

C1-EU-NPA
CLUSTER ONE EU NEGOTIATIONS PLATFORM – ALBANIA



KOMITETI SHQIPTAR I HELSINKIT



Position Paper
**THE ADVANTAGES AND
DISADVANTAGES
OF THE NEW JUDICIAL MAP**



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Document prepared by:

Att. Erida Skëndaj, *Executive Director of the Albanian Helsinki Committee*

Assisted by:

Ms. Enegrída Bënja, *Project Assistant/Lawyer*

Ms. Eriselda Ndreca, *Project Assistant/Paralegal*

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Rr. Brigada e VIII, Pallati “Tekno Projekt” Shk. 2 Ap. 10, Tirana-Albania

Post Office Box 1752 Tel: 04 2233671

Mob: 0694075732

E-mail: office@ahc.org.al web site: www.ahc.org.al

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List of Abbreviations

EU – European Union

CEPEJ – European Commission for the Efficiency of Justice

ECtHR – European Court of Human Rights

CJEU – Court of Justice of the European Union

SCCOG – Special Court against Corruption and Organized Crime

IWG – Inter-institutional Working Group

HJI – High Justice Inspector

CoE – Council of Europe

HJC – High Judicial Council

HPC – High Prosecutorial Council

EC – European Commission

ECHR – European Convention of Human Rights

AHC – Albanian Helsinki Committee

CMD – Council of Ministers Decision

INTRODUCTION

Reforming of the justice system realized in the Assembly of the Republic of Albania came as a need to fight corruption in the country and, at the same time, strengthen the independence of the judiciary, to increase its accountability and efficiency, for citizens to get justice without obstacles, with quality, from a professional judicial corps with integrity and within reasonable deadlines.

Re-organization of the courts and their territorial competences, known otherwise as the new judicial map, in principle, bears key significance for increasing access, quality, and reduction of costs for citizens in obtaining justice, important objectives in the context of reform in the justice system. This process should have been conducted in a transparent manner, based on a complete evaluation of the situation and taking into consideration the objectives, principles, and criteria established in articles 14 and 15 of one of the most organic laws of the justice reform package, law no. 98/2016 “On the organization of the judicial power in the Republic of Albania,” approved by the Assembly of Albania on 06.10.2016. In AHC’s assessment, these principles and criteria were not fully respected, as analyzed further on in this document.

By order no. 78, dated 18.02.2019, the High Judicial Council (HJC) established the inter-institutional working group for the assessment and re-organization of judicial districts and the territorial competences of courts, consisting of members of the HJC, representatives of the Ministry of Justice, representatives of courts of first instance of general jurisdiction, courts of appeals of general jurisdiction, administrative courts, and the High Court, as well as support staff of the Council.¹ About three years later, namely on 21.07.2022, the Council of Ministers approved Decision no. 495, “On the re-organization of judicial districts and the judicial competences of courts.” This decision, based on the proposal of the Minister of Justice, reorganizes the first instance and appeals courts, by bringing about a drastic reduction of the number of some courts in the country, as follows:

- a. First instance courts of general jurisdiction are reorganized into 13 courts of judicial districts, from 22 such, leading to the dissolution of 9 courts.
- b. Appeals courts of general jurisdiction are re-organized into one Appeals Court of General Jurisdiction, from 6 appeals courts nationwide, leading to the dissolution of 5 courts.
- c. Administrative courts of first instance are re-organized into 2 administrative courts of first instance with territorial competences, from 6 such courts, leading to the dissolution of 4 courts.

In total, with the new judicial re-organization, otherwise known as the new judicial map, 18 courts are dissolved, thus creating an extraordinary and unprecedented situation in these 32 years of democracy.

¹ <https://klgj.al/wp-content/uploads/2022/06/relacion-harta-gjyqesore-F-1-Mbledhje-Plenare.pdf>, fq.1

EXECUTIVE SUMMARY

The Albanian Helsinki Committee (AHC) has been among the first organizations to react on the effects of the new judicial re-organization, immediately after it became familiar with it through the media. In its statement of June 14, 2021,² AHC placed special emphasis on the need for access to justice, after it became familiar with the reporting by the HJC Chair to a meeting of the Parliament's Committee of Laws where, among other things, there were discussions about the new judicial re-organization. AHC drew attention to the fact that a priority in the new organization of courts should be that of citizens' effective access, which is a key objective of justice reform. This would require an in-depth and comprehensive study and broad consultations. AHC pointed out that the need for consultation also derives from the law "On public consultation," as the new judicial map represents a policy of high public interest.

In the beginning of 2022, the HJC launched for consultation the initial evaluation draft for the new judicial map. The Albanian Helsinki Committee (AHC), together with 9 civil society organizations,³ drew attention on:

- The lack of transparency before the public about the activity of the IWG established by the HJC.
- The lack of a consultative, inclusive process during the phase of drafting the evaluation report by this working group.
- The lack of an objective and comprehensive study or evaluation, with the advantages and disadvantages of the re-organization of judicial districts and their territorial competences.

In these circumstances, the premises were created for a proposal by the HJC and the Ministry of Justice, for the drastic reduction of the number of courts in the country. The greatest concern is that about the functioning of 1 single appeals court of general jurisdiction, at the national level, while other countries that re-organized their courts and were referred to as a model by the HJC had a much softer reduction in the number of appeals courts. It is worth mentioning here Moldova and the Netherlands, which reduced the number of appeals courts from 5 to 4 in their reforms undertaken for judicial maps. It is worth emphasizing also that models of judicial maps in countries of the European Union, such as Portugal, may not be considered successful as long as they have evidenced processes that clearly favored the separation of courts and services simply on the basis of mathematical estimations, without taking into consideration the caseload or great distances between geographic areas.

In light of the principle of the rule of law, inseparable in the system of the European Convention of Human Rights, the European Court of Human Rights (ECtHR) considered that "a court" should always be "created by law," otherwise, it would lack the legitimacy required in a democratic society to hear and review individual cases. In AHC's estimation, the process and criteria followed by the HJC and the Ministry of Justice for judicial re-organization, are not in compliance with the relevant legal provisions of the law on the organization of the judicial power, thus calling into question the standards of the principle of the court created by law.

Furthermore, access to justice and justice without delay are two very important standards of the right to due legal process. The new judicial map seeks, in an imbalanced manner, to increase the efficiency

2 <https://ahc.org.al/njoftim-per-shtyp-aksesi-ne-drejtisi-prioriteti-me-madhori-hartes-se-re-gjyqesore/>

3 https://ahc.org.al/wp-content/uploads/2022/02/Opinion-ligjor_Raporti-i-Vleresimit-per-Harten-e-re-Gjyqesore.pdf

of the judicial system and speed of adjudication, without weighting with adequate care access to justice, which among others, requires also citizen's proximity to the court. Also, in terms of judicial efficiency, this map has been based on a projected estimation of the review of cases vis-à-vis the number of judges currently in the system, while vacancies, especially at the Appeals Court of General Jurisdiction, are at about 70%. This court began to function on February 1, 2023, with 25 judges, while its staffing pattern has 78 judges.⁴

It is worth emphasizing that the staffing of the number of judges on which this re-organization has been conceived is from 11 years ago, according to the decree of the President of Albania, dating before justice reform. The evaluation report on the proposed judicial map does not analyze poverty in the country (referring to unemployment and the incomes that Albanian citizens gain) and, at the same time, nor the lacking means of transport to some of the remote rural areas and the access of economically disadvantaged groups to the use of roads and means of transport.

As a function of the analysis realized in this document, AHC has addressed to First Instance Courts of General Jurisdiction and the Appeals Courts in the Republic of Albania, part of the territorial judicial re-organization, a total of 19 requests for information on the internal critique of the courts themselves on the new judicial map. Only 12 of the courts responded to our request for information, while it appears that only one judge at the District Court level presented his concern in writing to the Ministry of Justice; according to him, the dissolution of the courts does not respect the basic principles of territorial competence linked to the proximity of the individual with the court, the reduction of costs of services for citizens, and the increase of service quality. In AHC's opinion, the silence or lack of critique by the overwhelming majority of judges is an indicator of the disproportionate interest they have in being transferred to bigger courts or promoted to the Appeals Court in the future.

Despite the very dynamic activity that the HJC had in terms of responding to disturbing vacancies in the system, the undertaken measures are of a temporary nature and do not respond to the needs of the system in the long term. HJC's inability to envisage strategically the filling of vacancies, especially in the Appeals Courts, and to project the reduction of the backlog of about 32,000 cases for the single Appeals Court of General Jurisdiction, creates legal uncertainty and just concern among thousands of citizens and users of the courts on their cases that remain pending while awaiting adjudication. In this situation, we recommend to the HJC to avoid the assignment of judges as acting in posts in the justice system institutions as that would represent wrong management of human resources among judges in the circumstances of emergency that our judicial system is faced with.⁵

With regard to the implementation to date of the new judicial map, AHC notes that the IWG renewed by the HJC has also displayed a lack of transparency and access of civil society representatives to its meetings; therefore, in the absence of an inclusive process during the phase of necessary acts to concretize the new judicial map. We view as very problematic the approach of the HJC to not operate through obtaining official information in the exchange of data with the courts and other institutions represented in the IWG for the implementation of the new judicial map. The unreasonable denial of access to information about the Action Plan and IWG process-verbals to an organization monitoring the justice system, such as AHC, is also disturbing. The same finding applies also to the lack of documentation and information concretized by the General Prosecution Office and the Ministry of Justice, co-asked with the implementation of the judicial map, jointly with the HJC, according to paragraph 4 of CMD no. 495, dated 21.07.2022.

⁴ <https://shqiptarja.com/lajm/nga-sot-vetem-1-gjykate-apeli-ne-tirane-shkrihen-5-te-tjera-ne-rrethe-32-mije-dosje-ne-pritje>

⁵ E.g. see decision: VENDIM-Nr.538datë14.12.2022-PËR-KOMANDIMIN-E-Z...-SI-DREJTOR-I-PËRGJITHSHËM-I-DREJTORISË-SË-PËRGJITHSHME-TË-ANTIKORRUPSIONIT-NË-MINISTRINË-E-DREJTËSISË.pdf (klgj.al)



Regarding the continuity of the judicial personnel and administration of the courts proposed for dissolution, contrary to what was envisaged in the conception phase that the new Judicial Map does not bring about a reduction of human resources in spite of the reduction of the number of courts, we find contradictory data regarding the organizational structure approved for every court.⁶ AHC notes that a considerable number of positions are cut in the courts of the judicial districts to be dissolved. As a function of transparency to the public, with regard to the effects of the new judicial map starting from the appeals courts, AHC considers that the official website of the HJC should reflect processed and categorized data on the number and positions of employees transferred in the context of restructuring, where they were transferred, whether they refused transfers and what are the causes, as well as those that decided to be terminated and the causes justifying these decisions.

It results that the HJC took some decisions, in the form of individual acts, on starting the procedure to transfer judges due to the cutting of posts in the courts where they were assigned permanently. In the sense of criteria that led the HJC to propose for each magistrate who has a permanent post in the court to be dissolved, it is unclear how the courts of judicial districts where they are proposed to be transferred were selected. The reasoning of decision-making is also a non-respected obligation of the HJC, according to article 89, paragraph 2, of law no. 115/2016 “On the justice governing bodies,” according to which, individual administrative acts of the Council, regarding the status of judges or civil judicial employees, are made public on the official internet website of the Council, accompanied by the respective reasoning.

⁶ Referring to decision no. 555, dated 29.12.2022, of the HJC and its comparison to the HJC evaluation report on the new judicial re-organization.

1 International Standards on Access to Justice

When talking about the standards of access to justice, first to prevail are the standards envisaged in international acts that our country adheres to or aspires to adhere to, such as the standards established in treaties and conventions approved by international organizations such as the United Nations (UN), the EU, Council of Europe (CoE), European Commission for Efficiency in Justice (CEPEJ), the Organization for Security and Cooperation in Europe (OSCE), standards set by the jurisprudence of the European Court of Human Rights (ECHR), Court of Justice of the European Union (CJEU), etc.

As part of the right to due legal process, the right to access to justice is guaranteed in a series of international acts. This right is guaranteed among others in the European Convention for Human Rights⁷ (1950) and in the International Covenant on Civil and Political Rights (1966)⁸ both ratified by our country.

Article 6, paragraph 1, of the European Convention of Human Rights envisages: *“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal, established by law.”*

An almost identical provision is in the International Covenant on Civil and Political Rights, article 14: *“In the determination of any criminal charge against him, or of his rights or obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law.”*

According to the law of the European Union, namely article 47 of the Charter of Fundamental Rights of the European Union: *“Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended, and represented.”*⁹ Article 47 applies to all human rights and freedoms deriving from the EU law. The formulation of this provision is almost identical to the provisions of article 6 (1) of the ECHR, with the difference being that the latter envisages the limits of the implementation of this right, regarding rights and obligations of a civil nature and criminal charges against citizens. Therefore, article 47 guarantees, as a minimum, the protection offered by article 6 of the ECHR, regarding all rights and freedoms deriving from EU law.¹⁰

7 https://www.echr.coe.int/documents/convention_sqi.pdf

8 <https://hrrp.eu/alb/docs/CCPR-a.pdf>

9 https://www.europarl.europa.eu/charter/pdf/text_en.pdf

10 [CJEU Decision, C-619/10, Trade Agency Ltd v. Seramico Investments Ltd, 6 September 2012, paragraph 52.](#)

Referring to the standards of the Court of Justice of the European Union, article 47 of the Charter of Fundamental Rights of the European Union was interpreted to embody the EU principle that Member States should guarantee effective judicial protection for the rights of an individual, deriving from EU legislation. It is up to the EU Member States to create a system of juridical means and procedures that guarantee respect for the rights according to EU law.¹¹ National legislation should not infringe upon effective judicial protection of these rights.¹²

The right to access to court is a right inferred in the right to fair trial because the mentioned article of the ECHR suggests that disagreements are adjudicated by an independent court established by law. Referring to ECtHR jurisprudence, “The right to access to court” is not absolute. It may be subjected to restrictions, but these should not limit or restrict access to the individual in a way to an extent that the essence of the case may be violated (*Philis vs. Greece* no. 1, § 59; *De Geouffre de la Pradelle vs. France*, § 28; *Stanev vs. Bulgaria* [GC], § 229; *Baka vs. Hungary* [GC], § 120).

The ECtHR judges that a restriction may not be in accordance with article 6 § 1 of the ECHR unless it pursues a legitimate purpose and unless a reasonable relationship of proportionality exists between the means used and the purpose sought to be achieved (*Greek-Catholic Parish of Lapeni and others vs. Romania* [GC], § 89). The right to access to court should be “practical and effective” (*Bellet vs. France*, § 38). But for this right to be effective, an individual “should have clear and practical possibility to oppose an act that leads to an interference with his rights” (§ 36; *Nunes Dias vs. Portugal* (decision) on provisions about the notification to appear).

In the specific circumstances of a case, the ECHR notes that the practical and effective nature of the right to access to court may be harmed, among others, by the cost of procedures keeping an individual from addressing the court, vis-à-vis his financial situation (*Aït-Mouhoub vs. France*, §§ 57-58; *García Manibardo vs. Spain*, §§ 38-45).

However, accessibility to justice or court includes several aspects of this right, such as the availability of courts with relevant jurisdiction, availability of interpretation, access to information and accessibility to court decisions. It may also incorporate geography if its location impedes petitioners to partake effectively in a judicial process.¹³

The European Commission for Efficiency in Justice (CEPEJ),¹⁴ published in December 2014 a Handbook on the Organization and Accessibility of Court Premises.¹⁵ The purpose of the publication of this document by the Commission was to provide a frame of reference that may be useful for administrators and decision-makers, during the construction of new premises of courts or the conversion of old buildings.¹⁶ According to the Commission, when new premises of courts are built, it is important to keep in mind the possibilities for mid-term and long-term urban development, with special attention to possibilities for public transport and proximity to parking areas.¹⁷ In cases when

11 CJEU Decision, C-432/05, *Unibet (London) Ltd and Unibet (International) Ltd v. Justitiekanslern*, March 13, 2007, paragraph 37–42

12 CJEU Decision, C-279/09, *DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH v. Bundesrepublik Deutschland*, December 22, 2010, paragraph 59

13 https://www.echr.coe.int/documents/handbook_access_justice_eng.pdf see page 25
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62013CJ0567&from=EN>

14 <https://www.coe.int/en/web/cepej/about-cepej>

15 <https://rm.coe.int/16807482cb>

16 See paragraph 2 of the Guide introduction

17 See paragraph 2.1.5 of the Guide

new premises for courts are built, and it is necessary to select new premises,¹⁸ it should be considered that the location of the court should have good connections with public transport so that it facilitates access to justice, in this case to courts, of citizens.

In 2013, CEPEJ also approved a Guide on the creation of judicial maps, to support access to justice, in a quality judicial system.¹⁹ The objective of this document is to provide a framework through which administrators and policymakers can undertake reforms and decisions to draft (or maybe redesign) an entire country's judicial map or part of its territory. Paragraph 2.3.4 of this Guide envisages "*Geographic location and available transport and infrastructure*," where there is an emphasis on the principle to be applied regarding geographic location, minimizing the distance between the judicial institution and all municipalities in the territory of a country.

Referring to a study of October 2015, contracted by UN Women²⁰ and realized in cooperation with the Council of Europe, it is underscored:

- Remote distance from the court is seen as a main obstacle to access to justice, which affects disproportionately poor and in-need people, including women, and inhabitants who live in rural areas and are poor, without access to means of transport.
- Travel to large geographic distances requires time and is costly as it may cause to loss of income, as a result of the time that a person has to dedicate to it, leaving work to travel to a court and to participate in judicial procedures.
- Measures facilitating access, regarding distance from courts, should rely on both objective/administrative data and on perception data; that is, how distance affects people's perception of accessibility of the justice system.

¹⁸ See paragraph 4.1.1 of the Guide

¹⁹ <https://rm.coe.int/european-commission-for-the-efficiency-of-justice-cepej-revised-guidel/168078c492>

²⁰ UN Women is the [United Nations](#) entity dedicated to gender equality and the empowerment of women.



2 Recommendations of the European Commission in the context of our country's EU integration process

According to the European Commission Progress Report for 2022,²¹ Albania is moderately prepared for the functioning of the judiciary. Progress has been limited regarding the recommendation on the case management system and the legal training system, which has been suspended for several years. Efficiency of the judicial system has been negatively affected by the dragging out of procedures, low rate of case review, and the high backlog of judicial cases.

The courts with the highest caseload are the High Court, the Tirana Judicial District Court, and the Administrative Court of Appeals. The latter has 18,415 cases, of which 9938 are older than two years. The High Court has the highest backlog of cases, over 35,822 cases, of which 27,843 are older than two years (or 77% of them). However, with the continuation of new appointments to the High Court, the rate of review has increased considerably, namely 117% of criminal cases and 193% of administrative cases. Of particular concern is the fact that the average timespan for the review of one case at the appeals level is 893 days. Meanwhile, at the Tirana Court of Appeals, the timespan of procedures for one criminal case is 5820 days or about 16 years.

Among the recommendations of the European Commission raised in its report on Albania is the need to consolidate efforts to strengthen the efficiency and transparency of all courts and prosecution offices. In this regard, there is a need for, among other things, fast and determined actions to create an integrated case management system, and the presentation of a new sustainable implementation plan for the new Judicial Map.

²¹ https://neighbourhood-enlargement.ec.europa.eu/albania-report-2022_en

Advantages and disadvantages of the evaluation process of the new judicial map in our country

3.1 Standards for the “Court created by law”

According to article 135, paragraph 1 of the Constitution (amended by law no. 76/2016, article 13), “Judicial power is exercised by the High Court, and the appeals and first instance courts, which are created by law.”

In light of the principle of the rule of law, inseparable in the system of the European Convention of Human Rights, the ECtHR has considered that a “tribunal” or a “court” should always be “created by law,” otherwise it would lack the legitimacy required in a democratic society to hear and review individual cases (*Lavents vs. Latvia*, § 81). Referring to this jurisprudence, the expression “created by law” incorporates not only the legal basis for the very existence of a “court,” but also the compatibility of this court with special legal provisions regulating it (*Sokurenko and Strygun vs Ukraine*, § 24). The lawfulness of a court or tribunal should also incorporate, according to this definition, its composition as well (*Buscarini vs. San Marino*).

The ECtHR has pointed out that although the right to a “tribunal created by law” is an independent right according to article 6 § 1 of the ECHR, a very close correlation is argued in the jurisprudence of this court, between this specific right and the guarantees of “independence” and “impartiality.” The institutional requirements of article 6 § 1 share the same ordinary purpose of protecting the fundamental principles of the rule of law and division of powers (case *Guðmundur Andri Ástráðsson*, §§ 231-233).

As will be analyzed further in this section, the process and criteria pursued by the HJC and the Ministry of Justice for the new judicial re-organization are not in accordance with relevant legal provisions, thus calling into question the standards of the principle of a court created by law.

3.1.1 Transparency and inclusivity

According to article 13, paragraph 4 of law no. 98/2016 on the organization of the judicial power, the process of assignment or re-assignment of judicial districts and territorial competences of courts



is done in a transparent manner, based on the complete evaluation of the situation and taking into consideration the objectives, principles, and criteria established in articles 14 and 15, of this law, and the need for the continuation of judicial services, transfer of personnel, and organization of logistics. Yet, in spite of this provisions, AHC considers that the process for the judicial re-organization was realized in circumstances of lack of transparency while the assessment of the situation was not realistic and comprehensive.

While reform in the justice system enabled the total reform of the composition of the Councils (HJC and HPC), in order to achieve equilibria to fight corporatist elements noticed in previous bodies, with regard to the career and discipline of judges/prosecutors, the same approach could have been reflected in the composition of the IWG for the new judicial map. These meetings were not open to the public and interested parties, including civil society organizations. As a result, representation in this group did not guarantee adequate diversity and inclusivity, while the presence of judges from the courts proposed for dissolution without enabling a merit-based selection process in the eyes of public opinion, is questionable in the eyes of a public, objective, and impartial observer.

Consultations in the final phase of the draft evaluation report prepared by the working group in the beginning of 2022 gave formal nuances to this consultation. Also, the consultation process in dedicated meetings with citizens and people in need, especially users of the courts, is another lacking but very important aspect in the methodology pursued by the working group. This consultation could have been extended more broadly in geographic terms but also in time, especially for those courts that are proposed for dissolution.

In AHC's judgment, the new judicial map represents a process of vital importance for citizens because access to justice is a precondition for seeking the reinstatement of rights in court, when these are not respected or are violated. Although the assessment of needs of this map lasted for almost three years, the IWG established by the HJC held a small number of meetings, looked proportionately from this time frame, namely 10 meetings in total.

3.1.2 Other legal criteria

Referring to article 15, paragraph 3 of law no. 98/2016: "Judicial districts and territorial competences of courts are determined by taking into consideration, in the same and appropriate manner, the following criteria:

- the country's territorial administrative division, demographic development, number of inhabitants vis-à-vis the number of courts, economic development, road infrastructure and conditions of transport to and between the courts, as well as geographic characteristics;
- caseload in the courts, with regard to received, completed, and under review cases, the efficiency of courts and judges in delivering justice, human resources available, location and size of institutions for the execution of criminal decisions.

AHC has considered even earlier that the legal principles and criteria envisaged in article 15 of law no. 98/2016, for the establishment of territorial competences of courts, have been analyzed partially and, in some cases, in a fragmented, unrealistic, and non-inclusive manner. Further on in this section, there is a concrete analysis of some of these principles and criteria.

a. Demographic development

Of special importance in judicial re-organization is the evaluation of the distribution and concentration of the population in the administrative units of each Municipality (demographic criterion), in the missing analysis on the manner of distribution of courts in the context of this re-organization.

To illustrate this with an example, based on data published by INSTAT on January 1, 2021, it results that the County of Gjirokastra has the lowest % of the population (about 2.1% of the general population), followed by the County of Kukës (2.6% of the general population). However, based on the analysis conducted by the Working Group, it is noted that the centers of these counties have turned into centers of the court buildings where the dissolved courts will be placed.

b. The indicator of “economic development” vis-à-vis “road infrastructure and conditions of transport to and between courts”

The methodology followed for the evaluation conducted by the IWG on the new judicial map creates serious premises for the infringement of access to justice of people belonging to groups in need in the country, which is also one of the 3 objectives envisaged in the establishment of territorial competences, article 14, letter “a” of the law on the organization of the judicial power. Access to justice, according to this provision, is clearly conditioned by the proximity of the individual to the court and ranks as the first principle in the needs of the organization of courts.

AHC notes that referring to the report of the People’s Advocate on the minimum living standard in our country, for 2020, the percentage of the population at risk of poverty or living with very low income is 49%. Referring to INSTAT data, during 2021, the official rate of unemployment for the age group 15-74 years is 11.5%, while 32.7% of contributors in the category of those employed with a salary receives a monthly gross salary at the level of the minimal official wage of 30.000 leks.

As has been analyzed in reports of international organizations (cited above), the remote distance from the court is assessed as a key obstacle to access to justice, which has a disproportionate impact on poor and in-need people, including women, as well as inhabitants living in rural areas and are poor, without access to means of transport.

It is also worth emphasizing that although our country approved in December 2017 the law no. 111/2017 “On legal aid guaranteed by the state,”²² the implementation of this law saw delays and slow effects in terms of providing secondary legal aid (which includes representation in court toward its beneficiary categories. The law envisages as special beneficiary categories the victims of domestic violence, sexually abused victims and victims of human trafficking, juvenile victims and juveniles in conflict with the law, children living in social care institutions, persons benefiting from disability allowances, persons benefiting from social protection schemes, etc. Also, the right to benefit legal aid is enjoyed by anyone who proves that they have insufficient income and assets to afford expenses for counseling and/or protection in criminal cases, administrative cases, and civil cases. The incomes of a person who lives in a family are considered insufficient if the total incomes of all members of the family, divided by the number of the family members, are lower than 50% of the monthly minimum wage established according to legislation in force. According to CMD no. 158, dated 12.03.2022, starting from April 2022, the monthly minimum wage, nation-wide, for employees, mandatory by any legal or physical entity, domestic or foreign, is 32,000 leks.²³ Applied in the context of the law on free

22 <https://www.drejtesia.gov.al/wp-content/uploads/2019/02/LIGJ-nr.-111-2017-date-14.12.2017.pdf>

23 <https://www.tatime.gov.al/d/8/45/0/1707/njoftim-per-pagen-minimale-nga-periudha-prill-2022>



legal aid guaranteed by the state, if a family in the city of Kukës or at the appeals court, but the average monthly income per individual is 17,000 leks, it may not benefit from free legal aid guaranteed by the state.

So, benefiting the free legal aid guaranteed by the state is for the poorest strata of society, while referring to data from INSTAT, there are many families in economic difficulty who, although they are not part of these strata, are not able to afford the added costs that will come as a result of the transport costs and the time required of the lawyers and parties to move from their place of residence to the re-organized courts. It is also worth stressing that according to the CEPEJ evaluation report on judicial systems in Europe, the budget awarded by the Albanian state for free legal aid, although increasing, the number of cases for which there has been free legal aid per 100,000 inhabitants remains still considerably below the average of member countries of the Council of Europe.²⁴

The HJC evaluation report does not analyze poverty in the country (referring to unemployment and income received by Albanian citizens) or, at the same time, the quality of roads and road transport, lacking means of transport in some of the remote rural areas, and the access of economically disadvantaged groups to the use of roads and means of transport. In the hearing session at the Committee of Laws²⁵ with representatives of the HJC, the General Prosecution Office, Minister of Justice, People's Advocate, National Chamber of Advocates, and AHC, it appears that the IWG was lacking such information from the Ministry responsible for the field of transports. This situation is very problematic, leading to disrespect of this important legal criterion for the re-organization of courts in the country, and therefore, creating serious obstacles to citizens' access to court.

The IWG concluded that the time an inhabitant of an administrative unit to the competent court of the judicial district of up to two hours, or a bit more, may be acceptable. The IWG admits that there is no internationally accepted standard while the previous report referred to this length of time as reasonable, based on an analysis conducted in Great Britain, a country with a more developed living standard and public transport compared to our country. Such data is not analyzed realistically or objectively.

The Google Maps system, on the basis of which the IWG estimates distances to the courts that will be borne by the dissolved courts does not reflect the infrastructure of roads or the conditions of transport to these courts. However, even if we take the data from this system for granted, the distances are still considerable. Thus, regarding the dissolution of the First Instance Court of General Jurisdiction in Kruja, we consider that the number of citizens deprived of liberty at IEPD Kruja has not been taken into consideration. Based on the distance estimation system (Google Maps), it results that a citizen serving a sentence at the Fushë-Kruja IEPD will need to travel double the distance because the Kruja Court is merged into the Durrës Court (for issues that fall within its competence). If we take the proposal for merging the Lushnje Court with that of Fier and estimate the time that an inhabitant of Ballagat, Lushnje needs to travel to the Fier Judicial District Court, we'll see that the Google Maps platform estimates the time needed to travel by vehicle, but not public transport means. The same inability for estimation is noticed between the two courts, that of Lushnje and that of Fier. The travel time and difficulties to travel from one judicial district to another become difficult for large distances. The time distance estimated by Google Maps between the Tropoja Court and the Kukës Court (with the proposal being to merge into that of Kukës) reflects a time of 2 hours and 17 minutes by car, while there is no information on public transport means. If we estimate the time an inhabitant of Cerem, Tropoja, needs to travel to the Kukës Court, that inhabitant will need exactly 3 hours and 6 minutes,

24 <https://rm.coe.int/cepej-fiche-pays-2020-22-e-web/1680a86276>

25 <http://www.parliament.al/lajme/%203fb7a03f-b367-45fb-bf80-41c798f8e2c7>

by private vehicle, while the economic condition of inhabitants of this area or the remotest areas of Tropoja Municipality makes access to justice difficult or impossible.

The same concern appears also for the maximum time estimated to arrive at the National Appeals Court of General Jurisdiction, especially for inhabitants of the remotest areas living near border regions in the southern, southeastern, northern, and northeastern parts of the country.

c. Number of judges

Referring to the table on the dissolution of 9 Judicial District Courts, the IWG notes that they do not have in their staffing pattern the minimum number of judges necessary to guarantee increased efficiency and specialization. In the sense of court staffing, the Working Group took as reference the one established by Decree of the President of the Republic of Albania 10 years ago, precisely November 2012.

In fact, with the new justice legislation, approved 6 years ago, the determination of the number of judges is an exclusive competence of the High Judicial Council,²⁶ which judges the number of judges for each court, at least every five years. In this process, the Council should rely on the same objectives established for determining the territorial competences of courts according to article 14 of the law on judicial power and the same criteria of judicial re-organization according to article 15, paragraph 3, letter “b,” specifically linked with court caseload, efficiency, available human resources, etc.

In other words, the judicial re-organization and the determination of the number of judges should have been two processes conducted in full cohesion and in parallel. Judicial re-organization should not have been conditioned by an old staffing pattern of 10 years ago, which does not respond to the needs for justice of inhabitants who live in the areas where courts are to be dissolved.

It is also worth emphasizing that for 2020, CEPEJ found that the number of judges per 100,000 inhabitants is 10,8, considerably lower than the average of CoE countries.²⁷ This number saw a reduction again, given that vacancies in the system increased as a result of the vetting process. during the period after December 2018, which coincided with the establishment of the Councils, AHC called for a careful assessment of immediate needs for filling vacancies, to then move gradually and in parallel to the specialization of judges and panels of judges and the creation of sections with no less than 6 judges.

d. Efficiency

The CEPEJ report of 2022 (with data belonging to 2020) notes that the time available for the adjudication of civil and commercial cases at the second level is 1742 days or 4.7 years and, for administrative cases, is 4485 days or 12.2 years. This indicator is extremely high.

The timespan for cases by category is an important indicator for judging the efficiency of the re-organized courts and is directly connected with adjudication within reasonable deadlines of cases, as

²⁶ Article 22, paragraphs 3 and 4 – The process of assignment of the number of judges for each court is based on objectives envisaged in article 14 of this law, in order to ensure a balanced caseload for judges in Albania. The process is conducted transparently, based on an annual report analysis and the efficiency of measures taken to implement the recommendations set in annual reports, according to paragraph 2 of this article.

²⁷ <https://rm.coe.int/cepej-fiche-pays-2020-22-e-web/1680a86276>



one of the standards for due legal process. However, such data was lacking and the IWG referred to the inability to take into consideration this indicator and the caseload analysis. For an assessment process that lasted about three years, this could have been addressed even partially if it were piloted partially, based on data provided by the ICMIS management system, in those courts where it is applicable. Also, in AHC's assessment, the addition of necessary administrative personnel for the collection and manual processing of data in those courts that do not have the necessary electronic management and processing system, could have been seen as an option applicable in the early phase of the conception of the new judicial map.

Establishing or preserving a balance between the distribution of caseload and the distribution of judges among courts, according to the IWG, is an indicator of the lack of efficacy of the system, which should be corrected with the new map. However, it is noticed that part of the courts proposed to be dissolved, given their judges staffing, have higher caseload than the average of 429 cases per year (Kavaja 591, Kurbin 671, Kruja that includes Kruja IEPD – 593, and Lushnje 490). The same concern is seen also with regard to the caseload of judges in the Appeals Courts. It is true that the caseload list was headed by the Tirana Appeals Court, with a total of 20,350 cases, or 2572.7 cases per judge. Although not in these figures, some of the Appeals Courts in the country had considerable caseload, namely Durrës with 999.6 cases per judge; Shkodra with 853.8 cases per judge; Vlora with 1040.3 cases per judge. So, even in these courts, their users were faced with delays in the trail of cases (e.g., referring to data of the European Commission on the Shkodra Court). therefore, the concentration of all cases in the single Appeals Court of general jurisdiction, while it facilitates users of the former Tirana Court of Appeals, it makes it more difficult in terms of time and the need to get justice without delay, for users of the Shkodra, Vlora, or Durrës Court of Appeals. It is worth emphasizing that equality in and before the law does not indicate equality of situations of unlawfulness, such as the infringement of the standard of adjudication within a reasonable time and justice without delay. Also, this new judicial map does not give any user or the public in general any information as to what the average timespan of adjudication of a given case is (categorized and sub-categorized in the sphere of civil, criminal, and administrative cases).

The offered solution of dissolving some courts by making possible the specialization of judges and reduction of trail time, while it may contribute positively to reducing the timespan, on the other hand, creates problems of access to justice in an unbalanced manner.

For the purpose of delivering judicial administrative services as close to the citizen's place of residence as possible, the IWG proposed establishing the office of judicial service. However, this solution, while it would facilitate the citizen's filing of procedural documentation for initiated or ongoing judicial cases, it does not provide a full effective solution in justice bodies, with regard to the need of the presence of parties or defense lawyers, in hearing sessions. Access to justice, if it does not guarantee at the same, the right of parties to be heard fairly and publicly before the court. but if many citizens will have difficulties to access the court during their judicial processes, as a result of economic difficulties, then access to justice will be infringed, depriving these citizens of their right to due process.

In its map evaluation report, the working group states that the contradicting debate on adjudication in the appeals level for anything that may be tried in counseling chambers or hearing session does not require the presence of the parties in a hearing as usually happens with first-instance adjudications. According to the assessment, for the majority of cases, adjudication at the appeals level concludes with one hearing session, as it requires more specialized representation (by lawyer), without making the presence of the party essential. AHC considers that these arguments are not realistic and do not respond to the right for effective defense. Besides it being necessary to provide statistics for this

indicator, it should be stressed that it is at the discretion of the litigating parties to judge whether they wish to be present in the hearing, independently from whether they have a defense lawyer or not. Also, lawyers too should cover a certain distance from the municipalities they work in to the National Appeals Court and, the longer that distance, the bigger the costs for the lawyer, borne by citizens.

The IWG identified as a positive model for the creation of a single Court the Administrative Appeals Court and Special Court against Corruption and Organized Crime. But in this case, we consider that the defining criteria may not be analyzed similarly, due to the material competence and therefore the nature of cases tried by each of these Courts. The difference between the three appeals courts (general jurisdiction, administrative, and special for offenses in the field of corruption and organized crime), it should be seen not only from the simple statistical aspect on the number of cases per year and the backlog, but also in terms of the economic-social status of litigating parties and defendants. Thus, according to monitoring by organizations of criminal cases in the field of corruption, it results that defendants have good economic possibilities to be represented with a private lawyer. The same logic applies to defendants accused of criminal offenses in the field of organized crime.

e. Location and size of IEPDs

With regard to the dissolution of the Kruja Judicial District Court of General Jurisdiction, AHC has noted that the analysis has not taken into consideration the number of citizens deprived of their liberty and serving their sentence at the Fushë-Kruja IEPD. At IEPD Fushë-Kruja, citizens deprived of liberty are pursuing their processes, especially those in pre-trial detention. The dissolution of this court might create problems with regard to these citizens' access, considering also the limited logistical and human resources means that the prison system administration has for accompanying citizens deprived of liberty to judicial processes. In this regard, it is also worth underscoring Recommendation no. 2.3.10 of the CEPEJ Guide on the creation of judicial maps, according to which, one influencing factor is the reduction of travel distances for inmates involved in a judicial process, for economic and security reasons. Furthermore, it is noted that in the realized evaluation, there are no statistical references for a given period, on the place of residence of litigating parties in cases tried by the Kruja Court, which would serve a more realistic evaluation regarding their access to the closest Court.

Also, AHC notes that the proposal to merge the Lushnje Judicial District Court into the Fier Judicial District Court, did not take into consideration the number of citizens deprived of their liberty in the IEPD Kosovo (Lushnje) and how this re-organization affects following their cases being tried in the Lushnje Judicial District Court.

4 Judicial maps of other countries (Model of Portugal)

Addendum B) of the evaluation report includes an analysis by IWG of neighboring countries such as Bosnia-Herzegovina, North Macedonia, and Croatia, which though with similar population to our country's, have a higher number of appeals courts, compared to the proposal for a single appeals court of general jurisdiction in the case of Albania. Also, it is notable that other countries such as Moldova and the Netherlands lightly reduced the number of appeals courts, from 5 to 4, while comparatively, the proposal for one appeals court of general jurisdiction from 6 is drastic.

Countries such as Denmark or Finland have a lower number of courts, guaranteeing coverage of a higher number of inhabitants and territory. To conclude in a genuine comparative analysis between systems of judicial organization, it would be necessary for the IWG to be based also on the analysis of the economic development of these countries. Unlike our country, due to the high living standard, countries such as Denmark, Finland, or Sweden have the possibility to guarantee their citizens access to justice even with a reduced number of courts. This aspect should be analyzed also against the procedural legislation of these countries, the level of use of information technology by citizens and the courts, etc.

Looking at the situation that the country is going through in terms of implementation of justice reform and vacancies created in the judicial system, as well as the fact that in these countries, there has been no drastic reduction of the number of courts, comparisons made by the IWG have not enabled the identification of an optimal model of judicial re-organization, appropriate for our country. In particular, prevailing in this model should be the country's economic development and financial capabilities of those citizens who do not benefit from free legal aid, but are still unable to afford expenses as a result of the dissolution of a considerable number of courts.

4.1 Overview of the Judicial Map Model in Portugal

As a case study for evaluating the impact of the reduction of the number of courts, among the countries referred to in the IWG evaluation report for the new judicial map, is Portugal, a member country of the European Union.

From the start of 2000, there have been discussions about reforming the judicial system of Portugal. Pursuant to these discussions, law no. 52/2008 of the Portuguese Parliament approved the new judicial map that aimed at the re-organization and functioning of courts, seeking to merge 308 courts

into 20 larger courts that function with different sections in the same district.²⁸ The approval of this law had not been consulted previously with the public and had immediate legal power, but with the understanding that this reform would be realized after the initial implementation of a pilot project. According to this project, the reform would first go through an experimental phase that would only include 3 regions (Alentejo Litoral, Baixo Vouga and Grande Lisboa-Noroeste).²⁹ By decision of the Minister of Justice of the time, it was decided that besides testing this reform, there would be also a reform of the procedural law so that the latter and judicial reform would converge. At the end of this experimental phase, the goal was to achieve a real phase of consultation and reflection with institutions and involved personnel to benefit from their experience and encourage a broader and more innovative vision for the reform, but also to ensure that the reform is understood and supported by the people that would be responsible for it.³⁰

The re-organization of the judicial system took into consideration some criteria as the following:

- a. Number of cases:** the courts trying fewer than 250 cases per year would be closed; in the case of Albania, the closing affected courts whose average caseload per judge was over 400 cases per year.
- b. Distance criteria:** if a court that deals with few cases is less than one hour from another court that may address the case, it should be closed down. Meanwhile, in the case of Albania, as analyzed earlier, distances between courts (the dissolved ones and merged ones are in some cases considerable, especially the Appeals Courts and the administrative courts of first instance.
- c. Quality of court equipment and the court building:** if rented and equipment is old, the court should be closed, but if it belongs to the Ministry of Justice and is in good condition, it should remain. This element as well as investments made in the infrastructure of part of the dissolved courts were not assessed in the case of the judicial map in our country.
- d. Demographic tendencies:** if the 2011 census indicates that a geographic area has been abandoned, its courts should be closed.

The reduction of the number of courts by the government did not have as its purpose the increase of the distance between justice and citizens, especially those living in villages far from the main cities. To that end, there are plans to create proximity sections that will function in the buildings where the courts used to be operating from before with equipment that enable full access to the computer system in all parts of the region.

Besides the reasons cited above, this reform was a historic moment after a Memorandum of Understanding was signed in 2011 with the Troika (European Union, International Monetary Fund, and the European Central Bank), according to which Portugal would be placed in the position of a country obliged to undertake profound reforms that mainly seek to reduce state expenses in all areas.³¹ This moment also marks the conclusion of the pilot test implemented in the 3 Portuguese

²⁸ The existing map was the result of root-deep evolution in the 19th century. It was based on very small territorial jurisdictions, called comarcha, and numerous small courts distributed around the country, which did not favor specialization and efficiency of the judicial system. Moreover, in many cases, comarchas did not match areas of jurisdiction of the local administration, public safety, social insurance, and tax collection institutions, thus contributing to problems with efficiency of the judicial system.

²⁹ https://www.researchgate.net/publication/326686070_Judicial_Reforms_%27Under_Pressure%27_The_New_MapOrganisation_of_the_Portuguese_Judicial_System

³⁰ <https://rm.coe.int/comparative-study-of-the-reforms-of-the-judicial-maps-in-europe/168078c53a>

³¹ <https://estudogeral.sib.uc.pt/bitstream/10316/33099/1/The%20transition%20to%20a%20democratic%20Portuguese%20judicial%20system%20%28delaying%29%20changes%20in%20the%20legal%20culture.pdf>



regions. However, of the numerous reforms in the justice system, some difficulties were noticed, making improvements in the justice sector a long and inconsistent process. Among the numerous reasons for this, the following six factors should be stressed, which have been relatively constant in recent decades:

- a. lack of general and properly based planning (there are no studies and/or genuine use of studies);
- b. lack of human, technical, and financial resources (including those necessary for the implementation of the described reforms);
- c. negligible (or, in some cases, excessive) support by members of the judiciary and other specialists for the identification of problems and the determination and evaluation of reforms;
- d. poor investments in training, especially continued training for judges;
- e. transitions that were very fast, due to pressure from the Troika, using sporadic reforms to address structural problems;
- f. limited use of pilot schemes to test and assess solutions and rebuild strategies before major investments.³²

Thanks to the Memorandum of Understanding, in order to not lose financial support in the economic crisis the country was going through, the Ministry of Justice undertook the initiative for a new Judicial Map, 5 years later. Through law 62/2013 for the organization of the judicial system, the number of first instance courts was reduced from 311 to twenty-three main courts (consisting of 218 sections and 290 local sections replacing the former courts). The initiated reform pursued three main goals: expanding the area covered by each main court, specialization of judges according to legal fields, and introduction of a new court management model.

This justice reform is criticized for ignoring all previous experience and results of the pilot project, as well as opposition by local representatives and from among politics, arguments of legal professionals, and warnings by experts. It was planned and implemented within an extremely short period of time (two years). Taking into consideration the complexity and necessary steps for its implementation (adjusting buildings, computer networks, professional training, amendments to legislation and in software, among others), the political decision for this re-organization within such a short period of time was sudden. The objective was clear: everything should be done before the expiry of the Memorandum of Understanding otherwise financial support would be affected.

The public evaluation of the first two months of the new organization of the judiciary in Portugal clearly discovered that the negative effects of this hasty reform would last for several years. Media reported about disturbing problems: the software collapsed, sending courts to total blockage; buildings were not prepared for the number of cases and personnel they would accommodate; human resources were inadequately distributed, leaving many courts with shortened personnel; opening of some specialized courts and other judicial services in remote places appeared chaotic due to the limited infrastructure of the main courts, and citizens and companies received very limited information. Delays in legal procedures, the simultaneous conduct of judicial processes and reconstruction work, together with the inability to file cases due to the collapse of the software, became the lead word of daily reporting. Experts estimate that that the real legal impact is yet to be evaluated, as financial costs remain to be estimated.³³

³² https://www.researchgate.net/publication/326686070_Judicial_Reforms_%27Under_Pressure%27_The_New_MapOrganisation_of_the_Portuguese_Judicial_System

³³ <https://estudogeral.sib.uc.pt/bitstream/10316/33099/1/The%20transition%20to%20a%20democratic%20Portuguese%20judicial%20system%20%28delaying%29%20changes%20in%20the%20legal%20culture>

Since the 2013 reform, Portugal has 23 main/county courts, one for each of the capitals of the counties, with competence to decide on all cases that have not been filed with another court. They are divided into central sections, sections of specialized competences in different fields (central civil, criminal investigations, family and minors, labor relations, commercial, and execution of decisions), local sections, those that include general sections (civil local, criminal local, and minor offenses), and proximity sections. In essence, the Portuguese Government chose a model based on one court per district, with different sections that function in different locations within the district. These sections are not autonomous courts but branches of the same court. Meanwhile, in our country, although the branches of the first instance courts of general jurisdiction are envisaged in two forms (permanent and temporary), in articles 17 onwards of law no. 98/2016, they were not created in the context of the new judicial map.

Courts with broader territorial jurisdiction in Portugal are divided according to the material competence in the field of copyright, competition, maritime regulation and oversight, implementation of convictions and central criminal instruction – which means they have specialized competence to hear cases that involve special masters. Their territorial competence is broader than that of the county courts, as they may review cases in several districts or special areas established by law. Administrative judicial jurisdiction is exercised by first instance and second instance courts and the High Administrative Court. The latter, headquartered in Lisbon, has jurisdiction throughout the Portuguese territory and is divided into two sections.

Referring to research reports and scientific articles by experts of the field,³⁴ some summarized problems on the judicial map reform in Portugal are as follows:

- a. This process clearly showed favoritism toward the division of court and related services simply on the basis of mathematical estimates, without taking into consideration the caseload or great distance of geographic areas and securing equal access to public transport and for different areas of the country.
- b. The lack of future planning and guarantees for appropriate physical conditions to accommodate services and human resources led to many courts functioning without the minimum conditions that would enable the proper exercise of their activity. During the implementation phase, courts were still subjected to re-construction, staff worked in temporary modular offices, while temporary employment for personnel was also a concern in some courts. As a result, motivation of employees in the judicial system dropped considerably, as did their capacity to carry out their work based on competences and in a dignified manner. From an infrastructural aspect, premises did not guarantee adequate space for all (internal staff, lawyers, users, support services, etc.). Available resources in terms of finances, equipment, personnel, and buildings resulted in very unsafe working conditions, leading to decisions for closing some of the services by the Portuguese Authority for Working Conditions.

After highlighting these problems, in 2016, an attempt was made to undertake a series of measures to correct the most visible mistakes identified in a preliminary evaluation of the reform, for the purpose of introducing measures that would effectively bring justice closer to citizens. To achieve this, the Ministry of Justice proposed the re-opening of 20 premises of closed courts, the mandatory holding of adjudications in 27 local branches, and the separation of central family and juvenile sections. Other concerns reflected in the proposed changes included addressing the consequences of continued abandonment of internal rural regions with an increasingly elderly population and the improvement of access to the justice system by reducing distances and costs for those seeking justice.

34 Quoted in footnotes above, in this section.



These measures, considered urgent, in essence sought to fulfill the political pledge to reopen courts closed by the previous government, but did not reflect the results of any in-depth evaluation of the reform to involve the public. Until 2018, small changes and improvements were made, especially in infrastructure, which had no significant impact on the overall functioning of the judicial system.

Access to justice and the courts currently³⁵ is limited by many factors, such as legal costs, limitations of legal aid, and access to other legal services, especially in the Public Prosecution service. However, physical distance is also an important aspect of access and reforms of the judicial map should not worsen the abandonment of certain geographic areas. Experts who analyzed the effects of the judicial map in Portugal consider that it is necessary to take into consideration the impoverishment of the population, geographic asymmetry, and difficulties and costs of travel for the parties and witnesses throughout the process.

The process for the implementation of justice reform in Portugal, under external pressure, reduced the possibilities to achieve the set objectives, both in terms of improving proximity and efficiency or the reduction of costs.

The chaos that ensued and the evident and measurable results indicate the mistakes of the approved strategy and the implemented model, with serious consequences for the functioning of the judicial system and therefore for citizens and businesses seeking judicial protection, who continue to wait beyond reasonable deadlines in the courts with specialized jurisdiction.

One of the clear conclusions is that a top-bottom reform under the weight of the troika's external demands, as part of an agreement to provide financial support for Portugal, avoiding and underestimating the social context of the different territories and the broader interests of citizens, has every potential to incorporate a harmful practice for citizens and democracy.³⁶

35 Refers to 2018.

36 https://www.researchgate.net/publication/326686070_Judicial_Reforms_%27Under_Pres-sure%27_The_New_MapOrganisation_of_the_Portuguese_Judicial_System

5 Evaluation of the process of implementation in practice of the new judicial re-organization in our country

5.1 Analysis of the activity of responsible institutions

According to Decision no. 495, dated 21.07.2022, of the Council of Ministers “On the re-organization of judicial districts and the territorial competences of courts,” the following deadlines have been envisaged for the re-organization of courts:

- For the first instance courts of general jurisdiction, which will be 13 in total, re-organization will be realized on May 1, 2023.
- For appeals courts of general jurisdiction, re-organization into a single appeals court nationwide will be realized on February 1, 2023.
- For administrative courts of first instance, which will be a total of two, re-organization will be realized on July 1, 2023.

As may be seen, the fastest deadline for the new judicial re-organization is for the Appeals Courts, for which there is the most drastic proposal for dissolution compared to the other courts.

According to paragraph 4, of CMD no. 495, dated 21.07.2022, the HJC, General Prosecutor, and the Ministry of Justice are tasked for following up and implementing this decision. To analyze the concrete activity of these institutions for the new judicial re-organization within the set deadlines, AHC first turned to the official websites to obtain relevant information.

Although three months and a half had gone by since the day of the approval of the CMD, the HJC website only featured information regarding the assessment of the new judicial map, but not for the implementation of CMD no. 495 (2022). Meanwhile, the act itself (CMD no. 495), important for the implementation of the new judicial map, was not even published on the website of the sole institution for the governance of the judiciary. It is worth mentioning that the HJC has been tasked with the assessment of the Judicial Map and the re-organization of judicial districts as well as the regulation of territorial competences of the judicial district courts, according to articles 13 onwards of Law no. 98/2016. In AHC’s assessment, this CMD is part of the legal framework that leads the activity of this institution, which moreover, has been tasked with responsibilities for its implementation. The same



finding was noted also for the official website of the Ministry of Justice as a co-sponsor for the re-organization of judicial districts and territorial competences of courts, as well as for the website of the General Prosecution Office. As a result, this situation does not serve the transparency of these institutions before the public.

In the absence of basic information that should have been public on the websites of these institutions, AHC addressed official requests for information to all three mentioned institutions, at the start of November 2022. The HJC made available to AHC partial information, analyzed further on in this document. Meanwhile, the Ministry of Justice and the General Prosecution Office provided insufficient responses in terms of the contribution they gave as part of the IWG for the implementation of the new judicial map. Concretely:

The Ministry of Justice, by letter no. prot. 5833/1, dated 18.11.2022, states that the Minister of Justice established the Working Group by order no. 456, dated 20.09.2002 “On the verification and inventory of assets and buildings used by the district courts and the appeals courts under administration responsibility of the Ministry of Justice.” The Ministry of Justice did not make available to AHC any document or information regarding the obligation to implement paragraph 4 of CMD no. 495, dated 21.07.2022 on the Judicial Map, which co-assigns this Ministry the obligation to implement the new judicial re-organization. In its letter, the Ministry stated that for more detailed information, we could address the HJC, which is the competent authority for creating the map.

The response of the General Prosecution Office, by letter no. prot. 1514/1, dated 30.11.2022 does not enable either the provision of concrete information and documentation on the obligation to implement paragraph 4 of CMD no. 495, dated 21.07.2022 on the Judicial Map. Among others, its letter highlights that the General Prosecutor issued the order “On the establishment of the working group on the implementation of the new judicial map in prosecution offices of general jurisdiction, including representatives of appeals prosecution offices and first instance prosecution offices.” Furthermore, competent structures of the General Prosecution Office, in cooperation and coordination with the HJC and the Ministry of Justice, upon approval of CMD No. 495, dated 21.07.2022, are drafting a plan of administrative measures to enable the normal functioning of the prosecution office from an infrastructure standpoint, with the start of the implementation of the new judicial map. The provided information is very general and does not enable an evaluation of concrete steps of work of the General Prosecution Office, with regard to its responsibilities for the implementation of the new judicial map.

5.2 HJC activity

5.0.1 Order no. 80, dated 28.07.2022, of the HJC Chair

AHC requested to become familiar with a copy of order no. 80, dated 28.07.2022, of the HJC Chair on the establishment of the IWG, for following up and implementing CMD no. 495, dated 21.07.2022. This order was made available by letter no. 5826/1, dated 17.11.2022, of the High Judicial Council. According to its contents, the IWG consists of 13 members, three of which are HJC members, two representatives of the Ministry of Justice, two representatives of the General Prosecution Office, two judge magistrates (respectively from the Appeals SCCOC and the Vlora Judicial District Court), 1 chancellor of the Tirana Appeals Court, and three high-level representatives of the HJC administration.

Based on the contents of the HJC letter, it results that the composition of this group has been revitalized, which means that part of its members is the same as the members of the IWG that made

the assessment for the new judicial organization. It is unclear on the basis of which criteria the IWG members from the judicial system were selected, whether there was a selection and evaluation process of candidates, on the basis of a more inclusive and merit-based process.

According to paragraph II of this order, invited to the working group are representatives from the Council of Europe in the context of the project “On the reduction of the backlog and increase of the efficiency of the High Court.”

It is notable that in this IWG (as in the IWG for the assessment of needs of the new judicial map), no invitation to participate, as observers even, was extended to representatives of domestic civil society organizations involved in initiatives in the justice system, lecturers, lawyers, or domestic experts of the law in the field of justice. Reflecting such an open collaborative approach, on major matters such as the new judicial map, should have been among the key priorities of the HJC, with representatives not only from the judicial system, but also from advocates, civil society, the school of magistrates, schools of law.

5.0.2 Action Plan for Courts of Appeals

According to paragraph VI of order no. 80, dated 28.07.2022, of the HJC Chair, the IWG should have concluded within November 30, 2022, all necessary acts for the implementation of the new judicial map. Until November 17, 2022, several meetings of this group were conducted and they agreed on the Action Plan for the courts of appeals and deadlines for each action. It is notable that the Action Plan, which was requested by AHC in its request for information, was not made available by the HJC.

Pursuant to this plan, it results that six sub-groups were established, which worked on six main directions for the new judicial re-organization, as follows:

- Sub-group I “Human Resources/Judges”
- Sub-group II “Human Resources/ Judicial Administration”
- Sub-group III “Buildings and Infrastructure”
- Sub-group IV “Information Technology”
- Sub-group V “Judicial Administration”
- Sub-group VI “Informing the Public and Communication”

According to HJC, the sub-groups conducted continuous meetings, which focused on compiling draft acts necessary for starting the implementation of the map, having them go through review and approval procedures by the HJC plenary meeting. In fact, none of these draft acts (in the draft version) does not appear to have been published on the official website of HJC, thus not complying with the needs for transparency and informing the public, which is actually one of the special pillars of the activity of the working sub-groups.

In the letter of response to AHC, the HJC admits that every act that will be the product of IWG work will be made public only after it has been reviewed and approved by the HJC. Thus, it is unclear why such draft acts are not published as proposed to the HJC, while their confidentiality does not serve transparency to the public or the public’s confidence in the process for the new judicial re-organization.



5.0.3 Lacking HJC correspondence with institutions, for the implementation of the new judicial map

AHC also requested from HJC to become familiar with every official copy of official correspondence with relevant institutions, involved in the establishment of the working group and the sub-groups for the realization of the new judicial map. In particular, AHC sought to become familiar with correspondence maintained with the courts, whether there was any such, upon approval of CMD no. 495 for the judicial re-organization (for the evaluation of the main pillars of work).

In its response, the HJC states that it avoided official correspondence with institutions, which were represented in the IWG, which is an inclusive structure that aimed at the proper functioning and effectiveness of interaction and exchange of information, necessary for the realization of objectives in every phase of the process. According to the HJC, the IWG secures a representation of all levels of courts affected by the organization, while this piece of information is contradictory because the IWG has only two magistrate members from among the judiciary, namely the SCCOC and the Court of a judicial district.

AHC considers that the appointment of IWG members from other institutions (Ministry of Justice, General Prosecution Office, the courts) and correspondence with the courts for collecting and processing data for all six directions on which work was done to implement the map, should have had an official character and therefore be documented, in order to be verifiable for anyone interested on the phases of the implementation of the judicial map. In this regard, it is worth stressing that the HJC had a relatively reasonable time available for realizing the new judicial map, which envisaged the first deadline of February 1, 2023, for the re-organization of the Appeals Court at the national level (or about six months since the date of CMD no. 495). In closing, AHC considers that the document on the needs of the courts as a result of the process of implementation of the new judicial map would also serve transparency before and trust of the public.

5.0.4 Copies of IWG process-verbals

In its request to HJC, AHC also requested a copy of the process-verbals of the weekly meetings of the IWG, if they were transcribed in a summarized or detailed manner. In the letter of response from HJC, on November 17, 2022, we were informed that during the meetings of the IWG there was a detailed process-verbal, made known to IWG members. This practice has been pursued for the purpose of internal use and to collect and process the views, findings, or suggestions provided by them, which would then be reflected in the final compilation of draft acts and accompanying reports, during the phase of their approval in the Council. The HJC did not make available to AHC a copy of these process-verbals, considering them materials for internal use. This restriction is illegitimate as it runs counter to provisions of the law no. 118/2014 “On the right to information,” according to which “Public information” is any data registered in any form or format, during the exercise of public functions, whether drafted or not by the public authority (in the case in question by an *ad hoc body* established by the HJC, with an advisory character). Based on article 3 of this law, every person shall enjoy the right to become familiar with the process-verbals of the IWG, which have the status of public information, without having to explain the motives.

In closing, AHC notes that the IWG, in its pursuit and implementation of the new judicial map, displayed lack of transparency and access of civil society representatives to its meetings, therefore, lack of an inclusive process during the phase of drafting the necessary acts for the realization of the

new judicial map. We find very problematic the approach displayed by the HJC about lack of official documentation for the exchange of data with courts and other institutions represented in the IWG for the implementation of the new judicial map and the unreasonable denial of access to information about the Action Plan and IWG process-verbals, to an organization known for its monitoring of the justice system like AHC.

5.0.5 Acts approved by HJC for the realization of the new judicial map

a) Normative by-laws

- *Decision no. 505, dated 21.11.2022 “On the start of functioning of the Appeals Court of general jurisdiction”*

This is the first by-law approved by the HJC that opens the way to the functioning of the sole Appeals Court of General Jurisdiction in our country.

According to its contents, the judge appointed/assigned in a permanent post in the Tirana Appeals Court remains in his/her post in the structure of the Appeals Court of General Jurisdiction. The decision also envisages the interruption of activity of the Appeals Courts in Durrës, Gjirokastrë, Korçë, Shkodër and Vlorë, on 31.01.2023. The position of the judge appointed/assigned to a permanent post in these dissolved appeals courts is cut due to judicial re-organization and he/she is transferred to a permanent post in the structure of the Appeals Court of General Jurisdiction. The positions announced for promotion in the appeals courts in Tirana, Durrës, Gjirokastrë, Korçë, Shkodër and Vlorë, for which by 01.02.2023, the procedure for promotion has not concluded yet, are considered free permanent positions in the structure of the Appeals Court of General Jurisdiction.

The by-law also envisages regulation for the continuation of work of the judicial administration. Concretely, the judicial administration of the Tirana Appeals Court, consisting of employees exercising judicial, administrative, and support services according to definitions of the law, continue to exercise their activity at the Appeals Court of General Jurisdiction, and is not subjected to re-structuring. The judicial administration of the Appeals Courts of Durrës, Gjirokastrë, Korçë, Shkodër and Vlorë is subjected to the process of re-structuring. Legal aides with final appointments to the appeals courts of Durrës, Gjirokastrë, Korçë, Shkodra, and Vlora, whose positions are cut due to judicial re-organization, but are transferred permanently to the structure of the Appeals Court of General Jurisdiction, are exempted from this rule. It is unclear why this differentiation has been made in the continuity of the position of legal aides while for employees of other courts proposed to be dissolved, they undergo the re-structuring process. This decision should have been accompanied by an explanatory report on the needs and should clarify the public and those interested, by important elements of its contents, such as the continuity of work of employees of the administration and judicial ones of the dissolved courts.

There are special provisions also about the separation of judicial cases of the appeals courts that are dissolved. Judicial cases registered with the Appeals Court of Tiranë, Durrës, Gjirokastrë, Korçë, Shkodër and Vlorë, until 31.01.2023, but did not conclude according to law, are transferred to the Appeals Court of General Jurisdiction. These cases are registered in the manual registers and the electronic case management system ICMIS. Judicial cases transferred to the Appeals Court of General Jurisdiction are redistributed by electronic lottery, in keeping with criteria approved by the High



Judicial Council. Judicial cases transferred to the Appeals Court of General Jurisdiction, for which judicial review has begun or is planned in the appeals courts of Tiranë, Durrës, Gjirokastër, Korçë, Shkodër and Vlorë, are not subjected to re-distribution by lottery. These cases will continue to be reviewed by the same judges. For the purposes of re-organization, transferring, and management of cases, the planning of dates for the review of judicial cases in the appeals courts of Tiranë, Durrës, Gjirokastër, Korçë, Shkodër and Vlorë, is done until 31.12.2022.

The Appeals Court of General Jurisdiction, within February 2023, based on legislation in force, fulfills all obligations and responsibilities deriving from the closing on 31.01.2023 of the economic-financial activity of the appeals courts. AHC notes that this provision has not been accompanied by a financial bill and sub-categorization of the evaluation of dues and the way they will be met by the Appeals Court of General Jurisdiction and, above all, whether the latter has available the budget to pay for these dues.

- *Decision no. 554, dated 29.12.2022 “On the distribution of judicial cases by lottery”*³⁷

The subject of this decision is the establishment of detailed criteria and rules for the distribution of judicial cases by lottery, at all levels of courts in the Republic of Albania. The cases and criteria for the distribution of cases by lottery are to be regulated by a special by-law of the HJC. The distribution of judicial cases by lottery is realized through algorithms, on the basis of the principle of transparency, information, control, oversight, tracking, equality of distribution and objectivity, and by enabling the authenticity of the lottery, integrity of data, their safety, and auditing.

The electronic lottery system is expected to produce periodical auditing reports or on the basis of requests for auditing (tracking) by the HJC or HJI. Judicial cases presented to the court are immediately registered with the electronic case management system by the judicial secretary, according to categories of the system, under the supervision of the chief secretary and the chancellor. The distribution of cases by lottery, as a rule, will be realized every working day electronically through the judicial case management system. The lottery process for the distribution of cases is realized in a courtroom and displayed in real time on the monitors placed at the court entrance premises to the extent possible. Reporting of the lottery is public and is immediately reflected on the court's official website. Judicial cases are distributed equally among the judges, according to the court's internal organization.

According to the contents of this decision, the electronic lottery assigns the case judge who is the head of the panel of judges or the rapporteur judge, in cases when the case is tried by a panel of judges. It is unclear, according to this formulation, whether the lottery enables also the selection of the other members of the panel of judges, when the case is adjudicated in panels of three or more judges.

Furthermore, it is worth emphasizing that when the electronic case management system does not function in a documented manner, for more than two working days the distribution of cases is realized by manual lottery.

In spite of the provisions in decision no. 505, dated 21.11.2022, AHC notes that it would be necessary for the principle of clarity that this by-law have a special transitory regulation regarding cases transferred to the Appeals Court of General Jurisdiction from the courts being dissolved.

³⁷ <https://klgj.al/wp-content/uploads/2023/01/VENDIM-Nr.554dat%C3%AB-29.12.2022-P%C3%8BR-NDARJEN-ME-SHORT-T%C3%8B-%C3%87%C3%8BSHTJEVE-GJYQ%C3%8BSORE.pdf>

- Decision no. 556, dated 29.12.2022 “On the approval of standard rules on the staffing, job descriptions of judicial civil employees, and other employees of the Appeals Court of General Jurisdiction”³⁸

This regulation, together with the accompanying annexes, envisages standard rules on the staffing structure, job descriptions and responsibilities of judicial civil employees and other employees of the Appeals Court of General Jurisdiction. Its purpose is to complete the legal basis for the organization and functioning of the internal structure of the Appeals Court of General Jurisdiction, in order to enable the functioning as effectively, professionally, and transparently of the activity of this court.

The organizational structure of the Appeals Court of General Jurisdiction consists of 245 functionalities/ employees, categorized as follows:

- a) Court Chair (1);
- b) Judicial corps (77 positions);
- c) Chancellor (1 post);
- d) Legal Services Unit (32 positions);
- e) Chief secretary (2 positions);
- f) Judicial Secretariat (82 positions);
- g) Directory of the Budget and Financial Management (6 positions);
- h) Sector of Human Resources, Support Services, and Procurement (22 positions);
- i) Sector of Information Technology, Statistics, Public Relations, Media, and Foreign Relations (4 positions);
- j) Sector of Protocol and Archives and Service Offices Coordination (18 positions)

Article 14, paragraph 3 and 4 of this decision envisages the establishment and functioning of service offices in the 5 cities where the dissolved appeals courts are located, namely Durrës, Korçë, Gjirokastrë, Vlorë and Shkodër. The purpose of the functioning of these offices is the provision of administrative services linked with protocol and judicial archives. The two judicial civil employees exercising their functions at the service offices in the districts, accept and convey without delay for review to the central structure of the judicial or administrative services of the Appeals Court of General Jurisdiction, every request or document presented in a judicial process by the parties, legal representatives, other users of the court, and any other interested subject. Also, these employees carry out all duties of the judicial secretary and actions linked with the administration of judicial cases completed by January 31, 2023, such as communication of judicial decisions to the litigating parties, communicating appeals/counter-appeals of litigating parties in civil cases, and conveying the judicial case file with all acts for review by the judge regarding the allowance of the appeal, etc.

Annex B of this decision details a standard description of the duties and responsibilities for each position of the judicial civil employees of the Appeals Court of General Jurisdiction.

³⁸ <https://klgj.al/wp-content/uploads/2023/01/VENDIM-Nr.-556-dat%C3%AB-29.12.2022-MBI-MIRATIMIN-E-RREGULLAVE-STANDARDE-P%C3%8BR-ORGANIGRAM%C3%8BN-P%C3%8BRSHKRIMIN-E-DETYRAVE-DHE-P%C3%8BRGJEGJ%C3%8BSIVE-T%C3%8B-POZICIONEVE-T%C3%8B-N%C3%8BPUN%C3%8BSVE-CIVIL%C3%8B-GJYQ%C3%8BSOR%C3%8B-DHE-PUNONJ%C3%8BSVE-T%C3%8B-TJER%C3%8B-T%C3%8B-GJYKAT.pdf>



b) Collective acts of the HJC

– *Decision no. 553, dated 29.12.2022 “On establishing the number of judges in the Appeals Court of General Jurisdiction”*³⁹

By means of this decision, the HJC has decided that the number of judges in the Appeals Court of General Jurisdiction is 78 (seventy-eight) judges. As will be noted by the accompanying report for the approval of the evaluation report of the new judicial map, this number is a summary of the number of judges of the six previous appeals courts, according to the staffing structure approved by decision of the President about 10 years ago.

According to the needs assessment of the new judicial map, the IWG admits that the statistical analysis of the caseload of the six appeals courts be done on the premise that the single Appeals Court of General Jurisdiction would function by a mechanical transfer of all appeals court judges to a single court.⁴⁰ Further on, the IWG notes that if the six appeals courts had functioned as a single court, we would have had a total caseload of 39,882 cases, distributed among 38.2 effective judges. This data would indicate an indicator of average caseload per judge of 1215.9 cases. As is noticed, the analysis has been conducted not on the basis of the total number of judges approved for the single court of appeals, but the number actual judges this court had in 2021, which is about half. Meanwhile, with the start of its functioning, the number has dropped to 25 judges, or 13.2 judges fewer than the HJC assessment of the caseload of the single Appeals Court.⁴¹

Per the above, AHC notes that this analysis is not complete and is entirely mathematical while the HJC should have assessed in parallel the room for filling vacancies in the Appeals Court, taking into consideration the trend of the vetting process and the rate of judges who successfully passed this process to be promoted to the Appeals Court, taking into consideration also the new input from the School of Magistrates for the First Instance Courts.

– *Decision no. 555, dated 29.12.2022 “On the re-distribution of the number of jobs at the Appeals Court of General Jurisdiction and the judicial district courts”*⁴²

By means of this decision, the HJC decided to approve the re-distribution of the number of positions in the Appeals Court of General Jurisdiction, the re-distribution of the number of positions in the Judicial District Courts, and suspend all recruitment procedures for filling vacancies for all categories of judicial civil employees and other judicial employees, until the conclusion of the restructuring process.

Of note is the fact that for the judicial administration of Judicial District Courts, the planning was not done for 13 courts that will function as of May 1, 2023, but for 16 courts, which includes the dissolved

39 <https://klgj.al/wp-content/uploads/2022/12/VENDIM-Nr.-553-dat%C3%AB-29.12.2022-P%C3%8BR-CAKTIMIN-E-NUMRIT-T%C3%8B-GJYQATAR%C3%8BVE-N%C3%8B-GJYKAT%C3%8BN-E-APELIT-T%C3%8B-JURIDIKSIONIT-T%C3%8B-P%C3%8BRGJITHSH%C3%8BM.pdf>

40 P.17, see accompanying report published at this link:

<https://klgj.al/wp-content/uploads/2022/06/relacion-harta-gjyqesore-F-1-Mbledhje-Plenare.pdf>

41 <https://shqiptarja.com/lajm/nga-sot-vetem-1-gjyqate-apeli-ne-tirane-shkrihen-5-te-tjera-ne-rrethe-32-mije-dosje-ne-pritje>

42 <https://klgj.al/wp-content/uploads/2022/12/VENDIM-Nr.-555-dat%C3%AB-29.12.2022-P%C3%8BR-RISHP%C3%8BRNDARJEN-E-NUMRIT-T%C3%8B-POZICIONEVE-T%C3%8B-PUN%C3%8BS-N%C3%8B-GJYKAT%C3%8BN-E-APELIT-T%C3%8B-JURIDIKSIONIT-T%C3%8B-P%C3%8BRGJITHSH%C3%8BM-DHE-N%C3%8B-GJYKATAT-E-RRETHEVE-GJYQ%C3%8BSORE.pdf>

courts such as those of Pogradec, Lushnje, Kavaja, and Mat. In total, for these courts, which are part of the annex of the HJC decision, plans envisage a total number of 558 judicial administration posts, or 21 more compared to the previous staffing structure. The new staffing does not include the number of personnel of courts planned for dissolution against that envisaged in the IWG assessment report. According to it, the new judicial map does not bring about a reduction of human resources, in spite of the reduction in the number of courts. This is because the number of judicial cases for review is not reduced but, on the contrary, increases every year.⁴³

If we compare the data of the new judicial map assessment report to the organizational structure for each judicial district court, based on decision no. 555, dated 29.12.2022 of the HJC, we notice that a considerable number of positions in the courts to be dissolved are cut. Concretely, the Durrës Judicial District Court has a staffing structure of 43 employees, while the assessment report envisaged a structure of 52 employees (12 of which belonged to the dissolved Kavaja court). The Gjirokastra Judicial District Court has an approved staffing structure of 17 employees, while the assessment report envisaged a structure of 28 administration employees (11 of which belonged to the Përmet dissolved court). The Kukës Judicial District Court for which the IWG envisages 25 administration employees (13 + 12 from the Tropoja Court) does not appear in the addendum of the HJC decision. The Lezha Judicial District Court has a structure of 20 administration employees approved by the HJC, while according to the assessment report it would have 35 employees, of which 15 belonged to the Kurbin Judicial District Court, etc. The Shkodra Judicial District Court has an approved structure of 34 administrative employees, while the assessment report envisaged a structure of 46 administration employee, of which 12 belonged to the Puka Judicial District Court, dissolved, etc.

– *Decision no. 557, dated 29.12.2022 “On the creation, functioning, and competences of the restructuring commissions”⁴⁴*

The decision targets the establishment of detailed rules for the creation and functioning of Restructuring Commissions established in the framework of the re-organization of the courts’ territorial competences and the procedures for the verification of conditions and criteria that should be met by judicial civil employees and other judicial employees, subjected to restructuring as a result of re-organization. The Restructuring Commission consists of the chairs and chancellors of courts being dissolved and the receiving ones (e.g., for the single Appeals Court, it consists of all the chairs and chancellors of the 6 appeals courts) and is run by a representative of the HJC. These Commissions review the possibility of accommodating every judicial civil employee and other judicial employees of the courts subjected to re-organization, into the structure and staffing of the receiving court, or even positions of the same category in other courts.

The chancellor of every court, immediately after the creation of the Restructuring Commission, notifies individually every employee of the court about the start of the restructuring procedure. Furthermore, the chancellor makes available to the Restructuring Commissions the job descriptions and specific criteria of the positions, copies of the personnel file, etc. Within 15 days from its creation, the Commission concludes the evaluation process and approves the proposing decision for the permanent transfer of all court employees, based on elements such as comparison of the receiving court’s structure to the existing one, verification of job descriptions, verifications of personnel files of judicial civil employees to highlight professional experience/education and the distance of the place

⁴³ See page 23 of the accompanying report: <https://klgj.al/wp-content/uploads/2022/06/relacion-harta-gjyqesore-F-1-Mbledhje-Plenare.pdf>

⁴⁴ <https://klgj.al/wp-content/uploads/2022/12/VENDIM-Nr.-557-dat%C3%AB-29.12.2022-%E2%80%9CP%C3%8BR-KRIJIMIN-FUNKSIONIMIN-DHE-KOMPETENCAT-E-KOMISIONEVE-T%C3%8B-RISTRUKTURIMIT.pdf>



of residence of more than 45 km from the institution, the relevant document of the judicial civil employee with health issues verified by the relevant medical report.

In principle, AHC considers that the 15-day deadline available to the Restructuring Commission to make the evaluation of such documentation does not appear reasonable, considering the considerable number of employees subjected to such evaluation. The Restructuring Commission for the Appeals Courts appears to have been created by decision no. 2, dated 11.01.2023, or about 2 weeks later than the approval of decision no. 557, dated 29.12.2022,⁴⁵ thus not respecting the 2-day deadline envisaged in paragraph 1, article 2 of this decision (which begins from the date of its publication, December 30, 2022). However, considering official holidays (January 1 and 2, 2023), AHC places special emphasis on the complexity of work of the Restructuring Commissions, which should have been established at least within November of the previous year (2022). As a result, the collective acts enabling their establishment should have dated to at least one month earlier.

The proposing decision of the Restructuring Commission for the permanent transfer of the judicial civil employee, is sent to the current Council of the receiving court and for chancellors, the proposing decision is sent to the HJC. This decision identifies the position in the structure of the receiving court or, depending on the case other courts, or the termination of the labor relations in the judicial civil service. Based on the contents of this provision, AHC notes that decision-making on proposals of the Restructuring Commission only to the current Councils of the receiving courts is disputable. Also, in the sense of juridical certainty of employees in the courts and the principle of their continuity of work, it is unclear after this decision in what cases the Commission may propose the termination of the labor relationship in the judicial civil service.

According to the decision, the employee may refuse transfer only if his /her health condition, proven by medical report, makes transfer impossible or when the court the person is proposed to be transferred to is more than 45 km from the place of residence of the civil servant. Refusal by the employee of the proposing decision of permanent transfer for reasons other than the mentioned ones is cause for dismissal from the judicial civil service. Regarding the manner of formulation of these provisions, it appears that for employees who have a legal reason to refuse the transferred position will not be dismissed from the judicial civil service. If that is the case, in the sense of continuity, this is a positive element, but it requires transitory regulation in HJC decision-making about how long they shall remain in the judicial civil service, the salary they will receive, and the prioritization of accommodation by relevant bodies, according to law no. 98/2016.

Also unclear is the status of other judicial employees of courts being dissolved, as the decision envisages that for them, provisions of this decision and provisions of the Labor Code shall be applied to the extent possible. This lack of clarity reflects on the rapport of the provisions of this decision vis-à-vis articles of the Labor Code, which are not referred to in its contents. Also, in terms of the principle of continuity, the decision should give priority in its formulation to the taking of all measures to enable accommodation in a similar or equivalent job of other judicial employees. The prevalence of this need is also an obligation of article 13, paragraph 4, of law no. 98/2016, on the organization of the judicial power, which envisages that the process to assign or reassign judicial districts and territorial competences of courts is done by also taking into consideration the need for continuity of judicial services, transfer of personnel, and organization of logistics.

⁴⁵ <https://klgj.al/wp-content/uploads/2023/01/VENDIM-NR.-2-DAT%C3%8B-11.01.2023-P%C3%8BR-KRIJIMIN-E-KOMISIONIT-T%C3%8B-RISTRUKTURIMIT-T%C3%8B-GJYKATAVE-T%C3%8B-APELIT.pdf>

For the sake of transparency to the public and employees in the dissolved courts, with regard to the effects of the new judicial map, starting from the appeals courts, AHC considers that the official website of HJC should have reflected processed and categorized data about the number and positions of employees transferred in the context of restructuring, where they were transferred, whether they refused transfer and why, and those for whom a termination of labor relations was decided, with the reasons justifying such decisions.

c) Individual HJC acts

During these months, HJC appears to have made some decisions in the form of individual acts, for the start of the procedure of transfer of judges due to the cutting of positions in the court where they were assigned permanently. It is a positive fact that judges have been given the possibility to transfer to one of the free permanent positions in the courts of the same level and substance to their previous position, giving them the possibility to choose. However, regarding the exercise of this right, the three-day deadline allowed to a magistrate to accept one of these positions, in AHC's estimation, is not sufficient.⁴⁶

In terms of the criteria that led the HJC to propose to each magistrate who has a permanent position in the court being dissolved, it is unclear how the judicial district courts were selected to propose their transfer to. We note this because, for instance, taking into consideration one of the decisions to start the transfer procedure for the cutting of the post of a judge in the Court of Lushnje⁴⁷ or the Court of Kurbin, the proposal was made for four vacancies, two for the Tirana Judicial District Court and two to the Durrës one. Meanwhile, after the new judicial re-organization, the Lushnje Court will be merged into the Fier Judicial District Court. The Kurbin Court will be merged into the Lezha Judicial District Court.⁴⁸

It is worth emphasizing that these decisions of the HJC have been based on articles 42 (principles of transfer) and 44 (transfer without consent) of law no. 96/2016 "On the status of Judges and Prosecutors in the Republic of Albania." According to article 44, paragraph 1, letter "b" of this article, transfer without consent is done when the position of the magistrate is cut due to changes in the administrative structure or the territorial competence of courts or prosecution offices, after the conduct of an evaluation, based on objective and transparent criteria. Thus, this provision conditions the realization of the transfer with relying on objective and transparent criteria, which are lacking in HJC decision-making analyzed in this section. It is also worth underscoring that the magistrate whose position is cut, according to letter "b," paragraph 1 of this article:

- i. shall be transferred to a position in the new structure of the same level, with the territorial competence of the court or prosecution office, where the magistrate previously exercised that function, or when that is not possible;
- ii. enjoys the right to choose to be transferred to any position that is free or expected to become

⁴⁶ <https://klgj.al/wp-content/uploads/2023/01/VENDIM-Nr.-8-dat%C3%AB-18.01.2023-P%C3%8BR-FILLIMIN-E-PROCEDUR%C3%8BS-S%C3%8B-TRANSFERIMIT-T%C3%8B-GJYQTARES-%E2%80%A6-P%C3%8BR-SHKAK-T%C3%8B-SUPRIMIT-T%C3%8B-POZICIONIT-N%C3%8B-GJYKAT%C3%8BN-KU-%C3%8BSHT%C3%8B-CAKTUAR-N%C3%8B-M%C3%8BNYR%C3%8B-T%C3%8B-P%C3%8BRHERSHME.pdf>

⁴⁷ [VENDIM-Nr.-9-datë-18.01.2023-PËR-FILLIMIN-E-PROCEDURËS-SË-TRANSFERIMIT-TË-GJYQTARES-...-PËR-SHKAK-TË-SUPRIMIT-TË-POZICIONIT-NË-GJYKATËN-KU-ËSHTË-CAKTUAR-NË-MËNYRË-TË-PËRHERSHME.pdf \(klgj.al\)](#)

⁴⁸ [VENDIM-Nr.-10-datë-18.01.2023-PËR-FILLIMIN-E-PROCEDURËS-SË-TRANSFERIMIT-TË-GJYQTARES-...-PËR-SHKAK-TË-SUPRIMIT-TË-POZICIONIT-NË-GJYKATËN-KU-ËSHTË-CAKTUAR-NË-MËNYRË-TË-PËRHERSHME.pdf \(klgj.al\)](#)

free within six months since the moment when the position is cut, to a court or prosecution office of the same level, of the same material competence.

The reasoning of decision-makings also is an obligation not respected by the HJC according to article 89, paragraph 2, of law no. 115/2016 “On justice governing bodies,” according to which individual administrative acts of the Council, regarding the status of judges or judicial civil employees, shall be made public on the official internet website of the Council, accompanied by the relevant reasoning.

d) Internal rules of the HJC

Among the qualified HJC decisions as internal acts, during December 2022, three procedures were initiated, for three vacancies, for promotion to the position of judge in the Tirana Appeals Court in the field of criminal law, the Durrës Appeals Court in the field of criminal law, and the Korça Appeals Court in the field of criminal law.⁴⁹

e) Rubric “Judicial Map” on the HJC official website⁵⁰

The HJC official website features a rubric entitled “Judicial Map,” which serves transparency before the public on the effects of this map. At present, the rubric contains information on the re-organization of appeals courts into the single Appeals Court of General Jurisdiction, the date when it starts functioning, and the location of the building, cases transferred to this court, and those that, though not transferred, will not be distributed by lottery but will continue to be tried by the judicial panels of the dissolved courts, requests that may be submitted through judicial service offices established and functioning at former appeals courts buildings, etc.

⁴⁹ Decisions no. 502, 503 and 504, dated 21.11.2022.

⁵⁰ <https://klgj.al/harta-e-re-gjyqesore/>

6 Analysis of positions of the Courts affected by the new judicial re-organization

AHC has sent a total of 19 requests for information to the First Instance Courts of General Jurisdiction and Appeals Courts in the Republic of Albania affected (dissolved) due to the territorial judicial re-organization. This correspondence was conducted to collect quality and statistical data on the critique of the courts themselves on the organization of the new judicial map, now in the process of implementation per CMD no. 495, dated 21.07.2022.

In its requests for information, AHC's interest focused on three main directions that consist in the courts making available process-verbals maintained during the general meeting of judges for each court for the period September – November 2022, official correspondence maintained by the courts with the IWG established by the HJC, and other documents that incorporate the individual positions of judges on their reservations about the dissolution of courts where they exercise their functions (if any).

Regarding the above, AHC requests received responses from a total of 12 courts, according to data reflected in table no. 1.

| TABLE DATA | | | | |
|------------|----------------------------------|--|--|-------------------------------------|
| No. | Institution | General Meeting of judges (Process-verbals for September – November 2022 period) | Correspondence with working group set up by HJC | Individual critique in writing |
| 1 | Mat Judicial District Court | NO (Re-organization, not on agenda) | NO | NO |
| 2 | Pogradec Judicial District Court | NO (No quorum of members) | YES- Communication with Budget Department sector at HJC KLGJ | YES (written position by one judge) |

| | | | | |
|----|--|--|--|---|
| 3 | Puka Judicial District Court | NO (Re-organization, not on agenda) | NO | NO |
| 4 | Lushnje Judicial District Court | NO (Re-organization, not on agenda) | NO | NO |
| 5 | Gjirokastra Administrative Court | No information provided | NO | No response |
| 6 | Shkodra Administrative Court | YES (unanimous agreement of judges on new judicial map) | No information | NO (verbal positions) |
| 7 | Korçë Administrative Court | No response | YES , Training for archive sector employees | NO (positions in context of consultation round tables) |
| 8 | Durrës Administrative Court | NO (Re-organization, not on agenda) | No response | No response |
| 9 | Shkodra Appeals Court | NO (Re-organization, not on agenda) | NO | NO |
| 10 | Durrës Appeals Court | NO (Re-organization, not on agenda) | NO | NO |
| 11 | Korçë Appeals Court | NO (No quorum of members) | NO | NO |
| 12 | Vlora Administrative Court of First Instance | NO (Re-organization, not on agenda) | No response | YES (Alternative position) |

From the review and administration of response letters, it results that only the Shkodra Administrative Court, during the general meeting of judges of 02.12.2022, discussed indirectly about the judicial re-organization. The process-verbal made available clearly indicates that part of the agenda in the day's meeting is the request of AHC and the participating judges declared verbally on the spot that they agreed from the start with the provisions of CMD no. 495, dated 21.07.2022. However, this appears to be in the context of providing a response to AHC while we have not been made available any process-verbal maintained in previous meetings, documenting positions of judges. Likewise, no official positions were made available in writing by judges or court personnel.

The Korça Administrative Court states that no meeting of judges took place where the discussion of the new judicial map was on the agenda. Regarding individual views of judges, it was stressed that they were expressed in the context of public consultations organized by the HJC and the Ministry of Justice at the central level and in meetings between courts of the same instance. However, these positions, are not reflected even in a summarized manner in the written response to AHC, which would provide transparency on positions taken by the judges of this court on the judicial map.

Per the above, it is worth pointing to the correspondence with the Pogradec Judicial District Court where, though there is no meeting of judges where the territorial and functional re-organization of courts was discussed, it is important that only one of the judges of this court presented his concern

in writing to the Ministry of Justice, through a letter of 11.06.2021. The letter highlights that the dissolution of courts according to the IWG assessment does not respect basic principles for the determination of territorial competence regarding the proximity of the individual to the court, reduction of service costs for the city, and increase of service quality. It is also worth stressing that, in reference to articles 14 and 15 of law no. 98/2016, courts that are part of the approved draft plan may operate functionally better in the form of branches and that, according to law, judges may be replaced by rotation once every two years. The Ministry of Justice responded to this concern in writing, clarifying that the drafting of the new judicial map took into account specifically articles 13, 14 and 15 of law no. 98/2016 “*On the organization of judicial power in the Republic of Albania,*” where the Ministry claimed summarizing that the process took into consideration guaranteeing access to justice, number of inhabitants vs. number of courts, road infrastructure, and transport conditions, court caseload, location and dimensions of institutions for the execution of penal decisions, and the need to organize judicial districts and territorial competences of courts at least every five years. ***Though the Ministry stresses that an in-depth analysis of all criteria envisaged by law was conducted, the response appears to be weak and only remains at the theoretical level because it is not based on previously tested empirical conclusions.***

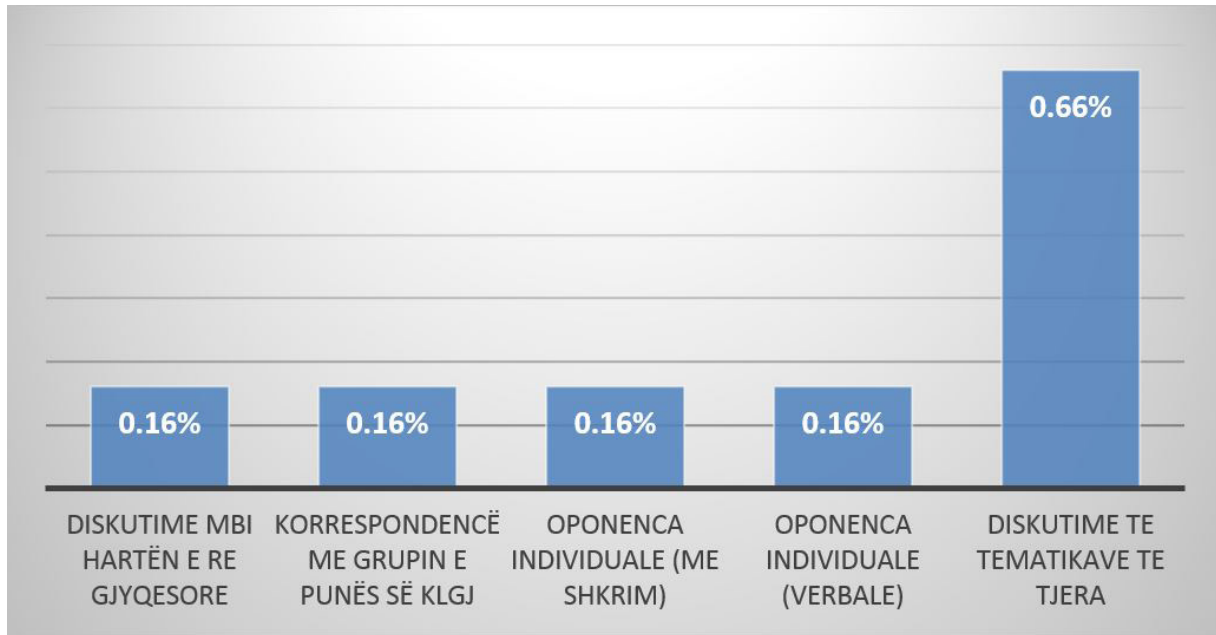
Of interest is the written position presented by the Vice Chair of the Vlorë Administrative Court of First Instance, whose position has the features of a rather alternative than disturbing position. Meanwhile, his position focuses on several aspects:

He mainly dwells on his suggestion to not transfer the court he serves at to the buildings outside the city of Vlorë because, in his opinion, after the dissolution of the Vlorë Appeals Court according to the approved map, the premises of this court will be vacated and the Vlorë Administrative Court could be transferred to these premises. The position is backed up by arguments linked with the contemporary conditions of the building guaranteed by the EU, the difficulty of transferring files and relevant materials from one city to another if the Court is transferred outside the city of Vlorë, and preserving the civil servant status for those employed in the court as, according to law, they enjoy the right to not be transferred outside their official place of residence farther than 45 km.⁵¹

In a final analysis, it is noticed that the topic of discussion in the agenda of meetings of courts according to table no. 1 was not discussion on the judicial re-organization and the challenges this reform brings with it, but mostly problems of the daily activity of the courts. In some cases, it was not possible to hold meetings because the legal quorum of members was not reached, due to vacancies created by vetting.

51 Law no. 152/2013 “On the civil servant”

Concern and individual views of judges presented in % in the below graph.



DISCUSSIONS ON THE NEW JUDICIAL MAP
 CORRESPONDENCE WITH THE HJC WORKING GROUP
 INDIVIDUAL CRITIQUE (WRITTEN)
 INDIVIDUAL CRITIQUE (VERBAL)
 DISCUSSIONS ON OTHER TOPICS

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