



**REPUBLIC OF ALBANIA  
ASSEMBLY  
Ad Hoc Parliamentary Committee on Justice System Reform<sup>1</sup>  
Group of High Level Experts**

*Project*  
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# **STRATEGY ON JUSTICE SYSTEM REFORM**

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## **STRATEGY FOR REFORM IN THE JUSTICE SYSTEM**

The Document of the Strategy for Reform in the Justice System follows the Justice System Analysis, which highlighted problems in the justice system.

The **purpose** of the strategic document is to determine the strategic objectives of reform in the justice system and to identify the necessary constitutional and legal interventions for the realization of these objectives, on the basis of problems identified by the analytical document.

Further on, the strategic document will be followed by an **action plan** that will detail the concrete constitutional, legal and other kinds of interventions, the subjects that will be engaged for their implementation as well as the deadlines.

The overall **goal** of the reform is to create a justice system that is credible, fair, independent, professional and oriented toward services, open, accountable and efficient; one that will enjoy the confidence of the public, will support the country's sustainable social-economic development and will enable its integration into the European family.

A justice system that has the mentioned features is an indispensable precondition for strengthening the rule of law, for respecting individual's rights and freedoms, the equality of citizens before the law, the country's economic and social advancement as well as progress in the European integration process.

Against the background of the awareness of the vital importance of a justice system that fulfills the mentioned characteristics, it is a known and widely accepted fact, highlighted in a detailed manner also in the analysis that preceded the drafting of this document, that the justice system in Albania has failed in almost all of the aforementioned parameters.

The Justice System Analysis pointed out that the current state of the justice system has been defined by the combined interaction of numerous factors.

Poor quality of legislation approved in the past 25 years is one of these factors. Often times, the process of drafting laws in Albania has been nothing more than an import of foreign laws without subjecting them (the foreign laws) to an adaptation process in the light of the country's real needs and possibilities. As a result of often contradicting influences of different legal systems, the Albanian legal system remains in transition, disoriented and lacking coherence. Other branches of law originate from different legal systems. As a result, legislation is not harmonized. Concrete displays of the lack of harmonization are clashes between provisions that contradict one another, repetitions, inconsistent handling of the same concepts in different laws, the use of unclear terminology, etc. The consequences of this legal cacophony are mostly displayed in the marked lack of efficiency of the justice system but also its ability to deliver justice.

Another factor identified by the Justice System Analysis that has had an impact on the current state of the justice system, and one that is even more important, is the prevailing

presence of corruption in the system. Here, we also need to add the low level of professionalism of justice officials.

The weakness of the justice system is even more evident in the context of the country's European integration process. In the context of this process, our legal system will be irreversibly and constantly exposed to concepts, rules and principles of European law, which will become an inseparable part of our domestic law. Our system, however, is not prepared for this challenge yet. In fact, aside from the aforementioned problems, our justice system is characterized by profound deficiencies in the knowledge and implementation of standards of the European Convention on Human Rights (ECHR) and the jurisprudence of the ECtHR, knowledge of EU directives and treaties, applicable legislation in the context of European integration, the jurisprudence of the European Court of Justice and the ability to be oriented by and refer to these standards.

In the face of these major problems and challenges, there is a natural need for a root-deep change of the situation in the justice system. This need dictates a profound and sustainable constitutional and legal reform that will address effectively the challenges of today and will guarantee the European future of the country.

With regard to the lacking quality and coherence of the legal system, justice reform will seek to create a coherent legal system that will respond to our legal tradition, the country's needs and level of development and that need to enable our sustainable economic and social development in the future. This means efforts to create a consolidated, systemized and harmonized system within itself and with international standards and one that is uniformly applied by justice system institutions. This is expected to give a strong impetus to the efficiency of the justice system and the culture of the implementation of the law.

With regard to the problem of corruption, justice reform will create the conditions for the corps of judges and prosecutors to meet the highest standards of integrity and ethics through conceiving, approving and rigorously applying systems for continued monitoring and testing of moral, ethical and psychological integrity of judges and prosecutors, as a criterion for remaining in office. Systems for the professional performance review of judges and prosecutors will be perfected and their results will be transformed into exclusive criteria for the progress of magistrates in their career.

As pertains to the challenge of integration, justice reform will aim at a justice reform whose main actors – judges, prosecutors, lawyers, notaries, bailiffs, mediators – possess the moral integrity and professional capabilities to apply the standards of European law in Albania.

Pursuant to the overall goal of the reform explained above, this strategy pursues some specific goals for reforming the justice system in order to make it:

- Independent from any influence;
- Impartial in its functioning;
- Responsible, accountable, with high moral and professional integrity in all of its structural levels;
- Efficient and professional;

- Credible, transparent and accessible to the public;
- Cooperative at the institutional level when decision-making powers are exercised for the appointment of senior officials of the system.

**Reform in the justice system has been conceived on the basis of 7 main pillars** that together constitute the complete establishment of the justice system in the country. Namely, these pillars are:

- I. The justice system according to the Constitution and the Constitutional Court,
- II. Judicial power,
- III. Criminal law,
- IV. Legal education and legal schooling,
- V. Legal services and free professions,
- VI. Measures in the fight against corruption,
- VII. Funding and infrastructural support for the system.

These 7 pillars are also the main components of the analytical document “Justice System Analysis” in Albania. The document will be subjected to a transparent process of consultations with engaged citizens, with the actors of the system, interest groups and civil society, always keeping in focus the overall goal of creating a justice system that is credible, fair, independent, professional and oriented toward services, open, accountable and efficient, one that enjoys the confidence of the public, supports the sustainable social-economic development of the country and enables its integration into the European family.

## **I. THE JUSTICE SYSTEM ACCORDING TO THE CONSTITUTION AND THE CONSTITUTIONAL COURT**

The Constitution of the Republic of Albania has reviewed three times since it went into effect in 1998. The experience of recent years has shown that constitutional changes, especially those of 2008, have had a negative impact on the organization and functioning of the justice system.

The Justice System Analysis, which preceded the drafting of this document, found that some of the main problems that affect our justice system originate from the way in which the Constitution regulates some aspects of the organization and functioning of institutions of the justice system and the interaction between them. In other words, the Constitution has not managed to fully guarantee the independence, accountability and efficiency of the main justice institutions prescribed in the Constitution. As a result, it is not possible to realize a profound and successful reform of the justice system without the review of relevant provisions of the Constitution.

The purpose of the constitutional amendments is to reinstate constitutional balances in order to guarantee the functioning of the justice system according to the principles of the rule of law and in respect of the fundamental principle of the mutual checks and balances of powers.

In more concrete terms, the proposed constitutional reform and reform of the Constitutional Court will focus on realizing the following specific objectives:

### ***Objective 1.***

#### ***Preservation of the balances that derive from the role of the President of the Republic in the justice system and guaranteeing cooperation between constitutional institutions***

The President has a very important balancing role in the justice system. The successful fulfillment of this role should be guaranteed by the responsibilities that the Constitution grants to the President vis-à-vis the justice system, the manner of the president's election as well as the instruments that enable cooperation between the President and other constitutional institutions.

The measures that will be undertaken to realize this objective require constitutional amendments and the approval of a material law for the institution of the President of the Republic, reflecting also the best standards and practices in this area. They seek to guarantee the independence of the President in exercising the functions related to the justice system, to reframe the President's position vis-à-vis the judiciary, adjusting the competences of the President with the formula to be applied for the election of the President. This means that a President elected in a consensual manner will need to exercise more responsibilities vis-à-vis the judiciary. The opposite should take place if the President is elected by a simple majority. Another goal of the constitutional reform with regard to the President will be to avoid frequent constitutional disagreements between the

President and other constitutional institutions (e.g. the parliament) in order to make cooperation between the two as effective as possible.

***Objective 2.***

***Reframing from a constitutional standpoint of institutions related to the judiciary, such as the High Court, the High Council of Justice, the Prosecutor General, with the main goal being to guarantee a judicial branch that is independent, impartial, effective and accountable***

One of the priorities of justice reform that we expect to realize through constitutional amendments is to transform the High Court into a court of law whose main or exclusive duties will be: (i) to guarantee the uniform interpretation of the law through the process of unifying judicial practice; and (ii) to guarantee reasonable length of adjudications by the lower courts.

Constitutional norms that regulate the makeup, manner of appointment of members, responsibilities and the manner of functioning of the HCJ will need to be reviewed in order to guarantee the independence, accountability, quality of membership and efficiency of this important constitutional body and, through it, the good governance and independence of the judiciary as well as the status and impartiality of judges.

The constitutional reform will seek to strengthen guarantees for the independence, integrity and efficiency of the prosecutor's system through the review of the constitutional formula for the appointment, dismissal, or limitation of the mandate of the Prosecutor General, but also through the review of the manner in which the prosecutor's office system is organized.

The constitutional reform will seek to create a special constitutional body, with clear responsibilities and appropriate tools, for the review and punishment of disciplinary violations of members of the Constitutional Court and the High Court.

***Objective 3.***

***Guaranteeing the independence and effectiveness of the Constitutional Court from a constitutional standpoint***

The Constitutional Court has a very important role in the constitutional system of any democratic country. It guarantees the application of fundamental constitutional principles by all constitutional institutions, as a function of the protection of the rights and freedoms of the individual. The Justice System Analysis has identified problems with regard to the independence of the Constitutional Court and with effectiveness of its decisions. On the basis of these findings, the proposed constitutional reform will review the process for the appointment of members of the Constitutional Court, the rules having to do with the judge's remaining in office beyond the constitutional mandate, cases of expiry of the mandate and dismissal from duty, modalities for the resignation of a constitutional judge, and the partial renewal of the Constitutional Court.

In more concrete terms, the proposed constitutional amendments will seek the:

- proper definition of rules for the conduct of the process for the appointment of constitutional judges by including rules and criteria for the selection of candidates in respect of independence, impartiality and the principle of constitutional loyalty;
- establishment of clear qualifying criteria in order to guarantee high quality membership of the Constitutional Court;
- avoidance of the politicization of the process for the appointment and makeup of the Constitutional Court through provisions that guarantee broad support for candidates in the Assembly, including mutual control of the parliamentary majority and minority on the voting process in order to balance the powers of the parliamentary majority;
- guaranteeing of the collegial functioning of the CC and avoiding the prolonged service of members in order to preserve the constitutional principles of the independence and impartiality of the CC;
- respect for the length and untouchability of the constitutional mandate;
- review of constitutional provisions in order to create clear modalities and mandates with regard to issues that have to do with the dismissal/completion of the mandate of judges;
- inclusion of constitutional judges in the system of accountability and responsibility through clear material and procedural regulations of their disciplinary responsibilities, by prescribing that the system for their disciplinary accountability is under the authority of a special disciplinary tribunal or under the authority of the Constitutional Court itself;
- clearer identification of issues related to the jurisdiction of the Constitutional Court, seeking to avoid it as a fourth instance of adjudication, as well the clarification of the legitimacy of conditioned and unconditioned subjects that initiate cases for constitutional adjudication.

#### ***Objective 4.***

##### ***Increasing the efficiency and effectiveness of the Constitutional Court at the legal level***

The Constitutional Court is a constitutional body whose mission is to preserve the constitutionality and protection of fundamental human rights and freedoms. It functions as an independent body that has the competence to invalidate public power acts and decisions by ordinary courts, when these are in contravention of the Constitution and international agreements.

Based on these peculiarities and referring to its 23-year old practice, the Constitutional Court has had an important and irreplaceable role in the establishment of and respect for constitutional principles such as: the division and balance of powers, the rule of law, democracy, hierarchy of normative acts and the supremacy of the constitution, respect for human rights, legal certainty, etc.

However, this body too, in the course of its practice, has encountered some constitutional and legal obstacles that, as a result, have led to some cases of its non-efficient functioning from an organizational viewpoint or its not being effective in the exercise of competences that the Constitution accords to it.

The main objectives with regard to the effectiveness of the Constitutional Court will be achieved through interventions in the material law **by aiming at:**

- alignment with the Constitution of subjects legitimized to address the CC according to the CC's organic law through inclusion also in the law of subjects prescribed by article 134/1 of the Constitution;
- foreseeing more reasonable deadlines for some of the procedures prescribed in the material law of the CC in order to guarantee citizens' legal certainty and the compatibility of these deadlines with the ECtHR practice;
- guaranteeing the constitutional exercise of functions by some senior officials by prescribing detailed procedures for the verification of their electability (e.g. of members of parliament) and deadlines related to the start of procedures for the declaration of the incompatibility of the MP's mandate;
- prescribing detailed procedures for the dismissal of the President, review of a referendum, constitutionality of political parties, dismissal of mayors and dismissal of local government bodies, granting consent for the detention or arrest of the constitutional judge or judge of the High Court caught in the act of committing a crime, continuation of adjudication when the case under review does not have an object, avoiding the blocking of decision-making of the Constitutional Court due to lack of a majority required by law;
- guaranteeing the efficiency in control of referenda through the drafting and approval of a special law on referenda for the regulation of holding and organizing a referendum, as an important instrument of direct democracy;
- effectively protecting and guaranteeing fundamental rights and freedoms of the individual by prescribing procedures that are lacking in the law on the Constitutional Court;
- establishment of effective mechanisms in order to oblige relevant institutions to implement its decisions for reinstating the violated right of the individual, according to findings of the Court, in accordance with article 13 of the ECHR;
- alignment with the Constitution of legal provisions related to the juridical power of Constitutional Court rulings and clarifying the retroactive power of these decisions;
- regulating the legal status of Court's legal advisors, as an irreplaceable link in its decision-making that guarantees its quality and efficiency;
- considering the possibility of establishing reasonable and proportionate fees for setting the CC into motion without violating the access of subjects to this court.

### **Possible constitutional and legal amendments.**

With regard to Pillar I of justice reform: "Justice system according to the constitution and the Constitutional Court," based on the findings and problems encountered by the Analytical Document and pursuant to relevant objectives and measures outlined in this Strategy, we prescribe the following main amendments to the:



- Constitution, Part IV “President of the Republic,” Part VIII “Constitutional Court,” Part IX “Courts,” Part X “Prosecutor’s Office” Part XI “Referendum.”
- Drafting of a material law on the President of the Republic
- Law “On the organization and functioning of the Republic of Albania”
- Law “On the organization and functioning of the High Court of the Republic of Albania”
- Law “On the organization and functioning of the High Council of Justice”
- Law “On the organization of judicial powers in the Republic of Albania”
- Law “On the organization and functioning of the prosecutor’s office in the Republic of Albania”
- Law “On referenda,” etc.

## **II. JUDICIAL POWER**

Judicial power is the foundation rock for the functioning of democracy and the rule of law as well as a guarantee for the protection of individual's rights and freedoms. The proper functioning of this power is an essential condition for the European Union integration process, the development of democracy and the consolidation of the rule of law.

The problems highlighted in the Analysis of the Justice System are related to almost all aspects of the organization and functioning of the judicial power. These problems include the lack of independence and impartiality, widespread corruption among judges and the judicial administration, the lack of professionalism, accountability and transparency, efficiency and the marked lack of the public trust in the justice system.

Reform in the judiciary will address all the highlighted problems through necessary constitutional and legislative interventions that are organized along the following main objectives:

### ***Objective 1.***

#### ***Increasing access and effectiveness in the judicial system through the reorganization of courts in accordance with European standards***

The realization of a capillary reach of the judicial service throughout the inhabited territory of the Republic through its territorial reorganization in such a way as to guarantee citizens' access to this service, effectiveness of judicial services, increased speed of adjudication, effective control of legal and factual violations of lower courts by the higher ones and the proportionate distribution of average caseload per court and per judge.

In more concrete terms, constitutional and legal amendments with regard to the organization and functioning of the judicial power, will **aim at**:

- the reorganization and distribution of courts and judges in accordance with the new territorial division, their rapport vis-à-vis population numbers and influx of cases in accordance with European standards;
- capillary reach of judicial services throughout the inhabited territory of the Republic and the expansion of the scope of disagreements to be adjudicated by one single judge;
- clearer legal definition of the jurisdiction of all kinds of courts (civil, administrative and criminal) in order to avoid conflict of competences, overload of some courts, prolongation of adjudication and to minimize the service of acting judges, especially from ordinary courts to specialized ones;
- review of the boundaries of the review competence of the High Court, the appeals courts and their organization in order to avoid unreasonable dragging of judicial process;
- strengthening of the role and functioning of the first instance court, also looking at the possibility of reorganizing this court at two levels: a) District Court for the adjudication of lawsuits of minor worth, lawsuits without litigating parties, pure

administrative cases, etc., and b) Regional Court that will adjudicate all other cases and complaints against District Court decisions;

- creation of the conditions for the specialization of judges in order to guarantee their professional growth.

## ***Objective 2.***

### ***Guaranteeing the independence and effectiveness of the High Court***

The High Court is the last instance court in the judicial system (criminal, civil and administrative). According to the Constitution, the High Court has initial and reviewing jurisdiction. Due to its position and role as a court of law, the High Court checks the way that the material and procedural law is implemented by the lower instance courts. The Constitution has also granted the High Court the authority to unify or change judicial practice.

Guaranteeing the independence and effectiveness of the HC is one of the main objectives of the reform given the important function of the High Court in the justice system.

Considering its important role and based on the problems identified for the High Court in the Justice System Analysis, constitutional and legal amendments regarding the High Court will **aim at**:

- reviewing the possibility of making the HC an integral part of the judicial system, by considering the possibility of extending HCJ competences over it;
- prescribing constitutional criteria that candidates should meet for appointment to the HC in order to guarantee high quality membership of the HC;
- consolidating the HC as a “career court,” whereby the majority of members of the High Court will be judges promoted from the lower instances of the system;
- prescribing a representation quota for the HC of candidates from outside the system (academicians, faculty, known jurists from other sectors, etc.) in order to guarantee the diversity of professional standpoints, soliciting the most advanced academic views, developments in international standards, as well as jurisprudential achievements of international courts in the HC adjudication practice;
- detailed prescription in the law and strengthening of the criteria and procedures for the promotion of judges in the HC;
- detailed prescription in the law of the criteria and procedures for the selection and appointment of external candidates to the HC, in order to reduce the discretion of relevant bodies and ensure the election of the best candidates;
- review of the appointment formula for HC members who do not come from judiciary ranks by prescribing an exclusive role of the HCJ in this process or a cooperation between the HCJ and the President to enable transparency and objectiveness of the process and, most importantly, the election of the best candidates;
- guaranteeing the independence and impartiality of the HC by regulating the issues that have to do with the extension of the constitutional mandate of high judges by considering the possibility of an indefinite term in office;

- eliminating unclarity with regard to the dismissal/completion of the term of the high judge;
- reviewing and clarifying the jurisdiction of the HC in order to enhance its profile as a court of law through constitutional and legal interventions that will seek to: (i) strengthen the competences of the HC for the implementation of HC competences for unified implementation of the law; (ii) limit the jurisdiction of the HC to review lower court rulings only for important reasons of the law; (iii) strengthen HC competences to control respect for the principles of a fair trial; (iv) granting the competence to adjudicate disagreements between courts, etc.
- reviewing constitutional provisions with a view to removing HC initial jurisdiction as a function of guaranteeing the equality of citizens before the law, guaranteeing the right to effective redress and increasing efficiency in the fight against corruption.

### *Objective 3.*

#### *Good governance of the judiciary as a function of its independence, accountability, efficiency and transparency*

A judicial system is viewed as having good governance when it is independent, accountable, efficient and transparent. On the other hand, self-governance is the best manner of guarantee the good governance of the system. There is no doubt that self-governance is the best way to guarantee its independence from external interferences. Furthermore, there is increasing consensus that self-governance is the best way to guarantee also the other characteristics of the judiciary such as accountability, efficiency and transparency.

The analysis of the Justice System has highlighted a series of problems in the area of governance of the judiciary. These problems include: (i) fragmentation of responsibilities of governance in too many hands; (ii) weak role of the High Council of Justice due to the lack of competences in important areas of governance (e.g. judicial administration, budget, training, etc.) and capacities; (iii) weak role of the National Judicial Conference (NJC) in strengthening ethics in judicial ranks and protecting its interests; (iv) the tendency for judicial corporatism as a result of the current makeup of the HCJ, whereby 2/3 are judges; (v) poor level of collegiality in HCJ work as a result of its members' part-time engagement; (vi) poor quality of HCJ membership as a result of shortcomings of procedures and criteria for the selection of HCJ members; (vii) overlapping of HCJ and Minister of Justice competences with regard to court inspections and the review of complaints against judges; (viii) lack of clarity with regard to the role of the Minister of Justice in the area of judicial administration, especially with regard to the case management system, public and media relations, court security and the management of administrative support personnel, etc.

Based on the above-mentioned problems, amendments of a constitutional and legal character that will be undertaken in order to fulfill the objective of good governance of the judiciary will **aim at**:

- critical review of the current distribution of responsibilities between the institutions for the governance of the judiciary (*High Council of Justice, the Minister of Justice, Office for Judicial Budget Administration and the School of Magistrates*), seeking to strengthen HCJ's role, the clear division of responsibilities of governance between institutions of justice and the executive, avoiding the fragmentation of responsibilities and encouraging the process of institutional cooperation;
- Reviewing the makeup, formula for the selection and appointment of members, and the manner of functioning of the HCJ, making the necessary constitutional and legal interventions for:
  - i) prescribing the criteria that HCJ members should meet in order to guarantee the quality, professionalism, high moral and professional integrity of members;
  - ii) clearly defining the situation of conflict of interest, disciplinary responsibility and the creation of institutional accountability mechanisms for the HCJ and individual responsibility of its members;
  - iii) narrowing the current difference between the number of members from judiciary ranks and external ones, with members of the judiciary preserving a majority of seats on the HCJ;
  - iv) prescribing a formula for the appointment of HCJ judicial members that guarantees proportional representation of all three instances of the judiciary;
  - v) prescribing a formula for the appointment of HCJ members who are not judges that would reduce the discretion of the Assembly, including in the candidate selection process proposals from lawyers, academia, civil society, School of Magistrates, etc., and the review of candidates and their ranking by an *ad hoc* advisory committee;
  - vi) prescribing that the Minister of Justice and the President are not part of the HCJ;
  - vii) prescribing that the HCJ will elect its own chairperson;
  - viii) prescribing that HCJ members will exercise their functions full time and will return to their prior position upon completion of the mandate;
  - ix) organizing the HCJ in two chambers, if the Prosecutor's Office will be part of the judiciary, namely the Council of the Judiciary and the Council for the Prosecutor's Office, which will have separate competences, namely for judges and prosecutors;
  - x) the functioning of the HCJ with three permanent committees (independently from whether it will have one or two chambers), namely: Disciplinary Committee, Career Evaluation Committee and the Administration Committee, which will have full decision-making competences in the relevant areas and complaints against their decisions will be reviewed by the plenary meeting of the HCJ;
  - xi) defining clear procedural rules for all processes conducted by the HCJ in order to ensure a transparent decision-making process;
- creating the opportunities for structures responsible for governing the judiciary to have the proper capacities for the development of sector policies and strategies;
- elimination of the National Judicial Conference;

- establishing, as a rule, the compulsory drafting of Annual Activity Reports for the High Council of Justice, the Constitutional Court, the High Court, and the Prosecutor General, to be presented to the parliament and public opinion, based on relevant European models in this area.

#### ***Objective 4.***

#### ***Consolidation of guarantees for the status of the judge, responsibility and accountability in the exercise of duties in accordance with European standards***

The status of judges is in essence a system of personal guarantees as a function of the independence and accountability of the judicial power. In more concrete terms, constitutional and legal guarantees on the status of the judge are related mainly on the manner of their appointment, career management, guarantees for remaining in office (immovability) except for cases and situations that are clearly prescribed by law, as well as to the financial and non-financial benefits in the course of the exercise of duty and upon the completion of duty.

Naturally, these guarantees are not absolute and not a goal in themselves. They serve the major purpose of independence of the judiciary and the impartiality of judges and should be accompanied by a clear and effective accountability system, without which there can be no functional and responsible justice system.

The Analysis of the Justice System identified problems that relate to all aspects of the status of the judge, starting from appointment, promotion, evaluation, disciplining and financial treatment.

Based on the findings of the Analytical Document, legal amendments that will be undertaken to realize this objective (consolidation of guarantees, responsibility and accountability) **seek to:**

- clarify and codify (inclusion in one law) provisions related to the status of the judge (criteria for selection as judges, appointment and transfer procedures, promotion procedures, disciplinary process, cases of dismissal from duty and all other elements of the status);
- guarantee that the process of appointment and promotion of judges will be based on transparent, objective and merit-based criteria such as qualification, integrity, professional capability and purity of judicial condition (lack of criminal precedents);
- review the continued training and periodical evaluation system of judges for career purposes, by further expanding and strengthening objective criteria for measuring professional skills of judges, as well as by conceiving and implementing criteria and tests for the measurement of their moral and psychological integrity;
- prescribe at the constitutional level that all judges and prosecutors of all three levels, including constitutional judges, are subject to discipline responsibility and the clear and objective listing in the law of all disciplinary violations and sanctions proportionate to violations;

- regulate clearly the concept of “professional insufficiency” and the legal provision that marked professional insufficiency, categorized according to a point system, pursuant to an evaluation and re-evaluation process, will be grounds for taking disciplinary measures against judges;
- establish an independent inspectorate, tasked with the responsibility to investigate disciplinary violations of judges and conduct other inspection services on the courts;
- develop disciplinary proceedings against judges and prosecutors at two instances of adjudication, before the Judicial Council in the HCJ (first instance) and before the Disciplinary Tribunal (second instance). The disciplinary tribunal will be an ad hoc body, consisting of members and deputy members (majority being active judges and minority being non-judges);
- develop the disciplinary process in accordance with the principle of due process that enables respect for the rights of the judge being investigated and the enactment of sanctions proportional to the committed violation;
- describe in as detailed a manner as possible in the law of procedures that ensure the selection of candidates for magistrates and their confirmation for career, relying on objective and transparent criteria; review of the minimal age limit to be appointed judge (or prosecutor); establishment of a 3-year probation period for young and newly-graduated judges (or prosecutors);
- create an inclusive system for the career development of judges and the establishment of a grade system during the career, accompanied by financial treatment and additional benefits depending on the grade level;
- define clearly and fully the rights, obligations of the judge and the incompatibility with the exercise of the function in the special law on the status of the judge (see above);
- deeply improve the financial treatment and support measures for judges and their families and establish guarantees for the financial treatment of judges and their families even upon completion of their duties;

***Objective 5.***

***Guaranteeing transparency of the judicial power and the right to due legal process in accordance with European standards***

Transparency of the judiciary is a distinctive characteristic of developed democracies. Guaranteeing transparency of the judiciary is indispensable not only for changing the image of the system and increasing public trust in the judiciary and the justice system overall, but also to increase responsibility, professionalism and quality in decision-making. The publicity of judicial activity, public access to justice and the openness of this activity to the society through communication with the public are essential preconditions for a functional justice system.

The Justice System Analysis highlighted problems with regard to transparency of the judiciary with regard to the way court hearings are conducted, the announcement of decisions, the notification of parties, reasonable deadlines for adjudication, courts’ relations with the public and the media, access to the judiciary, etc.

Based on these findings, in order to achieve this objective (guaranteeing transparency and due legal process), legal amendments will **seek to**:

- increase the transparency of the courts, access of private individuals to justice bodies and public access to court hearings, as well as the strengthen relations between courts on the one hand and the media/public on the other, through amendments to procedural legislation;
- guarantee effective redress means to judicial rulings, increase efficiency and speed of adjudications, avoiding the dragging out of judicial processes;
- improve the notification system, prescribing of effective means and mechanisms that prevent the postponement of adjudications, through relevant amendments to procedural legislation;
- eliminate problems related to judicial tariffs and obstruct citizens' access to the judicial system and equip the state institution that should provide free legal aid to vulnerable citizens and groups with the necessary human, financial and infrastructure resources;
- improve the quality of arguments in judicial decisions and submit the ruling at the same time as the arguments for it;
- establish the obligation to publish judicial rulings *online* in a timely fashion;
- regularly conduct sociological measurements of citizens' opinion of justice, through specialized bodies that conduct studies, surveys and sociological research;
- improve and develop relations with public in judiciary activity, open justice to the society through communication with the public as an important tool for building credibility of the judiciary;
- create Judicial Access Offices that will serve as instruments to inform and realize daily, effective and professional communication with the public, media, groups of interest and civil society;
- publish annual and periodical public reports of information about court activity;
- support public information means (press, broadcasters, etc.) to give them the opportunity to inform the public in a fast, professional, critical and real manner about the functioning of the justice system;
- draft regulations, good practices or guidelines that regulate the relations of judges and prosecutors with mass media outlets and individuals;

#### ***Objective 6.***

##### ***Increase the efficiency of the judicial administration in accordance with European standards***

One of the main factors for the proper functioning of the judicial system is judicial administration personnel (not judges). The role and functioning of the judicial administration may not be separated from the function of delivering justice and represents an important element of the organizational independence of the judicial power.

Problems highlighted in the Analysis of the Justice System with regard to the status of judicial administration personnel and the conditions of information technology systems in



courts make it essential to increase the efficiency of the judicial system in accordance with European standards.

Legal measures to be undertaken to achieve this objective **seek**:

- administrative, functional and infrastructure reorganization in order to ensure a capillary distribution of judicial services throughout the country's inhabited territory, as a condition for guaranteeing equal access of every individual to justice;
- assignment of judges and/or court judicial structures to leadership functions of court administration seeking a clear division of these competences, relying on objective criteria of career hierarchy, professionalism and merit;
- reform of the judicial administration seeking to regulate its status, the establishment of criteria that guarantee the professionalism, integrity, impartiality and selection on the basis of a selection, competitive and transparent process and the creation of a career system that enables the continued qualification and training of this personnel;
- establishment of clear regulations for the process of the selection and appointment of judicial administration personnel in order to guarantee professional and political influence-free personnel;
- increase of efficiency of judges through the assistance of legal assistants in the courts of all three levels and the prescribing by law of their maximal number per judge, in accordance with European standards;
- improvement of efficiency of generation of statistics in judicial governance institutions and in courts, through the integration of modern information system technologies for the input, processing, management, administration and publication of information;
- expansion of the application of information technology in the judicial process and beyond;
- consolidation of a functional and unique case management system that guarantees transparency and responsibility in the court's work.

### ***Objective 7.***

#### ***Creation of a new rapport of our judicial system with European Courts***

The judicial system will feel challenged by the dynamics of the integration process. Albanian law will experience a challenging evolution it never saw before, being irreversibly and continually exposed toward European law concepts, regulations and principles, with the meeting point being the obligations deriving from the European Union membership process. Preparing the Albanian judge for this process is decisive and an inevitable test for the country's profound transformation through guaranteeing the application of European standards in practice.

In order to achieve this objective, legal amendments will aim:

- prescribing in Albanian legislation an efficient mechanism for the execution of decision of the European Court of Human Rights (ECtHR), including the taking of measures that are of a general regulatory nature or that seek to unify practice;
- creation of a special structure at the Ministry of Justice as a function of preparing necessary legislative amendments toward harmonization with ECtHR jurisprudence;
- creation of institutional cooperation mechanisms to encourage “judicial dialogue” between the Constitutional Court, the High Court and ECtHR in order to ensure the harmonization of domestic judicial practice with the jurisprudence of the European Justice Court;
- gradual transformation of the School of Magistrates into a resource center for judges that will be the meeting point between Albanian practice and the jurisprudence of the European Court of Justice and the European Court of Human Rights;
- establishment of objective and measurable criteria in the judges evaluation system of the way in which the judge refers to the jurisprudence of the European Court of Justice and the European Court of Human Rights.

#### ***Objective 8.***

##### ***Increasing the effectiveness of the justice system through the implementation of judicial rulings and arbitration decisions in accordance with European standards***

The execution of judicial rulings represents an essential element of the rule of law and is considered the final phase for the realization of a judicially earned right. Only upon completion of this phase may it be considered that the individual has fully reinstated his earned right. The process for reinstating a violated right requires not only the decision-making of courts, but also the concrete actions of responsible bodies that are tasked with the execution of final judicial rulings.

The Justice System Analysis found deficiencies in the execution of judicial rulings; therefore, the strategy for achieving this objective focuses on legal amendments that **seek to:**

- guarantee the implementation of administrative, civil, commercial and criminal judicial rulings within a reasonable deadline, through the proposal of a package of legislative, infrastructural and budgetary measures, which first requires the establishment of an efficient monitoring and control system for the implementation of judicial rulings;
- clearly highlight responsibilities, duties and sanctions on all subjects, particularly state institutions responsible for the execution of judicial rulings in accordance with international acts;
- increase professionalism through strengthening capacities in providing the bailiff’s office services and the prevention of corruption within the private and state bailiff’s system;

- prescribe legally the automatic mechanisms and clear procedures for the execution of ECtHR decisions and financial compensation as well as legislative measures of a general character or seeking to unify practice;
- guarantee the fair execution of criminal judicial rulings that assign special treatment for medical, educational, recaptivation or rehabilitation purposes of convicts through the establishment of specialized institutions in this regard;
- reflection of necessary legal amendments in accordance with international acts, for the purpose of executing arbitration decisions, looking at the possibility of drafting a new law on arbitration.

### **Possible constitutional and legal amendments.**

For pillar II of justice reform: “Judicial Power,” based on the findings and problems found by the Analytical Document and pursuant to objectives and relevant measures outlined in this Strategy, we prescribe the following main amendments to the:

- Constitution, Part IX “Courts;”
- Drafting an organic law on judicial power that will include amendments, additions and abrogations of laws or provisions in:
  - i. Law “On the organization and functioning of the High Court of the Republic of Albania;”
  - ii. Law “On the organization and functioning of the High Council of Justice;”
  - iii. Law “On the organization of judicial power in the Republic of Albania;”
  - iv. Law “On the organization and functioning of administrative courts and the adjudication of administrative disagreements;”
  - v. Law “On the organization and functioning of serious crimes courts;”
  - vi. Law “On the School of Magistrates;”
  - vii. Law “On the creation of the Office for Judicial Budget Administration;”
  - viii. Drafting a new law on the status of the judge;
  - ix. Drafting a new law on judicial administration.
- Civil Procedure Code;
- Criminal Procedure Code;
- Law “On the organization and functioning of the Ministry of Justice”
- Invalidation of the law “On the organization and functioning of the National Judicial Conference;”
- Drafting a new law on arbitration.

### **III. CRIMINAL LAW**

Criminal law is one of the main pillars of the rule of law. In our days, it faces new and sophisticated forms of criminality, which necessitate improvement of legislation and an increased effectiveness of the activity of specialized agencies in the fight against criminality.

Reform in criminal justice will focus on the realization of the following main objectives:

#### ***Objective 1.***

#### ***Increasing the efficiency of criminal law through the consolidation of the mission and functions of the Prosecutor's Office and through the reorganization of its structures and the redistribution of responsibilities between them***

At present, the Prosecutor's Office in the Republic of Albania is a centralized body and its constitutional function is to exercise criminal prosecution and represent charges in the trial process. The role of the prosecutor's office in guaranteeing the rule of law through combatting criminality in general and organized crime and corruption in particular is of fundamental importance.

The Justice System Analysis pointed out that the performance results of the prosecutor's office work do not respond to the proper extent and in the proper way to the current challenges of criminality and organized crime and corruption in particular. The analysis showed that this situation is determined by the following causes: (i) the entirely centralized and hierarchical organizational model of the prosecutor's office, which may be a cause for political pressure on the system and for violating internal independence of prosecutors; (ii) the limited advisory role of the Prosecutor's Office Council in the administration of cases related to the status of the prosecutor; (iii) deficiencies in the regulation of the status of the prosecutor; (iv) lack of effective mechanisms for prosecutor's responsibility and accountability; (v) lack of effective mechanisms for prosecutors' performance evaluation. At present, the Prosecutor General, as an institution, is characterized of strong hierarchical competences and concentrated powers on the cases of individual prosecutors, as well as on issues of career, transfers, and discipline. This limits the internal independence of the prosecutor's office. Likewise, this strong concentrated power over prosecutors places the system at the risk of external political interferences.

Amendments of a constitutional and legal character that will be undertaken to realize this objective will **seek**:

- reassessment of the constitutional position of the prosecutor's office, preserving the current model of organization as an independent institution or choosing the alternative of placing it in the judicial power, in the organizational and functional aspects;
- reorganization of the prosecutor's office by aiming at the: (i) guaranteeing internal and external independence of prosecutors and the prosecutor's office; (ii) review of the competences of investigation and representation of charges in court,

encouraging effective control and the balancing of these competences by responsible structures; (iii) territorial reorganization of the prosecutor's office in order to respond better to the organization of courts; (iv) ensuring sufficient independence of special structures of the prosecutor's office.

- clarifying and strengthening constitutional criteria for the appointment of the Prosecutor General.
- amending the process for the appointment of the Prosecutor General by attributing to the Prosecutor's Office Council the right to propose two qualified candidates to the President.
- amending the competences of the Prosecutor General, extending his mandate without the right to reappointment and envisaging guarantees with regard to the person's status and career upon completion of the term in office.
- amending the status and responsibilities of the Prosecutor's Office Council, transforming it into an independent constitutional institution or into one of the chambers of the High Council of Justice (should the model of the prosecutor's office within judicial power be chosen), seeking in both cases the strengthening of the Council's standing and its exercise of decision-making functions;
- amending the composition of the Prosecutor's Office Council by ensuring representation in the council of members who are not prosecutors but come from civil society, faculty, lawyers, etc. and a majority of prosecutors;
- establishment of clear regulations that discipline the hierarchical power of the highest prosecutor to respect the principle of lawfulness and the conduct of independent and objective investigations;
- creation of a Specialized Anti-Corruption Structure at the national level, which includes police, prosecutor's office and the court.
- creation of a consolidated system of data that will clearly and accurately inform the number and kind of cases that have been registered, initiated, and closed to final sentences, to be generated through the case management information system;
- making fully efficient the case management information system;
- improvement of legal and institutional measures that secure support with the required human, financial, technical and logistical resources and increased discovery and investigative expertise, equipment with contemporary technical means, etc.

## ***Objective 2.***

### ***Consolidating guarantees for the status of the prosecutor, responsibility and accountability in the exercise of duties.***

The process for the selection, appointment, promotion, transfer and disciplining of prosecutors should be independent, impartial, based on objective and transparent criteria such as professional qualification and experience, skills, moral and professional integrity. The Justice System Analysis found numerous deficiencies and unclarity in legal regulations and practices with regard to these issues. Among the main problems that were identified are: (i) lack of a standardized evaluation procedure for measuring the skills and integrity of prosecutors; (ii) lack of respect to the proper extent and in the proper manner for the principle of immovability of prosecutors; (iii) small number of disciplinary procedures and lack of criminal prosecution of prosecutors; (iv) poor professional skills of

prosecutors and judicial police officers; (v) lack of a clear division of responsibilities with regard to issues of performance evaluation, ethics, and issues of a disciplinary nature.

The legal amendments that will be undertaken to realize this objective **aim to:**

- guarantee that the appointment and promotion process of prosecutors will be based on transparent, objective and merit-based criteria such as qualifications, integrity, professional skills and purity of judicial status (lack of criminal precedents);
- grant decision-making responsibilities with regard to the prosecutor's status to the Prosecutor's Office Council, which will be a constitutional body or a chamber of the High Council of Justice, depending on the model for the reorganization of the prosecutor's office;
- envisage accountability of the prosecutor's office to the Assembly with regard to the exercise of criminal policies and their efficiency.
- create independent mechanisms, inside or outside of the prosecutor's office system, to inspect and take decisions with regard to prosecutors' disciplinary violations (depending on whether the prosecutor's office will be in the judiciary or not), prescribing guarantees that enable the conduct of due legal process and ensure effective redress remedies at a higher adjudicating instance;
- clearly define the causes for disciplinary responsibility and sanctions proportionate to the gravity of the violation, avoiding the possibility for arbitrary decisions;
- prescribe legally that marked professional insufficiency, categorized through a point system, pursuant to a process of evaluation and re-evaluation, will represent cause for taking disciplinary measures against prosecutors;
- describe in as detailed a manner as possible in the law of procedures that ensure the selection of candidates for magistrates (prosecutors) and their confirmation in career, based on objective and transparent criteria; review of the minimal age limit for someone to be appointed a prosecutor; establishment of a 3-year probation period for newly graduated prosecutors.
- regulate fully and on the basis of clear and objective criteria cases of transfer to a lower level job, at the prosecutor's office level or transfers, establishing as a compulsory element the consent of the prosecutor, except for cases when this is dictated by reorganizational needs;
- unify principles, standards, guarantees and procedures for professional training, selection, appointment, career moves, promotion, disciplinary responsibility of judges and prosecutors, taking into consideration the peculiarities of the prosecutor's office system;
- improve profoundly the financial treatment of working conditions for prosecutors for all levels and establish guarantees for the financial treatment of prosecutors and their families even after leaving office.

### ***Objective 3.***

#### ***Reorganization in its entirety of judicial police, strengthening and improving their status, professionalism, responsibility, accountability and efficiency***

In the current criminal justice system in Albania, judicial police has a key role in criminal investigations and, as a result, in the efficiency against organized crime and corruption in

particular. Many problems of today that are related to the poor quality of investigations, criminal prosecution and impunity of perpetrators of criminal offenses, especially those that pose a high risk to society, have to do with the weak and inefficient role of this structure in the investigation system.

The Justice System Analysis found several causes for the poor level of judicial police work, such as: (i) insufficient control of prosecutors on the work of judicial police officers; (ii) dual dependence of judicial police officers on the executive and the prosecutor's office; (iii) lack of initial and continued training programs for judicial police officers; (iv) lack of specialists of different areas of expertise that require special technical knowledge; (v) lack of a coherent, specialized investigation structure that is specialized and focused on conducting investigations, in spite of dual dependence.

The reform of judicial police seeks to create a structure concentrated on a more limited group of criminal offenses that are more complex and to grant attributes for the investigation of lighter crimes to the police. Judicial police will have the necessary expertise and human resources to undertake investigations under control of the prosecutor's office. One example could be the creation of a national judicial police (maybe National Bureau of Investigations) to support prosecutors of the Specialized Anti-Corruption Structure.

For the realization of this objective, legal amendments will **aim at**:

- the structural and functional reorganization of judicial police, seeking to increase its responsibilities in the conduct of proactive, professional and efficient investigations in the fight against criminality, under the leadership and supervision of the prosecutor;
- clarification of the roles of the Prosecutor and of Judicial Police by turning the prosecutor into a supervisor of criminal investigation, by delegating competences for the investigation and part of procedural actions, during the investigation, to Judicial Police;
- regulation of the rapport between the number of prosecutors and the number of judicial police officers, according to the prosecutor office's internal organization and the caseload and issues of criminality in certain areas;
- strengthening professional, ethical, and moral criteria in the recruitment and promotion of judicial police officers, by aiming to create a system that enables appropriate professional education, the development of a sustainable career and continued training and qualification;
- envisaging mechanisms to solicit the contribution of specialists and technical experts to the judicial police structures;
  - guaranteeing adequate material, financial and human resources for Judicial Police, seeking at the same time to attract experts of different areas to this structure.

#### ***Objective 4.***

***Strengthening procedural guarantees in the phase of preliminary investigations and during adjudication in the first instance and appeals courts.***

Criminal procedure law prescribes the rules for the conduct of the criminal process in all of its phases, starting from the investigation, adjudication, issuance of the decision, and the implementation of the decision. The Justice System Analysis highlighted some problems that weaken procedural guarantees during the criminal process. During the investigation phase, these problems include: (i) lack of clarity with regard to the position and role of the prosecutor in the initial investigation phase; (ii) lack of compatibility between time deadlines for investigation and the type of crime being investigated; (iii) lack of definition of concrete consequences for cases when investigation deadlines are surpassed; (iv) lack of clarity with regard to the prosecutor's position in the conclusion of investigations and in checking them. Problems highlighted for the adjudication phase include: (i) lack of efficiency of adjudication; (ii) surpassing of the reviewing competence by first instance, appeals courts and the criminal college of the High Court, etc.

Given that the Criminal Procedure Code is being reviewed by a working group set up by the Ministry of Justice, the CPC for Justice Reform will ensure that the objective in question (strengthening procedural guarantees...) will be fulfilled by bringing to the attention of the working group the indispensability of undertaking the following measures:

- strengthening the role and position of the prosecutor in leading, controlling and conducting preliminary investigations;
- guaranteeing procedural instruments and reasonable deadlines for the conduct of investigative actions, in accordance with the complexity of the case;
- conduct of adjudication in an uninterrupted manner;
- increase of the authority of the court in disciplining and smooth conduct of the criminal adjudication;
- prescribing necessary legal mechanisms that enable the participation of the defendant and/or his defense lawyer in adjudication to avoid adjudication in absentia;
- improvement of regulations for notifying parties;
- improvement of regulations with regard to complaints, which will fasten adjudication and alleviate current caseload of the higher courts;
- prescribe other amendments, in accordance with EU standards for external jurisdiction relations and European Arrest Warrants.

#### ***Objective 5.***

##### ***Improvement of the Criminal Code in order to harmonize it with EU standards.***

The implementation of the criminal law is one of the key indicators of respect for the principle of the rule of law. The Albanian Criminal Law was initially approved in 1995, but has been often amended during the 20 years since it went into effect. As a result, the Criminal Code has lost its internal coherence. Furthermore, in the current form, the Code does not reflect some of Albania's international standards and some EU standards that will be obligatory in the future. Likewise, some decisions of the European Court of Human Rights cast doubts on the compatibility of some provisions with the ECtHR.



The Justice System Analysis has highlighted several problems and shortcomings of a formal and structural nature of the Criminal Code. They include: (i) insufficient regulation of main concepts such as causal relationship, collaboration, competition of criminal offenses, etc.; (ii) unclear and contradictory formulations between different articles; (iii) sentences that are not adequate for the significance of some criminal offenses; (iv) lack of harmonization with the Council of Europe Convention against Trafficking in Human Beings (2015); (v) lack of harmonization with Directives 2006/12/EC, 2005/35/EC, and 2008/99/EC of the European Parliament and European Council, which regulate crimes against the environment.

In the context of fulfilling the objective of improving the Criminal Code and harmonizing it with international standards, legal amendments will **seek to**:

- avoid lack of clarity and prescribe accurate concepts and definitions regarding terms used in the CC;
- clarify and complete some terms and institute/concepts of the Criminal Code and particularly criminal provisions related to the concepts of the statute of limitations, amnesty and rehabilitation;
- review and clarify measures and criteria for criminal punishment for a large part of criminal offenses;
- harmonize prescribed criminal offenses and sanctions with European standards;
- assess the possibility for amendments in the short term or/and plans for a new Criminal Code.

#### ***Objective 6.***

##### ***Increasing the effectiveness of the criminal justice system***

The general objective of reform in the penitentiary system is to increase public security and the general and special prevention of criminality through the concepts of rehabilitation, humane and dignified treatment and the protection of convicts' rights.

In Albania, unlike in many other countries, the Prosecutor's Office is responsible for the execution of criminal decisions or for the request to change a sentence. In most other countries, this role is overseen by the courts with the help of the probation service. Albania has a developing probation service, which enables alternative sentences to imprisonment. As a long-term goal, there needs to be a more efficient process for the execution of sentences through court oversight. The Justice System Analysis highlights problems with regard to the lack of Special Institutions for the execution of medical remand measures "Compulsory Medication in a Medical Institution" and educational measures for juveniles less than 14 years of age who do not bear criminal responsibility because of their age.

Legal amendments to achieve the above objective will **aim to**:

- Improve the existing legal framework with regard to the execution of education and medical remand measures and the creation of Special Institutions for the execution of these measures.

- guarantee the just and unified execution of judicial rulings in respect of the principle of the freedom and safety of the person.
- reconfigure the role of the court and the prosecutor in the execution of criminal decisions, seeking to increase the effectiveness of the execution system.
- clarify CC provisions with regard to alternative sentences and the criteria that should be fulfilled for their implementation;
- alignment of the legal framework for international judicial cooperation in the criminal area with the *acquis communautaire*, with the EU; clear definition of the procedural role of the Probation Service and strengthening of its role in executing alternative sentences and in rehabilitation activities and programs.
- further develop the prison system, based on continued harmonization with international standards and creation of necessary conditions for their implementation;
- improve the legal framework for the treatment of inmates by seeking to improve juridical means for the protection of their rights as well as their reintegration and recapacitation in society, with a focus on juveniles in conflict with the law.
- create legal and institutional mechanisms, equipped with the necessary material and human resources for the treatment and continued professional qualification of personnel in Penitentiary Institution administration and the Probation Service.

#### ***Objective 7.***

#### ***Strengthening and improving the status and juridical status of the victim in the criminal process***

The Justice System Analysis highlights that the procedural position of the person injured by the criminal offense and the role of the prosecutor in guaranteeing the protection of those injured by the criminal offense feature marked weaknesses. There is a lack of legal regulation and detailing of rights and procedural guarantees in accordance with EU standards. Many of the rights prescribed for victims of crimes in Directive 2012/29/EU are not reflected in the current Criminal Procedure Code.

The undertaking of legal measures to achieve this objective **seeks to:**

- review the juridical position of the victim in the Criminal Procedure Code aligning it with international standards and the jurisprudence of the ECtHR;
- envisage mechanisms that will guarantee physical and psychological protection for the victims of the criminal offenses and their family members in the long-term;
- prescribe a broader circle of rights for the victims of criminal offenses and their family members in the Criminal Procedure Code in accordance with European Union Directives and international standards, guaranteeing:
  - i. their access to justice bodies
  - ii. the right to be informed
  - iii. the right to be counseled and effectively defended by a free lawyer
  - iv. the right to compensation
  - v. fair and proportional compensation,
  - vi. reimbursement of expenses,

- vii. provision of psychological and medical assistance,
- viii. the right to not be surprised.

***Objective 8.***

***Reforming the justice system for juveniles in conflict with the law by strengthening the restorative justice system and effective protection of their procedural rights***

The highest interest of the child is an important principle that should find implementation primarily in criminal law. Juveniles in the criminal justice system represent a vulnerable category and therefore their protection is one of the most important strategic objectives of reform in the criminal justice system. At present, the criminal justice system for juveniles features a series of problems, identified in a detailed manner in the Analytical Document, and which should be addressed through concrete measures.

In order to have effective justice for juveniles, measures will be taken to:

- lead to the approval of a Strategic Plan for Juvenile Justice that will be in accordance with European recommendations and standards;
- draft a new legal framework that is inclusive and specialized on juvenile justice in Albania, in accordance with international standards and the national context;
- draft special provisions for juveniles in the Criminal Code and the Criminal Procedure Code or group these provisions in a separate Code for Juveniles, which would encourage the issuance of alternative sentences, the application of educational, integrating and rehabilitating programs for them;
- envisage and respect for special procedures for juveniles during investigation and adjudication, in accordance with international standards, which guarantee better protection of children’s rights in the judicial process;
- review of norms for the establishment of sentences for juvenils in conflict with the law;
- create specialized structures in criminal justice institutions, equipped with the adequate (financial and human) capacities, infrastructure and resources responsible for the treatment of juveniles in conflict with the law;
- develop training programs for representatives of criminal justice system institutions (prosecutors, judges, Probation Service officers and the prison administration) with regard to children’s rights and the treatment of juveniles in conflict with the law.

For Pillar III of Justice Reform “Criminal Justice,” based on the findings and problems highlighted by the Justice System Analysis and pursuant to relevant objectives and measures outlined in this Strategy, we prescribe the following main amendments to the:

- Constitution, Part X “Prosecutor’s Office;”
- Law “On the organization and functioning of the Prosecutor’s Office in the Republic of Albania;”
- Law “On the organization of the judicial power in the Republic of Albania;”
- Law “On the organization and functioning of the serious crimes courts;”

- Criminal Procedure Code;
- Criminal Code;
- Law “On the organization and functioning of Judicial Police;”
- Law “On the rights and treatment of persons sentenced to imprisonment and detainees;”
- Law “On the execution of criminal decisions;”
- Law “On the organization and functioning of the Ministry of Justice;”
- Law “On the School of Magistrates.”
- Alignment of the law “On jurisdictional relations with foreign authorities in criminal cases,” in accordance with directives and standards of the European Union.

#### **IV. LEGAL EDUCATION AND EDUCATION IN LAW**

The roots of disrespect and lack of implementation of laws, which is easily found in our society today, should be searched among others also in the citizens' poor legal education, the lack of an education system for the values and importance of the law in the life of every citizen.

The Justice System Analysis pointed to a series of problems and deficiencies with regard to legal education and legal schooling as one of the main pillars in the preparation of future jurists and citizens who have solid knowledge of the law. At present, juridical education is not competitive at the European level or beyond. Scarce experience, poor juridical debate and literature, lack of familiarization with international and European law, inadequate financial capacities are some of the main problems that legal schooling faces today.

Because of the primary importance of legal education and legal schooling for the proper functioning of the justice system as a whole, but also in order to ensure a full and effective reform of the juridical training of legal professionals and equip citizens with the proper legal knowledge about respecting the law, below are outlined some strategic objectives:

##### ***Objective 1.***

##### ***Raising civic awareness about the importance of law enforcement.***

Legal education in the pre-university education and the public legal education are profoundly decisive in the training of the young generation and citizens in general with knowledge about law enforcement, fundamental human rights and freedoms as well as responsibilities deriving from the law.

To date, legal education of the public has been realized solely through projects and initiatives by non-profit organizations operating in this area and with support from international partners. The Justice System Analysis has pointed to deficiencies in terms of lack of institutionalization of legal education for citizens and the lack of coordinating and responsible institutions that would encourage, organize and monitor this important activity. As a result, it is necessary to undertake steps to develop the culture of law enforcement through methods of public legal education and the creation of relevant institutions for this purpose. Furthermore, the analysis highlights that at present school curricula give special importance and significance to subjects such as physics, mathematics, biology, chemistry, etc., while there are deficiencies in the evaluation and treatment of social subjects that provide legal knowledge and education as equally important. Therefore, it is essential that concrete steps be undertaken to complete these deficiencies through knowledge of a juridical nature in the pre-university education system.

Legal amendments for the realization of the above objectives **seek to:**

- include legal education in basic subjects of pre-university education and the enrichment of curricula and extra-curricular education of the pre-university education system with elements of legal education in the areas of criminal, administrative, fiscal, civil and family law, as well as review the nature of information provided to students with an emphasis on the legal and not just moralizing nature of the rights and obligations of children and youth;
- prepare the teaching staff with the necessary level of legal knowledge through the inclusion of obligatory subjects of legal education in university curricula of teachers' training programs and through continued education programs;
- increase practical knowledge about the functioning of decision-making institutions, executive and judicial ones, and the encouragement of public activation; enhance social cohesion through information about ways to participate in decision making;
- enrich public's legal knowledge through the establishment of information portals of a practical nature in the areas of criminal, civil, fiscal, administrative and family law;
- increase knowledge about alternative conflict resolution, away from self-justice and revenge, in order to prevent criminality and unlawful behavior; sensitize the public about the advantages of conflict resolution through mediation by organizing massive educational campaigns;
- increase access to justice by offering simple information and special information programs for the public about the justice system;
- oblige state institutions to support projects to publish civic use publications "Law in your life," as essential for citizens to become familiar with the basic norms of European and Albanian legislation, mainly norms and regulations related to respect for fundamental human rights and freedoms, fiscal obligations and procedures, consumer rights, access to information law, the obligation of institutions to address citizens' requests and complaints, etc.

## *Objective 2.*

### *Reform the university education system in law*

In the area of higher legal education at the university level, important steps and reforms have been undertaken to bring legal education closer to the Bologna Declaration. These reforms have also increased students' access to law school education by considerably increasing the number of law students and schools and, therefore, the number of graduates in this field. However, as highlighted by the Analytical Document, the quality of legal schooling in universities remains low and the preparation of students does not respond to the main challenges of European integration or the real demand of the labor market.

This document sought to give special priority to legal schooling also because reforms in the justice system cannot be successful unless immediate measures are undertaken in this area.

There is a need to undertake concrete measures to address the above mentioned problems and these measures **seek to:**

- clarify and review the legal and regulatory framework regarding education in law, taking into consideration the specifics of university education in law and the training of future jurists;
- define strict and transparent criteria for the recruitment of qualified and motivated academic personnel as well as include an obligation of universities to periodically train academic staffs;
- envisage integrated studies in law for no less than 5 years and envisage the obligation to take the qualifying state exam;
- transform law schools into real centers of scientific research in the field of law, in accordance with the strategic needs of the integration process and those of developing the Albanian doctrine and jurisprudence;
- address issues related to adjusting student of law demands with labor market demand;
- perfect curricula of law schools with subjects of an ethical nature, of a practical and clinical nature, as well as subjects of European law.

### ***Objective 3.***

#### ***Improving the legal framework and practices of initial and continued training in legal professions***

Education in law for free professions such as those of lawyers, notaries, bailiff's services and mediation is a component that has a direct impact on the quality and smooth conduct of their activity. The justice system analysis highlighted that the Advocacy School still does not have developed capacities to accommodate legal amendments regarding compulsory continued education for lawyers.

The system of education in law and criteria for admission into the free professions, particularly bailiff's services, is inadequate and features marked deficiencies in professional preparation and continued training for the purpose of acquiring new knowledge and updating existing knowledge in one's career. Procedures for licensing free professions need to be improved, seeking on the one hand an autonomous mechanism for their self-regulation and on the other hand participation of state institutions in these procedures in a balanced manner. Notaries, lawyers, bailiffs, mediators should undergo a state qualification exam before being licensed to exercise their legal profession. Furthermore, criteria for admission into these professions should be further strengthened to enable the attraction of capable and skilled persons with ethical and professional integrity.

As a result of identified problems, it is necessary to improve ***the legal framework and practice of initial and continued training in legal services.***

To achieve this objective, legal measures will be taken in order to:

- consolidate the functioning of the National Advocacy School to transform it into the kernel of training future advocates and continued training of advocates who practice their profession;

- reform entirely the legal framework of legal professions by enabling initial professional training and continued quality training for the free professions and strengthen criteria that guarantee attraction of capable persons with professional and ethical and moral integrity who are not corrupt;
- improve admission and licensing procedures for the free professions, prescribing a qualifying state exam as a compulsory legal condition in these procedures;
- create mechanisms that enable periodical control of free professionals' knowledge; this would impose the update and enrichment of knowledge with developments in legislation and/or jurisprudence.

#### ***Objective 4.***

#### ***Consolidation of the recruitment, initial training, continued training and profilization of magistrates.***

The School of Magistrates has a very important role in the quality of legal training of judges and prosecutors. Nevertheless, the Analytical Document highlighted that this institution, with regard to initial training, has encountered difficulties in recruiting candidates because it was not possible to evaluate indicators of integrity, ethics, social and moral behavior and honesty.

Furthermore, there have been no policies for the establishment of clear criteria for the recruitment of experienced jurists; difficulties were encountered in drafting tests for applicants as a result of problems relate to psychological condition and mental health; deficiencies were noticed in the level of awareness of judges and prosecutors about the need for continued training; there were deficiencies in the profilization and specialized training of judges.

Based on these reasons, it is essential to undertake steps to consolidate the system of recruitment, initial training, continued training and profilization of magistrates that **seek to:**

- review criteria for admission to the School of Magistrates, seeking to strengthen them, especially with regard to minimal age and prior work experience as well as by emphasizing legal skills, analysis of human indicators related to integrity, honesty, psychological profile of candidates for future judges and prosecutors; establishment of a 3-year probation period for newly graduated magistrates;
- establish proportional quota for admission beyond competition in the School of Magistrates, in accordance with needs dictated by the system and in every case envisage the compulsory attendance of the School for at least one year;
- update methods for training, evaluation and certification of professional skills during initial training of magistrates;
- increase the weight of continued training of judges and prosecutors in office in the evaluation and career promotion system, providing training tailored to judges' profiles;
- improve the legal and regulatory basis to plan compulsory legal training for the personnel of institutions that carry out justice support functions.



### **Potential constitutional and legal amendments.**

For pillar IV of justice reform “Legal education and Legal Schooling,” based on the findings and problems encountered by the Analytical Document, and pursuant to the relevant objectives and measures outlined in this Strategy, we prescribe the following main amendments to the:

- Law on Higher Education
- Law on the School of Magistrates
- Law on the Pre-University Education System
- Draft legislation for the state exam in law
- Law on the Lawyer’s Profession
- Law on the Organization and Functioning of the Bailiff’s Service
- Law on Private Judicial Bailiff’s Service
- Law on the Organization of the Law on Judicial Power in the Republic of Albania
- Law on the Organization and Functioning of the Prosecutor’s Office in the Republic of Albania
- Law on Mediation in Conflict Resolution
- Law on Notaries
- Law on the State Advocate
- Law “On the organization and functioning of Judicial Police”

## **V. LEGAL SERVICES AND FREE PROFESSIONS**

Legal services, Advocacy, Notary Services, Judicial Bailiff's Services, Mediation, and the State Advocacy are an important part of the functioning of the justice system in the Republic of Albania. The improvement of their functioning, organization and service level in accordance with contemporary standards is also necessary in the context of Albania's EU accession. In the current circumstances, reform of the justice system dictates the need to reform and improve these services, based also on the problems highlighted by the Analytical Document.

### ***Objective 1.***

#### ***Improving the service level of advocacy and raising professionalism, responsibility and accountability in the exercise of this profession***

For an improvement of the general service level offered by advocates to their clients and an increase in professionalism, responsibility and accountability further improvements in the initial and continuous training of advocates and a redesign of disciplinary structures, rules and proceedings and an increase in the transparency of disciplinary proceedings against advocates seems indispensable.

The following set of measures will thus be required to achieve these aims:

- Improving the preparation of candidate advocates for the profession by strengthening the role and capacities of the School of Advocates in this process, updating, improving and broadening of the curricula of the initial training of advocates in cooperation with the Law Faculties, etc;
- Increasing the professionalism of advocates by strengthening the transparency and objectivity of the bar exam, introduction of obligatory continuous trainings, intensification of training on rules of ethic and legal rules on the exercise of this profession, etc;
- Strengthening the disciplinary structures and increasing the transparency of disciplinary proceedings against advocates, by introducing clear and strong rules of discipline, strict procedural measures, clearing the definition of cases of suspension and withdrawal of license, etc.
- Drafting and adopting rules on the professional insurance of advocates;
- Establishment of effective mechanisms to secure the fulfillment of fiscal obligation and to impede tax evasion in the exercise of the function of advocates;

### ***Objective 2.***

#### ***Improving the service level of notaries and raising professionalism, responsibility and accountability in the exercise of this profession***

The framework law on the profession of notary is – due to frequent amendments – neither efficient nor practical. The establishment and functioning of an educational institution for notaries ('School of Notaries') is imperative. Further on the increase of the

professionalism of notaries is mandatory. It is indispensable that the disciplinary law and the disciplinary structures are strengthened and streamlined and that the transparency of disciplinary proceedings against notaries is strengthened.

A further area of intervention concerns the necessary strengthening of the profession of notary. The NCN has at present a weak organisational basis and needs also more transparency and more service orientation as well as a substantial increase of financial funds. Lastly the problem of the relatively high number of notaries in Albania needs to be tackled and needs a comprehensive solution.

To achieve this objective, legal measures will be undertaken to:

- Improving the preparation of candidate notaries for the profession by developing and implementing curricula of the initial training of candidate notaries and updating these curricula in cooperation with faculties of law, establishing a school of notaries and strengthening the role and capacities of this school, introduction of an extended initial training period, etc;
- Increasing the professionalism of notaries by reviewing and reorganization of the notary license examination committee, introduction of obligatory continuous trainings, intensification of training on rules of ethic and legal rules on the exercise of this profession, etc;
- Streamlining and strengthening of the disciplinary structures and the transparency of disciplinary proceedings against notaries, by reviewing and improving the disciplinary structures and procedures, introducing clear and strong rules of discipline, strict procedural measures, clearing the definition of cases of suspension and withdrawal of license, etc.
- Strengthening of the rules on the professional insurance of notaries
- Strengthening of the profession of notary by strengthening the internal autonomy, capacities and participation in the National Chamber of Notaries, democratization of the election of the steering organs of this body and the local chambers of notaries, increasing and strengthening the transparency of the administration of these structures, etc.
- Introduction of strict criteria and modalities for the determination of the number of notaries proportionate to the number of population and in the light of the best European standards and practices.

### ***Objective 3.***

#### ***Ensuring effective execution of executive titles by improvement of procedural rules and the service level of bailiffs and raising professionalism, responsibility and accountability in the exercise of this profession***

The Justice System Analysis highlights that there are deficiencies in the state and private bailiff's service, unjustified protraction in the execution of executive titles, there is lack of transparency and dedication in carrying out duties, and major delays in execution. The activity of judicial bailiff's for the most part is not characterized by professionalism and impartiality in the process of compulsory execution of executive titles; therefore, it is

indispensable to improve the initial and continued training of private and state judicial bailiffs and to take a set of other necessary measures.

In seeking to fulfill this objective, the following measures will have to be taken:

- Improvement of the legal framework of enforcement in compliance with EU member states standards, by considering also the possibility of drafting a new law on execution of court decisions;
- Increasing professional level of bailiffs through introducing initial and continuous training, defining minimum requirements of professional training, introduction of strict control mechanisms during the training, establishment of a training structure for initial and continuous training, introducing compulsory continuous training including a system of compulsory professional credits, introducing continuous training on the rules of ethics and professional standards and reorganising the commission issuing licenses to private bailiffs in order to improve transparency and objectiveness in the licensing exam and building professionalism of the newly-licensed private bailiffs.
- Strengthening the enforcement service capacities from a professional, functional, structural and financial perspective as an independent and competitive service;
- Improvement of the legal and organisational framework governing the profession of the private bailiffs, by strengthening the regulatory role of the chamber, defining a clear legal mechanism for the number of private bailiffs based on an assessment of the existing rules in place for the number of licenses and best European practices, defining the enforcement fees in the law, accurately, clearly and non-evasively, etc.
- Strengthening the cooperation with the stakeholders (public and private institutions) involved in the enforcement process;
- Improvement of supervision and control of the enforcement service by building an effective monitoring and control system, strengthening the supervisory measures, creating a special control and monitoring mechanism to assess execution in terms of legitimacy, etc;
- Increasing the transparency and accountability of the execution of executive titles through the establishment of a public database, improving the electronic bailiff case management system, etc;

#### ***Objective 4.***

##### ***Increasing the use and service level of mediation services and the professionalism, responsibility and accountability of mediators***

The law on mediation and its implementation have so far not been very successful because of a lack of harmonization with the rest of the legislation. Mediation has thus so far only been used very limitedly and the impact of mediators has thus been restricted. Courts have also not been active in summoning mediators.

The following measures will thus have to be taken to achieve the above objective:

- Improvement of law on mediation and effective implementation of this law by harmonizing it with procedural codes and other laws and enhance effective implementation and application;
- Improvement of the service level of mediators by enhancing the qualification through better initial and continuous training and the promotion of ethical standards and anti-corruptive behavior;
- Strengthening the profession through increasing the capacities of the chamber, improving collaboration with other institutions, etc.

#### ***Objective 5.***

#### ***Strengthening the role of the State Advocacy in the representation of the state's property interests***

Practice has identified drawbacks in terms of the effective implementation of the 'principle of exclusivity'. Thus the assistance of the state advocacy is often requested too late by the state authorities.

The frequent movement and failure to create a genuine tradition of institutional and professional quality has resulted in low quality of state advocacy services. The lack of legal guarantees for state advocates has also negatively affected the stability, quality and continuity.

The following measures will therefore have to be taken to achieve the above objective:

- strengthening the assistance of State Advocacy for state bodies, through counseling in preliminary procedures of drafting and entry into contracts of public institutions;
- Increase of the capacities of state advocates through specific and intensified initial training securing an initial education level of state advocates at least as high as advocates and continuing of specialization and qualification of State Advocates in relevant areas;
- Establishment of legal guarantees for state advocates with regard to the sustainability, quality and continuity of the exercise of their functions by defining the status of state advocates in a final way and by interconnecting this status with other similar legal professions;
- Identification and solution of concurrent and/or overlapping competencies between state advocates and lawyers of state institutions with regard to counseling, consulting and representation functions;
- Reorganizing the State Advocacy Office by considering the possibility to attach this office to the Prime Minister and introduction of a specific salary scheme in proportion with the qualifications of state advocates;

#### **Potential constitutional and legal amendments.**

For pillar V of justice reform, "Legal services and free professions," based on the findings and problems highlighted by the Analytical Document and pursuant to objectives and

relevant measures outlined in this Strategy, we prescribe the following main amendments to the:

- Civil Procedure Code
- Criminal Procedure Code
- Law on the Profession of Advocates
- Law on the Organization and Functioning of Bailiff's Services
- Law on the Private Judicial Bailiff's Service
- Law on Mediation in Conflict Resolution
- Law on Notaries
- Law on the State Advocacy
- Law "On the organization and functioning of the Ministry of Justice"
- Amendment of the Law "On the organization and functioning of Judicial Police"

## **VI. Anti-corruption measures**

This pillar of the strategy for justice reform seeks to address and provide solutions for one of the most negative solutions that characterize the justice system in the country – corruption.

For years, Albanian public opinion and international monitors perceive a high level of corruption in the judiciary and the prosecutor's office. For years in a row, Albania has been ranked by *Transparency International* as the most corrupt country in Europe and the judiciary has been ranked as the most corrupt institution in Albania. Domestic public opinion, based on surveys conducted on corruption, believes that judicial processes are mostly influenced by monetary interests, business ties, personal ties of judges and prosecutors, and political interests and pressures.

In support of public perception, data collected and reflected in the Analytical Document indicate that the number of corruption cases ending up in court is small. Even those cases that do end up in court are resolved incoherently by judges and sentences are generally mild. A large part of cases are not well investigated and often feature lack of evidence. Overall, the current structure of investigating corruption at the police level lacks specialized staff. Structures of investigating corruption at the prosecutor's level face problems such as jurisdictional conflicts, lack of efficient collaboration with police, lack of technical equipment to be used in investigations with special investigation means, etc. In this context, it is clear that Albania needs to improve and strengthen the investigation of criminal corruption offenses and their adjudication. However, this is impossible as long as the phenomenon of corruption is present in alarming levels within the ranks of the judiciary and the prosecutor's office.

Therefore, the main purpose of reform under this pillar among others is to establish a self-cleansing mechanism in the justice system, especially the judiciary and the prosecutor's office, from corrupt elements through effective control of their moral and ethical integrity. That is the only way in which institutions of the justice system may release their potential in the fight against corruption in the society and particularly among high officials.

Based on the findings and problems highlighted in the Analytical Document, the main objectives to be achieved through concrete measures to fight corruption are:

### ***Objective 1:***

#### ***Encouraging public participation in the fight against corruption.***

Based on the profoundly negative perception of the public for corruption in the judiciary, citizens may be considered the main victims of corruption, as they are the ones forced to pay to even get a just decision. Therefore, they are the main actors interested in the fight against it. Public's active participation in the fight against corruption assumes special significance in the context of this reform.

Media in Albania do not have a tradition supporting investigative journalism. The proliferation and evolution of investigative journalism needs to be encouraged, as it is a

mechanism that unmask and prevents corruption. Numerous western universities offer undergraduate and graduate programs in Investigative Journalism. The University of Tirana does not have a journalism program but a program specializing in investigative journalism and a graduate program need to be planned. The executive should support financially concrete investigative journalism projects through the creation of a special fund in its budget, either allocating this fund to a non-profit organization or to the Ombudsman's Office.

Measures to be taken to achieve this objective **aim at:**

- making citizens aware of the importance of their inclusion in the fight against corruption and expanding legal and institutional mechanisms to increase their opportunities for reporting corruption cases;
- increasing access to information regarding investigation and judicial processes in the area of corruption;
- guaranteeing and increasing the level of protection for individuals reporting cases of corruption in the judiciary;
- encouraging inclusion in curricula of pre-university, university and graduate education of programs and subjects that raise awareness about the phenomenon of corruption and its negative consequences for the society;
- prescribing the state's legal obligation to support investigative journalism through concrete annual projects, the establishment of a specialized and/or graduate program on investigative journalism in public universities that have journalism departments;
- reviewing the law on public cooperation in the fight against corruption, seeking to contextualize it in accordance with problems that exist with its implementation in practice;
- drafting a specialized program and a graduate program on investigative journalism at the University of Tirana;
- supporting financially projects of investigative journalism through the creation of a government fund, which might be accorded to the Agency on Support of Civil Society, in order to support the projects of civil society in this field.

### ***Objective 2.***

***Creating a corps of judges and prosecutors with high ethical-moral and professional integrity, improving the performance evaluation and re-evaluation system and their ethics.***

Although it is not a direct anti-corruption instrument, professional and ethical performance review for judges and prosecutors is nevertheless very important as it provides data on their ethical and professional integrity or, otherwise, the presence of corruption.

Nevertheless, the potential of the evaluation system in the fight against corruption has not been proven because of some problems and shortcomings that characterize it. The Justice System Analysis highlights these problems and shortcomings both in the content of the performance evaluation system for judges and prosecutors and in its implementation. They include: (i) lack of effectiveness of this system because it takes a considerable amount of



time to produce evaluation results; (ii) use of complicated criteria in the evaluation process; (iii) concentration of attention on professional performance, thus neglecting ethical evaluation; (iv) lack of disciplinary measures for violations of rules of ethics by judges and prosecutors; and (v) lack of periodical training and evaluation for ethics.

In order to establish an effective ethical-professional evaluation system in the fight against corruption in the judiciary and the prosecutor's office, some countries in Europe such as Serbia, Kosovo and Ukraine, given the alarming level of corruption and the low professional level of judges and prosecutors, have applied a general re-evaluation of the ability of judges and prosecutors to administer justice. The review process for judges and prosecutors in these countries is subjected to control by relevant constitutional courts and evaluations of the Venice Commission. The reasoning of constitutional courts of the mentioned countries and particularly evaluations of the Venice Commission create a framework of concepts and principles that could be used for the evaluation of judges and prosecutors in Albania too.

In order to realize the above objectives, based on the experience of other countries and the relevant opinions of the Venice Commission, constitutional and legal amendments in this area will **seek to**:

- review the performance evaluation system for judges and prosecutors, giving more significance to the evaluation of ethics;
- include provisions of the Draft Law of the Ministry of Justice in the organic law for the judiciary, reflecting the identified needs and proposals of high-level experts for justice system reform regarding the evaluation system;
- review of Codes of Ethics for judges and prosecutors seeking to create specialized structures and effective procedures for locating unethical behavior and addressing it;
- review of the legal obligation for the publication of Codes of Ethics for Judges and Prosecutors in official websites as well as of final decisions of a disciplinary nature, sanctioning among others violations of ethics rules;
- review of curricula of the Schools of Law and the initial education and continued training of the School of Magistrates to include Judge's and Prosecutor's Ethics as mandatory subjects;
- prescribe the legal obligation to take the mandatory ethical test before licensing for the exercise of a legal profession or before appointment as a judge or prosecutor;
- drafting necessary constitutional and legal amendments that prescribe the creation of a qualified, independent and impartial *ad hoc* mechanism that will be tasked to conduct the evaluation of professional knowledge, moral, ethical and psychological integrity of judges and prosecutors, combined with a special verification of their assets, with the burden of proof resting on the verified subjects, providing all necessary procedural guarantees to the evaluated judge or prosecutor, such as: (i) a review process with clear criteria; (ii) a review process that is individual and transparent; (iii) a review process conducted by a professional, independent and impartial corps; (iv) a review process that guarantees the opportunity to complain before a structure that has the same characteristics as the structure tasked with the review, and (v) in accordance with all other guarantees articulated by the Opinion of the Venice Commission on

Ukraine; and (vi) with direct assistance for and control on the process by international agencies monitoring and assisting our country's justice system.

- clearly regulating the concept of “professional insufficiency” and the legal provision that marked professional insufficiency categorized according to a point system, pursuant to an evaluation and review process, will be cause for the taking of disciplinary measures toward judges and prosecutors;
- not accepting or ousting from the system the judges, prosecutors, judicial police officers with criminal precedents, for criminal offenses according to the definition of a fair and reasonable minimum of punishment prescribed for these offenses by law.

### ***Objective 3:***

#### ***Preventing corruption through increasing the responsibility of judges and prosecutors and strengthening administrative and criminal investigations into their assets.***

This is a broad objective that seeks on the one hand to increase responsibility on the part of judges and prosecutors and, on the other, to strengthen existing structures and build new preventive structures against corruption in the justice system.

The Justice System Analytical Document highlighted some problems and deficiencies in this regard as follows: (i) confusion with regard to relevant responsibilities of the HIDAACI and HCJ to verify assets disclosure statements of judges because besides HIDAA, the law On the Council of Justice (article 16.1) also grants to HCJ the competence “to verify and raise issues with regard to assets declared by judges...;” (ii) current (manual) declaration system makes it difficult to process the information in a computerized fashion and weakens transparency in the process of declaration and verification of assets; (iii) the circle of relatives and related persons of judges and prosecutors who are subjected to the declaration system is not adequately broad to allow for the identification of assets registered on behalf of third persons; (iv) judges and prosecutors are not subjected to the verification of assets created before they were appointed judges or prosecutors; (v) the administrative personnel of courts and the prosecutor's office does not enjoy adequate legal guarantees, such as those of civil servants and, as a result, may become subject to pressure to help or avoid corrupt actions in the judiciary or prosecutor's office; (vi) immunity prescribed in constitutional provisions and the Criminal Procedure Code represents another obstacle, leading to delays in the conduct of important and urgent actions of an investigative character; (vii) relevant provisions of the Criminal Code do not prescribe specific aggravating or extenuating circumstances for the criminal offenses of corruption, thus making it difficult to construct an effective criminal policy in this area; (viii) judicial practice in the review and sentencing of criminal offenses of corruption is not coherent and sentences issued on them are average, etc.

Vis-à-vis these findings, in order to achieve this objective, the strategic document proposes measures of a constitutional and legal nature in areas such as declaration and audit of assets and conflict of interest, immunity toward certain criminal procedural actions, the Criminal Code, etc.

More concretely, to realize the above objectives, constitutional and legal amendments will **seek to:**

- improve the system for the declaration and audit of assets and conflict of interest of judges, prosecutors and persons related to them, in order to highlight cases of benefits of illegal assets gained through corrupt criminal offenses;
- prescribe provisions that plan a mandatory condition the detailed audit of assets of judges and prosecutors and persons related to them before their appointment to duty;
- specify and clearly divide competences between the HCJ and HIDAACI regarding the audit of assets disclosure statements of judges;
- increase transparency in the declaration of assets of judges and prosecutors by enabling the inclusion of other actors (public, civil society) in providing information, facts and other data that would facilitate their auditing;
- prescribe by law as one of the causes for initiating disciplinary proceedings toward judges and prosecutors the failure to declare, declaration beyond legal deadlines, or incomplete declaration of assets and conflict of interest during the exercise of duties;
- empower existing structures for the investigation of corruption within police and prosecutor's office;
- review competences of the serious crimes prosecutor's office for the investigation of senior officials;
- clarify the proving power of some certain kinds of evidence that so far have been judged differently in adjudication practices;
- review immunity prescribed by the Constitution, aiming at its full removal or further limitation towards members of the High Court or the Constitutional Court
- amendment of the Criminal Procedure code regarding the immunity of the members of High Court and Constitutional Court;
- include and regulate by law an Independent Inspectorate for the disciplinary inspection of judges and prosecutors in accordance with the structure proposed by this reform for the judiciary and the prosecutor's office;
- prescribe strong legal regulations in the justice system laws against nepotism and conflict of interest, employment in courts, prosecutor's office, and institutions of judicial governance, such as the High Council of Justice;
- strengthen the status of judicial and prosecutorial administration, prescribing necessary legal guarantees that disallow their influencing by any kind of pressure of a corruptive nature, within or outside the system;
- amend the Criminal Code, expanding aggravating circumstances that harshen criminal policy on corruption offenses and prescribing as an alleviating circumstance the collaboration of the defendant with state authorities to resolve the case.

#### *Objective 4*

#### **Punishability of criminal offenses in the area of corruption by seeking the strengthening of proactive discovery and investigation and the creation of specialized anti-corruption structures.**

Discovering corruption is essential not only for the punishability of judges, prosecutors and corrupt officials, but also for the prevention and deterrence of corruptive behavior.

It is indispensable to establish a specialized structure for the discovery, investigation and adjudication of criminal offenses of corruption. Such a structure should function on the basis of the principles of sustainability, credibility and clarity of competences and should be independent from external influence by criminal or political groups, but also internally independent so that a senior prosecutor may not be able to influence or cease cases. The structure should be stable in that judges and prosecutors should not be moved, penalized or feel threatened because of investigations or cases. These officials would undergo vetting and will be the subject of continued monitoring, as happens in successful offices in some countries of the region. Likewise, they should enjoy the appropriate financial treatment and benefits and should have extensive access to databases of the executive, similar to access of their counterparts in countries with successful models in this area. The Constitution should prescribe the creation of a specialized police force responsible for serious corruption cases, such as the National Bureau of Investigation or some other appropriate form. Employees of this structure should undergo a rigorous process of scanning of their professional and moral integrity, their assets, based on objective criteria in order to leave no room for the recruitment of corrupt persons. Corruption cases investigated by the Special Anti-Corruption Structure should not be subject to the statute of limitations.

Legal interventions envisioned in this strategic document should follow the models of international practices for securing evidence and for tracking and investigating corruption cases, such as the use of undercover agents, anonymous and protected witnesses, the encouragement of citizens to collaborate in investigations by carrying out simulations, etc. Legislation should prescribe clear rules for the wiretapping of communications and the use of evidence obtained from citizens or the media.

In order to realize the above objectives, legal amendments will **seek to**:

- prescribe a new constitutional provision and the regulation by special law of the creation of a Specialized and Special Anti-Corruption Structure (SACS), with judicial police, first instance and appeals prosecutor's offices and courts based on similar models in the region;
- prescribe a new constitutional provision and the regulation by special law of the creation of the National Bureau of Investigation or similar structure in accordance with the Constitutional Court ruling, which would assist SACS in conducting investigation actions;
- prescribe provisions that envision special status for judges and prosecutors of SACS and investigators of the Bureau of Investigation, guarantee their

immovability from office and their impartiality as well as help select individuals with high ethical-moral and professional integrity to these positions;

- amend the Criminal Procedure Code and legislation on electronic communications, with provisions that make it easier to investigate criminal offenses of corruption, such as special deadlines, unimpeded access of investigators to telephone and electronic data, the expansion of the scope of evidence beyond classic categories and in accordance with international standards, allowing the use of provoker agents, recordings and footage obtained from individuals and the media, testimony by anonymous witnesses, etc.;
- amend the Criminal Procedure Code to lessen the burden of proof for proving charges for criminal offenses of corruption, according to the European Convention of Human Rights;<sup>2</sup>
- prescribe special provisions or draft a law on assistance for the discovery and prevention of corruption, which should envision:
  - protection and reward of whistleblowers that signal a case of corruption;
  - civil responsibility of officials, judges and prosecutors who are sentenced by final criminal sentence for corruption criminal offenses and abuse of office.
- create a special Mechanism (Court Watchers) with legal authority to accept corruption complaints or unethical behavior by judges and prosecutors, who may actively monitor the courts.

#### ***Objective 5.***

#### ***Prohibiting corruption by completing the legal framework and consolidating criminal policy in this area***

This objective seeks to address all those legal loopholes that create the conditions for corrupting judges, prosecutors and other officials and make it possible to avoid their punishment or sentencing.

In the court administration system, the chief justice still has *de facto* competences to assign cases to judges, which creates room for corruptive cases within the system. Legislation and the Electronic Case Management System prescribe the drawing of lots to distribute cases, which does not provide sufficient guarantees for random distribution of cases and that may be easily manipulated by court administrators. The law should prescribe regular audits of the case management system, whether electronic or not, to ensure there are no interferences in the system.

Transparency is an important protective instrument against corruption. Judicial decisions that are written and reasoned unclearly and incompletely are potential indicators of a corrupt judicial process. Improvement of quality of courses of legal reasoning in Law Schools and the School of Magistrates would increase the professionalism of future generations of judges with regard to this matter.

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<sup>2</sup> According to ECtHR practice, the testimony of a single collaborating testimony is sufficient to prove corruption charges

Testing by the Chamber of Lawyers and in Law Schools as well as the process of inspecting registers/files of judges and legal professions such as the notary should be based on a system that guarantees the secrecy of persons being tested or inspected.

The justice system analysis highlights the need to take measures that guarantee financial transparency on reaching and notarizing contracts, maintaining special bank accounts for transactions between lawyers and their clients and disrespect for this obligation should be cause for the initiation of disciplinary proceedings

Unjustified delays in the judicial process are often signals that a judge or prosecutor is seeking a bribe. Procedural amendments that avoid delays and prescribe sanctions against parties causing these delays might reduce opportunities for corruption.

Another area that holds a great opportunity for corruption and political influence is that of cases of an administrative nature, such as disagreements regarding the restitution and compensation of property, cases of employment, cases of privatization, cases involving agricultural land and legalization of buildings. Legal administrative and judicial procedures regarding these cases should be simplified in order to make them more transparent and to reduce opportunities for requesting bribes or exercising pressure.

Criminal policy on criminal offenses in the area of corruption should be reviewed in order for officials who abuse office or are corrupted to be prohibited from exercising their profession; look at the opportunity for increasing the margin of sentences proportionate to the amount of bribes, when this has led to major damages to the state budget and has caused the increase of public perception of corruption in certain highly sensitive areas such as the judiciary, education, health, taxes, etc.

The research of investigated and adjudicated cases regarding criminal offenses of corruption shows there is an average level of sentences issued by courts and, in many cases, the use of bail. Judicial practice in corruption cases consists of simple cases, built almost exclusively on the cooperation of one of the parties in the corruptive transaction and investigated through special investigative tools. Financial investigation remains almost unknown and undeveloped. Public officials who are sentenced are mainly of a low level while the impunity of senior officials and particularly of judges and prosecutors is a disturbing problem that needs to be addressed.

Considering corruption a serious problem of the society, concrete measures will be taken to realize this objective:

- review formulations of criminal offenses in the area of corruption by expressly prescribing the criminalization of influences or the exercise of pressures of a political or other nature on the decision making of judges or prosecutors;
- disciplinary punishment up to dismissal from office and criminal punishment of judges and prosecutors who create extra-judicial relations with parties in the process and are in the company of persons with criminal precedents, which would damage their credibility in public and their moral and professional integrity;

- accompany criminal sentences with complementary sentences of prohibiting the exercise of professions and other measures such as asset freezing and confiscation;
- clarify the proving power of some kinds of evidence for which different practices have been pursued during adjudication to date;
- legal assessment of the possibility and need to draft a law on the civil responsibility of judges and prosecutors, aside from necessary regulations regarding their criminal responsibility;
- prescribe the legal obligation for the judicial case management system and particularly the case assignment system are audited regularly by an independent agency;
- review curricula of the Schools of Law and curricula of initial and continued training for the School of Magistrates to prescribe legal writing and reasoning for judicial decisions as mandatory courses, aiming to improve the quality of the texts and teaching of this course;
- prescribe the legal obligation for exams and tests conducted by the Chamber of Lawyers and state exams are conducted according to a system that guarantees the secrecy of the identity of tested persons;
- prescribe the legal obligation for all juridical actions conducted before the notary and that require the payment of cash fees between parties, as well as all payments, are conducted through bank transfers;
- prescribe the legal obligation of the possibility to lower the limit of cash payments by judges, prosecutors and persons related to them, according to provisions of the Law on Money Laundering;
- review civil, administrative and criminal procedures to seek a legal framework that will guarantee speedy and transparent adjudication through amendments to procedures for the notification of acts, the conduct of preparatory hearings, sanctioning of parties causing unjustified delays of hearings, easing procedures for “lighter” cases (low monetary amounts or minor administrative and criminal offenses), etc.

For pillar VI of justice reform “Anti-Corruption Measures,” based on the findings and problems highlighted by the Analytical Document and pursuant to relevant objectives and measures outlined in this Strategy, we prescribe the following main amendments to the::

- Constitution, Part IX “Courts” and Part X “Prosecutor’s Office;”
- Law “On the organization of judicial power in the Republic of Albania;”
- Law “On the organization and functioning of administrative courts and the adjudication of administrative disagreements;”
- Law “On the organization and functioning of the prosecutor’s office in the Republic of Albania;”
- Law on the Organization and Functioning of the High Council of Justice;
- Civil Procedure Code;
- Criminal Procedure Code;
- Draft a new law to prescribe anti-corruption measures and create specialized mechanisms for the investigation of corruption criminal offenses;
- Law “On the organization and functioning of Judicial Police;”
- Law “On the declaration and audit of assets, financial obligations of elected persons and some public employees”

- Law “On the prevention of conflict of interest in the exercise of public functions;”
- Administrative Procedure Code;
- Law “On the School of Magistrates;”
- Law on Pre-university Education System in the Republic of Albania;
- Law on Higher Education;
- Law on Advocacy in the Republic of Albania;
- Law on Notaries;
- Law on the organization and functioning of the Judicial Bailiff’s Service;
- Law “On the organization and functioning of the Ministry of Justice;”
- Law on the Prevention of Money Laundering and Financing of Terrorism;
- Law on Banks or Regulations related to Banks;
- Law on the Restitution and Compensation of Property.



## **VII. Funding of the justice system**

There may be no independence of judicial power without its financial independence. This is a principle already sanctioned in the Constitution. The specific weight and significance of the justice system in general and judicial power in particular in a democratic state demand its funding as a binding condition for the smooth functioning of the system. No strategic reform in the justice system may be realized and be successful without adequate funding, according to priorities identifiable through reforms.

In the context of this awareness, the Justice System Analysis highlighted a series of problems in the funding and infrastructure of the justice system, which require necessarily profound reform in this sector. The justice system is not provided the necessary legal and institutional guarantees for the independent administration of budgets, adequate budgetary means for salaries and social insurance, for infrastructure, operational expenses and technology development, for the effective management of the system in general and human resources in particular.

Because of the lack of human resources and mainly financial ones, court management remains very poor. The annual budget for the judiciary has seen progressive growth that is still inadequate.

The administration of judicial services is inefficient. The system of salaries, social benefits and rewards for judges, prosecutors and judicial police officers is not motivating and not oriented toward judicial career. The financial means are lacking to equip prosecutor's offices with modern infrastructure in keeping with international standards.

Progress in improving working conditions in the courts is limited. Further efforts must be made to establish a computerized, uniform case management system in all courts and prosecutor's offices of all levels.

The new social-economic phase the Albanian society faces requires an adjustment of judicial resources to pay attention to the demand for justice. It is necessary to have real and effective strengthening of financial independence of the judiciary by including in its material laws and the budget laws principled criteria for the untouchability of the judiciary's budget and its reduction by lawmakers as a form of the violation of judicial power's independence that should be deterred.

A modern justice system should be equipped with adequate financial means and qualified human resources for carrying out relevant duties.

In order to guarantee the smooth functioning of the justice system as a whole, it is essential to ensure special financial support for this system according to an action plan that stretches over many years, starting from the definition of a financial level as a certain percentage of the GDP with the support of all political forces.

***Objective: Necessary financial and infrastructural support for the justice system, seeking to increase its independence, efficiency and professionalism.***

Legal amendments to realize this objective **aim**:

- to review the current scheme of institutional organization and clearly establish responsibilities for budget planning, management and control and logistical support for the justice system, the judiciary and the prosecutor's office;
- to expand competences in financial planning, management and administration by the justice system itself, ensuring a just and proportional balance of these competences with the competences of the executive and legislative;
- to establish a binding standard in the state budget that would guarantee not only the day to day functioning of the justice system, but also the required progress with regard to empowering human and infrastructural resources as a function of realizing financial independence;
- increase the level of the judicial budget as a ratio of the state budget and the administration of a certain percentage of judicial revenues by the courts themselves in order to enable the funding of their services and addressing their needs;
- consolidate competences and responsibilities of the relevant office for the administration of the justice system budget, the judiciary and the prosecutor's office;
- to regulate the system of tariffs, seeking to establish reasonable tariffs that are proportionate to services offered by the justice system, as a function of their categorization by types of disagreements and by planning exemptions based on objective and measurable criteria that will seek to increase access to court for individuals without financial means;
- to improve deeply the financial treatment and support measures for judges/prosecutors and their families and to establish guarantees for financial treatment of judges and their families even after they leave their duties;
- to review of the system of salaries, rewards (bonuses) and other appropriate benefits for judges and prosecutors, in order to improve their financial treatment in accordance with work experience, the grade system and difficulties, seeking to achieve the level of countries in the region;
- at a government-drafted efficient master plan for the justice system's infrastructural development, accompanied by an action plan of legal, institutional and administrative measures that will address its needs for financial, material and logistical support as well as the development of contemporary technologies;
- to review the needs of financial support the administration of justice institutions ensuring a fair rapport between the number of judges/prosecutors and the number of personnel according to European standards;
- to create appropriate working conditions for judges and prosecutors and an efficient system of services, communication and monitoring of actions of representatives of parties in judicial processes and particularly lawyers;
- to support facilitated housing loans for judges and prosecutors who exercise their functions away from their places of residence;

- to create appropriate premises and increase security measures in courts to guarantee the physical untouchability of and avoid threats to judges, prosecutors, lawyers, defendants, parties injured by criminal offenses, family members and experts;
- make use of financial resources for the automation and computerization of the activity of all justice system institutions, realizing their networking at the national level in order to guarantee speedy movement of information, digitalization of the entire archival system and its maintenance, increased effectiveness and transparency of activity and creation of a unified database for all the information on matters of justice;
- to modernize the system through the implementation of new technologies, with special attention to ensuring information technology in every office and every process of investigation and adjudication, through the establishment of *online* connection of institutions of the system, strengthening the data protection system, realizing a unique national archive of judicial decisions, creation of a unified national statistical register with system data, etc.;
- to establish an electronic communication system for citizens that is easily accessible and that will realize the considerable reduction of public's costs. The computerization of the justice system services will help speed up information about trial hearing schedules, reduce costs for withdrawing judicial decisions of district courts of first instance or of appeals through application in the nearest office of system services;
- to modernize techniques for discovering and investigating criminal offenses through investment in necessary technical equipment and training of human resources;
- to support the School of Magistrates to secure necessary expertise for the initial training of candidates for judges and prosecutors and to increase the effectiveness of systematic training for serving judges and prosecutors;
- to increase the level of recovering damages deriving from criminal offenses, develop an integrated monitoring mechanism for security measures and confiscations in cases of serious criminal offenses, including corruption;
- to establish clear criteria for funding from the state budget for legal aid for vulnerable citizens;
- to reform the system and improve legal and sub-legal acts with regard to funding for providing state legal aid;
- at essential funding for improving the infrastructure and living conditions in the pre-trial detention and prison systems, the creation of re-educational institutions for juvenile perpetrators of criminal offenses, reopening the psychiatric hospital for mentally ill persons who have committed criminal offenses, reopening the Medical Institution for mentally ill persons remanded to the medical measure of "Compulsory medication in a medical institution," and who are kept illegally in prison hospitals;
- to support and empower the activity of judicial bailiff offices with all the necessary financial tools for a speedy execution of judicial decisions;
- introduce more efficient procedures in the procedure codes.

### **Potential constitutional and legal amendments.**

For pillar VII of justice reform “Funding the justice system,” based on the findings and problems highlighted by the Analytical Document and pursuant to relevant objectives and measures prescribed in this Strategy, we prescribe the following main amendments to the::

- Constitution, Part XIII “Public Finances”
- Law no. 9936, dated 26.6.2008, “On managing the budget system in the Republic of Albania;”
- Law no. 8363,/1998, "On the organization and functioning of the Office for the Administration of Judicial Budgets;”
- Law no. 9877, dated 18.02.2008, “On the organization and functioning of judicial power,” amended;
- Law no. 8737, dated 12.2.2001, “On the organization and functioning of the prosecutor’s office in the Republic of Albania,” amended;
- Law no. 8811, dated 17.05.2001, "On the organization and functioning of the high Council of Justice,” amended;
- Law no. 8363/1998 "On the organization and functioning of the Office for the Administration of Judicial Budget;”
- Amendments to relevant legislation regulating the system of salaries for employees of the state administration if the system of salaries of judges and prosecutors is included in that system;
- Law no. 9975,/2008 “On national taxes,” amended;
- Review of the law “On legal aid”
- Review of the Civil Procedure Code and the Criminal Procedure Code regarding judicial tariffs, the electronic case management and recording system and efficient procedures (small claims, payment order, penalty order, more efficient judgements on default;
- Draft new detailed instructions on all kinds of tariffs for judicial services.

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**Strengthening the rule of law and European integration require root-deep change of the situation in which the justice system is now. Albanian citizens deserve a justice system that is credible, independent, professional, speedy and efficient. They deserve a justice system in which everyone is equal before the law and where the law is applied equally for everyone, independent from social or institutional standing.**

**Our mission, through this Strategy for Reforming the Justice System and the Action Plan accompanying it, is to build sound bases to give our citizens credible justice and a justice system that functions according to constitutional and European standards.**

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### **Monitoring of implementation of the Strategy**

Justice reform strategy constitutes a framework document that will be respected in any political circumstance from all parliamentary political forces, regardless of the controversies between them, or all other issues. This document is drawn up on the belief that justice is the highest obligation has policies to citizens.

Justice reform strategy represents the basic document which will be supported by the Group of domestic and international High Level Expert, near the Ad Hoc Parliamentary Committee, with regard to continue the process of judicial reform, to draft constitutional and legal amendments that are foreseen.

This document is also a strategic roadmap that the Parliament and the Council of Ministers should follow for implementation of the judicial reform.

Fulfilling the objectives defined this document, following and monitoring the Action Plan in short, medium and long term, that are considered integral part of this pact, constitutes a legal obligation for institutions involved in it.

The Council of Ministers shall report periodically to the Assembly, in connection with the financial resources to commit to periodic meeting of the Action Plan.

**Annex 1, attached - Action Plan** (*Concrete legal, institutional and administrative measures, Implementation, Deadlines, Financial Impact, Monitoring/Implementation*) is considered an integral part of this document.

**Annex 2, attached – Legislative measures** (*Concrete laws to be intervened in, arguments, relevant alternatives, etc.*) are also considered an auxiliary part of this strategic document.