



Analysis of Legal and Practical Aspects of the Vetting Process

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Abstract

Albania's quest for accession to the European Union necessitates sweeping judicial reforms, with a primary focus on bolstering the judiciary's independence, accountability, and professionalism. Collaborative endeavors with the Venice Commission underscore Albania's unwavering commitment to this transformative process. At the heart of this reform agenda lie constitutional amendments and legislative enactments, prominently among them being the law governing the re-evaluation of judges and prosecutors. This legislative framework facilitates the establishment of innovative judicial institutions. The inception of the "vetting process" in 2018 marks a pivotal mechanism aimed at combating corruption and fostering public confidence in a fair and impartial judicial system. The evaluative criteria encompass the disclosure of wealth, professional competence, and public image. This analysis critically examines the operations of the Independent Qualification Commission and the Special Appeals Panel, scrutinizing their investigative, administrative, and decision-making processes within the framework of the vetting law. Of particular interest is the examination of auxiliary bodies, notably the Public Commissioner and the International Monitoring Body, as key entities tasked with ensuring transparency and impartiality in the vetting process. Recognizing the vetting process as a transformative, albeit non-panacea, initiative underscores its historical significance. While acknowledging short-term repercussions, such as the suspension of the Constitutional Court, as sacrifices in the pursuit of upholding the rule of law, the overarching objective is to establish a robust and qualitatively sound justice system. This paper aims to contribute to scholarly discourse by offering a comprehensive examination of the vetting process in Albania and its implications for judicial reform, the rule of law, and the country's European integration aspirations.

Keywords: justice reform, membership, vetting process, Constitutional Court, International Monitoring Body

1. Introduction

The establishment of a special parliamentary commission for justice reform by the Parliament of Albania underscores the nation's commitment to addressing systemic issues within its judicial system (Report over the "Draft Law", 2016). This initiative, prompted by the European

Commission's progress report emphasizing the imperative for concrete interventions in the justice system, reflects Albania's dedication to enhancing the rule of law through legal reforms (Maxhuni & Cucchi, 2017). Central to this reform agenda is the system of re-evaluation of judges and prosecutors, designed to safeguard the rule of law, uphold judicial independence, and rebuild public trust in the justice system.

Despite the adoption of Law No. 84/2016 on transitional re-evaluation, the implementation process has encountered obstacles, notably the challenge posed by a request to the Constitutional Court to declare the law illegal. In response, the President of the Court sought guidance from the Venice Commission regarding the compatibility of the vetting law with European Union standards, the European Convention on Human Rights (ECHR), and the Albanian Constitution (see the Addressing Question of Venice Commission, 2016). While affirming the Constitutional Court's ultimate authority in interpreting the Constitution and assessing the compatibility of national laws, the Venice Commission provided insights to assist in ensuring compliance with European standards.

Albania's collaboration with the Venice Commission exemplifies its commitment to justice reform and adherence to international standards. This study delves into various aspects of Law No. 84/2016 and the interpretation of the vetting process, shedding light on elements that have posed challenges or highlighted deficiencies in the law's application. By analyzing practical instances of the vetting process, the study aims to elucidate the extent to which the standards outlined in the law are upheld in practice, particularly regarding the right to a fair legal process and the evaluation criteria used by re-evaluation bodies.

Specifically, the study examines the administrative investigation process concerning criteria such as property, public image, and professional competence. It scrutinizes the extent of administrative scrutiny applied to these criteria, the responsibility of individuals related to the subject of re-evaluation in declaring assets, and the criteria used by re-evaluation bodies to determine inaccuracies or omissions in asset declarations. Moreover, the study explores how the evaluation of public image and professional competence is conducted and the evidentiary standards employed by re-evaluation bodies in assessing these aspects. The practice of the vetting process, despite being relatively new, has provided ample cases for analysis. As the re-evaluation bodies refine their processes and decisions over time, there is a growing body of cases to assess the implementation of the standards outlined in Law No. 84/2016. This analysis encompasses not only the adherence to the right to a fair legal process but also the application of these standards in the examination of criteria subject to administrative investigation. This examination is pivotal in the decision-making process of re-evaluation entities, including both the Independent Qualification Commission (KPC) and the Special Appeals Panel (KPA) in Albania.

While the study provides initial insights into the vetting process, it acknowledges the need for further analysis and the consolidation of practice. Additionally, the study refrains from offering a comprehensive legal analysis until a consolidated practice or cases reviewed by the European Court of Human Rights (ECHR) are available. This cautious approach underscores the importance of robust legal analysis grounded in empirical evidence and established legal precedents. So, it contributes to the ongoing discourse on justice reform in Albania by examining key aspects of Law No. 84/2016 and the practical implementation of the vetting process. By critically assessing the challenges and complexities inherent in the vetting process, the study aims to inform policymakers, legal practitioners, and scholars and facilitate informed decision-making in the pursuit of a fair and transparent judicial system aligned with international standards.

1.1. Literature Review

The implementation of judicial vetting processes constitutes a crucial milestone in the endeavour for legal reform and accountability within national judicial systems. Illustrated by Albania's enactment of Law No. 84/2016, these processes establish a framework for the re-evaluation of judges and prosecutors, with the overarching goal of augmenting the integrity and independence of the judiciary. In this scholarly discourse, theoretical perspectives play a pivotal role in informing discussions and evaluations of judicial vetting, particularly those under Law No. 84/2016 in Albania. By drawing upon theoretical concepts such as the separation of powers, legal process theory, democratic legitimacy, and human rights frameworks, stakeholders are empowered to critically assess the efficacy, fairness, and legitimacy of vetting procedures. This integration of theoretical perspectives into the discourse surrounding judicial vetting contributes to the cultivation of robust and accountable legal frameworks that uphold the rule of law and safeguard individuals' rights within democratic societies.

The concept of the separation of powers, advocated notably by political philosopher Montesquieu in 1748, underscores the significance of distinct branches of government—legislative, executive, and judicial—functioning autonomously to forestall abuses of power and preserve the rule of law. Framing the analysis of judicial vetting within the framework of the separation of powers facilitates an evaluation of the extent to which these processes uphold the judiciary's independence from executive influence. This perspective facilitates the identification of potential threats to judicial independence and informs discussions on the requisite safeguards to fortify this cornerstone of democratic governance.

Legal process theory, as delineated by scholars like Herbert Packer in 1964, accentuates the paramount importance of procedural fairness and adherence to legal norms in achieving justice. This theory asserts that the legal system should afford equal opportunities to all involved parties while ensuring transparency and accountability in decision-making processes. Applying legal process theory to the examination of judicial vetting processes enables a critical assessment of whether the procedures delineated in Law No. 84/2016 adhere rigorously to principles of procedural fairness and due process. This perspective underscores the significance of transparent and accountable vetting procedures in engendering public trust in the judiciary and safeguarding individuals' rights throughout the evaluation process.

Democratic legitimacy, grounded in democratic theory as elucidated by scholars such as Dahl in 1989, contends that governmental decisions and actions must align with the will and interests of the populace to be deemed legitimate. Considering the tenets of democratic legitimacy within the context of judicial vetting processes engenders an exploration of mechanisms for public oversight and engagement in the re-evaluation of judges and prosecutors. This perspective underscores the criticality of transparency and public accountability in ensuring the legitimacy of vetting outcomes and nurturing public confidence in the judiciary.

Human rights theories, rooted in international legal instruments such as the Universal Declaration of Human Rights (1948) and the European Convention on Human Rights (1950), underscore the imperative of safeguarding individuals' fundamental rights and freedoms, including the right to a fair trial and due process. Analyzing judicial vetting processes through a human rights framework enables an evaluation of whether the procedures and outcomes align with individuals' rights under international human rights law. This perspective underscores the necessity of harmonizing vetting procedures with international human rights standards to ensure the protection of individuals' rights throughout the evaluation process.

Empirical studies underscore the importance of striking a balance between reliability, fairness, privacy rights, and transparency in vetting procedures across various domains. Research by Wadsworth and Owens (2013), exploring the impact of online screening methods, including vetting processes, on evaluative processes in recruitment and selection, highlights the evolving nature of vetting procedures in the digital age. Slobogin (2003) delves into the legal issues surrounding criminal background checks, a cornerstone of vetting processes in various contexts. Coyne and Bartram (2002) evaluate the efficacy of integrity tests in diverse contexts, including their predictive validity across various job positions and industries. Lyon and Zureik (2012) accentuate the significance of privacy rights and transparency in vetting procedures.

Furthermore, while investigating the integration of reliability and fairness into recruitment systems, including vetting processes, there is a need to balance reliability and fairness in vetting procedures to promote equity and effectiveness in recruitment processes (Hou et al., 2020).

2. Institutions and the practice of the vetting process are three aspects subject to re-evaluation

The vetting process commenced with the constitutional objective of reinstating public trust in the judiciary and purging the ranks of the justice system of corrupt officials. Hearings are conducted publicly, and institutions ensure transparency by providing the rationale behind vetting decisions. Genoveva Ruiz Calavera, chief of the International Organization for Migration (IOM), remarked in a public statement, *“The significant number of magistrates resigning or being dismissed confirms the seriousness of this process for judicial renewal”* (Picari, 2019). Both the Constitution and Law No. 84/2016 have established re-evaluation institutions—the Independent Qualification Commission and the Special Appellate Panel—to carry out their responsibilities based on principles of accountability, integrity, and transparency, aiming to establish an independent and corruption-free judiciary. Additionally, public commissioners, besides monitoring, have the right to information and appeal decisions made by these bodies (Article 63 of Law No. 84/2016). In contrast to ordinary court jurisdictions where decisions can be appealed, both the Commission and the Appellate Panel in this case have jurisdiction to review cases on their merits and administer evidence and relevant information as they see fit on a case-by-case basis. The law acknowledges the finality of decisions issued by the Appellate Panel, which take immediate effect and become executory titles. The only avenue for appeal provided by the vetting law and the Constitution pertains to subjects’ access to submit claims to the European Court of Human Rights.

The purpose of the vetting process is to restore citizens’ trust in the justice system. Transparency, accountability, and citizen involvement are crucial elements outlined by the law. The obligation to uphold these principles extends beyond the main decision-making institutions to include assisting bodies in the vetting process. Failure to convincingly demonstrate this commitment may cast doubt on the reform’s credibility. The Albanian Helsinki Committee (2018) notes that the assisting vetting bodies (DSIK, HIDAA, HCJ, PP) have not fully transparently contributed to the process, particularly concerning asset valuation, image control, and professional skills assessment of judges and prosecutors. Their avoidance of providing information on findings of public interest from their verifications thus far raises concerns about transparency.

The International Monitoring Operation (IOM), comprising highly qualified experts from the US and the EU, plays a significant monitoring role in the vetting process by providing findings, collecting information, drawing conclusions, and making recommendations to re-evaluation bodies. However, it does not make executive decisions, ensuring transparency and impartiality.

The wide access granted to the IOM, as recognized by the Annex to the Constitution (Article B) and Law No. 84/2016, underscores its critical role in the process.

Vetting is a complex process, with each case differing from the next, as various aspects of the three evaluation pillars-property valuation, image control, and professional skills assessment-can lead to different conclusions for seemingly similar reasons. The re-evaluation process involves the Commission, the Appellate Panel, and public commissioners collaborating with international observers. The evaluation criteria and findings from concrete cases produced by the vetting process are summarized and analyzed in decisions by the Commission and the Appellate Panel (Article 63 of Law No. 84/2016).

2.1. An approach to Vetting Practice on the Property Valuation Aspect

The criterion of asset valuation represents the initial component of Law No. 84/2016 and has encountered significant resistance from judges and prosecutors, leading to a notable increase in resignations to avoid undergoing verification procedures (Articles 4 and 30 of Law No. 84/2016). Asset valuation involves a comprehensive assessment of assets, scrutinizing the legitimacy of their sources of acquisition (Article 31 - 33 of Law No. 84/2016). All judges, prosecutors, and counselors are required to declare their assets by the law, allowing institutions to conduct investigations. The High Inspectorate of Declaration and Control of Assets and Conflict of Interest (HIDAACI) assists the Commission by verifying asset declarations and submitting reports on their legality, accuracy, and completeness. Re-evaluation subjects must justify their assets based on legitimate sources, income, and tax returns, presenting all necessary documents to authenticate their authenticity and legality. Failure to submit asset declarations on time results in dismissal, and if a subject attempts to conceal or misrepresent their assets, the burden of proof lies with them (Law No. 84/2016). For example, in the case of Xh. Z., the Commission argued that certain actions related to asset declaration occurred outside the re-evaluation period and therefore could not be grounds for dismissal. However, the Appellate Panel disagreed with this interpretation, highlighting the lack of time criteria in transitional re-evaluation legislation regarding asset sources' legitimacy (Decision No. 19, dated 26.07.2019).

The Commission and the Appellate Panel possess jurisdiction to review asset valuation cases comprehensively, evaluating evidence and information on a case-by-case basis. The law stipulates that asset declarations begin from the date of a judge or prosecutor's appointment, although the practice allows for scrutiny of assets acquired before this date. However, discrepancies arise regarding the interpretation of this provision, particularly concerning the burden of proof and the extent of related persons' obligations to declare assets. The Appellate Panel has emphasized the necessity of proving the legitimacy of asset sources, including for assets transferred or mortgaged by related persons while cautioning against imposing disproportionate burdens of proof.

Another challenge involves discrepancies between previous asset declarations and those submitted for vetting. Inconsistencies between statements may lead to allegations of concealment of property, requiring subjects to provide detailed and accurate asset declarations. Failure to declare assets, such as in the case of a garage in Tirana owned by a re-evaluation subject, constitutes concealment of property. The Commission has the authority to dismiss subjects for such violations, placing the burden of proof on them to refute allegations. For example, in the case of A. Th., the subject failed to declare a garage in Tirana in both periodic and vetting declarations, leading to allegations of concealment of property by HIDAACI (Decision No. 40, dated 17.07.2018).

Financial discrepancies, such as insufficient income to cover expenses or provide savings, also raise concerns about the legitimacy of asset sources. The Appellate Panel has upheld disciplinary measures for subjects found to have inaccurately declared their assets over the years, applying a presumption in favor of dismissal. However, not all discrepancies necessarily constitute concealment of property, as evidenced by cases where the subject's actions did not actively conceal assets. Inconsistencies in the vetting process, including incomplete financial analyses and discrepancies between published decisions and hearing statements, highlight the need for greater transparency and consistency. While re-evaluation bodies have conducted extensive administrative investigations, these findings must be reflected accurately in published decisions to ensure accountability and fairness in the vetting process. For instance, in the case of F. M., observers noted discrepancies between published decisions and statements made during the hearing, indicating inconsistencies in the vetting process and the need for more transparent decision-making (Decision No. 16, dated 03.05.2018).

2.2. An approach to Vetting Practice on the Aspect of Image Control

The assessment of the re-evaluated subject's integrity, as outlined in Article DH of the Annex of the Constitution and Article 34 of Law No. 84/2016, involves scrutinizing evaluations and other data to identify connections with individuals involved in organized crime. If the assessment reveals clear links to organized crime figures or inappropriate connections, the subject is dismissed unless they can provide evidence to the contrary (Lex Feranda, 2016). Such associations are deemed to jeopardize national security and public safety (Maxhuni & Cucchi, 2017). However, determining the extent of these connections poses a challenge, as the law lacks clarity regarding the justification and proof required to establish incriminating links.

For instance, the law considers photographs of re-evaluated subjects with individuals having a criminal record as evidence of inappropriate contact, but it does not specify how these facts will be substantiated to prove the alleged links. Despite being a relatively infrequent subject of discussion, the evaluation of connections with organized crime has attracted significant attention. Initial discussions during hearings held by the KPC raised questions about the definition of organized crime and whether vetting bodies are overstepping their mandate by assessing judges and prosecutors for criminal offenses beyond the scope of organized crime. Furthermore, cases involving criminal records of re-evaluation subjects have garnered attention, even if they occurred before the deadlines set by Law No. 84/2016. The KPA has interpreted criminal proceedings against re-evaluation subjects during their tenure as judges as detrimental to public trust in justice, citing constitutional criteria that mandate the removal of judges with criminal records (Law No. 96/2016). For example, in the case of A. Th., the KPA rejected the subject's claim that criminal proceedings against them had been terminated, emphasizing that the existence of a criminal record directly affects public trust in justice (Decision No. 10, dated 18.04.2019). The law cited by the KPA holds individuals responsible even if criminal proceedings against them are terminated, highlighting the seriousness with which criminal records are viewed.

Moreover, re-evaluation subjects have raised concerns about the lack of evidence supporting allegations of inappropriate contact with organized crime figures. They argue that without sufficient evidence, they are unable to defend themselves effectively. However, the KPA has upheld dismissals based on findings that violate public trust in justice, especially when subjects held high positions within the judiciary. In another case, the KPC's decision to consider a subject appropriate based on the CISD report's findings was questioned, highlighting the need for a thorough and objective analysis of evidence regarding inappropriate contacts with organized crime figures. Dismissals under the vetting law may result from serious inappropriate

contacts that render subjects unfit to continue their duties or from incomplete declarations regarding such contacts.

Another provision, Article 54 of Law No. 84/2016, grants individuals who commit corruption offenses related to re-evaluation subjects the opportunity to collaborate with prosecutors in exchange for immunity from prosecution. However, this provision has been misunderstood by some citizens as an opportunity to challenge final court decisions. Additionally, while most decisions have not analyzed the image control criterion extensively, a notable exception is the case of P.M. (Decision No. 202, dated 06.11.2020), where a detailed analysis of this criterion was conducted. Lack of information provided to subjects about the nature of CISD report changes may hinder their ability to defend themselves effectively and appeal to higher instances.

2.3. A Vetting Practice Approach on the Aspect of Professional Competency Assessment

The evaluation of professional skills, as stipulated by Law No. 84/2016 and related legislation governing the status of judges or prosecutors, focuses on several criteria including judicial aptitude, organizational capabilities, ethical conduct and adherence to judicial values, personal qualities, and professional commitment. The assessment aims to identify individuals who are not qualified to fulfil their duties and those with occupational deficiencies that may be remedied through further education (Decision no. 21, dated 13.09.2019). The re-evaluation period commences from January 1, 2006, for subjects with more than three years of professional experience, and from the beginning of their mandate for those with less than three years. Disciplinary proceedings regarding professional skills have primarily addressed serious procedural violations rather than shortcomings in professional competence. No subject has explicitly been dismissed solely due to inadequacy in professional skills, as outlined in Article 61, point 4 of Law No. 84/2016. However, cases exist where professional re-evaluation was linked to breaches of public trust in the justice system, leading to dismissal under Article 61, point 5 of the same law (Albanian Committee of Helsinki, 2018).

In the case of G.M., the International Monitoring Operation (IOM) submitted written recommendations to the Public Commissioner identifying findings and deficiencies related to professional competence. The response of the KPA to the Venice Commission's opinion in 2016 stressed the importance of attributing a negative assessment only in cases of substantial and persistent errors indicating a lack of professional skills. However, there remains ambiguity regarding the threshold for errors or deficiencies that warrant dismissal versus those necessitating reform and professional development.

Contradictions in findings also exist within the practice of re-evaluation bodies, as observed in the case of B. Abdullai. While the High Council of Justice (HCJ) deemed the subject capable of continuing duty, the Commission's administrative investigation uncovered procedural violations, prompting the proposal for re-evaluation based on article 44a of Law 84/2016.

Standardization of the administrative investigation process is exemplified in the case of A.M., where the decision relied solely on the report of a working group at the General Prosecutor's Office, despite the existence of other reporting entities such as the HPC. In contrast, decisions in cases D.B and M.M were based on reports from the Albanian Helsinki Committee, 2018, highlighting inconsistencies in decision-making sources.

To effectively assess professional competence, all relevant elements must be considered, including file management abilities, legal reasoning, and ethical conduct. In some instances, despite deficiencies in file administration, positive assessments of other professional elements led to the conclusion that the subject is capable of continuing their duties. However,

discrepancies between stated ethical conduct and documented evidence may raise concerns, as exemplified in Decision No. 40, dated 17.07.2018, where conflicting information regarding gifts received was identified.

3. Applied Standards of Vetting Process Institutions and Observance of Due Process of Law

In the course of examining various decisions, the Albanian Helsinki Committee (AHC) in 2018 observed disparities between the findings of the subsidiary body HIDAACI and the administrative investigations carried out by the KPC. Notably, the KPC occasionally sought a reassessment of subsidiary body reports, resulting in subsequent reversals of initial conclusions in second reports, thus indicating divergent positions regarding entity purity. It is noteworthy that the KPC predominantly conducted extensive administrative investigations rather than relying solely on reports from assisting bodies, leading to divergent conclusions from those of the latter. However, appeals submitted to the Special Appellate Panel highlighted instances where the Commission's failure to fully or comprehensively exercise its competence was cited as grounds for appeal, both by Public Commissioners and re-evaluation subjects seeking evidence to elucidate crucial aspects of the vetting process. One of the most deliberated procedures since the inception of the vetting process has been the decision-making of re-evaluation institutions based solely on one criterion. This approach raises questions regarding the parity of these criteria under the law governing the evaluation of judges and prosecutors, or whether a hierarchical structure exists among the three criteria.

In cases of dismissal decisions, the KPC did not consistently analyze all three evaluation criteria, opting to conclude the re-evaluation process for entities based solely on the property criterion in some instances. Decisions such as Decision No. 51 dated 30.07.2018 and Decision No. 180 dated 18.07.2019 underscore this selective approach. In these decisions, trial panels deemed the property criterion sufficient for decision-making regarding transitional re-evaluation, as detailed in one of the KPA's decisions: "The Constitution and the law mandate this process to restore public confidence in the justice system and ensure the rule of law's functioning. Thus, there would be no legitimate value in continuing the re-evaluation procedure for other criteria if it is determined that failure to meet even one criterion necessitates removal from the justice system to restore public confidence. However, Article 59 of Law No. 84/2016, point 1, stipulates that confirmation in office requires subjects to meet all three criteria cumulatively, ensuring a reliable assessment of assets, figure control, and minimum qualifying professional skills (Decision No. 3, dated 17.07.2018)." This approach prompts reflection on whether it represents a fair and proportionate method or if it could be construed as a dual standard in the re-evaluation process. It suggests that to remain in office, subjects must undergo administrative investigation across all three criteria, ensuring justified assets, figure purity, and professional competence, or at least demonstrate convincing overall compliance. However, this standard may not be uniformly adhered to in cases of dismissal, raising questions regarding its consistency and fairness.

As highlighted by the Albanian Helsinki Committee (AHC) in 2018, there exists a divergence of opinions among specialists regarding the fundamental nature of the vetting process. While some argue for comprehensive scrutiny across all three criteria underlying the process, asserting that such thoroughness is essential for transparency and completeness, others advocate for a more focused administrative investigation into each criterion to enhance transparency and public understanding. Critics of the prevailing practice note the discrepancy between the frequent use of terms like "in-depth", "complete", and "comprehensive" investigation by the KPC and the subsequent reliance on a single criterion for decision-making.

This inconsistency is underscored by the burden of proof placed on subjects to refute investigation findings, including evidence about figure control and professional ability, as exemplified in Decision No. 235 dated 04.02.2020 regarding individual A. Xh.

Decision-making in the re-evaluation process often hinges on the outcome of administrative investigations, which, although not solely reliant on subsidiary body reports, typically involve extensive examination and allow re-evaluated entities to offer clarifications and explanations. While citizen complaints are occasionally considered in decision-making, their specific content is not consistently disclosed. Moreover, the burden of proof, a pivotal aspect of the process, has been subject to scrutiny, as illustrated by Decision No. 237 dated 02.02.2020, where the absence of evidence opposing the property criterion resulted in a dismissal decision.

Despite these procedural intricacies, the formal aspect of decision structures often lacks uniformity and conciseness, with the descriptive-reasoning part of decisions frequently lacking clarity and logical coherence. This organizational deficiency, compounded by a scattered presentation of facts, complicates comprehension and undermines transparency. Moreover, subsidiary bodies, particularly HIDAACI and CISD, have faced challenges in complying with the Commissioner for the Right to Information's decisions, thereby impeding the provision of complete statistical information to the public. Such discrepancies in information disclosure contravene constitutional and legal provisions governing the vetting process.

The procedural aspect of due process of law constitutes a fundamental tenet that must be safeguarded within the framework of judicial and investigative proceedings, including the re-evaluation of judges and prosecutors. This principle, widely acknowledged within jurisprudence and legal frameworks, entails the right to a fair trial, underpinned by a set time limit established by an impartial court in adherence to principles of proportionality, equality of arms, and the issuance of a reasoned decision.

The articulation of a reasoned decision not only constitutes a requisite formal aspect of judicial pronouncements but also serves as a pivotal evidentiary tool facilitating avenues for appeal or redress. Decision-making must encompass every detail sanctioned by legal provisions to ascertain a concrete case. For instance, in the case of M.F., the absence of a clear delineation within the decision regarding the legal prohibition on practicing the judicial profession for a stipulated duration after resignation raised pertinent concerns. This prompted an appeal to the KPA for the inclusion of such provisions within the decision, a precedent echoed in subsequent Commission decisions. Furthermore, in procedural terms, the surpassing of deadlines for the notification of reasoned and written decisions prompts inquiries into the extent of non-compliance with due process. The acceptance of such claims, as exemplified in the Ceno case, by the KPA, notwithstanding, underscores the imperative of ensuring compliance with statutory requirements.

Central to the concept of due process is the principle of equality of legal weapons, ensuring parity in the presentation of cases without placing either party at a disadvantage. This principle assumes particular significance in the gathering of evidence, which directly influences trial outcomes and the decisions rendered by re-evaluation bodies. Instances of the KPA's practice in requesting and presenting new evidence, juxtaposed with the subject's burden of proof and the review bodies' discretion to reject evidence, exemplify the complexities inherent in upholding this principle. Moreover, considerations of double standards within vetting commissions warrant nuanced examination, given the specificity and individual characteristics inherent in concrete issues. The evaluation of each commission decision, predicated on the factual circumstances substantiated during the trial and the faithful application of relevant legal precepts, underscores the need for contextualized assessments rather than generalized comparisons with other entities' re-evaluations.

As discussed, the discourse surrounding the procedural dimensions of due process underscores the multifaceted considerations inherent in ensuring fairness and adherence to legal norms within the re-evaluation process of judges and prosecutors.

4. Conclusion

Despite the commendable aspects of the vetting process, there remains a need for a unified interpretation and implementation of Law No. 84/2016. Standardizing procedures and establishing guiding principles for similar issues would enhance the coherence of the process. Specifically, regarding the documentation and analysis of the assets and financial resources of re-evaluated subjects and related individuals, a standardized approach is necessary to ensure transparency and public understanding. Financial statements should be presented in a clear and easily comprehensible manner.

Furthermore, a more argumentative approach is required for evaluating the integrity and professional competence of subjects. Rather than merely referencing reports from assisting bodies, re-evaluation institutions should provide thorough analyses of findings from administrative investigations. The lack of justification for the reports' underlying decisions by the NPC or KPA on these aspects inhibits the ability of subjects to appeal evaluation conclusions.

In terms of decision-making practices, discrepancies persist in the level of detail and structure of decisions issued by re-evaluation institutions. While some decisions are detailed and well-structured, others lack coherent analyses of facts and supporting evidence for the subjects' claims.

Transparency remains a challenge for both re-evaluation institutions and subsidiary bodies. These entities must understand that the vetting initiative is not merely an internal disciplinary procedure but a mechanism aimed at rebuilding citizens' trust in the justice system. Access to announced decisions by the KPC is hindered by a lack of synchronization between the timing of decision-making and publication mechanisms.

In summary, addressing these challenges requires a concerted effort to standardize procedures, enhance transparency, and improve the quality of decision-making within the vetting process.

Conflict of interest

The author has no conflict of interest to disclose.

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Decision No. 231, dated 29.01.2020, with subject A. M.
Decisions no. 15, dated 20.04.2018.
Decision No.19, dated 14.05.2018.
Decision No. 180, dated 18.07.2019, (KPC), with the subject I. M.
Decisions no. 12, dated 23.03.2018.
Decision no. 14, dated. 13.04.2018.
Decision no. 15, dated 20.04.2018.
Decision No.3, dated 17.07.2018, with subject F. L.
Decision No. 235, dated 04.02.2020.
Decision No. 237, dated. 02.02.2020, with subject A. Xh.
Decision No.111, dated 27.02.2019, with subject P. C.
Decision no.5, dated 23.03.2018, with subject M. F.
Decision No. 236, dated 06.02.2020, with subject M. R.
Decision No.14, dated 09.07.2020 (KPA), C.
Decision no. 07/2019 (JR), dated 05.04.2019.