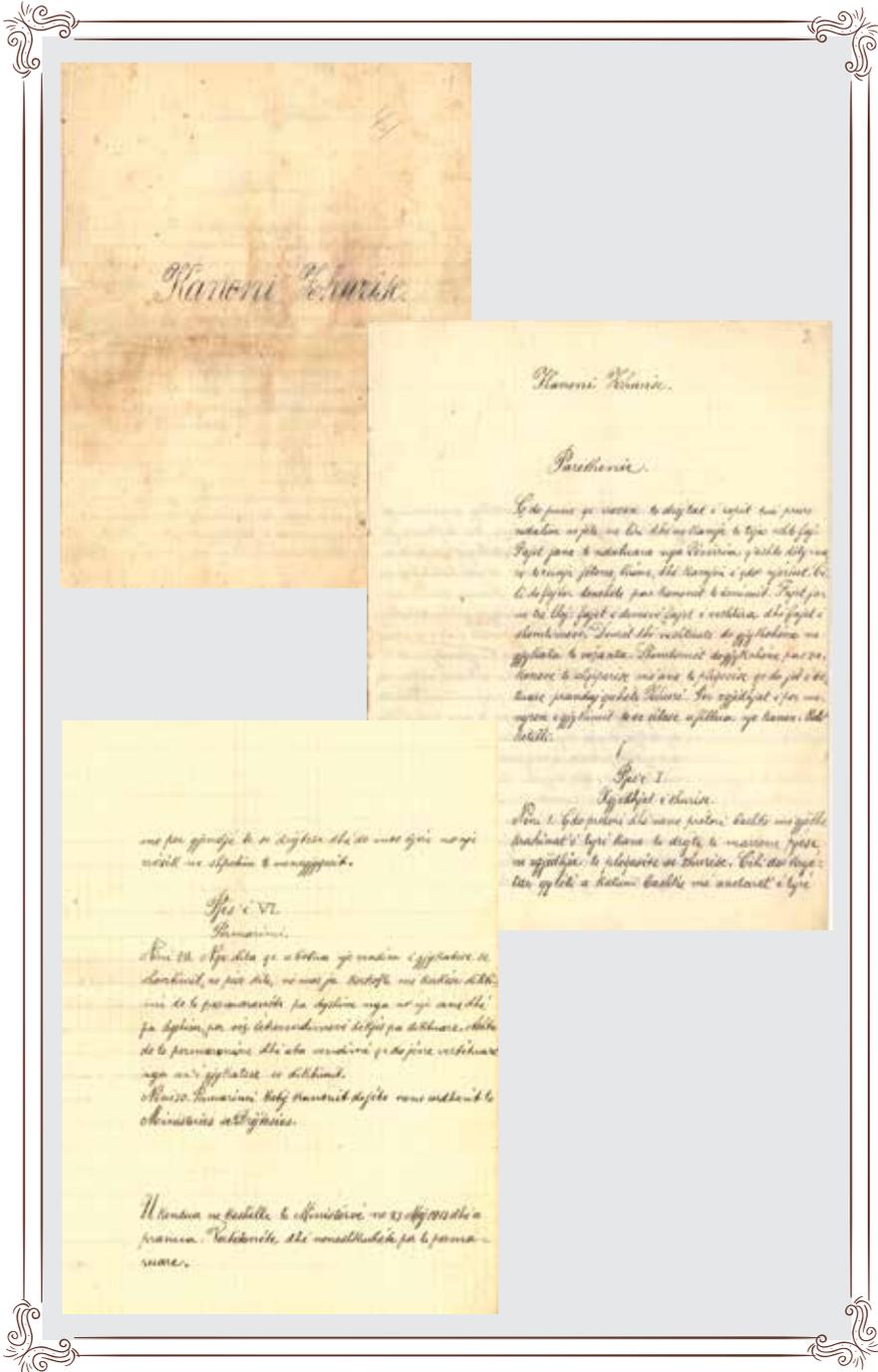
- Neni 65. Hierarkia e gjyqtarëve është si mëposhtes:
- 1) Kryesekretarë-Nd.Gjyqtarë e Gjyqësor Shk.I.re.
 - 2) Kryesekretarë-Nd.Gjyqtarë e Apelit.
 - 3) Ndihmës antarë e Gjyqësor Apelit.
 - 4) Gjyqtarët hetues.
 - 5) Gjyqtarët e Shk.I.re.
 - 6) Antarët e Apelit.
 - 7) Prokurorët të Apelit.
 - 8) Nd.Antarët i Diktimit.
 - 9) Kryetarët e Apelit.
 - 10) Ndihmës i Kryeprokurorit (në tërësi është dhe Inspektori i Drejtësisë).
 - 11) Antarët e Gjyqit Diktimit.
 - 12) Kryeprokurori.
 - 13) Kryetarët e Gjyqit të Diktimit.

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Year 1925/ Law on the Reinstatement in Implementation of the Previous Organization of Courts. Articles 59, 60 and 61 of this law are related to the types of disciplinary punishments for judges and the reports of the Inspector of Justice.



Letter sent to the Chief Inspectorate of the Royal Court. Extracted from file no. 205 of 1932.



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