



KOMITETI SHQIPTAR I HELSINKIT ALBANIAN HELSINKI COMMITTEE

Tirana, April 30, 2018

REPORT

VETTING UNDER THE OBSERVATION OF THE ALBANIAN HELSINKI COMMITTEE

FINDINGS AND STATISTICAL DATA *SEPTEMBER 2017 – APRIL 2018*

Main Findings

The transitory re-evaluation of judges and prosecutors, otherwise known as vetting, has been considered by the Venice Commission a justified and necessary measure for Albania to protect against corruption, which, if not addressed, might entirely destroy the judicial system.

Supporting bodies¹ as well as independent constitutional institutions² of vetting are working to carry out their obligations established in law No. 84/2016 “On the temporary re-evaluation of judges and prosecutors in the Republic of Albania.” In some cases, supporting bodies have referred that they have faced deficiencies in human resources and a high volume of work in carrying out their responsibilities as assigned by law.

Due to the importance and volume of the vetting process, which envisages the transitory re-evaluation of about 800 individuals, the Albanian Helsinki Committee (AHC) is aware that this process is complex and difficult. Nevertheless, AHC deems that this high volume of work requires an activity at a higher and more dynamic pace from independent constitutional institutions of vetting, without affecting the quality of the vetting process.

The establishment of the High Judicial Council and the High Prosecutorial Council is now a process depending on the vetting of candidates for members who are respectively judges and prosecutors in these two councils. Delays in the timely establishment of these Councils have caused stalemates in filling the vacancies in the High Court, the appointment of a Prosecutor General with a full mandate, as well as the timely establishment of special institutions against corruption and organized crime.

It is a good start of the process that there is respect for the principle of publicity in the first hearing sessions conducted by the IQC, which enabled an extensive participation of the media, domestic and international observers, as well as the public. In this regard, we deem that the legal opinion of AHC experts before these hearing sessions began made a

¹ High Council of Justice (HCJ), Prosecutor General Office, High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest (HIDAACI), the Directory for the Security of Classified Information (DSCI);

² Independent Qualification Commission and the Appeals College at the Constitutional Court;



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contribution, given that plans were for these hearing sessions to take place in halls with inappropriate infrastructure and very small in the IQC premises.

On March 21, 2018, the IQC held the first vetting hearing session that began among members of the Constitutional Court. The pace of the hearing sessions with the first subjects going through the vetting filters are slow. Within one week, only one hearing session is held by only one panel of judges, while the total number of members of this Commission ensures the formation of four panels of judges. Vetting may take place at a faster pace for those judges and prosecutors who have resulted without problems after the IQC's administrative investigation. These subjects, according to article 58, item 1, letter "a" of the vetting law may be confirmed in their jobs.³ This might help ease the stalemate created in the functioning of key institutions of justice and, in parallel, fill the vacancies in these existing institutions and the new justice institutions. The transitory period of reforming the existing justice institutions should not obstruct citizens' access to justice, nor lead the existing justice system, albeit temporarily, to a collapse or a nonfunctioning state.

Respect for the principle of publicity of the hearing sessions with the vetting subjects is an essential requirement of the right to due process. However, the transparency that this publicity has enabled should not infringe upon the human dignity of the vetting subjects. The dignity of judges and prosecutors, like the dignity of any other human being, should be respected, independently from the decision-making of independent constitutional bodies of the vetting process.

Also, AHC deems that the final authority of independent vetting institutions should be respected; these are organized in two levels while the subjects being re-evaluated and Public Commissioners enjoy the right to appeal vetting decisions of the first instance. Every person, independently from the official position or public status, should respect the principle of the presumption of innocence of judges and prosecutors who are the subject of vetting, avoiding any kind of reaction that may be perceived as a direct or indirect interference with the activity of constitutional vetting institutions. This would contribute to increasing the public's trust that the vetting process is being carried out in an impartial manner and by independent constitutional institutions, as required by the new legal framework of the justice system.

During monitored IQC hearing sessions, the panels of judges have demonstrated mainly correct ethical behavior toward subjects and their defense lawyers. To the extent it was possible for AHC observers to monitor, the right to due process has been generally respected by these bodies, although some important aspects of this right, highlighted in the following parts of the report, are disputable.

The vetting process is still accompanied by a marked level of lack of transparency by supporting bodies for the broad public, in spite of efforts of the Albanian Helsinki Committee (AHC), which turned into legal battles, some of which were won. Two of these

³ This decision is not final if the right to appeal is exercised within the legal deadline, 15 days from the day the decision of the Commission has been announced.



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bodies, namely the HIDAACI and the DSCI are not implementing decisions of the Commissioner for the Right to Information, to provide complete statistical information resulting from their verifications, particularly that information that is of interest for the public. The arguments of these two bodies to not provide information are in contravention of constitutional and legal provisions of vetting.

The way in which supporting bodies have acted vis-à-vis the Independent Constitutional Vetting Institutions does not appear to be unified. In part, this may be due to the law. The Directory for the Security of Classified Information (DSCI) and the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest (HIDAACI) admit that they possess in their reports preliminary conclusions or evaluations regarding the two components they help with (figure and assets). Meanwhile, the Inspectorate of the High Council of Justice (HCJ) and the General Prosecution Office directly or indirectly claim they do not possess conclusions regarding the professional capabilities of judges and prosecutors, in the detailed and reasoned reports that they make available to the vetting commissions.

According to the DSCI, 3% of judges/prosecutors have not responded accurately to the questions in the self-declaration forms or had deficiencies in filling out the data or completing required documentation. Meanwhile, the HIDAACI states that 3 judges of district courts, 1 judge of the High Court, and 2 members of the Constitutional Court have not submitted their asset disclosure forms.

The number of 794 subjects of re-evaluation that have submitted their asset disclosure forms to HIDAACI does not match the number of 901 subjects who have submitted the declaration on the control of their figure to the DSCI. The reason for the statistical mismatch in the number of subjects that have filed declarations with DSCI and those who have submitted declarations with HIDAACI may be even the resignation of some subjects of vetting during the process of submitting self-declaration forms to these bodies. If that is the case, the withdrawal of these subjects may have taken place precisely because of the declaration of their assets and conflict of interest.

These are only some of the main findings of the monitoring that AHC is conducting on the vetting process in the country. The following data indicate the great importance of this process and above all the need to monitor it impartially and professionally, being guided by the standards of human rights and freedoms.



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1. FINDINGS AND DATA OF A QUALITATIVE NATURE

In order to encourage transparency and accountability of bodies that have been assigned competences for the transitory re-evaluation of judges and prosecutors, the Albanian Helsinki Committee (AHC), in cooperation with the Open Society Foundation Albania (OSFA), continued to monitor the implementation of the vetting process, thanks to impartial and professional contribution by domestic and international partners.

The goal of the vetting process is to restore citizens' trust in the justice system. In this regard, transparency, accountability and the involvement of citizens in the process, according to the law, are important elements. Another goal of the reform in the justice system as well as of vetting as part of it is to remove the hands of politics or anyone seeking to influence the independence of justice institutions and the impartiality of members of the justice system.

1.1 By-laws of the vetting process

With help from international experts, AHC provided legal critique on the Regulations “On the activity of the Independent Qualification Commission,” the Regulations “On procedures for lottery in the IQC,” as well as on Regulations “On the activity of the Appeals College.” Being objectively unable to be part of the consultation process during the drafting of these regulations, AHC recommended that the views and suggestions presented in this critique be discussed collegially among the members of these bodies, when the need to review these regulations arises (given that they have been approved already).

In general, AHC found that the regulations were very detailed and allowed the regulation even of issues that are not essential or that are regulated in other parts of legislation that are of higher hierarchy. **In some cases, regulations contained provisions that conflicted legislation of a higher hierarchy, which makes them legally invalid. It is recommendable that future versions of regulations avoid duplications (or *overlapping*) of legislation in force and that some provisions in them are further clarified.**

1.2 Transparency of vetting supporting bodies to the public

As will be noted in this report, there remain difficulties and obstacles in terms of enabling full transparency to the public with regard to the vetting process, and particularly data from bodies that help this process, the constitutional vetting bodies.

AHC has addressed the vetting supporting bodies⁴ to obtain mainly statistical as well as qualitative information on the progress of the process. At this first phase, AHC sought information regarding the number of re-evaluation subjects that have filled out self-declaration forms, whether there were subjects that did not complete this requirement within the deadline, the advancement of the re-evaluation process by supporting bodies, the nature of encountered problems, as well as information on whether they prepared detailed reports as envisaged in provisions of the Law no. 84/2016. AHC specified in its requests that the nature of the

⁴ Prosecutor General Office, High Council of Justice (HCJ), the Directory for the Security of Classified Information (DSCI) and the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest (HIDAACI).



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requested information was mainly statistical and general and did not violate any element of the right to private life or the confidentiality of the vetting process itself on cases envisaged by law.

Supporting bodies hesitated to provide fully the information requested by AHC, thus not respecting the provisions of the law “On access to information” and its deadlines. These bodies avoided especially providing information that was of interest to the public regarding this process and concretely about how many justice officials, based on preliminary data these bodies possessed, were considered unfitting for the three components that are at the foundation of the vetting process – namely assets, integrity and the professional capabilities of judges and prosecutors.

Failure to provide information by supporting bodies, within the deadline and fully, led AHC to address the Commissioner on Access to Information and Protection of Personal Data, in order to realize the constitutional right of information. The Commissioner found AHC’s request for two of these bodies, namely the Directory for the Security of Classified Information (DSCI) and the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest (HIDAACI),⁵ to be based on the law and ordered these two bodies to supply the requested information missing in the official letters to AHC.

The Commissioner did not accept AHC’s complaint on the Prosecutor General’s Office, which AHC used its right to complain on at the Tirana Administrative Court of First Instance. Meanwhile, on February 5, 2018, AHC withdrew from the administrative complaint filed with the Commissioner on the Inspectorate of the High Council of Justice. During the review of this case by the Commissioner, the Inspectorate sent us two official letters where we find the provided information to meet our request for information from a formal-legal standpoint.

Even after the decision of the Commissioner, the DSCI and the HIDAACI did not provide information on some of the questions presented by AHC. AHC used the right to sue these two institutions at the administrative court after the right to access to information was violated by their inaction pursuant to the decision of the Commissioner. **We wish to emphasize that the law on access to information does not envisage effective legal mechanisms to force public bodies to enforce decisions of the Commissioner when the right to access to information is violated or is not respected.**

The arguments used by supporting bodies for not providing information that is of greatest interest to the public differ from one body to the other, thus highlighting lack of consistency in terms of implementation of the law. Furthermore, these arguments are not based on or justified by the constitutional and legal provisions of vetting.

HIDAACI avoided providing information on the assets of judges and prosecutors, on the grounds that this is a function of constitutional re-evaluation bodies.⁶ The Commissioner on the Right to Information accepted as reasonable and legal the arguments of AHC and found that the requested information is within the competences that article 33, Law 84/2014 and article D

⁵ http://www.idp.al/wp-content/uploads/2018/02/Vendim_nr_05-ILDKPKI.pdf
http://www.idp.al/wp-content/uploads/2018/02/Vendim_nr_04-DSIK.pdf

⁶ Independent Qualification Commission and the Appeals College at the Constitutional Court;



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of the Constitution assign to HIDAACI. In its decision, the Commissioner clarified that *paragraph 40 of Decision no. 2/2017 of the Constitutional Court and paragraphs 37-39 of Decision no. 78/2017 of the Constitutional Court grant HIDAACI and other bodies involved in the re-evaluation of judges and prosecutors an supporting role vis-à-vis re-evaluation institutions created especially for this process, and **recognize the right of these institutions to conduct further investigations in the context of final decision-making.** This stipulation has been made in order to preserve the division of powers and the independence of institutions in the context of the re-evaluation process, **but not in the sense of excluding these bodies from carrying out their investigative activity.***

On the other hand, DSCI's argument is that the information they possess contains sensitive data, the exposing of which might violate the smooth conduct of the process and prejudice its conclusion. It is further clarified that the requested information relates to the process carried out by the Working Group on the "Control of Integrity," which is classified information.

In some cases, the supporting bodies stated that they have faced deficiencies in human resources for realizing this very dynamic and voluminous process. **As we have been informed by the HCJ Inspectorate, where 10 officials presently carry out their duties (chief inspector and 9 inspectors), 6 seats in this Inspectorate are vacant, thus lacking 40% of the staff, which cannot be filled due to the legal amendments of Justice Reform.** The Inspectorate has stated that it has encountered difficulties in the process of withdrawing judicial files that will be part of the professional evaluation process because in some cases, judicial files have been transferred from one court to another and, as a result, there are several official letter for the same file to different courts, which requires time until the final withdrawal of the files.

The response of the HCJ Inspectorate lacked information about how many of the subjects that were under its competence were professionally fitting or not. To a request sent again by AHC specifically for this piece of information, **the Inspectorate responded by saying that the reports it has drafted, although of a detailed descriptive nature of data, they do not contain conclusions on whether the subjects are professionally capable** and that these reports are in accordance with the provisions of article 43 of the vetting law and decision no. 2, 18.01.2017 of the Constitutional Court.

The Constitution does not specifically envisage the body that will carry out the preliminary control of the declaration about the professional capabilities submitted by judges and prosecutors, while the Constitutional Court, in its decision no. 2 (2017) argued that, according to article 10/3 of the law, the bodies for evaluating the professional capabilities are the Inspectorate of the High Council of Justice and the relevant structure in the Prosecutor General's Office. With regard to this issue, in its response, the Prosecution General Office, only said that, "*The Working Group is in the process of drafting evaluation reports for these subjects...but it is the Independent Qualification Commission that will conduct the re-evaluation on these reports,*" indicating that the professional evaluation reports drafted by the Working Group in the Prosecutor General's Office do not contain conclusions on whether the subjects are professionally capable or not. Also, the model of the Evaluation Report, attached to the official response by the Prosecutor General's Office does not contain any section with conclusions, but it is worth mentioning that its structure expressly contains descriptions and findings on legal knowledge, legal reasoning, organizational skills to handle workload,



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administer files or carry out investigation procedures, communication skills, etc.,..., indirectly reaching conclusions on elements of the of the professional values of prosecutors and legal assistants in the Prosecutor General's Office.

While in the case of the DSCI and HIDAACI, though information was refused, it was indirectly admitted that these institutions had data on the preliminary conclusions (evaluations) regarding the two components that they help constitutional vetting bodies, in the case of the HCJ Inspectorate and the Prosecutor General's Office, it is stated directly or indirectly that these bodies do not possess conclusions regarding the professional capabilities of judges and prosecutors.

The Constitutional Court⁷ has judged that all four supporting bodies do not carry out their legal activity detached from the activity of the re-evaluation bodies, the IQC and the AC, but under the supervision and control of the latter. **Due to the mission they have and the functions they carry out, the purpose of including them in this process is to help constitutional bodies exercise constitutional competences.** However, it is unclear whether in the case of supporting bodies, the detailed and argued report⁸ that these bodies prepare for every subject presents or not preliminary conclusions or opinions regarding professional capabilities!

1.3 Importance of the dynamism of the vetting process without affecting its quality

The impasses created in the functioning of existing bodies of the justice system, such as the Constitutional Court and the High Court, as well as delays in the creation and functioning of new bodies such as the High Judicial Council, the High Prosecutorial Council, the Judicial Appointments Council and specialized institutions against corruption and organized crime, require a faster and more dynamic vetting process, while not harming its quality.

The establishment of the High Judicial Council and the High Prosecutorial Council is now a process that depends on the vetting of candidates for members, namely judges and prosecutors, in these two councils. In a chain reaction, the timely establishment of these Councils would lead to unblocking impasses created in filling vacancies in the High Court, the appointment of a Prosecutor General with a full mandate, as well as the timely establishment of specialized institutions against corruption and organized crime. While the Judicial Appointments Council, which is responsible for ranking the candidates for the Constitutional Court and the High Justice Inspector, has been constituted, the law requires the vetting of the members of this Council, which might put into question its legitimacy.

According to the notification of the Independent Qualification Council, from 01.12.2017,⁹ shortlisting has been done and re-evaluation procedures have begun for the first 57 subjects of the priority list due to the law, among others, for the members of the Constitutional Court, members of the High Court, candidates for the High Judicial Council, the High Prosecutorial Council, the Judicial Appointments Council, and the High Justice Inspector.

⁷ Decision of the Constitutional Court no. 2, 18.01.2017

⁸ Article 43, item 2 of Law no. 84/2016

⁹ <http://kpk.al/2017/12/12/njoftim/>



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Starting from February 16, 2018, the Independent Qualification Commission (IQC) decided to interrupt the transitory re-evaluation of 11 subjects, based on their individual resignations, presented to the commission since January this year.¹⁰ Two of the subjects that submitted resignations were part of those shortlisted by the Independent Qualification Commission.

The pace with which hearing sessions are taking place at the IQC may be considered slow against the total number of members of the IQC,¹¹ which enables the formation of four panels of judges. According to the calendar of sessions conducted to date, it appears that within one week, an average of two sessions have been conducted by only one panel of the IQC, for one subject of re-evaluation, where the first session was a hearing and the second was to announce the decision.

Law no. 84/2016 “On the transitory re-evaluation of judges and prosecutors” does not envisage clearly deadlines for the vetting process in both of its levels. However, when appropriate, re-evaluation institutions may implement procedures envisaged in the Administrative Procedure Code or the law “On the organization and functioning of administrative courts and the adjudication of administrative disagreements.”

1.4 Monitoring of hearing sessions with subjects of re-evaluation

The scarce number of hearing sessions conducted with subjects of re-evaluation does not enable the reflection of complete and generalizing conclusions with regard to the monitoring conducted by observers of the Albanian Helsinki Committee. It is worth highlighting that respect for the principle of publicity in the first hearing sessions conducted by the IQC, which enabled the extensive participation of the media, domestic and international observers, as well as the public, is a good start of the process.

In spite of the very good standard that the IQC has set for the publicity of hearing sessions, in two sessions,¹² AHC observers were not allowed to enter the hall where the sessions were being held. In the first session, AHC observers were present one minute before the session began; in the second, they were there a few minutes later. In both cases, disallowing AHC observers to enter the hall premises was argued with the fact that the smooth progress of the session was affected given that it had already begun. In our opinion, this practice violates the principle of the public session envisaged in article 55 of the Vetting law, article 20 of the Law Administrative Courts and, there is a risk of violating article 6, paragraph 1 of the European Convention of Human Rights.¹³ The public session requires that the public may enter and leave the hall at any time. Limitations in this regard are envisaged in article 20, paragraph 2 of the law on Administrative Courts, when the court may not allow the participation of the media and the public in a trial session or part of it, on grounds such as protection of public morale, public order, national security, commercial secrets, the right to private life or personal rights.

Respect for the principle of publicity of hearing sessions with vetting subjects is an essential requirement of the right to due process. Nevertheless, AHC finds that it is also essential to

¹⁰ <http://kpk.al/vendime/>

¹¹ <http://kpk.al/rreth-nesh/komisioneret/>

¹² Sessions on March 23, 2018, and April 17, 2018.



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respect the human dignity of all vetting subjects, because human dignity is embodied in the Preamble of the Constitution of the Republic of Albania.

According to international standards, protection of human dignity requires protection, among others, from humiliation or reduction of self-esteem of a person or group of persons. In spite of decision-making by bodies that are responsible for vetting, AHC considers that the progress and results of the vetting process should not be accompanied by public statements that infringe upon the human dignity of judges and prosecutors.

Also, AHC considers that the final authority of vetting bodies should be respected, and particularly, the rights of re-evaluation subjects (judges and prosecutors) should be respected. The principle of the presumption of innocence of these subjects should not be violated even in the cases when the Independent Qualification Commission decides to dismiss this or that judge or prosecutor. We emphasize this because according to article “F” of the Constitution, and article 62, item 1, of the Law no. 84/2016, the evaluated subject’s right to an appeal with the Special Appeals Commission, whose decision is final, is guaranteed. Nobody should prejudice individually or as a group, directly or indirectly, the judges, prosecutors, or other subjects that are subjected to vetting. This would contribute to increasing the credibility among the public and the vetting subjects themselves, that this process is being realized in an impartial manner, and by independent constitutional bodies, as required in the new legal framework of the justice system.

In general, during the hearing sessions monitored in the IQC, the panels of judges have demonstrated ethically correct behavior toward the subjects and their lawyers, without displaying prejudice or any conduct that might be perceived as biased. To the extent possible from the monitoring by AHC observers,¹⁴ the right to due process has been respected by these bodies; however, some important aspects of this right, highlighted in the following paragraphs, are disputable:

- a) In the hearing session of 21.03.2018, the panel of judges stated that it could not present questions¹⁵ for the subject of re-evaluation, in spite of the presence of his lawyer in the session, because the subject was not personally present. In the opinion of the AHC observers, based on article 55, item 3, of Law no. 84/2016, and the principles of due process, the panel of judges is not denied the right to present questions even if the subject of re-evaluation is not present but is represented through his lawyer. The latter always reserves the right to not respond to questions.
- b) In the hearing session of 11.04.2018, the defense lawyer of the subject of re-evaluation, was denied the request to summon an independent auditing expert. In the opinion of the AHC observers, refusal of this right is disputable and might violate the principles of due process.¹⁶ The vetting law gives the IQC the opportunity and the right to summon an expert and the expertise may be obtained as proof (article 49/1, letter “b,” article 49/2).

¹⁴ The reasoned decisions, which are yet to be transcribed and published fully in the official website of the IQC, might be useful for clarifying these aspects.

¹⁵ The questions could not be submitted by the panel of judges or the IMO.

¹⁶ Article 49/6 of the vetting law “*The request to obtain a piece of evidence is refused by the Commission or the Appeals College, if it is not allowed by law or in the cases when: a) obtaining the evidence appears to be unnecessary; b) the fact to be proven is insignificant for decision-making or might result proven during the adjudication; c) the evidence tool is entirely inappropriate or inaccessible; ç) is done for the purpose of delaying*”



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Also, it is unclear in the practice of the IQC so far when the subject of re-evaluation will be considered uncooperative. In the hearing session of 11.04.2018, the rapporteur of the case stated that the subject had not been entirely cooperative, in accordance with article 48 of the vetting law. The way in which article 48 of the Law no. 84/2016 is somewhat general, which allows for relatively broad discretion to the vetting institutions for its implementation. This term needs to be specified and clarified further in the practice and decision-making of these institutions, to reflect more transparency; otherwise, this may be a form of prejudice on the subject of re-evaluation or its biased evaluation.

adjudication; d) it attempts to prove a fact in favor of the subject of re-evaluation, which even if considered true, would not influence the taking of a decision."



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2. FINDINGS AND STATISTICAL DATA OF THE SUPPORTING BODIES

AHC is of the opinion that it may be of interest to the public to present in a summarized manner some of the partial statistical data made available by supporting bodies (DSCI, HIDAACI, HCJ and the Prosecutor General's Office), although such data is not final. According to the Constitution and the vetting law, **“The Commission and the Appeals College are the institutions that decide the final evaluation of the subjects of re-evaluation.”**

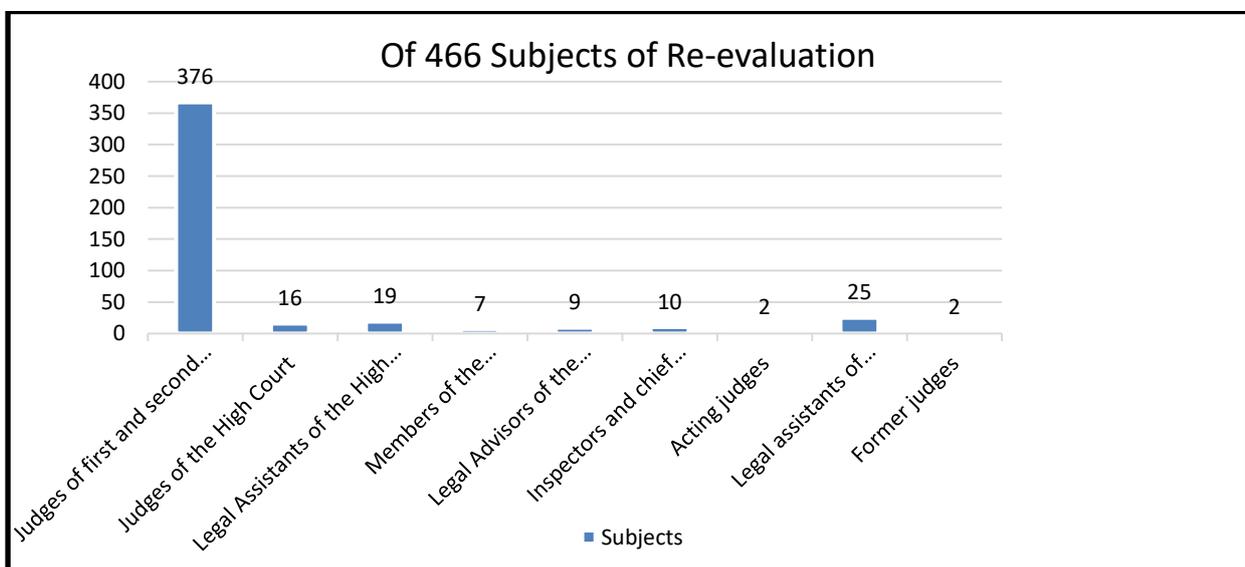
We wish to specify that, in carrying out their constitutional functions, these independent bodies carry out a genuine process of control and evaluation **and do not rely and nor are they bound by the conclusions presented to them by other supporting bodies.**

2.1 Evaluation of professional capabilities

A. Regarding the professional evaluation of judges and legal assistants

In reference to the official response of the Inspectorate of the HCJ, for the period 21.10.2016-31.03.2017, 466 subjects of re-evaluation submitted forms and accompanying documentation for professional evaluation. A preliminary analysis of the data indicates that these subjects are:

- 7 members of the Constitutional Court;
- 16 judges of the High Court;
- 376 judges of the first and second instance;
- 10 inspectors and the chief inspector of the HCJ Inspectorate;
- 9 legal advisors of the Constitutional Court;
- 19 legal assistants of the High Court;
- 25 legal assistants of the administrative courts of first and second instance;
- 2 acting judges in other institutions; as well as
- 2 former judges.

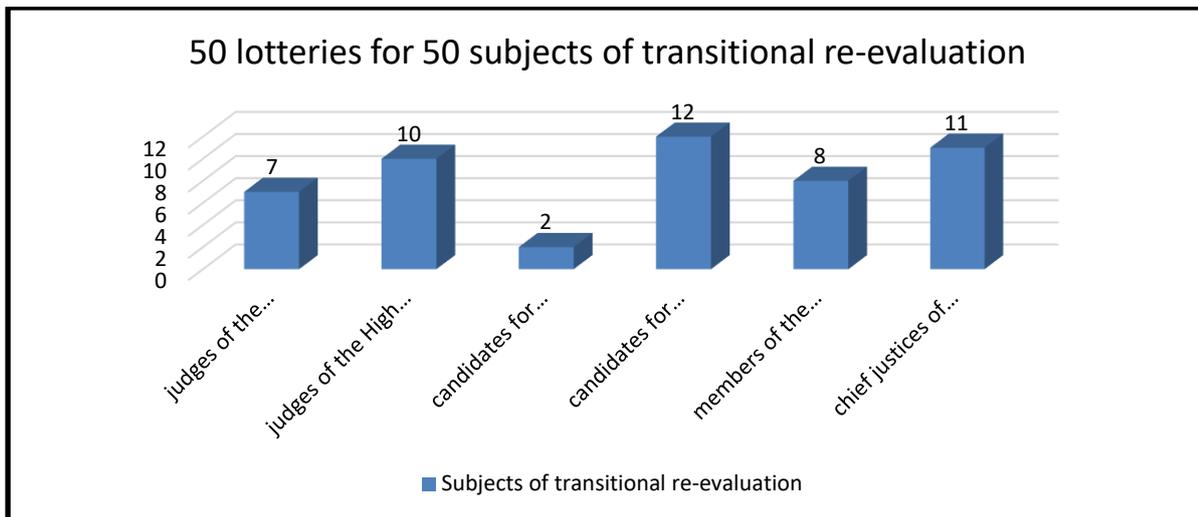




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Until January 26, 2018, under the instructions and with the cooperation of the Independent Qualification Commission, a total of 50 lotteries for 50 subjects of the transitional re-evaluation were drawn, which the HCJ Inspectorate helps for. These subjects are categorized as follows:

- 7 judges of the Constitutional Court;
- 10 judges of the High Court;
- 2 candidates for High Justice Inspector;
- 12 candidates for the High Judicial Council;
- 8 members of the Judicial Appointments Council, 4 of which were selected by lottery on December 7 by the Assembly;
- 11 chief justices of the first instance and appeals courts.



Following the organization of lotteries for the selection of files reviewed by the subjects of re-evaluation, the Inspectorate sought a total of 250 judicial files/ legal documents in the respective courts where these are administered. The situation of the submission of files is as follows:

- copies of 198 judicial files, which have to do with the transitional re-evaluation of 40 subjects of re-evaluation, have been submitted to the Inspectorate;
- the Inspectorate is awaiting files on 10 subjects of re-evaluation;
- for 12 subjects of re-evaluation, all files have been submitted and work is underway to finalize the reports according to the standard form in order to submit them as soon as possible to the IQC;
- for 28 subjects of re-evaluation, all files have been submitted and their analysis has been completed.

By decision of the Working Group established by the HCJ, the Inspectorate proceeded with the submission of reports and judicial files to the IQC by groups of subjects of re-evaluation, depending on the institution. According to this approach, a total of 17 reports have been



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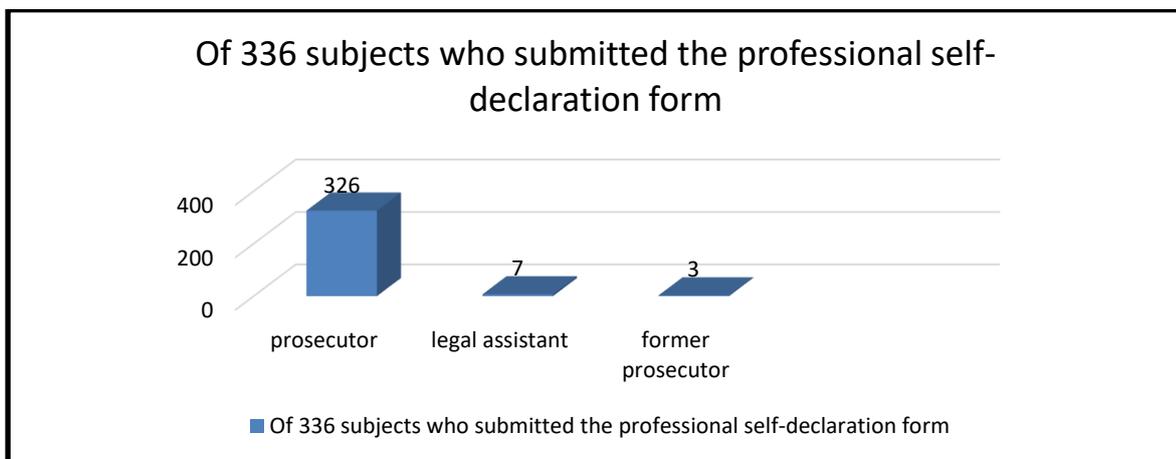
accompanied to the IQC, accompanied by 175 judicial files for 17 subjects of re-evaluation as follows:

- 7 judges of the Constitutional Court;
- 10 judges of the High Court;

B. Regarding the professional evaluation of prosecutors and legal assistants

AHC has requested from the Prosecutor General's Office information on the total number of subjects that have submitted the professional self-declaration forms within the legal deadline, according to article 41, item 1 of the law no. 84/2016, divided by the categories of prosecutors and legal assistants at the Prosecutor General's Office. The Prosecutor General's Office, in its official response, indicates that the total number of subjects who have submitted the professional self-declaration form is 336, of which:

- 326 are prosecutors;
- 7 are legal assistants; and
- 3 former prosecutors who are currently in the post of Inspector at the Inspection Directory at the Ministry of Justice.



According to the General Prosecutor's Office, all subjects of re-evaluation submitted within the deadline of January 31, 2017, the self-declaration form. With regard to the re-evaluation procedure, the Prosecutor General's Office has started with the priority subjects who are 23 prosecutors:

- Prosecutor General;
- 3 members of the Judicial Appointments Council;
- 19 candidates for the High Prosecutorial Council.

According to the calendar agreed in advance with the IQC, 21 lotteries have been drawn in the Prosecutor General's Office and more lotteries are expected.

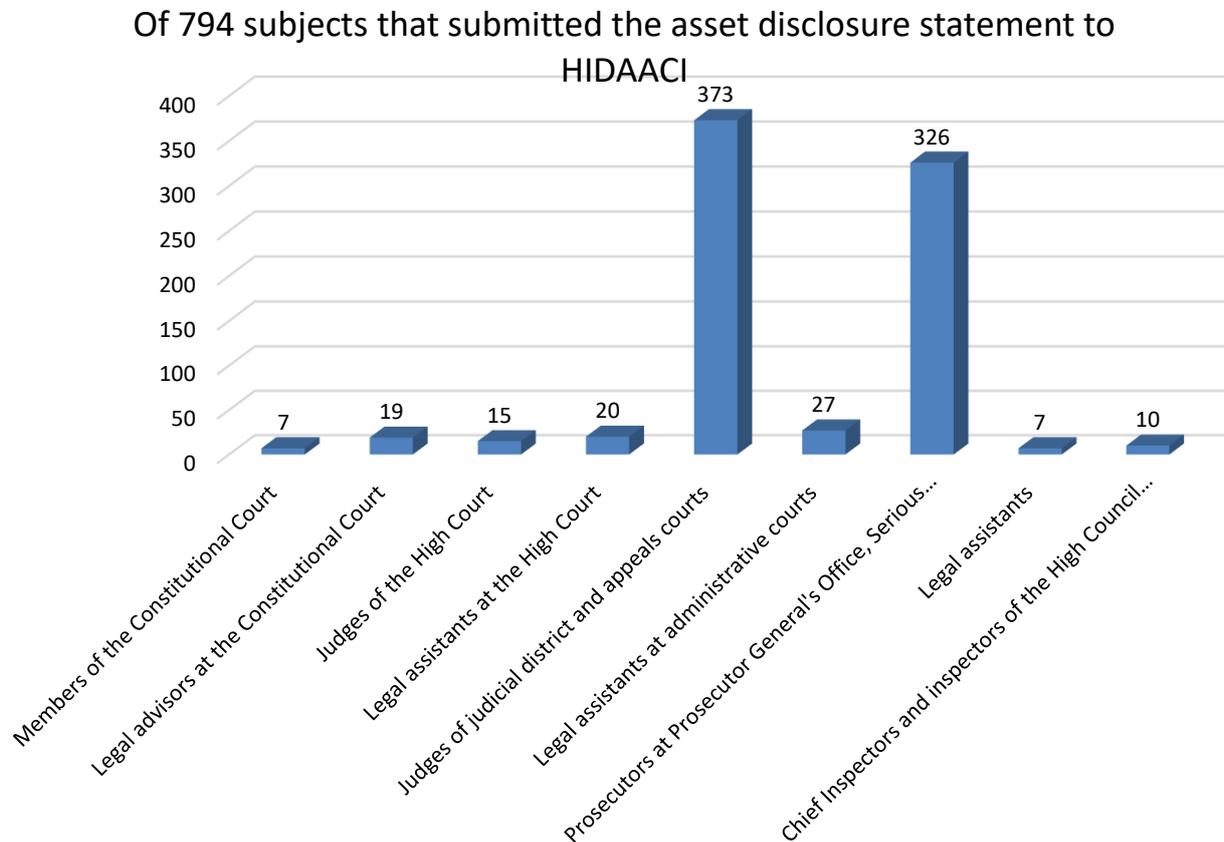
2.2 Evaluation of Assets



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Based on information AHC has obtained, it appears that a total of 794 subjects of the re-evaluation process have submitted to HIDAACI their asset disclosure statements, categorized as follows:

- 7 members of the Constitutional Court and 9 legal advisors in it;
- 15 judges of the High Court and 20 legal assistants in it;
- 373 judges of judicial district and appeals courts;
- 27 legal assistants at administrative courts;
- 326 prosecutors at the Prosecutor General's Office, Serious Crimes Prosecution Office, judicial district and appeals Prosecution Offices;
- 7 legal assistants;
- 10 Chief Inspectors and inspectors at the High Council of Justice.



A total of 6 subjects of the re-evaluation process did not submit their asset disclosure forms, of which 3 are judges at judicial district courts, 1 is a judge at the High Court, and 2 are members of the Constitutional Court. It is worth mentioning that the number of subjects who submitted their asset disclosure statements by the deadline is 794, which is lower than the number of subjects who submitted their forms for control of integrity and professional evaluation, resulting from the responses of the HCJ Inspectorate and the Prosecutor General's Office, as well as the DSCI. Specifically, the number of judges of the High Court and judges of first instance and appeals courts who submitted their asset disclosure forms to HIDAACI appears lower than the number of subjects who submitted forms for the 2 other criteria of re-evaluation,



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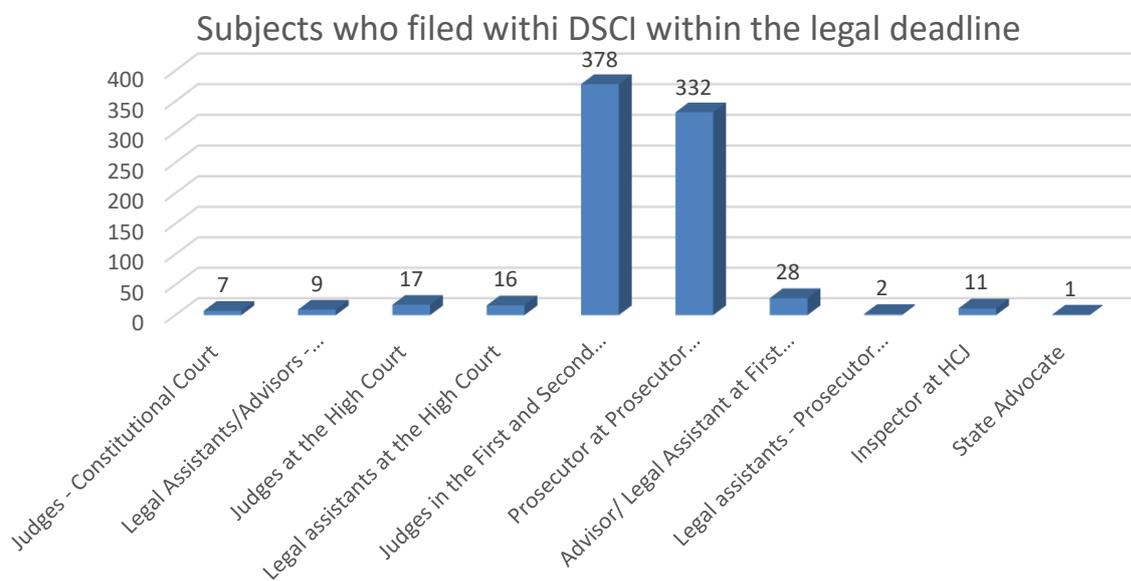
while the number of legal assistants at the High Court and the administrative courts, appears higher in this regard (see explanation in following paragraphs).¹⁷

AHC is expecting other information from HIDAACI, pursuant to the decision of the Commissioner on the Right to Information.

2.3 Control of Integrity

The DSCI responded to the AHC request regarding the number of subjects who filled our inaccurately (with deficiencies) the Integrity Statement, namely 3% of the total of 801 subjects of the transitional re-evaluation.

Those who submitted their statement to the DSCI within the legal deadline are 7 judges of the Constitutional Court, 6 legal assistants and 3 advisors in it, 17 judges of the High Court and 16 legal assistants at it, 73 judges and 1 prosecutor in the Appeals Courts, 244 judges and 6 legal assistants at the first instance courts, 39 judges, 1 advisor and 21 legal assistants at the administrative courts and the Administrative Court of Appeals, 22 judges of the Serious Crimes Courts, 1 judge and 10 inspectors at the HCJ, 331 prosecutors and 2 legal assistants at the Prosecutor General's Office and the judicial district prosecution offices, as well as 1 State Advocate.



The reason for the statistical discrepancy in the total of subjects who filed with DSCI and those who filed with HIDAACI may be the resignation of some subjects of vetting during the process of the submission of self-declaration forms. If that is the case, the withdrawal of these subjects occurred due to their declaration of assets and conflict of interest.

¹⁷ For further information, please look at explanation provided in item 2.3 of this report.



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The change in the number of subjects who submitted their statements with DSCI is also different from the number of subjects reported by the HCJ Inspectorate, the Prosecutor General's Office and the HIDAACI. Thus, there are some discrepancies in the statistical data from these bodies and for the categories or division of subjects. For instance, while HIDAACI states that 20 legal assistants filed with it, the DSCI reports a lower number, namely 16 legal assistants. One reason may be the unclarity in the categorization of judges or prosecutors who sought temporary suspension and were appointed as acting in other posts in the justice institutions; for instance, judges appointed as acting legal assistants in the High Court, the HCJ Inspectorate, etc. In other words, the supporting bodies may have understood the positions of the re-evaluation subjects in a different manner.

With regard to other questions, we are awaiting information from the DSCI, pursuant to the decision of the Commissioner on the Right to Information.

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