



JUSTICE REFORM: THE ROLE OF THE HIGH INSPECTORATE OF JUSTICE (HIJ)

Policy Document



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THE HIGH INSPECTORATE OF
JUSTICE (HIJ)**

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List of abbreviations

HIJ	High Inspector of Justice
JAC	Judicial Appointments Council
HJC	The High Judicial Council
HPC	The High Prosecution Council
SAC	Special Appeals Chamber
GP	General Prosecutor's Office

Introduction

The justice reform began with the aim of changing the justice system completely, to create a more efficient system and to restore the public's trust in this system. For this reason, a transitional re-evaluation system was established that would screen all judges and prosecutors of Albania, as well as new bodies were established for the administration of the justice system, such as JAC, HJC, HPC and the High Inspector of Justice. The latter was established with a clear goal, that through its powers make the justice system more accountable and prevent the new system from returning to its previous form. For this reason, the responsibilities of this institution are extensive.

The appointment of the High Inspector of Justice is made by the Assembly, based on the candidacies presented by the JAC. Therefore, in this case, the position and prestige is equal to that of the members of the Constitutional Court. However, the JAC of 2017-2018 was not operational, causing delays in the initiation and operation of the HIJ. Only the JAC of 2019 managed to present the candidacies to the Assembly, which in turn in January 2020 managed to elect the first High Inspector of Justice.

This official was charged with the task of setting up this institution. It is understandable that such a task was not easy, but rather got complicated by other events beyond its control, such as the Covid-19 pandemic. Gradually, the institutional structure began to form, but the challenges this institution is faced with, are multiple, both in terms of reviewing the complaints carried over the years, and the handling of new complaints that are addressed to this institution. Added to this is the burden of carrying out thematic inspections. These tasks must be carried out while we do not have a consolidated and complete administration at all its levels.

The purpose of this report is to provide an overview of the activity of this organization, during the first three years of its operation, the challenges it has faced, the successes it has achieved, the problems encountered, as well as the way of fulfilling its competencies. At the end, the report concludes with the part of conclusions and recommendations.

The document is part of the commitment of the Institute of Political Studies (ISP) within the project 'Improving the Debate on Policies and Accountability in fulfillment of the criteria of the First Group of Negotiating Chapters'. The project is supported by the Embassy of the Kingdom of the Netherlands in Tirana and is being implemented by a group of organizations to which ISP belongs, under the direction of the Center for the Study of Democracy and Governance (CSDG), in partnership with the Albanian Helsinki Committee and the Institute of Science. The objective of the project is to support Albania's EU accession negotiations regarding the First Group of Negotiating Chapters (Cluster 1), through improving policy debate, strengthening accountability and the role of CSOs in the process. Cluster 1 contains the following chapters: (23 – Judiciary and fundamental rights, 24 – Justice, Freedom and Security, 5 – Public procurement, 18 – Statistics, 32 – Financial control and economic criteria, functioning of democratic institutions and public administration reform).

Findings and Conclusions

HIJ is an institution established for the first time in Albania, with the constitutional amendments approved by the Assembly with the law no. 76/2016. Its organization was further detailed in Law no. 96/2016 'On the status of judges and prosecutors in the Republic of Albania', as amended, as well as in Law no. 115/2016 'On the governing bodies of the justice system'. amended.

- From the analysis of the HIJ competences, the procedures it follows and its concrete practice, it was ascertained that we are dealing with a very powerful institution, which can process the entire justice system, judges, prosecutors, members of councils, as well as the Prosecutor General. The only exception is the Constitutional Court. Therefore, it is an extraordinary power that is concentrated in the hands of a single man, i.e. High Inspector of Justice. For this very reason, the work of this institution must be constantly monitored by various actors, in order to keep it accountable concerning the functions it carries. Also, since it is a new institution, the work of the current High Inspector of Justice is very important to establish internal mechanisms for the work of the institution to be documented in all aspects, in order to continually monitor the work.
- As a new institution, there were two issues that arose, the first being the lack of human and infrastructural resources, and the second, a large stock of complaints submitted by various entities. Another problem, albeit a side issue, that influenced the start of the work of the HIJ and the establishment of the institution, was the beginning of the Covid-19 pandemic and the actions taken by the Albanian authorities to combat it. This caused a few months of setback that affected the efforts to establish the Institution. Another problem that accompanied the establishment of the institution, was the continuation of filing complaints against magistrates from various subjects.
- These four aspects taken together, generated a challenging situation for HIJ. However, efforts to establish this institution continued at first with the establishment of the temporary structure and then with the approval of the permanent structure by the Assembly. The current structure of the HIJ includes a total of 93 employees. The core of this structure ought to be the panel of inspectors which should consist of 26 inspectors, equally divided between magistrates and non-magistrates.
- Filling these places has presented a challenge of its own. Thus, the HIJ inherited from the former HCJ only one magistrate inspector, who in turn had applied for promotion, putting thus in question the time of his stay in the HIJ. Although the HJC announced and re-announced the procedure for commanding magistrates in the HIJ, at least 7 times, there was no interest from the magistrates, of the judge's profile. This can be explained by several reasons, the first of which could be the transition to the transitional re-evaluation procedure with priority in case of appointment in HIJ. Also, the creation of vacant positions in the judiciary during this period, as a result of the transitory re-evaluation process, has led

to the interest of magistrates being directed towards vacant positions in the Supreme Court as well as in the appellate courts. This trend is understandable and is also related to the criteria that candidates for inspectors must meet, these criteria are very high and practically a person who meets them is a potential candidate for these courts as well. For its part, the HPC initially commanded 4 magistrates, prosecutor profile, but one of them left as a result of the transitory re-evaluation process.

- As for the non-magistrate inspectors, several procedures have been carried out by the HIJ and it has been managed for their vacancies to be filled. However, in order for this category of inspectors to be that of a high integrity, the law requires the implementation of some evaluation procedures, which will take its time.
- In relation to the examination of submitted complaints, the HIJ has attempted to maintain a balance between complaints received before the establishment of the institution and newly submitted complaints. The approach of the HIJ seems correct, in order that the new complaints do not wait for their examination turn thus tempering with the expectation that the various subjects had in the new institution.
- Regarding the lodged complaints, a working group was initially established by the HIJ for their clarification, since they were in different stages of examination. On this basis, a determination of the way of examining them was made based on several priorities. Later, with the increase in the number of inspectors, a special group was established solely for their review. In spite of it, their examination has proceeded at a not very fast pace, given that even in 2023 there are still issues carried over from this category. Prolonging the processing of these complaints, in addition to lowering public confidence, may also lead to the passing of the statute of limitations, shunning the responsibility of the entities. It is worth highlighting that, nevertheless this situation has come as a result of the combination of several factors, discussed above, that were also beyond the control of the HIJ. In relation to the submitted complaints, after the establishment of the HIJ, the process of their follow-up has been more satisfactory, and for the most part they have been reviewed and resolved within satisfactory deadlines.
- It is understandable that the work of an institution is not only measured in quantitative but also qualitative terms. From the available data, it appears that for archiving decisions, appeals have been very few and in any case these decisions have been left in force by the respective councils. The small number of appealed decisions shows that the subjects were convinced by the reasoning of the HIJ, and this fact shows confidence in the institution. While the fact that none of the councils have dismissed the archiving decisions, shows that the work of the HIJ has been professional.
- Regarding the requests for proceeding initiated by the HIJ, it appears that so far they have all been accepted, with the exception of one request that was rejected by the HPC. The only difference that exists is that the Councils have not always accepted the measure proposed by the HIJ, since it did not seem proportional to them by setting a lower measure than the one requested. Nevertheless, the differences between the measures proposed by the HIJ and taken by the Councils do not have strong differences, and above all, important for the HIJ is the fact that the Councils have admitted that there are disciplinary violations by the

magistrate. The decisions taken by the Councils, based on the request of the HIJ and which were later appealed to the SAC, have been confirmed by the latter. These data indicate a positive result for the work of the HIJ as far as the magistrates' proceedings are concerned. This shows that the work of the HIJ has been professional and well founded, since as far as the Councils are concerned, in most cases they have been taken into consideration.

- The other aspect that remains to be discussed is that of the thematic inspections. In carrying out these inspections, HIJ has been limited, as discussed above, due to staff shortages and the high number of complaints carried over and submitted. However, three thematic inspections were carried out by the HIJ. What seems interesting is that the HIJ, due to the problems that have arisen, proceeded from the beginning with the start of proceedings against some magistrates, not waiting for the completion of the inspection.
- Based on the above, it is ascertained that HIJ, despite the difficulties that have arisen, has shown a commitment to the establishment of an institution, which is one of the foundations of the justice reform, initiated by the Assembly since 2016. Although it is understandable that the performance of the HIJ has room for improvement, it seems that the institution is on a good path.

Recommendations

In order to improve the work of the High Inspector of Justice, we recommend that:

- Changing the ratio that the law provides regarding the body of inspectors. Since the body of inspectors is the core of the operation of this institution and the vacancies of this corps are not fully covered, it is necessary therefore that the ratio between magistrate and non-magistrate inspectors, change. In this regard, we recommend that there should not be a literal relationship between these two flows, but in the event that both the body of magistrates and non-magistrates run for the same seat, then the magistrate candidate should have an additional evaluation due to his profile. In this regard, HIJ is enabled to complete the corps of inspectors.
- Also, in order to increase the possibility of applying for magistrate candidates, it is recommended to lower the criteria provided by the law. This is because with such high criteria, those magistrates who meet them will show interest in applying for promotion, not for a HJC inspector.
- Given that inspectors, regardless of whether they are magistrates or non-magistrates, perform the same work and potentially have the same workload, the difference in salary provided by the legislation in force should be changed by putting parity among both of these categories in financial treatment. In this respect, there is no discrimination between the inspectors themselves and it creates a better spirit of cooperation.
- The HIJ should not have the right to appeal against the decisions of the Councils that do not accept the disciplinary measures requested by it. This follows from the Constitution, which provides that HIJ proposals are reviewed by the Councils and does not provide for an appeal against their decision-making. Therefore, the possibility of courts to take disciplinary measures against magistrates is not foreseen in any part of the Constitution. Meanwhile, the penalized magistrate can complain since his work status and the rights derived from it are violated. HIJ has no reason to further appeal the Council's decision-making.
- In order to preserve the procedural rights of the HIJ, it is recommended only the possibility of appealing the decisions of the Councils for serious procedural reasons, but not for the merits of the decision-making.
- In order to deal with the stockpile of pending complaints, a resolution option is

recommended, such as the example from the Supreme Court, with external assistants hired, to help the relevant structures with the inventory of complaints and the creation of the inventory of files.

- A legal problem is posed by the situation when the submitted complaints, or thematic inspections, reveal disciplinary violations for the members of the HPC and the HJC. In this case, it can be discussed whether they will be investigated and processed administratively as magistrates or as members of the Councils. This situation requires a legal solution where it is recommended that they be treated as Council members as long as they possess that mandate at the time of the disciplinary proceedings.

HIJ, establishment and performance

In the Constitution of Albania, the High Inspector of Justice is referred to 6 times in articles 135, 147/d, 147/dh, 147/e, 147/ë, 149/d and 179. Based on these provisions, it follows that the High Inspector of Justice covers the examination of complaints, the investigation and the initiation of disciplinary proceedings for all magistrates, for the General Prosecutor, as well as members of the HPC and the HJC.

The reasons for the suspension and dismissal of these subjects are the same for all. The HJC in this case is set in motion by the MoJ, GP, members of Councils, presidents of courts or heads of prosecutions, but also by individuals (natural and legal persons).

From the moment of the filing of the complaint by the above-mentioned subjects to the High Inspector of Justice, the initial review and evaluation of the complaint is carried out, then proceeding to the verification of the complaint (at the end of these procedures, the HIJ may also decide to archive the complaint), the disciplinary investigation and disciplinary proceedings.

At the legal level, the organization and function of this institution is regulated by Law no. 115/2016 'On governing bodies in the justice system', as amended, in Part IV, Chapters I-IV, articles 193-216, as well as law no. 96/2016 'On the status of judges and prosecutors', amended, Part V, Chapters I-III, articles 100-157, which regulates the procedure of judges and prosecutors.

The High Inspector of Justice was appointed by decision no. 2 dated 20.1.2020 of the Assembly of Albania. From the institutional side, HIJ with order no. 1, dated 07.02.2020 'For the approval of the temporary structure and organization of the Office of the High Inspector of Justice', first approved the *transitory organogram* of the Institution with 40 employees. Then with the decision no. 28/2020 of the Assembly, the permanent structure of this institution was approved, which ought to have 93 employees. During 2020, 53 employees were hired while there were issues with the recruitment of magistrate inspectors. For this category, HIJ carried out several recruitment procedures which also required their time for the verification and evaluation of candidates.

During 2020, the HIJ continued to exercise its activity only with one magistrate acting inspector subordinate to HIJ. Further in February 2021, four magistrates of a prosecutor's profile were assigned to the Office of the High Inspector of Justice, by the High Prosecution Council. For a magistrate inspector, financial relations were terminated in July 2021, due to the decision of the IQC, to dismiss him from office, a decision that was appealed to the SAC.

Regarding the activity of the HIJ, the latter inherited a backlog of 2,104 complaints registered before February 1, 2020, the day when the High Inspector of Justice officially began functioning

as a constitutional institution. The review of these complaints began in 2020 and continued in 2021, a time when 427 complaints were reviewed.¹ In 2022, 534 more complaints were examined by HIJ from this fund, with 1072 complaints more to go.

Regarding new complaints received after February 1, 2020, there were 950 complaints for 2020, while a total of 184 decisions have been approved that have dealt with 173 complaints. From 2020 to 2021, 2,870 cases were carried over. Regarding the disciplinary proceedings, it seems that the HIJ has approved 8 decisions for the initiation of the disciplinary investigation, respectively for 2 (two) prosecutors and 6 (six) judges. 4 (four) requests for the initiation of disciplinary proceedings were also drafted, 3 (three) to the High Judicial Council, all accepted, while one presented to the High Prosecution Council was dismissed.

- For 2021, 1257 new complaints have been filed, of which the HIJ has examined 1719 complaints, of which 1433 complaints have been archived, 270 complaints were carried over for 2022, 22 decisions were made to initiate disciplinary investigations and **17** requests were presented to the Councils.
- For the year 2022, 789 new complaints were filed, with a total of 1715 complaints reviewed by the HIJ (including those carried over) concluded with 1234 decisions: of which **862** decisions for archiving after the initial review, **344** decisions for archiving after verification and **28** decisions for disciplinary investigation.

Regarding the thematic inspections, HIJ has launched a thematic inspection in 2020 and two more inspections in 2021 and specifically:

- *Decision No. 1 date 11.02.2020, 'For the performance of the thematic inspection of the courts and prosecutor's offices near them on the handling of requests subject to 'Conditional Release'.*
- *Decision no. 37, dated 01.06.2021 of the High Inspector of Justice 'On conducting the thematic inspection of the general jurisdiction' with the object: 'On taking administrative and procedural measures within the framework of the implementation of general instruction no. 12, dated 20.07.2020, of the Prosecutor General 'On the regulation of relations between prosecutors and heads of prosecution, information, transparency and guarantee of independence in prosecutions with general jurisdiction', as amended.*
- *Decision no. 47, dated 15.07.2021, of the High Inspector of Justice 'On the performance of the thematic inspection of prosecutors of the general jurisdiction with the object: 'Respecting the conditions and criteria for the assignment of personal security measures' for the criminal offense of 'Unauthorized possession and production of weapons, explosive weapons and ammunition'.*

Based on the data collected for the thematic inspection for 'parole', 2 requests for disciplinary proceedings were submitted in 2020, 1 request for disciplinary proceedings in 2021 and 1 request for disciplinary proceedings in 2022. However, this inspection is yet to be concluded with a final report, while for the other two thematic inspections, HIJ issued a final report, where the problems were identified and the relevant recommendations were reflected.

¹ HIJ Report of 2021, p.12.

Evaluation of the constitutional and legal framework of the HIJ

In the Constitution of Albania, the High Inspector of Justice is referred to 6 times in articles 135, 147/d, 147/dh, 147/e, 147/ë, 149/d and 179. From these provisions it follows that the High Inspector of Justice covers review of complaints, investigation and initiation of disciplinary proceedings for:

- a) judges
- b) prosecutors
- c) The Prosecutor General
- ç) members of the High Judicial Council
- d) members of the High Prosecution Council.

Referring to articles 140, 147/c, 148/d as well as 149/c of the Constitution, there seem to be no changes in the reasons for the suspension of these officials from office, or in the reasons for their dismissal. Thus, as a reason for suspension, are listed cases when these subjects a) are assigned the measure of personal security 'prison arrest' or 'house arrest' for committing a criminal offense; b) assume the status of defendant for a serious crime committed intentionally; or c) the disciplinary procedure begins, according to the law (Articles 140, point 2, 147/c, point 2, 148/d, point 2 as well as 149/c, point 2 of the Constitution).

As a reason for dismissal for these subjects, the constitutional norms are identical when they mention only a) the commission of serious professional or ethical violations; or b) punishment by final court decision for committing a crime (Articles 140, point 1, 147/c, point 1, 148/d, point 1 as well as 149/c, point 1 of the Constitution).

Point 2 of Article 194 of Law 115/2016 'On the governing bodies of the justice system', as amended, defines as follows that the HIJ is set in motion with

- a) the written complaint of any natural person, legal entity or public body concerned;*
- b) written complaint to the Minister of Justice;*
- c) the written complaint of the Prosecutor General;*
- ç) the written complaint of each member of the High Judicial Council or the High Prosecution Council;*
- d) written complaint by the president of the court where the judge works who is suspected of having committed a disciplinary violation;*
- dh) written complaint from the head of the prosecution office where the prosecutor who is suspected of having committed a disciplinary violation works.*

From the moment of the filing of the complaint by the above-mentioned subjects, the High Inspector of Justice follows the following steps:

- Initial review and evaluation of the complaint

The HIJ first examines whether the 'prima facie' complaint meets certain admissibility criteria. If one or more of the admissibility criteria of the complaint are not met, then the High Inspector of Justice issues the decision to archive the complaint.

- Complaint verification

In cases where *prima facie* the complaint has data that needs verification, its validation is decided. In this case, the HIJ may ask the complainant to submit additional documents or provide explanations about the manner and circumstances in which the alleged violation occurred, as well as may receive any other information from the relevant Council, court or prosecution.

After the administration of the documentation, as part of the verification of the alleged violation, if it is found that there are not enough facts to justify the initiation of the investigation, the complaint is archived and the reasoned decision to archive the complaint is notified to the complainant and the magistrate to whom the complaint was filed.

- Disciplinary investigation

Disciplinary investigation can be initiated in two ways. First, if, after the verification, there are reasonable doubts that the violation may have been committed, based on the facts and evidence collected during the verification, which justify the initiation of a disciplinary investigation against the magistrate or magistrates against whom the allegations are raised by the complainant, the HIJ starts the investigation.

In the second case, the disciplinary investigation can be triggered even if, after the initial examination, reasonable doubts are raised that the disciplinary offense may have been committed, based on the facts and evidence collected, which justify the initiation of the investigation. Therefore, a disciplinary investigation decision can be taken by the HIJ even not passing the verification stage in case that the aforementioned legal conditions are met.

The disciplinary investigation is one of the three phases of the complaint review which begins:

- At the initiative of the complainant, if it is ascertained or suspected that the violation may have been committed, based on the facts and evidence collected, which justify the initiation of the investigation. During the disciplinary investigation, a complete and comprehensive investigation is conducted regarding the doubts raised during the phase of the initial examination or verification of the complaint.

- On the initiative of the High Inspector of Justice, based on essential data on the facts resulting from reliable sources, on the basis of which reasonable suspicion arises that the violation may have been committed.

The decision to initiate a disciplinary investigation can be taken after the initial examination or verification of the complaint, if it is ascertained or there are reasonable doubts that the violation may have been committed, based on the facts and evidence collected that justify the initiation

of the investigation.

In the event that after conducting the investigation and completing the relevant procedures, the HIJ assesses that the violation is not proven or the claims are unfounded in the law and in the collected evidence, it decides to close the disciplinary investigation. If there are reasonable doubts that the magistrate has committed a disciplinary violation, then the HIJ starts the disciplinary procedure, submitting the investigation report together with the investigation file to the relevant Council (HJC or HPC).

- Disciplinary procedure

After the submission of the investigation report by the HIJ to the relevant Council, the latter sets the date of the hearing and notifies the parties within the deadlines set by law.

After considering the facts and evidence, the Council:

- a) dismisses the request for disciplinary proceedings since the alleged facts did not occur or they do not constitute a disciplinary violation;
- b) accepts the request and imposes one or more disciplinary measures.²

Organization at the legal level

Law no. 115/2016 'On governing bodies in the justice system', amended, in Part IV, Chapters I-IV, articles 193-216, regulates in detail the constitutional norms related to the object of the activity of High Inspector of Justice, independence, budget and structure of the institution, status of High Inspector of Justice, incompatibilities, selection, mandate, powers, Deputy High Inspector of Justice, investigation of disciplinary violations, method of appointment, disciplinary violations and status of inspectors.

While the above law regulates organizational issues, it is law no. 96/2016 'On the status of judges and prosecutors', amended, Part V, Chapters I-III, articles 100-157, which regulates the procedure of judges and prosecutors.

Selection of the High Inspector of Justice

The Judicial Appointments Council, with decision no. 3 dated 1.3.2019, opened the application procedure for the position of High Inspector of Justice. During the candidate evaluation procedure, at the stage before verification, according to the published data, two candidates resigned, in whose requests no specific reasons for resignation are provided.³

² HIJ report, year 2020, p. 30-32.

³ Request dated 14.1.2019 and 25.3.2019
Retrieved from website:

[http://www.gjykataelarte.gov.al/web/Kandidate te terhequr perpara procedures se verifikimit 5916 1.php](http://www.gjykataelarte.gov.al/web/Kandidate%20te%20terhequr%20perpara%20procedures%20se%20verifikimit%205916%201.php)

During the later stages, four candidates withdrew from the application:

- A subject in his act of resignation has claimed that JAC carries out the candidate verification procedure in a selective manner and equates subjects that are subject to declaration of assets to private subjects, in this case practicing the vocation of a lawyer⁴;
- One of the other subjects expressed in his resignation letter, the reason for the lack of time to complete the documents for the declaration of assets⁵;
- The other two candidates do not provide specific reasons for their resignation⁶.
- At the time of drafting this report, according to the data published by this institution, four candidates have been banned from running for the vacant position in the HIJ,⁷ referring to the published decisions, one of the candidates made an incorrect declaration of wealth⁸ and the other three candidates did not meet the seniority criterion⁹.

With decision no. 2 date 20.1.2020 the Assembly of Albania voted with 98 votes for the High Inspector of Justice.¹⁰ This vote came after the list ranked by the JAC, through the decision of 23.12.2019, where the chosen candidate ranked first, with 89.6 points.

Regardless of the progress of the process, we emphasize that the appointment of the High Inspector does not immediately lead to the start of his activity. Thus, for this institution, the organizational structure, the necessary infrastructure, the inspectors who will exercise the relevant duties, the support personnel, etc. were totally missing.

Establishment of HIJ's administration

One of the first challenges pertaining the establishment of HIJ as an institution was the establishment of its administrative apparatus. HIJ is a newly established institution and therefore did not inherit the financial, material and human resources of any other preceding institution.

⁴On the continuity of the application process for HIJ, dated May 8, 2019

Retrieved from website:

http://www.gjykataelarte.gov.al/web/heqje_dore_genci_ismaili_2058.pdf

⁵Retrieved from website:

http://www.gjykataelarte.gov.al/web/heqje_dore_suzana_frasheri_2046.pdf

⁶Retrieved from website:

http://www.gjykataelarte.gov.al/web/heqje_dore_lfteri_lleshi_luzi_2041.pdf

http://www.gjykataelarte.gov.al/web/heqje_dore_elira_kokona_2113.pdf

⁷Retrieved from website:

<http://www.gjykataelarte.gov.al/web/LISTA EKANDIDAT VE T NDALUAR NGA KANDIDIME T P R VENDIN VAKANT P R INSPEKTOR T LART T DREJT SIS 6064 1.php>

⁸Decision no. 53 dated 24.7.2019 of JAC

⁹Decision no. 77 dated 24.7.2019, decision no. 107, dated 2.8.2019, decision no. 101 dated 30.7.2019 of JAC

¹⁰Retrieved from website:

<http://parlament.al/Files/Akte/20200124111759vendim%20nr%20%202%20dt%20%2020%201%202020.pdf>

With order no. 1, dated 07.02.2020 'On the approval of the temporary structure and organization of the Office of the High Inspector of Justice', was first approved the transitory structure of the Institution with 40 employees. Based on this structure, job descriptions were drawn up and 27 vacant positions were announced on 08.02.2020. Despite this, due to the declaration of the state of pandemic at the time, most of the procedures were suspended and only 8 vacancies were managed to be filled.

Given that on 18.6.2020, it was approved by the Assembly of Albania, decision no. 28/2020 "On the approval of the organizational structure, organization and salary classification of the staff of the High Inspector of Justice", the previous procedures, announced based on the temporary structure, were canceled and new recruitment procedures were announced based on the new structure. These procedures were announced on June 25, 2020 and continued with the second round of announcements in September 2020.

Decision no. 28/2020 of the Assembly provided for a total structure with 93 employees. Until December 31, 2020, there were 53 people employed by the Office of the High Inspector of Justice as follows:

Inspector's Cabinet:	6 Advisors; 1 Assistant; 1 Secretary;
Magistrate inspectors:	1 Magistrate inspector;
Senior management level:	1 General director;
Middle management level:	2 Director of directorate (<i>1 parallel movement and 1 promotion</i>); 14 Assistant Inspector (<i>3 parallel movements and 11 promotions</i>);
Low management level:	5 Sector manager (<i>1 parallel move and 4 with promotion</i>);
Executive level:	16 Specialist (<i>5 parallel rotations and 11 additions into the civil service</i>);
Support staff:	6 employees working under the Employment Code;

Given the above, a total of 53 employments were made, and together with the High Inspector, make 54 employees in total. This shows a difference of 39 employees. Referring to the data, the differences are in these sectors:

Inspector's Cabinet:	1 advisor (of 9)
Magistrate inspectors:	12 Magistrate inspectors (of 13);
Non-magistrate inspectors:	13 Non-Magistrate inspectors (of 13);
Senior management level:	
Middle management level:	1 Director of directorate (of 3) 3 Assistant Inspector (of 17)
Low management level:	4 Sector manager (of 9)
Executive level:	5 Specialists; ¹¹

¹¹ HIJ Report, for the year 2020, p. 28.

The comparison of this data shows that during 2020 the HIJ structure was not completed, lacking mainly inspectors, which had an impact on the general performance of the HIJ for 2020. We emphasize that this is the most important structure of this institution.

Based on Article 209 of Law no. 115/2016 'On the governing bodies of the justice system', no less than half of the inspectors of the Office of the High Inspector of Justice are magistrates, who are assigned to this task by the High Judicial Council or the High Prosecution Council. The rest of the inspectors are appointed by the High Inspector of Justice according to the procedures defined in the law.

On the part of HIJ, it is that the positions for non-magistrate inspectors have been opened for running for 6 vacancies, but within the framework of these procedures, due to the resignation of some candidates from the candidacy for non-magistrate inspectors, 9 (nine) decisions have been approved with the object: 'For the completion of the procedure of verification, evaluation, scoring, and ranking of the candidacy. Due to the resignation from the candidacy for inspector, not magistrate'; Also, the High Inspector of Justice has approved 10 (ten) decisions related to the prohibition of running for vacant positions for non-magistrate inspectors as well as 11 (eleven) decisions related to allowing the candidacy for vacant positions for non-magistrate inspectors.

On 30.09.2021, the High Inspector of Justice announced the procedure for 9 (nine) vacant positions for non-magistrate inspectors, for which 19 candidates applied. The Inspector Appointment and Evaluation Committee, established by order no. 142, dated 29.10.2021 of the HIJ has carried on with the sending of official letters to the relevant institutions, with the aim of obtaining information, on which the verification of meeting the conditions and legal criteria would be based, as well as the verification of the image and assets.

On the part of the HJC with the decision no. 69, dated 07.02.2020, an acting magistrate inspector has been temporarily assigned to the Office of the High Inspector of Justice. At the meeting of 26.02.2020, the HJC decided to open the appointment procedure from the ranks of judges for 6 inspector magistrate positions, but there were no candidates. For this reason, on 05.10.2020 and then on 10.07.2020, the HJC reopened the appointment procedure from the ranks of judges for the position of inspector magistrate, however until December 31, 2020, there was no candidacy.

This situation continued for the year 2021, where the HJC has made a total of 7 announcements, for the appointment of magistrate judges in the position of inspector magistrates at the Office of the HIJ, which have not been successful in terms of meeting the needs of the HIJ. The High Inspector of Justice in September 2021 addressed the High Judicial Council, requesting the re-announcement of the procedures for the candidacy of 6 (six) magistrate judges for the position of magistrate inspectors at the HIJ.¹²

From the HPC with decision no. 37, dated 05.02.2020, was announced the start of the procedure for filling 4 (four) vacancies at the Office of the High Inspector of Justice through the appointment procedure, and with decision no. 77, dated 04.03.2020, a prosecutor was

¹² Report 2021, p.41.

appointed. HPC then admitted 6 candidacies from prosecutors for the position of inspector magistrate and carried on with the process of evaluating the submitted candidacies, not completing them within the year 2020.

At the beginning of 2021, the HPC took a decision on the appointment of 4 magistrates, prosecutor profile as magistrate inspectors at the HIJ.¹³ However for a magistrate inspector, financial relations have been interrupted, due to dismissal decision no. 426, dated 27.07.2021, of the Independent Qualification Commission (IQC). Currently, the case is pending before the Special Appeals Board (SAB). Another magistrate inspector has completed the re-evaluation process and has been confirmed in office, and the other two magistrates have not as yet undergone the transitional re-evaluation process. Only these last three appear to have joined the HIJ.¹⁴

In March 2021, there are 8 inspectors in total.¹⁵ 4 are non magistrates¹⁶ a procedure closed in February 2021,¹⁷ September 2021, the procedure for 9 vacancies for non-magistrate inspectors has been announced,¹⁸

Regarding the administration of the HIJ, during the year 2021, pursuant to law no. 152/2013 "For the civil servant", amended, the Labor Code and the organic law, a total of 16 (sixteen) appointments/hirings were made, as follows: ¹⁹

- The cabinet 3 (three) Councilor appointments (1 Councilor left in September 2021 with resignation)
- Senior management level 1 (one) General Secretary
- Middle management level 3 (three) Assistant Inspectors (2 parallel movements and 1 acceptance from outside the civil service); (1 suspension)
- Low management level 1 (one) Head, Internal Audit Sector (parallel movement);
- Executive level 5 (five) Specialists (1 parallel movement, 4 admission to civil service); (Discharged via resignation 3 & suspension 1)
- Employees under Labor Code 3 (three) General Services Sector

The total number of appointments for 2021 within the approved structure is 24 employees. The number of employees according to the organogram for 2021 is 93 approved employees. The total is 72 employees who effectively exercise their duties, of which 64 employees within the approved organogram and 8 employees with temporary contracts. So, from the HIJ side, it remains understaffed by 21 people, mainly a shortage in inspectors.

¹³ Decisions no. 18, dated 27.01.2021, no. 19, dated 27.01.2021, no. 20, dated 27.01.2021 and no. 21, dated 27.01.2021 of the HPC.

¹⁴ Bulletin no. 12, January 2022, p.3

¹⁵ Bulletin no. 14, March 2022, p.6

¹⁶ Bulletin no. 16, May 2022, p.13.

¹⁷ Bulletin no. 18, July 2022, p.3.

¹⁸ Bulletin no. 18, July 2022, p.7

¹⁹ HIJ Report for 2021, p.43

The professional activity of the HIJ

The activity of the HIJ was extended in three directions, the first is about addressing the complaints that were filed before the establishment of the HIJ, the second for handling the complaints made after the establishment of the HIJ and the last, carrying out thematic inspections.

Complaints carried over

The number of complaints received as a result of the transitional period after the entry into force of the constitutional amendments, approved by law no. 76/2016 until the start of the operation of the new bodies of the justice system was 2,104 complaints registered before February 1, 2020, as the day when the High Inspectorate of Justice officially began functioning as a constitutional institution.

These complaints were transferred in two stages in the months of June (757 complaints) and July (1347 complaints). In 2020, the HIJ set up a working group for their verification, also determining their treatment in order of priority based on criteria such as: date of delivery, stage of treatment by previous bodies, typology or urgency of the handling of the complaint, in compliance with the principle of equality and objectivity, as well as the time necessary for the examination and evaluation of each documentary practice.²⁰ During 2020, the HIJ managed to examine only 65 complaints from this fund.

The review of these complaints continued in 2021, with the revision of 427 complaints.²¹ In 2022, **534** more complaints were examined by HIJ from this fund. From these data, it results that out of 2104 carried over complaints that have been reviewed until December 31, 2022, there are 1032 complaints, with a fund of 1072 complaints still remaining.

Considering an average of 252 working days per year, during the year 2021 there were then 427 reviewed complaints, with 1.7 complaints reviewed per day. While in 2022, 534 complaints were reviewed, resulting in an average review of 2.1 complaints per day.

Complaints submitted after the establishment of the HIJ

After the establishment of the HIJ, which started functioning on February 1, 2020, we are now providing the data for the examination of new complaints submitted in 2020, 2021 and 2022, disciplinary proceedings, as well as the thematic inspections that were carried out in this period.

²⁰ HIJ Report for 2021, p. 20

²¹ HIJ Report for 2021, p. 12.

Year 2020

As for the complaints filed in 2020, there are 950 complaints filed after February 1, of which:

- 756 complaints from citizens;
- 185 complaints from other institutions;
- 9 complaints from other organizations.

In terms of the monthly distribution of these complaints, HIJ reporting was used as a source, but it was found that there were some data inconsistencies. According to the data published by the HIJ itself in their annual report for 2020, it turns out that there are 185 such complaints directly distributed to the HIJ by the institutions. However, on the part of the HJC, the complaints that were filed with this institution were submitted in the months of June and July. This explains the high number in the table above of complaints for these two months.

From the cooperation with the HIJ administration, it turned out that some mistakes were made in the tables reflected in the report, where in February, from 8 complaints, 80 were listed, in the month of October, the number of 20 became 21, and in the month of December, the number of 30 became 3.

As far as the months of June and July are concerned, in the HIJ data, only the transferred files that were forwarded by the HJC are entered. This means that for these two months, there have been no complaints from public institutions. This behavior can be explained by the fact that in June the anti-Covid 19 measures were eased by the state authorities and gradually the work of the courts resumed.

Based on the above, the monthly distribution of these complaints, after correcting the data, turns out to be.

Complaints filed in 2020			
	Citizens	Institutions	Other organizations
January			
February	152	8	
March	66	33	1
April	19	7	2
May	47	42	
June	87	757	1
July	72	1347	
August	39	10	3
September	79	23	1
October	87	20	
November	49	12	1
December	59	30	
Total	756	2289	9

Regarding their review, a total of 184 decisions were approved after reviewing the complaints and specifically:

- 42 decisions for the verification of complaints, of which 13 have been archived after verification and the rest 29 are in the review process;
- 142 decisions on archiving complaints; (including the 13 post-verification filing decisions mentioned above);

Given that, in many cases, there are submissions of more than one complaint for the same issue, the HIJ has followed the practice of combining them. For this reason, out of 142 decisions archived until December 2020, it turns out that 173 complaints have been handled by the HIJ.²² From 2020 to 2021, 2,870 cases were carried over.

Given the above, considering the period from February 1 to December 31, 2020, there are an average of 230 working days, it results that during this period 0.7 complaints per day were processed. This low percentage is related to the fact of the lack of human and material resources that characterized the HIJ during 2020. In this period, we must also consider the period of mandatory quarantine imposed by the Albanian authorities in the framework of measures to combat the Covid-19.

Regarding the disciplinary proceedings, it appears that the HIJ has approved 8 decisions for the initiation of the disciplinary investigation, respectively for 2 (two) prosecutors and 6 (six) judges. From these disciplinary investigations carried out, it results that:

- 6 of them, (respectively for 2 prosecutor magistrates and 4 judge magistrates), there are disciplinary investigations initiated mainly by the High Inspector of Justice.
- 2 of them, respectively for 2 magistrate judges, are disciplinary investigations initiated by cases presented by institutions to the HIJ.

For the period February-December 2020, the High Inspector of Justice formulated 4 (four) requests for the initiation of disciplinary proceedings, 3 (three) to the High Judicial Council and 1 (one) to the High Prosecution Council.²³

Of the above cases, 3 were reviewed by the respective Councils, while one was not completed during 2021. The HJC, which reviewed two of the requests, accepted them, while the HPC, decided to reject the request.

It is worth noting that the decision of the HPC was appealed by the HIJ to the Administrative Court of Appeal, that in turn requested:

1. Repeal/illegality of the administrative act of decision no. 269, dated 17.11.2020 of the High Prosecution Council, through which it was decided to overturn the request of the High Inspector of Justice, for the disciplinary proceeding no. 251/31, dated 21.07.2020 against prosecutor E.K.

2. Resolving the consequences of illegality, accepting the request of the High Inspector of Justice and appointing magistrate E.K. of the disciplinary measure 'public notice', provided by Article 105, paragraph 1, letter 'b' and Article 107 of Law No. 96/2016 'On the status of judges and prosecutors' as amended, for the disciplinary violation provided for by Article 102, point 1,

²² HIJ Report for 2020, p. 14

²³ HIJ Report for 2020, p. 14.

letter 'dh' of law no. 96/2016 'On the status of judges and prosecutors' as amended; or:

The obligation of the HPC to decide on the magistrate E.K. the disciplinary measure 'public notice', provided by Article 105, paragraph 1, letter 'b' and Article 107 of Law No. 96/2016 'On the status of judges and prosecutors' as amended, for the disciplinary violation provided for by Article 102, point 1, letter 'dh' of law no. 96/2016 'On the status of judges and prosecutors' as amended.

At the end of the trial, the Administrative Court of Appeal, with decision no. 86-2021-750, dated 13.12.2021, decided

1. *Partial acceptance of the claim.*
2. *Repeal of the administrative act of decision no. 269, dated 17.11.2020, of the High Prosecution Council.*
3. *Dismissal of the lawsuit for other claims.*

According to the Administrative Court of Appeal, the HPC had committed serious procedural violations in re-opening the administrative investigation, in obtaining new evidence and in not notifying the parties of these procedural actions. Based on these circumstances, the Court held that it no longer had room to consider other HIJ searches.

The manner of action of the HIJ in this case is of interest, since the Constitution stipulates that it is the Councils that decide the disciplinary measures and not the courts. The decision-making method of the Administrative Court of Appeal in this case is also of interest, since this court assessed only the procedural violations of the HPC, but refuses to consider the possibility of whether or not it could impose a disciplinary measure itself.

To the HIJ, documents were also referred to for the verification of cases of potential disciplinary violations by the Independent Qualification Commission, pertaining the conduct of the court session in the absence of a party,²⁴ reversal and annulment of a decision of the court of first instance by the court of appeal,²⁵ adjudication of a case under conditions of conflict of interest, adjudication of a case by an appellate judge, when it had previously adjudicated the case in the Court of first instance.²⁶

In all these cases, the HIJ decided to archive the cases because the limitation period had passed, with the exception of one case, where it was decided to suspend the examination of the case after the appeal made by the Public Commissioner raised, inter alia, claims for these violations. It turns out that the Special Appeals Board has reviewed these violations and decided that some of them did not stand and another part that they were not such as to bring about disciplinary liability.²⁷ Since in the end the subject was dismissed for other reasons, basically this matter remained without object.

Based on point 4 of article 194 of law no. 96/2016 'On the status of judges and prosecutors in the Republic of Albania', amended, the Office of the High Inspector of Justice, based on the motivated written request of the High Judicial Council, the High Prosecution Council, the

²⁴ Decision no. 257, dated 12.6.2020 of the IQC.

²⁵ Decision no. 242, dated 28.2.2020 of the IQC.

²⁶ Decision no. 273, dated 10.7.2020 of the IQC.

²⁷ Decision no. 35/2021 (JR) dated 23.11.2021 of SAC.

Minister of Justice, of the Prosecutor General, as well as in the annual plan of inspections, performs institutional and thematic inspections on every aspect of the work of the courts, judicial administration, prosecution offices and prosecution administration.

Initially, the HIJ approved Decision no. 1 date 11.02.2020, 'For the performance of the thematic inspection of the Courts and prosecutor's offices near them on the handling of requests subject to Parole'. However, due to the lack of timely response from the relevant institutions and the limited staff of the HIJ, this thematic inspection continued in 2021. However, until the moment of drafting this report, this thematic inspection is still in the process of completion.

Year 2021

According to the data published by the HIJ itself, during this year, 1257 new complaints were filed, which, divided according to the complaining subjects, are as follows:

- 1210 complaints filed by natural persons or individuals;
- 28 complaints filed by public bodies;
- 12 complaints filed by civil society organizations;
- 7 complaints filed by the media.²⁸

The monthly distribution of these complaints is as follows:

Complaints filed in 2021			
	Citizens	Institutions	Other organizations
January	103	7	1
February	80	8	-
March	83	30	2
April	110	15	-
May	109	9	
June	134	6	
July	101	21	
August			
September	65	5	
October	89	8	2
November	81	17	
December	121	7	
Total	1076	133	5

The above data of a monthly basis, are extracted from the HIJ monthly bulletins. As it turns out, there is again a discrepancy of data in relation to those reported in the annual report of the HIJ. Despite this inconsistency, we are of the opinion that the annual report should show the consolidated data, eliminating the errors that may have penetrated in the monthly bulletins.

To the above figure should be added that of cases carried over, reaching a total of 4,127

²⁸ HIJ Report for 2021, p. 12

complaints that remained to be examined. Of these complaints, HIJ has stated to have examined 1,719 complaints, of which 427 complaints, according to HIJ, are from the stock carried over from the former HJC (KLD). Based on the number 1,292 and calculating an annual average of 252 working days, it turns out that an average of 5.1 complaints per day were examined by the HIJ. If we were to include the review of the carried over complaints, i.e. a total of 1,719 complaints, it results that the HIJ reviewed an average of 6.8 complaints per day.

The result of the review of complaints is:

- 990 decisions for archiving 1,433 complaints; of which 785 decisions were taken after the initial review, and 205 archiving decisions were taken after, at the end of the verification of the complaint, it was determined that there were not enough facts to get started.
- 197 decisions for the verification of 270 complaints, which will follow in 2022;
- 22 decisions on the initiation of disciplinary investigation for 31 subjects of disciplinary investigation;
- 17 requests for disciplinary proceedings before the Councils.

In total, at the end of 2021, 2,678 complaints were carried over to 2022, including those of the carried over stock.

Against the archiving decisions have been filed with the Councils, as follows:

- 80 appeals against 785 archiving decisions after initial review;
- 4 appeals against 205 archiving decisions after verification;

None of the complaints have been returned for reconsideration by the Councils.²⁹ As for disciplinary proceedings, for the year 2021, 5 cases initiated from 2021 have been completed and 4 of them continue to be suspended due to the re-evaluation process of the magistrate for which a request for proceedings has been submitted to the Council.³⁰

The HIJ has approved 22 decisions for the initiation of disciplinary investigation. Of these, for 17 magistrates, a request for disciplinary proceedings was submitted to the Councils, while for the other 14 subjects of the disciplinary investigation, the results of the investigation are as follows:

- *For 1 magistrate, the investigation has been suspended until a final decision is rendered by the court;*
- *For 4 magistrates, the disciplinary investigation was closed due to the end of the magistrate's status, the evaluation of the facts, the circumstances investigated and the evidence obtained, as insufficient to prove the alleged violations;*
- *For 9 subjects of the disciplinary investigation, the investigative procedures are at different stages according to the requirements of the law on their conduction.*

From the 17 requests presented, it turns out that 11 of them were presented to the HJC, while

²⁹ HIJ report for 2021, pp. 14-15;

³⁰ Decisions no. 463, dated 11.10.2021, no. 559, dated 1.12.2021, no. 494, dated 25.10.2021 of the HJC.

6 of them to the HPC. At the end of the examination of the requests of the High Inspector of Justice for the initiation of disciplinary proceedings against the magistrates, the High Judicial Council:

- *out of 6 cases where the measure 'Dismissal from duty' was requested, the HJC accepted the requests for 2 magistrates, completed the disciplinary procedure due to the end of the status for 2 cases and for 1 case the disciplinary procedure is in process, while for the other case the disciplinary procedure has been suspended.*
- *from 5 cases where the measure 'Temporary reduction of salary up to 40 percent for a period not longer than one year' was requested.*
- *accepted 2 requests deciding on a different disciplinary measure,*
- *in 3 cases, it suspended the disciplinary proceedings.*

For the 6 requests for disciplinary proceedings submitted to the High Prosecution Council, the High Inspector of Justice has proposed these disciplinary measures:

- *Dismissal from office - 3 cases;*
- *Public reprimand - 3 cases.*

At the end of the examination of the requests of the High Inspector of Justice for the initiation of disciplinary proceedings in charge of the magistrates, the High Prosecution Council:

- *out of 3 'Dismissal from duty' cases, 1 request has been accepted, while in the other 2 cases the disciplinary procedure is in process;*
- *out of 3 'Public Reprimands' cases, 1 request has been accepted, while for 2 cases the disciplinary procedure is in process.³¹*

During the examination of the data by SAC, it results that from three appealed decisions, in all cases the appeals were not accepted (decisions 1/2022 (JD), dated 30.05.2022, no. 2/2022 (JD), dated 31.05. 2022 and No. 3/2022 (JD), dated 07.12.2022).

Even during 2021, there were referrals from the IQC, for reasons such as interference in the Court record on the day of the inspection, delay in the trial, the granting of a personal insurance measure not in accordance with the insurance needs, delay in clarifying the decisions,³² Procrastination of the judicial process, the development of illegal judicial process, flagrant violation of the law, absence of reasoning for the decision, procedural violation, illegal decision-making,³³ rendering of unfair and abusive decisions.³⁴ Even in these cases, it was decided to archive them as the statute of limitations had passed in all cases.

Regarding the thematic inspections, HIJ, in addition to the thematic inspection, initiated in 2020, two more inspections in 2021, specifically:

³¹ HIJ report, for the year 2021, p. 19.

³² Decision no. 355, dated 16.3.2021 of the IQC.

³³ Decision no. 522, dated 1.4.2022 of the IQC.

³⁴ Decision no. 394, dated 7.6.2021 of the IQC.

- 1 Decision no. 37, dated 01.06.2021 of the High Inspector of Justice 'On conducting the thematic inspection of the general jurisdiction with the object: 'On taking administrative and procedural measures within the framework of the implementation of general instruction no. 12, dated 20.07.2020, of the Prosecutor General', on the regulation of relations between prosecutors and heads of prosecution, in terms of information, transparency and guarantee of independence in prosecutions with general jurisdiction", amended.
- 2 Decision no. 47, dated 15.07.2021, of the High Inspector of Justice 'On the performance of the thematic inspection of prosecutors of the general jurisdiction' with the object: 'Respecting the conditions and criteria for the assignment of personal security measures' for the criminal offense of 'Unauthorized possession and production of weapons, explosive weapons and ammunition'.

Based on the data collected for the thematic inspection for 'bailable release', 2 requests for disciplinary proceedings in 2020 and 1 request for disciplinary proceedings in 2021 have been submitted.

Regarding the thematic inspection with the object: 'Respecting the terms and criteria for the assignment of personal security measures' related to the criminal offense 'Unauthorized possession and production of weapons, explosive weapons and ammunition', the working group has found issues in records not properly kept pertaining arrest and detention in the act, not properly evaluating the legal criteria for seeking personal security measures, not reporting cases when prosecutors have decided not to appeal against court decisions, etc., has issued recommendations, for the prosecutor's offices of the judicial districts, the General Prosecutor's Office, the School of Magistrates and the High Inspector of Justice, for the correction of these flaws, the issuance of binding instructions by the GP, the realization of trainings, as well as the extension of inspections on this subject and to the courts of districts.³⁵

Regarding the thematic inspection with object: 'On taking administrative and procedural measures within the framework of the implementation of the general instruction no. 12', dated 20.07.2020, of the Prosecutor General 'On the regulation of relations between prosecutors and heads of prosecution, in terms of information, transparency and guarantee of independence in prosecutions with general jurisdiction', as amended, there was commitment from prosecutions of districts and appeals for the implementation of instruction no. 12/2020 of the GP, but these have been limited. Often, the general instructions of the heads of the prosecutor's offices were missing, and in those cases when the instructions were issued, they did not reflect the deadline and the manner of appeal. However, no prosecutor has complained about any general instructions of the head of the prosecution in the HPC, while in a few cases the general instructions of the heads of the prosecution offices, are contrary to the Instruction no. 12/2020 of the GP.

³⁵ The inspection report on 'Respecting the conditions and criteria for the assignment of personal security measures' for the criminal offense 'Unauthorized possession and production of weapons, explosive weapons and ammunition', obtained from the link: <https://ild.al/sq/2022/11/11/raport-i-inspektimit-mbi-respektimin-e-kushteve-dhe-kritereve-per-caktimin-e-masave-te-sigurimit-personal-per-vepren-penale-te-mbajtjes-pa-leje-dhe-prodimit-te-armeve-armeve-shperthyeshe-dhe-munici/>

The report points out issues related to the non-mandatory instructions of the heads of prosecutions, the unification of terms, the lack of written communication on the issues between the prosecutor of the case and the head of the prosecution, as well as the non-reporting to the GP. From the data obtained, for the period of the inspection, there are no cases where the Head of Prosecution as the highest prosecutor, within the exercise of his powers, requested the beginning of verifications by the monitoring sector in the General Prosecutor's Office against the prosecutor regarding the implementation of the general guidelines. Likewise, there were no data related to such requests from the prosecutors against the Head of the Prosecution, the deputy head according to the provisions of the same instruction.

On this basis, there are recommendations for GP, appellate and district prosecutors to:

- update their general instructions also in relation to other GP instructions,
- review of the instructions issued by the head of the Prosecution of the Elbasani, Shkodra, Korça Judicial Districts, as well as the heads of the Appellate Prosecutions of Korça and Durrës,
- the reorganization of district prosecutor's offices, with the aim of increasing the efficiency of their work also in terms of issuing instructions by the heads of prosecutor's offices, issuing non-binding instructions for cases,
- reporting to the GP on the situation of criminality, the heads of the appellate prosecutions must evaluate the requirements of instruction no. 12/2020 for obtaining information, the unification of the way of informing the heads of the prosecutions,
- GP to use its powers for non-binding instructions, to clarify some points of instruction no. 12/2020, to increase cooperation between prosecution offices,
- for the School of Magistrates, it is recommended to take measures for professional growth, as well as the continuation of trainings for prosecutors on topics in the new legal framework of the operation of the prosecution, etc.³⁶

Year 2022

For the year 2022, the HIJ has not yet published its report, for this reason we have based the data extraction on the monthly bulletins that the HIJ itself has issued in the period January-December 2022, as well as communicating with the administration of the HIJ itself.

These bulletins, ascertain that for the year 2022, 789 new complaints were filed, divided according to the complaining entities:

- *756 complaints filed by natural persons or individuals;*
- *32 complaints filed by public bodies;*
- *1 complaint filed by civil society organizations.*³⁷

³⁶ The thematic inspection report "On taking administrative and procedural measures within the framework of the implementation of general instruction no. 12, dated 20.07.2020, of the Prosecutor General 'On the regulation of relations between prosecutors and heads of prosecution, information, transparency and guarantee of independence in prosecutions with general jurisdiction', obtained from the link: <https://ild.al/sq/2023/01/17/raport-per-kryerjen-e-inspektimit-tematik-te-prokurorive-te-juridiksionit-te-pergjithshem-me-objekt-mbi-marrjen-e-masave-administrative-dhe-procedurale-ne-kuader-te-zbatimit-te-udhezimit-te-per/>

³⁷ Data extracted from Bulletins no. 12-22, January-December 2022.

From the HIJ's end, 534 complaints from those submitted in the years before the establishment of this institution have been examined. A total of **1715 complaints were reviewed** by the HIJ, some of which are grouped as follows:

- **1502** complaints were filed by natural persons;
- **212** complaints were filed by legal entities, namely:
- **1** anonymous complaint, since the name of the complainant is not entered.

For 1,715 reviewed complaints, **1,234** decisions were approved according to the following categories:

- **862** decisions on archiving after the initial examination of **1,220** complaints;
- **344** decisions on archiving after verification of **425** complaints;
- **28** decisions for disciplinary investigation after examining **70** complaints for **41** subjects of disciplinary investigation.

After the completion of the disciplinary investigations, the following data result:

- for 6 magistrates (3 judges and 3 prosecutors) requests for proceedings were submitted to the respective Councils;
- for 1 magistrate (1 judge), the investigation is suspended until a final decision is made on the re-evaluation process;
- the disciplinary investigation was closed for 22 magistrates (20 judges and 2 prosecutors);
- for 14 magistrates (13 judges and 1 prosecutor) of the disciplinary investigation, investigative procedures are in progress.

For the 8 subjects of the disciplinary investigation, against whom the investigation began in 2021, the investigations continued during 2022, specifically:

- the investigation was suspended for 2 magistrates;
- for 3 magistrates and 3 other subjects, the investigation is closed.

On the part of the IQC, there have been references to the case this year as well, where one case has to do with maintaining a position that there was no cooperation from the defendant in committing the criminal offense of cultivating narcotics, a decision that was changed by the Appellate Court.³⁸

Calculating again an annual average of 252 working days, as well as taking into consideration the number of reviewed cases, of 1,715 complaints, it is ascertained that the HIJ reviewed an average of 6.8 complaints per day, in the same pace as in 2021.

Regarding the disciplinary proceedings for the year 2022, from the accessed data, it appears that the HJC has suspended the disciplinary proceedings against a magistrate until the decision no. 541, dated 15.06.2022, of the Independent Qualification Commission takes a final form.³⁹ Whereas in another case, the HJC decided the disciplinary measure of suspension from duty, with the entitlement to receive the minimum salary for a period of 3 (three) months.⁴⁰

³⁸ Decision no. 522, dated 1.4.2022 of the IQC.

³⁹ Decision no. 436, dated 25.10.2022 of HJC

⁴⁰ Decision no. 267, dated 19.7.2022 of the HJC.

As for the HPC, from the data published on the official website, there are no data on decision-making for disciplinary proceedings in 2022. In this case, it turns out that a decision was made to suspend the disciplinary proceedings, because the prosecuting subject was dismissed previously by the Independent Qualification Commission.⁴¹ Even the HPC in this case will wait for the decision-making of the SAC, before proceeding on its own in relation to this matter.

⁴¹ Decision no. 508, dated 10.2.2022 of the IQC.

Bibliography

Legislation

- *Constitution of the Republic of Albania*
- *Law no. 115/2016 'On government agencies in the justice system'*
- *Law no. 96/2016 'On the status of judges and prosecutors', as amended.*
- *Law no. 152/2013 'On the civil servant'.*

Decisions

- *Decision no. 3 dated 1.3.2019 of JAC*
- *Decision no. 53 dated 24.7.2019 of JAC*
- *Decision no. 77 dated 24.7.2019 of JAC*
- *Decision no. 101 dated 30.7.2019 of JAC*
- *Decision no. 107, dated 2.8.2019 of JAC*
- *Decision no. 2 dated 20.1.2020 of the Assembly of Albania.*
- *Decision no. 69, dated 07.02.2020 of the Supreme Judicial Council.*
- *Decision no. 1 dated 11.02.2020, 'For carrying out the thematic inspection of the courts and prosecutor's offices near them on the handling of requests subject to "Conditional Release' of the HIJ.*
- *Decision no. 242, dated 28.2.2020 of JAC.*
- *Decision no. 257, dated 12.6.2020 of JAC.*
- *Decision no. 273, dated 10.7.2020 of JAC.*
- *Decision no. 28/2020 'For the approval of the organizational structure, organization and salary classification of the personnel of the High Inspector of Justice' of the Assembly of the Republic of Albania.*
- *Decision no. 37, dated 05.02.2020 of the High Prosecution Council.*
- *Decision no. 18, dated 27.01.2021, of the High Prosecution Council.*
- *Decision no. 19, dated 27.01.2021, of the High Prosecution Council.*
- *Decision no. 20, dated 27.01.2021 of the High Prosecution Council.*
- *Decision no. 21, dated 27.01.2021 of the High Prosecution Council.*
- *Decision no. 355, dated 16.3.2021 of IQC.*
- *Decision no. 394, dated 7.6.2021 of IQC.*
- *Decision no. 35/2021 (JR) dated 23.11.2021 of SAC.*
- *Decision no. 86-2021-750, dated 13.12.2021 of the Administrative Appellate Court.*
- *Decision no. 508, dated 10.2.2022 of IQC.*
- *Decision no. 522, dated 1.4.2022 of IQC.*
- *Decision no. 1/2022 (JD), dated 30.05.2022 of SAC.*
- *Decision no. 2/2022 (JD), dated 31.05.2022 of SAC.*
- *Decision no. 3/2022 (JD), dated 07.12.2022 of SAC.*

Reports

- *Report on the State of the Judicial System and the Activity of the Supreme Judicial Council for 2018, published by the Supreme Judicial Council 2019*
- *The thematic inspection report 'On taking administrative and procedural measures within the framework of the implementation of general instruction no. 12, dated 20.07.2020, of the Prosecutor General 'On the regulation of relations between prosecutors and heads of prosecution, information, transparency and guarantee of independence in prosecutions with general jurisdiction'.*

- *The inspection report on ‘Respecting the conditions and criteria for setting personal security measures’ for the criminal offense of ‘Unauthorized possession and production of weapons, explosive weapons and ammunition’.*
- *HIJ’s 2020 report.*
- *HIJ’s 2021 report.*

HIJ bulletins

- *Bulletin no.1, January 2021.*
- *Bulletin no.2, February 2021.*
- *Bulletin no.3, March 2021.*
- *Bulletin no.4, April 2021.*
- *Bulletin no.5, May 2021.*
- *Bulletin no.6, June 2021.*
- *Bulletin no.7, July 2021.*
- *Bulletin no.8, September 2021*
- *Bulletin no.9, October 2021*
- *Bulletin no.10, November 2021*
- *Bulletin no.11, December 2021*
- *Bulletin no.12, January 2022.*
- *Bulletin no.13, February 2022.*
- *Bulletin no.14, March 2022.*
- *Bulletin no.15, April 2022.*
- *Bulletin no.16, May 2022.*
- *Bulletin no.17, June 2022.*
- *Bulletin no.18, July 2022.*
- *Bulletin no.19, September 2022.*
- *Bulletin no.20, October 2022.*
- *Bulletin no.21, November 2022.*
- *Bulletin no.22, December 2022.*

Websites

- [http://www.gjykataelarte.gov.al/web/Kandidate te terhequr perpara procedures se verifiki mit 5916 1.php](http://www.gjykataelarte.gov.al/web/Kandidate%20te%20terhequr%20perpara%20procedures%20se%20verifiki%20mit%205916%201.php)
- <http://parlament.al/Files/Akte/20200124111759vendim%20nr%20%202%20dt%20%2020%201%202020.pdf>
- http://www.gjykataelarte.gov.al/web/heqje_dore_genci_ismaili_2058.pdf
- http://www.gjykataelarte.gov.al/web/heqj_dore_suzana_frasheri_2046.pdf
- http://www.gjykataelarte.gov.al/web/heqje_dore_lfteri_lleshi_luzi_2041.pdf
- http://www.gjykataelarte.gov.al/web/heqje_dore_elira_kokona_2113.pdf
- <http://www.gjykataelarte.gov.al/web/LISTA EKANDIDAT VE T NDALUAR NGA KANDIDIMET P R VENDIN VAKANT P R INSPEKTOR T LART T DREJT SIS 6064 1.php>
- <https://ild.al/sq/2022/11/11/raport-i-inspektimit-mbi-respektimin-e-kushteve-dhe-kritereve-per-caktimin-e-masave-te-sigurimit-personal-per-vepren-penale-te-mbajtjes-pa-leje-dhe-prodhimit-te-armeve-armeve-shperthyese-dhe-munici/>

