

## **Accompanying document of constitutional draft amendments**

**(following the *ad interim* opinion of Venice Commission dated December 21<sup>st</sup> 2015)**

The Albanian Assembly has set up a special parliamentary committee,<sup>1</sup> in order to analyze the current situation in the justice system, define the justice reform objectives and propose necessary constitutional and legal amendments to achieve these objectives. In order to accomplish the above duties, a High Level Expert Group is set up at the parliamentary committee (HLEG), assisted by a technical secretariat. These units were tasked to prepare an analysis of the current state of affairs of justice system and the causes giving rise to such a situation. By the end of the phase of analysis, HLEG has produced another document (Justice Reform Strategy) which recommends the reform objectives, as well as specific solutions to the issues or concerns identified by the analysis. These documents, already adopted by the special parliamentary committee, have served as a benchmark for the formulation of constitutional draft amendments on which the opinion of Venice Commission (VC) was requested. More specifically, VC asked an opinion if the proposed constitutional solutions comply with the best European standards and practices in the relevant fields.

On December 21<sup>st</sup> 2015 the Venice Commission published the *ad interim* opinion on the constitutional draft amendments formulated by the group of experts, who, based on the recommendations and suggestions provided by VC experts, made the necessary reflections in the constitutional draft amendments.

### **1. Provisions on the membership of Albania in the EU**

Referring to the VC opinion on the inclusion in the proposed constitutional amendments, of provisions on the membership of Albania in the EU and legal consequences of this process, HLEG took into account the recommendation specifying that these provisions will become effective after the full membership of Albania in the European Union. This model was chosen by HLEG, in order to avoid a latter repeated change of the Constitution, but also because in a number of aspects, the EU law has started or will potentially start to produce legal effects on the Albanian legal order even without the full membership of Albania in the EU. As

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<sup>1</sup> Albanian Assembly Decision no. 96/2014.

regards this position of HLEG, there has also been an alternative position of the Democratic Party and Ministry of Justice experts for their full removal from the draft of constitutional amendments.

## ***2. Independence and effectiveness of the High Court***

In the framework of recommendations issued in the VC opinion, HLEG makes the following proposals:

(i) Establishing the original jurisdiction for the hearing of criminal charges against the highest level state officials, special first instance and appeals court for the hearing of criminal offences of corruption and organized crime, as well as the criminal charges against senior officials<sup>2</sup>. Further, the settlement of charges for other criminal offences (committed by senior officials) will remain within the power of the ordinary court.

(ii) Settlement of jurisdictional conflicts between the High Court and the High Administrative Court following the joint meeting of these two courts. A more precise definition of the jurisdiction of both high courts as courts examining at last instance only complaints related to issues of the interpretation of law (not matters of fact) and to provide the unification of case law.

(iii) Establishment of the High Administrative Court as the last instance for the settlement of administrative cases and with separate jurisdiction from the High Court for Civil and Criminal Matters<sup>3</sup> within a latter deadline after the entry into force of the proposed constitutional amendments (1.1.2020), in order to take adequate time for the transitional period upon the recommendation of Venice Commission.

(iv) A more detailed provision of constitutional criteria for the High Court. It is proposed they should be appointed by the President after the election from the High Judicial Council<sup>4</sup>. The President has the right to refuse only once the candidate proposed by the High Judicial Council about the fulfillment of criteria and compliance with the election procedure. In case of the refusal of candidates, the President should provide reasonable grounds for his decision. Further, in case of the omission

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<sup>2</sup>This position is also compliant with the Venice Commission Opinion (document CDL-AD (2014) 016), "On some amendments to the Criminal Procedure Code and Civil Procedure Code", which has also recommended that the High Court shall be removed the initial jurisdiction.

<sup>3</sup> The Albanian system of administrative trial is a mixed one. The administrative trial in Albania begins with first instance administrative courts and appeals administrative courts (as in Germany, France, Italy) *while* it ends with a High Court trying also criminal, civil, administrative cases (as in the British system or Scandinavian countries).

<sup>4</sup>Though, this regulation is planned to be established by law at a second phase.

by the President within a specific time limit, the candidate proposed by the High Judicial Council should be deemed appointed.

(v) It is proposed that some part of the judicial panel of the High Court (not to exceed 20%) comes from the academics of law, lawyers and other legal professions, in order to ensure the combination of professional experiences within the High Court. The representation of each of the above cited groups of the professionals of law at the High Court should be made on the basis of a percentage provided by law. The law shall also envisage the criteria to be met by a candidate for member of High Court (either be a candidate coming or not from the judiciary).<sup>5</sup> HLEG deems that this model of election and appointment of judges of the High Court minimizes the politicization of the appointment of High Court members, excluding the parliament from that process and limiting the President's discretion. Alternatively, the latter continues to play the role of inspection of the judicial system from outside, ensuring a balance in the appointment of High Court members.

(vi) Clear and objective criteria should be foreseen, focused on the professional merits<sup>6</sup> to be met by the candidates for High Court members. As such, the following are proposed: a) experience as a lawyer or legal expert and professional experience as judge, prosecutor, lawyer, lecturer/pedagogue at universities, legal expert at senior positions at the public administration (at least 15 years); (b) holding scientific titles<sup>7</sup>; c) high moral and professional integrity (although this criterion is not objective); ç) clean criminal record; d) not to be subject to disciplinary measures still in force; dh) they should not have been members of steering forums of political parties etc.

(vii) It is proposed that High Court members themselves should elect and appoint the president of the High Court, unlike the current provision under which the appointment is made upon the President's proposal and with the consent of the parliament. HLEG deems that this model reduces the potential political influence or of other kind and strengthens collegiality, conferring to the judges an important role

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<sup>5</sup> According to the model for the appointment of senior judges coming from out of the system applied in different countries, the proposing power is left to the bodies out of the judiciary belonging to the areas they come from. These members may belong to areas of law (legal profession, notary service) or from academic fields, but the HCJ approval/consent is foreseen for their appointment (Italy).

<sup>6</sup> Venice Commission Opinion CDL(2011)065 on the law of Turkish Constitutional Court. It is worth stressing that election of judges should be based on the objective criteria envisaged by law or by the competent authorities and these criteria should be mainly focused on merits.

<sup>7</sup> See also CDL-AD(2006)006, Opinion on draft laws amending Law No. 47/1992 on the organization and functioning of the Constitutional Court of Romania, § 17 *"It is highly welcomed that the Constitutional Court is composed not only by career judges and prosecutors, but also by lawyers and professors of law. Such a composition has a positive effect on court decisions. Venice Commission is of the opinion that the Constitutional Court should be open to the candidates of all branches, as long as the proper legal qualification is guaranteed."* See also the Venice Commission Opinion CDL(2011)065 on the law of Turkish Constitutional Court.

in running the High Court. It is proposed that the President's term of office is limited in time (5 years) and without a right to re-election, so that the High Court is presided on rotation basis.

### ***3. Independence, impartiality and transparency of High Council of Justice***

Given the trends and concerns identified by the Analytical Document for the High Council of Justice and the preliminary opinion of VC, HLEG proposes a comprehensive reorganization of the Council as follows:

- (i) It is proposed that the name of High Council of Justice be changed into "The High Judicial Council" or "HJC", thus reflecting the true nature of this body as governing institution of only the judiciary;
- (ii) It is proposed that the number of members be 11. Of these, 6 are judges in order to guarantee independence and self-governance of the judiciary.<sup>8</sup> It is proposed that judge members be appointed by fellow judges of all levels, as per the following proportion: 1 (one) member by the High Court and High Administrative Court; 2 (two) members by the Appeals Courts; and three (3) members by the First Instance Courts.<sup>9</sup> HLEG considers that this way of electing judge members abides by the principle of proportionality, because it involves all levels of the judiciary and creates a fair balance between judge members and lay members<sup>10</sup>. It is proposed that 5 of the High Judicial Council lay members be appointed by the Assembly with a qualified majority of 3/5 of all members, on the basis of proposals coming from the legal profession (1 member), notary (1 member) faculty of law full-time lecturers/pedagogues (1 member), School of Magistrates (1 member from the full-time or part-time lecturers/pedagogues, provided that they are not judges or prosecutors), civil society (1 member). Candidates shall be rated according to the merit and qualification by the Justice Appointments Council.<sup>11</sup> In case of failure

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<sup>8</sup> See comments of the Venice Commission no. 403 / 2006, dated 26.10.2007, making reference in its report on appointments in the judiciary (CDL-AD (2007)028).

<sup>9</sup> This proposed solution means that the National Judicial Conference will be abolished. The rapport between judges of different levels and the method of their election shall be governed by law.

<sup>10</sup> The Venice Commission stated that: at least half of the members must be judges (...) a substantial portion of the members must be judges (CDL-AD (2007) 028, Report on appointments in the judiciary, §§19, 20 and CDL-AD (2014) 008, Opinion on the draft law of the High Council of Justice and Prosecutorial Council of Bosnia and Herzegovina §§27, 28 CDL-INF (1998) 009, Opinion on amendments to the law on major constitutional provisions of the Republic of Albania §§9-12). Among judge members there should be a balanced representation of judges of courts of different levels/instances, and this principle should be stated (CDL-AD (2012) 024, Opinion on the constitutional amendments related to the judiciary in Montenegro §23 and CDL-AD (2011) 010, Opinion on the constitutional amendments in Montenegro §39).

<sup>11</sup> It is also proposed establishment of a new Justice Appointments Council. See below for more details.

to reach the required majority of the Assembly in the first voting, the proposing structures will introduce other candidates. If the Assembly does not reach the required majority in the second voting, it is proposed that the nominees (from the two rounds) ranked above by the Appointments Council be deemed appointed. HLEG believes that this composition avoids the management and governance of the judiciary only by judges, and enhances the quality, impartiality and trust of citizens in the administration of justice.<sup>12</sup> In the meantime, the qualified majority for the appointment of members elected by the Parliament is instrumental to the depoliticization of the High Judicial Council and is in compliance with the position recommended by Venice Commission.<sup>13</sup>

- (iii) It is proposed that the High Judicial Council members perform their duties on full time basis, in order to ensure efficiency and abidance by the collegiality of this body, to avoid potential conflicts of interest and to ensure the accountability of members in the exercise of their functions. This implies that the term of office of judge members be suspended, while serving at the High Judicial Council and be calculated for purposes of seniority. At the end of the period of service at the High Judicial Council, the judge member must return to his previous position<sup>14</sup>. The lay member, who before his appointment to the High Judicial Council worked on full time basis in the public sector, at the end of the period of service at the High Council of Justice should also return to the previous position;
- (iv) The President of the Republic is proposed to no longer be a member of the High Judicial Council, in order to guarantee the independence of the High Judicial Council and avoiding political influence.<sup>15</sup> As regards the Minister of Justice, given the important role of the Ministry of Justice in the proper functioning of the judiciary, it is proposed that the Ministry of

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<sup>12</sup> According to the Venice Commission, not only judges, but also "users of the judicial system" such as lawyers, representatives of civil society and academic circles should have a seat at the National Judicial Council, since uniformity can lead to self-analysis and lack of public responsibility in understanding the external needs and requirements (Summary of Opinion and Reports of the Venice Commission about the courts and judges, paragraph 4.2.2, p 77). It is advisable for the judicial councils to include members who are not representatives of the judiciary itself. However, such members should preferably be appointed by the legislative rather than the executive (Summary of Opinions and Reports of Venice Commission about the courts and judges, paragraph 4.3., p 85).

<sup>13</sup> CDL-AD (2002) 015, Opinion on the draft law on amendments to the law of judicial system in Bulgaria § 5. According to the Venice Commission, it should be ensured that the opposition also has an impact on the composition of the Council. One option would be to require two-thirds or three-quarters for the election of members by the Parliament (...) but at the same time procedural safeguards must be taken against risks of the stalemate (Summary of Opinions and Reports of Venice Commission about courts and judges, paragraph 4.3, p 85).

<sup>14</sup> It is proposed that the return to their previous position for judge members be written in the Constitution.

<sup>15</sup> In the Opinion no. 10/2007, CCJE recommends that "prospective members of the Judicial Council, whether or not judges, should not be active politicians, members of parliament, the executive or the administration. This means that neither the Head of State if he / she is the head of government, nor any minister can be a member of the Judicial Council.

Justice may participate in meetings of the High Judicial Council, where issues are deliberated related to strategic planning and the budget of judicial power. It is also proposed that the Ministry of Justice should not have the exclusive right to initiate disciplinary proceedings against judges (it is proposed that this competence be vested to the High Inspectorate of Justice); However, taking into account the key role of the Ministry of Justice in drafting state policies in the field of justice, it is proposed the Ministry of Justice has the status of a privileged petitioner. The request of the Minister for investigation of a presumed disciplinary breach addressed to the High Inspector of Justice should be investigated by the latter and in each case the results should be submitted to the High Judicial Council (see below on disciplinary proceeding and High Inspector of Justice).

- (v) It is proposed that the Chairman of the High Judicial Council is elected by the Council itself among the lay members. This is a balanced solution and guarantees accountability in the self-organization of the High Judicial Council.<sup>16</sup>
- (vi) The High Judicial Council as the government of the judiciary, is currently responsible for the appointment of first instance and appeals judges, evaluation, transfer and promotion of first instance and appeals judges; discipline of first instance and appeals judges, including the examination of complaints and inspection of the activity of judges.<sup>17</sup> It is proposed that the High Judicial Council has also the same powers over the High Court and High Administrative Court members. The only difference will be in relation to the appointment of High Court and High Administrative Court members in respect of whom the High Judicial Council will be competent for the proposal of candidates (see above). HLEG believes that such a solution guarantees the independence of the judiciary and increases the responsibility of High Judicial Council for all matters related to the status of judges, which complies with the international standards<sup>18</sup> and corresponds to the opinion of Venice Commission in the Memorandum of February 2014<sup>19</sup>.

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<sup>16</sup> According to Venice Commission, the election of the Chairman by the Council itself among the lay-judge members brings a balance between the required independence of the chairman and the need to avoid potential corporatist trends within the council (CDL-AD(2007)028, Report on appointments at the judiciary, §35)

<sup>17</sup> Inspection and examination of complaints are conducted by both the High Council of Justice and the Ministry of Justice

<sup>18</sup> Venice Commission supports the opinion that a judicial council should have a decisive influence on the appointment and promotion of judges and the adoption of disciplinary measures against them (CDL-AD(2007)028, Report on appointments in the judiciary, §§24, 25); See also the Summary of Opinions and Venice Commission Reports on Courts and Judges, paragraph 3.3, page 73.

<sup>19</sup> CDL (2014)021

- (vii) It is proposed that the High Judicial Council be entrusted new responsibilities (currently held by the Ministry of Justice) for the administration of judicial case management system, maintenance of statistical system of the judiciary, relations of the judiciary with the public and media, management of judicial administration, reporting to the public and Assembly, administration of physical infrastructure and security, and measurement of court performance.
- (viii) The responsibilities for judicial budget are proposed to be assigned to the High Judicial Council, although the Ministry of Justice is also proposed to be involved in this process by attending the respective meetings of the High Judicial Council<sup>20</sup>. This solution avoids the direct involvement of the executive in the inspection of every detail of the operational budget of courts, guarantees the compliance with international standards and allows a more comprehensive approach to the development of budget sector policies. HLEG has considered that as an institution of governance of the judiciary, it is understood that the High Judicial Council should deal with matters of budget policies of the judiciary.
- (ix) The responsibilities for strategic planning are proposed to be exercised by the High Judicial Council, also involving the Ministry of Justice in this process<sup>21</sup>.
- (x) Although not expressly regulated, the formulation of provisions on the High Judicial Council enables the establishment by law, of the subcommittees focused on areas such as discipline, performance evaluation, administration/budget etc. A proposal is made that the subcommittees should not have decision-making powers in the relevant fields but they have to draw up and propose draft-decisions, which are approved by the plenary meeting of the High Judicial Council. The latter and its subcommittees will be supported by specialized supporting staff. HLEG believes that this solution will contribute to the increase of efficiency of the High Judicial Council in exercising its own powers, considering also that the membership therein will be on a full time basis.
- (xi) It is proposed that the High Judicial Council be no longer competent to investigate disciplinary breaches and complaints against the judges. It is further proposed that the High Judicial Council be removed the competence for inspection of courts. A new body, the High Inspector of Justice is proposed to be set up for that purpose.

#### ***4. High Inspector of Justice***

- (i) A proposal is made for the creation of the High Inspector of Justice as an independent body being responsible for the investigation of disciplinary breaches and complaints against the judges of all levels/instances, members of the High

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<sup>20</sup> Preferably, a special committee at the High Judicial Council.

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Judicial Council, prosecutors of all levels/instances, members of the High Prosecutorial Council and Attorney General. The inspector will be also responsible for the initiation of disciplinary proceeding against the above cited officials and for the inspection of courts and prosecutor's offices.

- (ii) The disciplinary proceedings initiated by the High Inspector of Justice against the judges will be reviewed and decided by the High Judicial Council. The disciplinary proceedings initiated by the Inspector against the prosecutors will be reviewed and decided by the High Prosecutorial Council. As regards the disciplinary proceedings against the members of these two councils (High Judicial Council and High Prosecutorial Council) and against the Attorney General, they will be reviewed and decided by a special disciplinary tribunal (High Tribunal of Justice).
- (iii) It is proposed that the High Inspector of Justice be appointed by three fifth of all members of the Assembly among the candidates elected and listed by the Justice Appointments Council under a transparent, public and merit-based procedure.
- (iv) A proposal is made that the inspector has the status of judge of the High Court and a nine-year term of office, without a right to reappointment. On the other hand, in order to close the cycle of controls and balances, it is proposed that the Minister of Justice be the body for conducting the inspection of the High Inspector of Justice and to institute disciplinary proceeding against him/her before the Disciplinary Tribunal.
- (v) HLEG deems that the conduct of inspection by an independent body (High Inspector of Justice) is necessary because it separates the inspection from decision making process for the adoption of disciplinary measure. Further, the appointment of inspector by the Assembly by three fifth of all members on the list of candidates elected and listed by the Justice Appointments Council will favor the depoliticization of the appointment process and guarantee the Inspector's integrity and professional quality.

### **5. *Disciplinary Tribunal of Justice***

- (i) A Disciplinary Tribunal of Justice is proposed to be set up, which will be responsible to review cases of disciplinary breaches and to take disciplinary measures for the members of the High Judicial Council, High Prosecutorial Council, High Inspectorate of Justice and the Attorney General. HLEG deems that this new institution will influence strengthening of accountability of the governing institutions of justice system, and will depoliticize the procedures for dismissal of senior justice officials, which to date have been performed by the parliament through *impeachment* procedures.
- (ii) It is proposed that the Disciplinary Tribunal be composed of 7 (seven) *ex officio* members, specifically: President of the High Court, 2 judges of the High Court as provided by law, President of the High Administrative Court, 2 judges of the High



Administrative Court as provided by law and a prosecutor elected among the prosecutors as provided by law. The complaints against the decisions of Disciplinary Tribunal and of the High Judicial Council and High Prosecutorial Council are examined by the Constitutional Court.

## **6. Justice Appointments Council**

- (i) A Justice Appointments Council is proposed to be set up. It will be responsible to check the compliance with legal requirements, and professional and moral criteria of lay judge candidates of the High Judicial Council, non-prosecutor candidates of the High Prosecutorial Council, candidates for High Inspectors of Justice and candidates for members of the Constitutional Court appointed by the President and the Assembly. It is proposed that the Justice Appointments Council examines and lists as per their merits, the candidates recommended by the proposing institutions, and to advise the Assembly and the President when making appointments. It is believed that such a provision proposed will have a positive impact on the depoliticization of the process of appointments at high level positions within the justice system, thus reducing the discretion of political appointment bodies, and will enhance quality in the composition of institutions running the justice system.
- (ii) Finally, since the proposed reform will cover the central aspects of the organization and functioning of [HCJ](#) (number of members, composition, presidency of the body, competences, full time membership, modalities of appointment and dismissal of members etc), HLEG proposes the approval of some transitional provisions, which as a result, will give rise to the early termination of the term of office of [HCJ](#) members and will remedy the legal situation to be created after entry into force of the proposed constitutional amendments.

## **7. Role and mission of the prosecutor's office**

According to the current Constitution, the Prosecutor's Office system<sup>22</sup> is between the executive and judicial power. As such, it appears both with typical executive and

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<sup>22</sup> According to article 148 of the Constitution "The prosecutor's office exercises criminal prosecution and represents the prosecution before the court on behalf of the state. The prosecutor's office also performs other duties provided by law. Prosecutors are organized and operate as a centralized body attached to the judicial system. In the exercise of their powers, prosecutors are subject to the Constitution and laws".

judicial powers. This has also influenced the double functional dependence of the prosecutor's office from the court and the executive. This mixed model has given rise to the ambiguous position of the prosecutor's office in the framework of the separation and balance of powers and caused overlapping of powers for the inspection of prosecutor's office and a lack of its effectiveness (control). In order to address this situation and flaws reported in the work of prosecutor's office in the years since the entry into force of the Constitution (see above), HLEG has elaborated the following key proposals for the system reform:

(i) The Constitution should provide for the status of the prosecutor's office as an independent prosecution body (independent from the three traditional powers), which should include both functional and organizational independence.

(ii) The High Prosecutorial Council (HPC) should be redesigned as an independent constitutional body with full and exclusive powers in the area of the status of prosecutors (recruitment, appointment, transfer, reappointment and discipline of prosecutors). It is also proposed that HPC be granted powers to propose to the Parliament the candidate for Attorney General. HLEG considers that the division of power of the Attorney General with HPC would impact the increase of internal independence of prosecutors in relation to the highest level prosecutors and external independence of the institution<sup>23</sup>.

(iii) As mentioned above, the establishment of the High Inspectorate of Justice will be also associated with the competence of the investigation of disciplinary breaches and complaints against the prosecutors of all levels, initiation of disciplinary proceeding against them and inspection of prosecutor's offices (see above). HLEG deems that such an intervention will enable the operation of the accountability system at the prosecutor's office, which to date has been barely existent.

(iv) A partial functional decentralization should be foreseen within the prosecution system, in order to guarantee the internal independence of the prosecutors in relation to higher level prosecutors while investigating specific cases and bringing public charge. HLEG deems that the partial functional decentralization of the prosecutor's office does not threaten the body's operation because the functional decentralization process will be associated with adequate amendments to the criminal procedural legislation which will confer a role to the court to conduct criminal investigation (pre-trial investigation judge, to be distinguished from the judge hearing the merits of the case). Accordingly, the court will carry out the functional control/inspection of prosecutors that to date was performed by higher level

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23.CDL-AD (2014) 008, Opinion on the draft law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, §§24 and 41,42]

prosecutors. However, even the highest level prosecutors will maintain some minor competences of the functional supervision of lower prosecutors.

(v) A full decentralization of the prosecution system should be foreseen in the administrative framework as per the instances of the prosecutor's office (first instance, appeals and General Prosecutor's Office).

(vi) The Constitution should provide for the minimum/basic criteria to be met by the candidate for Attorney General, to ensure the quality of candidates and their integrity under a transparent and public procedure for their election, with a view strengthening public confidence on the candidate's integrity and professionalism.

(vii) As regards the procedure for the appointment of Attorney General, it is proposed that he is appointed by three fifth of MPs, upon the proposal of the High Prosecutorial Council for a 7 year period, without a right of reappointment. The procedure for the election and appointment of Attorney General will be defined by law. In order to further guarantee the independence of Attorney General, it is proposed that upon the termination of term of office and at request, he/she be assigned the duty he/she had prior to the appointment or be appointed as a judge at the appeals court.

(viii) As for the investigation of cases related to corruption and organized crime, and of criminal charges against the highest level state officials, the establishment of a special first instance and appeals court is proposed, and of the prosecutor's office at these courts. Further, it is proposed the creation of a special investigation unit to serve the inquiry, criminal prosecution and trial of the criminal offences of corruption, organized crime and charges against senior officials. These units will be independent from the Attorney General.

(ix) Finally, considering that the reform proposed, if approved, will bring a thorough structural and functional reorganization of the prosecution system, powers of the Attorney General, modalities of his election and appointment, duration of the constitutional term of office, procedures for his dismissal, upgrading to constitutional level of the Prosecutorial Council and an overall structuring of his competences for the appointment, career, promotion and disciplining of prosecutors, unlike the current constitutional and legal regulation, HLEG deems that the term of office of the Attorney General needs to be terminated and transitional constitutional provisions should be envisaged to regulate the interim period until the appointment of the new Attorney General.

## **8. Immunity of judges**

The analysis conducted in the framework of Justice System Reform has shown that notwithstanding the amendment of Constitution in 2012 lifting the immunity of judges from criminal prosecution (pre-trial investigation), there is still high special protection afforded to the judges. The protection from personal and home search represents in particular an unjustified obstacle to evidence collection process. Indeed, the number of investigations and criminal punishments against judges remains too low, regardless of the limitation of immunity in 2012. Furthermore, the Criminal Procedure Code includes a conflicting provision on the procedures followed for the arrest or detention of a judge or for conducting a personal search against him or of his home. As a result of this conflicting provision, the permission of High Council of Justice to arrest or control a judge is required even when the court has already authorized such an action. Further, the formulation of article 126 of the Constitution apparently creates a conflict of interest situation in cases when the Constitutional Court has to give the consent to the arrest, personal search and home search of its member. Based on these facts, HLEG proposes the necessary constitutional amendments be made for the full removal of legal immunity of judges of all instances, keeping their functional immunity intact.

## **9. Disciplinary liability of judges/prosecutors**

The Analytical Document of Justice System concludes that the constitutional and legal framework in Albania does not govern comprehensively and coherently the disciplinary liability of judges and prosecutors. Thus, the disciplinary system for ordinary judges fails when it comes to inspections. Governing the latter (inspections) by laws on HCJ and MoJ is confusing. Consequently, things are not clear about the nature of different types of inspections and verification of complaints, their purposes, use of their findings etc. Furthermore, responsibility for conduction of inspections of courts and judges is fully overlapping between HCJ and MoJ. Another problem affecting the disciplinary regime of ordinary judges is the fact that MoJ has the exclusive right to initiate disciplinary proceedings against judges. On the other hand, inspection of prosecutors is a competence of MoJ. This provision is proven to be infeasible. Moreover, there is no pure disciplinary and accountability system for the HC and CC members. This applies even to the HCJ members. They may be dismissed by the Parliament only through *impeachment*.

Considering the above-said, HLEG deems that the Constitution in general terms must foresee:

(i) all judges and prosecutors shall be subject to an accountability and disciplinary regime. Further, special laws must foresee explicitly the concrete disciplinary misconducts; clarify the disciplinary proceedings; determine the procedure of cooperation between the disciplinary bodies and other bodies including HIDAACI, tax authorities, money laundering etc; foresee unequivocally that the judge/prosecutor whose wealth or living conditions are improved inexplicably has the burden of proof in the disciplinary proceedings, and also the cases when the judges/prosecutors who fail to explain their wealth, may be dismissed.

(ii) The High Justice Inspector shall be set up to have competence to investigate disciplinary cases against judges and prosecutors of all the instances and request initiation of disciplinary proceedings against them. This implies the establishment of a single inspection structure for all the judges, except for the HC judges, all the prosecutors, HJC members, HPC members. It must have the right to initiate disciplinary proceedings against judges before the HJC, against prosecutors before the HPC, against the members of both councils and Prosecutor General before the Justice Disciplinary Tribunal (see above). This would make possible overcoming the institutional conflict of powers between MoJ and HCJ concerning the inspection process and initiation of disciplinary proceedings; it would focus in a single "hand" the competence of inspection and it would make possible effective use of limited human resources and also adoption of a full legal framework for investigation/inspection, - in compliance with the European standards.

(iii) The High Justice Inspector is appointed among the ranks of distinguished jurists with long professional experience and high integrity. The High Justice Inspector shall have the status of the High Court judge. (see above). He/she is appointed upon three fifth majority of all members of the Assembly, in order to avoid politicization of the process and increase credibility of the Inspector. Clear procedural requirements shall be defined by law.

### ***10. Efficiency and independence of the CC***

The analysis of constitutional provisions and practice concerning the appointment of judges of the Constitutional Court points out that the process of appointment/election of candidates for constitutional judges is inefficient. The reasons identified in this regard include (a) lack of clear criteria for the candidates, (b) lack of transparency in the process of selection of candidates and proposing them to the Parliament, and (c) lack of transparency in giving consent (non-consent) by the Parliament. Consequently, judges remain in office beyond the mandate because of failure to fill the vacancies on time.

Another problem identified by the Analytical Document is lack of clear constitutional provisions concerning disciplinary responsibility for the constitutional judges and lack of distinction between reasons of termination of mandate and dismissal, which has created lack of clarity in the consequences of each of them.

Moreover, formulation of provisions governing jurisdiction of CC and the circle of subjects who may recourse to CC, has lead to the absence of fully effective means, in case of recourse to the CC, for the protection of human rights and fundamental freedoms (as emphasised in ECHR decisions). The observed shortcomings have lead even to the lack of quality and efficiency in CC decision-making. Concerning the problems identified in the Analytical Document of the Justice System, and in line with the objectives of reform in the Constitutional Court, articulated in the Justice System Reform Strategy, HLEG has made the following proposals:

(i) The CC members are proposed to be appointed according to this formula: three shall be appointed by the President of the Republic, three members shall be appointed by the Assembly of Albania and three members shall be appointed by the judiciary, the joint meeting of the High Court and the High Administrative Court respectively. This imposes representation by several branches of power.<sup>24</sup> Therefore, considering that the candidates from the judiciary will be only judges, the President and Parliament must elect at least 2 members from other professions (lawyers, prosecutors, professors of law, or academia etc.) It is recommended that the process of selection and ranking of the best qualified candidates be applied for the members to be approved by the President and the Parliament, based on a transparent process conducted by the Justice Appointments Council. This Council shall rank the candidates according to the scientific criteria foreseen in the organic law. It is proposed that the Parliament appoints the CC judges by 3/5 majority of all the members. This election formula ensures participation of several bodies and groups of interest in the process, because each body has substantial and exclusive competence, thus ensuring that the process will not be blocked as it creates the possibility of mixing experiences of CC members. Moreover, this process is not dominated by politics, and it enables balancing.

(ii) Objective criteria for the selection of candidate members of CC are proposed to be foreseen. They shall be defined in the Constitution, and in the law and they will

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<sup>24</sup> With reference to Venice Commission Opinion CDL-AD(2009)024 about the appointment of constitutional judges in Ukraine, this Commission has welcomed the shift of the exclusive appointment competence from the President to a mix system that ensured the election of judges from 3 main branches of power, because this system provides for greater democratic legitimacy. On the contrary, failure to recognize this system and going for a combination in appointment by the President with the approval of the Parliament, is not welcomed. Such election formula is applied in Italy and Ukraine.

mostly be focused on merits.<sup>25</sup> The provision of criteria to be met by candidates must include: experience as jurist (at least 15 years); professional education: judges, prosecutors, advocates, law professors or jurists who have been employed in senior positions of the public administration. The identified candidates, in addition to their activity must be involved in academia (not necessarily hold scientific titles, but this may be a preferential criterion); they must be known in the area of human rights or areas similar to the constitutional law (i.e administrative law, constitutional law, European law etc).<sup>26</sup> The candidates must have high moral and professional integrity and they must not have been members of management fora of political parties. The whole process of appointment must be characterised by transparency and visibility (which have been missing so far), because these elements contribute to the constitutional justice quality and perception and strengthening of public trust in the independence of constitutional judges and consequently legitimacy of constitutional guarantee. In order to guarantee full-time appointment of new members, the law shall entrust the CC Chair with the duty to notify the appointment bodies 3 months before the end of mandate.<sup>27</sup> The law shall define even the obligation to publish the vacancies in the Official Gazette or media, by determining the body tasked with filling the vacancy.<sup>28</sup> The proposed candidates must be submitted within a period, which must not be shorter than 30 days from the publication of the call for applications. Concerning appointments to be made by the President and Parliament, the Justice Appointments Council shall rank the candidates by order of qualification. The proposed candidates must be accompanied by a reasoned summary of the candidacy. The list of selected candidates shall comply with the 1:2 or 1:3 ratio i.e per each vacancy there will be 2-3 candidates and it shall be accompanied by an explanatory report which explains the reasons of selection and distinguishing criteria. After the hearing sessions with the candidates, they are submitted for voting to the collegial bodies that in any case shall vote secretly and without debates. Clear definition of deadlines will enable the timely filling of CC vacancies. The mandate of CC members is proposed to be 9 years.

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<sup>25</sup> Venice Commission CDL(2011)065 on law of CC in Turkey: *"It ought to be stressed, that the selection of judges must be based on objective criteria preestablished by law or by the competent authorities and should primarily focus on merits."*

<sup>26</sup> See also CDL-AD(2006)006, Opinion on two draft laws amending Law No. 47/1992 on the organization and functioning of the Constitutional Court of Romania, § 17 *"CC members must not be only career judges and prosecutors, but also graduates in law, and law professors. Such composition has a positive effect on court decisions. The Venice Commission is of the opinion that CC must be open to candidates from all branches provided that they have a legal education"*. See also Venice Commission CDL(2011)065 on law of CC in Turkey:

<sup>27</sup> In the Moldova case, the CC President notifies the body of appointment (Parliament, Government and High Council of Magistrates) within three days from the date of announcement of the vacancy, requesting the appointment of the new judge.

<sup>28</sup> Organic laws on CC in Croatia (article 6), Slovenia, (article 12) Romania.

(iii) The Chair of CC is proposed to be selected by the CC members. HLEG is of the opinion that solution guarantees further independence of the Chair by the appointment bodies and increases the level of accountability of CC members to deal themselves with the internal issues. The Chair shall have a mandate of 3 years, non-renewable mandate, in order to ensure rotation in the CC management. Its election procedures shall be foreseen in the organic law of CC.

(iv) Clearly-defined procedures for the resignation and admission of resignation of the CC chair which are missing currently, shall be foreseen. It will be foreseen that the judges submit the written resignation to the Chair of the Court who notifies the respective body of appointment in order to take measures for the assignment of the succeeding judge within a certain legal time limit from the submission of the request for resignation.<sup>29</sup> It is proposed as well a clear provision in the Constitution of cases of termination of mandate of CC in the following cases: expiry of mandate, or reaching the age limit; resignation or dismissal.<sup>30</sup>

(v) A disciplinary system even for the CC judges is foreseen in the cases of their dismissal. Disciplinary proceedings against them are left to the CC, according to an elaborated procedure foreseen in the organic law of CC. In all cases, the only disciplinary sanction to be applied against CC members is dismissal from office.

(v) The CC jurisdiction is proposed to be extended in order to protect effectively rights of the individual. Currently, individual recourse to CC is not an effective remedy under the meaning of the Constitution, ECHR and respective case-law of ECtHR. Therefore, it is suggested the amendment to extend jurisdiction of the Constitutional Court concerning: (a) revision of constitutionality of the law amending the Constitution, in case of non-compliance with the procedure of adoption of the law; (b) extension of the individual constitutional recourse that should be reformulated in order to ensure greater protection of the individual by the acts of the public power (*German model - Verfassungsbeschwerde*), as assessed by the Venice Commission opinion; (c) revision of complaints against decisions of the Justice Disciplinary Tribunal and HJC and HPC decisions, after the conduction of disciplinary proceedings according to the Constitution (see above).<sup>31</sup> Moreover, the subjects that may initiate a constitutional review must be re-dimensioned, by adding subjects which activity is protection of fundamental human rights and freedoms.

## **11. Anti-corruption measures**

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<sup>29</sup> Article 20 pg 1/2 law on Constitutional Court in Serbia.

<sup>30</sup> Law on CC in Romania.

<sup>31</sup> Summary of Opinions and Reports of the Venice Commission on Constitutional Justice paragraph 5.2, page.19.



As above said, the Albanian prosecution service is organised in a hierarchical and centralised way, with lowest prosecutors who abide by the orders and instructions of the highest prosecutors. The functioning of the prosecution service, according to the principle of hierarchy, throughout the years, has damaged its activity, with an impact on respect for lawfulness, protection of rights and freedoms of the individual and proceedings according to the principle of objectivity and transparency in decision-making. Independence of prosecutors in relation to the hierarchical manager is practically limited by transforming them into executors of orders of the superiors.<sup>32</sup>

The Department for Investigation of Economic Crime, Corruption and Organised Crime in the General Prosecutor's Office is responsible for investigation and prosecution at first instance of corruption cases including the President, the Prime Minister, members of government, deputies and judges of the High Court and Constitutional Court.<sup>33</sup> However, despite the transfer of competence to investigate and criminally prosecute corruption involving "high officials" by the Serious Crimes Prosecution Office, corruption cases involving highest state officials (President, Prime Minister, Ministers, deputies and judges of the High Court and Constitutional Court), are not investigated by this prosecutor's office because jurisdiction on criminal offences involving officials according to the Constitution (article 141) is a competence of the High Court. This provision is problematic for two reasons. First, the high officials are exempt from enforcement of preventive seizure according to anti-mafia law. Second, it means that judges of the High Court decide on issues involving politicians who have selected the former as candidates and appointed the former to their positions.

Another obstacle so far is even special immunity enjoyed by the officials according to the current constitution.

Because of these reasons, the following is proposed:

(i) establishing a prosecution office independent from the Prosecutor General which will consist of an investigation structure with competence to investigate independently organised crime, corruption and criminal offences of high officials. To this end, constitutional amendments are proposed to make clearly determine the right of the prosecutor of the lowest instance to follow-up criminal prosecution if the proceedings is not ceased by the highest prosecutor. HLEG deems that this is the minimum requirement to fight judicial corruption.

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<sup>32</sup> See above the findings and problems of the prosecution service.

<sup>33</sup> All the criminal cases involving officials which according to the Constitution (article 141) are reserved to the High Court.

(ii) HLEG deems that establishment of the special prosecution office will result in greater efficiency in the fight against corruption.<sup>34</sup> This unit will be responsible even for the criminal prosecution of judges, prosecutors and high officials, foreseen in the law. The cases investigated by this structure shall be tried by the special first instance court and court of appeal, according to the law. The constitutional provision of this structure with own competences and independent from the Prosecutor General will make possible its smooth functioning free of obstacles that may result because of frequent legislative amendments. Moreover, its provision in the constitution indicates the priority that Albania gives to the fight against corruption and organised crime, as one of the main conditions for its EU membership.

(iii) It is proposed that prosecutors of special prosecutor's office be appointed by the High Prosecutorial Council. The law shall foresee special criteria for the prosecutors of this prosecution office including: (a) not less than 10 years' experience as prosecutors, (b) not punished by a court decision and (c) high moral integrity. Before appointment to this position they fill in the assets declaration and conflict of interest, and they undergo regular check of their reputation, assets, financial control and telecommunication, which includes even the kins.<sup>35</sup>

(iv) Even though not explicitly stated in the Constitution, the law shall foresee that the prosecutors of this structure be independent not only from the Prosecutor General, but also from the colleagues (in case they investigate even their colleagues). HLEG is of the opinion that this is the best organisational solution which enables performance of their function. The law shall foresee even a 10 year mandate for the prosecutors of this structure which is considered a reasonable time limit for their irremovability but also for investigation of the most difficult cases because of their complex nature. Other benefits and guarantees because of the office may be foreseen by law. Even though these prosecutors do not fall under any organisational subordination, they are subject to the disciplinary liability according to the law.

(v) The law shall make possible that this structure be assisted in the performance of its functions by a special investigation unit, that will conduct investigation under the management of the special prosecutor's office. The investigation unit will have a

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<sup>34</sup> The Croatia Model with USKOK and Romanian model with DNA have been consulted so far. The model that has been widely accepted during discussion with the group of experts is the Romanian model for the establishment of the National Anti-Corruption Prosecution Office. However, this model provides for a High Council of Magistrates consisting of two separate chambers for the judiciary and the prosecution service. In this way, the Albanian alternative would be a "hybrid" version, because the High Level Group of Experts following discussion, did not support the establishment of the High Council consisting of two chambers, or otherwise said, a prosecutor's office within the judiciary.

<sup>35</sup> Its provision in the constitution is necessary because of the privacy restriction.

clear subordination line and also a clear jurisdiction in order to guarantee proper functioning of the special structure against corruption and organised crime.

## ***12. On the process of re-evaluation of judges and prosecutors***

Albania aims at undertaking a deep reform of the justice system. One of the main measures in this framework is the re-evaluation of all the judges and prosecutors in order to identify the impact of organised crime, politicians and corruption on them, and also evaluate their qualification.

### *a) Legal framework of the Venice Commission*

In other countries, efforts have been made to evaluate qualification of judges and prosecutors. The recent examples include Kosovo, Serbia and Ukraine. The recent decisions of the Venice Commission on the process of Assessment of Qualification and Lustration in Ukraine give the details which are necessary about this process.<sup>36</sup> The transitional process of qualification evaluation of sitting judges and prosecutors, in Ukraine, was not considered relevant by the VC; instead this concept was turned down. The opinion gives some main concepts that must be complied with for the qualification evaluation of judges and prosecutors. The joint opinion states clearly that a qualification evaluation of sitting judges "should be regarded as wholly exceptional and be made subject to extremely stringent safeguards to protect those judges who are fit to occupy their positions".<sup>37</sup>

Currently Albania is experiencing a very special situation. Albania is an EU candidate country, but lack of trust in the judicial system and prosecution system is highly evident and there are indicators that judicial and prosecution systems are unable to be self-regulated at all levels. With an unprecedented convergence of the political power about reform in the judiciary and the substantial international support, this is a historical moment for the Albanian justice system to undertake a deep and comprehensive reform. However, it is evident that such reform may not be set aside - completely or partially - without an evaluation of those who make up the system. Albania believes that there are in place special circumstances which justify these

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<sup>36</sup> See *Joint Opinion of the Venice Commission and Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DG) of the Council of Europe on the Law on the Judicial System and the Status of Judges and Amendments to the Law on the High Council of Justice of Ukraine*, Venice Commission Opinion no. 801/2015 §§71-81 (23 March 2015), Document no. CDL-AD(2015)007 and the main principles defined in the *Final Opinion on the Law on Government Cleansing (Lustration Law) of Ukraine* Venice Commission Opinion no. 788/2014 (19 June, 2015), Document no. CDL-AD(2015)012.

<sup>37</sup> Joint Opinion of Venice Commission no. 801/2015 §74.

measures and that the proposal provides for adequate strict guarantees to protect rights of sitting judges and prosecutors.

*b) Re-evaluation of judges and prosecutors*

Some of the main reasons of undertaking this deep reform in the justice system include the high level of corruption in Albania, its low quality performance and non-functioning of existing mechanisms of control of judges and prosecutors in case of violation of law during office. The existence and level of corruption in the justice system is no longer an issue of perception in Albania. It is not only the public<sup>38</sup> to confirm the high level of corruption, but also the judges already admit that the justice system is not free of external influence.<sup>39</sup>

One of the measures proposed to be taken in order to change the serious situation in the justice sector is:

(i) building a comprehensive re-evaluation system of judges and prosecutors in order to reduce impact of organised crime, politics and other corruptive elements in rendering justice and also upgrading professional quality of judges and prosecutors. Concrete mechanisms are foreseen to ensure a positive and real result from this re-evaluation process. The evaluation system is to be based on a strong system of declaration of assets including creation of an anti-corruption court and prosecution office and also investigation service for this purpose.

(ii) Re-evaluation process will include a comprehensive inspection of judges and prosecutors about 3 important elements: assets of judges and prosecutors, detection or identification of their ties with organised crime and lastly evaluation of their work performance and professional skills. If the final result of these three tests is negative or inadequate, the Commission will issue a decision varying from the obligation of the judge or prosecutor to undergo re-training in the School of Magistrates for a year - in case of professional incapacity - up to dismissal from office. Triplicate examination of judges and prosecutors aims not only at the once-and-for-good removal of crime-related elements, but also the removal of the incompetent judges and prosecutors who have assumed these positions based on corruptive political or financial ties. The current evaluation system, which is more a self-defence system from these elements than a self-regulating system, failed in the identification and the removal of these judges and prosecutors from the system. It is because of this that the professional evaluation of judges and prosecutors is necessary.

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<sup>38</sup> *Corruption in Albania, Perception and Experience*, Institute for Development Research and Alternatives, Pg. 22-24 (2009).

<sup>39</sup> *Survey of Albanian Judges*, Center for Transparency and Freedom of Information (2012). In addition, the Global Barometer of Transparency International 2013, lists the judiciary as one of the most corrupt institutions in Albania.

(iii) It is proposed the establishment of an Independent Qualification Commission that will evaluate all the judges and prosecutors, regardless of the instance and jurisdiction. Its mandate shall be limited in time from 1 January 2016 until 31 December 2025. Members of the commission shall be jurists who have a long experience (at least 15 years) as judges, prosecutors, lawyers or professors of law and they shall have high reputation. Their status will be that of the HC member. Decisions of the Commission shall be reviewed by the Special Qualification College attached to the High Court. The Special College shall consist of members who try only cases linked to evaluation and re-evaluation, according to the annex. The details of the functioning of the Commission and College shall be foreseen in the Law. This process shall be carried out by local structures supervised by international observers in order to increase credibility to the process. International observers that will have access on the files of judges and prosecutors and supervise the entire decision-making process; they shall assist the process and provide any assistance necessary for the qualification commission and college. In order to guarantee the process and reduce the possibility of corruption within the commission, its members shall receive special treatment for them and their family. They shall be guaranteed special protection by the state.

### ***13. Transitional provisions***

In an effort to solve problems identified in the Analytical Document of the Justice System, following the objectives defined by the Justice Reform Strategy, the reform proposed in the justice system affects many aspects of organisation and functioning of the existing constitutional institutions of the justice sector. Indeed, constitutional amendments proposed by the HLEG include the CC, HC, HCJ, Prosecution and other stakeholders involved in the governance of the judiciary. On the other hand, the proposed amendments, if approved, will set up new institutions of governance of the judiciary. They include the High Inspectorate of Justice, the High Disciplinary Tribunal and the Justice Appointments Council. Third, the proposed amendments make a reallocation of responsibilities among the various justice institutions. Therefore many of the responsibilities which are currently assumed by the Minister of Justice are proposed to be entrusted to the High Judicial Council. Similarly, it is proposed that the High Judicial Council and Minister of Justice be no longer responsible for investigation of disciplinary misconducts and complaints against judges and inspection of courts and these responsibilities are entrusted to an independent inspectorate. Last, it is proposed the strengthening of the profile of some existing institutions (for example High Prosecutorial Council) and abrogation of other institutions (including National Judicial Conference).

Against these essential and massive changes that are proposed it is necessary to assess even the possibility of existing institutions to resume their activity by simply adopting some transitional provisions or reformatting them by terminating the mandate of existing functionaries thus opening the way to the constitution of new institutions. Of course, in making this assessment, HLEG has been inclined to preserve to the greatest possible extent the mandate of existing institutions. By the end of this assessment, HLEG has concluded the following:

**Constitutional Court** – HLEG is aware that the CC mandate may be terminated only under very special circumstances. The main amendments proposed for the CC include its composition, manner of appointment of members, list of subjects that may recourse to the CC and the scope of competences of the court. Of course, these are importance changes which significantly affect the physiognomy of CC. However, HLEG is of the opinion that the role and source of legitimacy of the CC has not significantly changed to justify interruption of the mandate of the existing court and constitution of the new court. It is deemed that a detailed transitional provision governing renewal of the CC composition under new conditions is sufficient to make possible for CC to effectively reply to new tasks and new functioning.

**High Court** – HLEG is aware that the HC mandate may be terminated only under very special circumstances. Indeed, the proposed amendments change substantially the profile and role of the HC. The main changes include: (i) separating the administrative jurisdiction of the HC, (consequently it is abolished the Administrative College of the High Court), by establishing the High Administrative Court (HAC is proposed to start its activity on 1.1.2020), thus significantly reducing the caseload of the existing HC judges; (ii) transforming HC into a career court. This means that the High Judicial Council will extend its authority over HC members and HAC members similarly as over all the other judges (example, performance of members of this court shall be evaluated by HJC that will impose disciplinary measures over HC and HAC member etc); (iii) modifying the manner of appointment of HC and HAC members by transforming the procedure of appointment from a completely political process to a professional/merit-based process (this will be achieved by recognizing the essential role of the HJC in the process; (iv) providing for more objective and merit-based professional criteria for the selection of candidate members to the HC and HAC that will be subject to strict control concerning their professional qualification through several filters; (v) re-dimensioning the constitutional competence of the HC that will transform it into a court of law focused on unification of the case-law (this may even raise the need to change the professional profile of the existing members); (vi) abrogating the original jurisdiction of the HC for the adjudication of criminal cases against high state officials etc.

It is clear that these are essential changes which create a high court with a new physiognomy and dimension. However, in final analysis, HLEG concluded that the role and source of legitimacy of the HC has not significantly changed to justify termination of the mandate of the existing court and constitution of the new court.

**High Council of Justice** – HLEG is aware that the High Council of Justice (HCJ) mandate may be terminated only under very special circumstances. The amendments proposed in relation to HCJ bring an essential change to the role and legitimacy of HCJ. Necessary amendments include: (i) changing the role of members from 15 to 11, and also their appointment procedure; (ii) changing the composition of the body by modifying the judge member - lay member ratio; (iii) abolishing three *ex officio* members in this body (President of the Republic, High Court chair, Minister of Justice); (iv) entrusting the position of the chair to a lay member, thus removing this right from the President of the Republic; (v) abolishing the constitutional function of the deputy chair of the High Council of Justice; (vi) extending the competences which are proposed to include almost all the aspects of judicial administration (including proposing and administering of the budget) and strategic planning; (vii) shifting from part-time to full-time membership thus making the HJC more efficient and collegial; (viii) providing for an accountability system for the HJC members; (ix) manner of appointment and dismissal of members; (x) assuming responsibilities for the reporting to the public and before the Parliament on judiciary issues and (xi) changing the designation of the body (from HCJ to HJC). Considering the depth and width of changes proposed for the HCJ (which have emerged from the problems identified in the Analytical Document of the Justice System and objectives of reform specified in the Justice Reform Strategy), HLEG proposes the adoption of some transitional provisions which consequence will be the early termination of mandate of HJC members and regulation of the legal situation that will be created after entry into force of the proposed constitutional amendments.

**Prosecutor General** – HLEG is aware that the Prosecutor General (PG) mandate may be terminated only under very special circumstances. However, given the fact that the proposed reform of the prosecution system and PG in particular, if passed, will bring about the entire structural and functional re-conception of the prosecution system, PG competence, manner of its selection and appointment, duration of constitutional mandate of PG, dismissal procedures, changes to the professional requirements and criteria (including the highest level of education, that complies with the focus of the position to represent the charge before the High Court and issue of written instructions) which are to be met by the candidates for the position of the PG, raising at constitutional level of the Prosecutorial Council and overall structuring of its competences (Council) for appointment, career, promotion and discipline of prosecutors, unlike the current constitutional and legal provision, changes to the

hierarchical relations within the prosecution system and separation of some part of the current mandate of the PG by creating the special anti-corruption structure, the HLEG deems it necessary to foresee transitional constitutional provisions in order to regulate the transitional period until the election of the new PG.

Because of the time that will be needed for the constitution of some constitutional institutions, given the fact that some functions are foreseen to be *ex officio*, part of some *ad hoc* bodies, and also in order to avoid impasse in the functioning of the bodies during the transitional phase, there have been foreseen all the necessary solutions that create the possibility to ensure smooth performance of their function.