



Lessons learned from the justice reform in Albania

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Policy Recommendations

1. The **political will** of the domestic political elites – or the lack of it – should be taken into account when initiating such deep reform(s) because it is a precondition for an efficient implementation of the required changes and results.
2. The **good governance** features should apply to the newly established judicial institutions and structures. Their implementation is crucial in determining the outputs and the long-term impact of the reform.
3. The **citizens**, who are the main beneficiaries of the reform, should be involved throughout the whole process from the design of the reform to its implementation and operation. Thus, there is a need to prepare information in a way that makes it easier for citizens to understand and to create external mechanisms such as involving representatives of civil society, academia or bar associations to monitor the strategic action plans of the new justice institutions.

Abstract

Judiciary and rule of law, more specifically, is a core element for the accession negotiations with the European Union (EU). In this regard, since 2014 and well before the decision of the European Commission to recommend the start of EU accession negotiations, Albania initiated a deep-cutting reform of its judiciary system. However, while the reforms in Albania were advancing, an increasing role of the member states in the EU accession process emerged. The 2020 enlargement strategy of the European Commission confirms this increased role and involvement of the member states in setting benchmarks, monitoring the progress of the reforms and providing technical

assistance on the ground in selected sectors. In the case of Albania, the enlargement instruments have been primarily focused on the justice reform, therefore, it gives the opportunity to go beyond the simply adoption of the *acquis communautaire* and of the capacity building approach (i.e. the formal establishment of new structures and institutions). This Policy Brief aims to draw some lessons from the implementation of the justice reform in Albania, which also allows to build a coherent body of knowledge that will assist to better plan, implement, monitor and maintain a sustainable institutional reform dynamic all over the Western Balkans region.

* This Policy Brief is inspired and draws its reflections based on CDI's previous research conducted in the framework of [ALBE initiative](#) focused on Justice Reform and Enlargement.



Lessons learned from the justice reform in Albania

Introduction

In the progress report of 2014, the European Commission emphasises the need to reform the judiciary, especially the key institutions such as the Constitutional Court, High Court, the High Council of Justice and the prosecution.¹ Since 2014 and well before the decision of the European Commission to recommend the start of accession negotiations with the European Union (EU),² Albania initiated a deep-cutting reform of its judiciary system. However, while the reforms in Albania were advancing, the new enlargement methodology allowed an increased role of the member states in the EU accession process. While the European Commission applies its chapter-based methodology, now cluster-based, member states tend to focus more on the progress of reforms, to include a high degree of political conditionality, and to apply such conditionality before the official opening of accession negotiations as the case of Albania (and North Macedonia) shows.

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The new enlargement methodology includes the “rule of law” and “functioning of democratic institutions” into the cluster of “fundamentals” – which eventually leads to higher scrutiny during the

implementation phase and on the good governance component. This development brings to the fore the importance of the implementation of the *acquis communautaire* (vs. the adoption) of the European Union and the functioning of the reformed local institutions (vs. the institution building).

In the case of Albania, the enlargement instruments of political dialogue, conditionality and assistance have been primarily focused on the justice reform. Likewise, the shift towards fundamentals and the increased role of the EU member states may lead to a longer and more complex enlargement process. Therefore, the justice reform in Albania gives us the opportunity to go beyond the simply adoption of the *acquis communautaire* and of the capacity building approach (i.e. the formal establishment of new structures and institutions), by allowing us to analyse the complex issues that emerged during the implementation of the *acquis communautaire* and in the good governance mechanisms of the newly established structures. It also provides a unique experience where enlargement is intertwined with the country’s institutional reforms, and where EU member states have taken a leading role in the scrutiny of the progress towards EU membership.

Reforming the justice

While the EU has repeatedly reported on Albania’s progress on the path of reforms subject to the countries accession into the EU, an Ad-Hoc Parliamentary Committee on Justice Reform³ composed by a group of high-level experts from the EU, the United States (US), and other international and local experts, prepared an Analytical Document of the Justice System in Albania which later served

1) European Commission (2014), “Albania Progress Report”. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014D0096>

2) EU Council, Council conclusions on enlargement and stabilization and association process — Albania and the Republic of Northern Macedonia. <https://www.consilium.europa.eu/en/press/press-releases/2020/03/25/councilconclusions-on-enlargement-and-stabilisation-and-association-process/>

3) Established with the Decision 96/2014, 27.11.2014. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014D0096&from=EN>



as the cornerstone in developing a strategy and action plan for the judicial reform.⁴ The main purpose was that the reform should address the re-set the existing corrupt, inefficient and dysfunctional justice system, strengthen the existing institutions and wherever necessary establish new efficient ones.⁵

“The will of the main political actors was crucial in pushing forward institutional reforms.”

The reform included, among others, setting up a fully-fledged system of vetting judges and prosecutors, establishing new institutions governing the judiciary, creating a special prosecution and courts for the fight against corruption and organised crime, and substantially reforming existing institutions, including the Supreme Court, Constitutional Court and General Prosecutor's Office. But mid-way and blocked by an absent Constitutional Court and a High Court, it was realised the existence of a Catch-22 situation: The will of the main political actors was crucial in pushing forward institutional reforms.⁶

The same scenario applies also in other Western Balkan countries: The good governance approach does not apply in an institutional environment that does not guarantee full democracy (as illustrated from the Freedom House's downgrading Serbia and Montenegro – from “semi-consolidated democracies” to “hybrid regimes”), respect for human rights and rule of law (as illustrated by the governing by decree during the COVID-19 pandemics), or where there is not a critical mass of political will in favour of these institutional changes (as in the confrontations

between the government, the parliament and the president for the appointment of the Constitutional Court judges in Albania).

Compared with the Western Balkan enlargement front-runners, in Albania the constitutional process of reorganising the judiciary was completed before the start of the EU accession negotiation process. The focus now has shifted towards the proper functioning and efficiency of the newly established structures and institutions. Frontloading conditionality has allowed Albania to mark a significant progress in many areas covered by Chapter 23, even if the accession negotiations with the EU have not been officially opened yet.

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Considering the political component in the “good governance” approach reiterates the importance of politics in the design, functioning and sustainability of the institutions. Weak administrative capacity, missing or incomplete rules of procedure, ad-hoc solutions and by-passing of institutional procedures, low transparency, weak fight against corruption, etc. happen because political leaders don't want strong institutions that can question or curtail their will. In the case of Albania, this was reflected also in the confrontations between the government, the parliament and the president for the appointment of the Constitutional Court judges, – which was a clear lack of critical mass of political will in favour of the institutional changes. Hence, **the legitimacy of political will becomes a key condition for good governance**. In this regard, **the role and impact of the political will and of good governance in the progress of the countries towards EU membership remains crucial**.

4) The Strategy on the Justice Reform and Action Plan. <http://www.reformandrejtisi.al/dokumenti-strategjik-dheplani-iveprimit>

5) Cooperation and Development Institute, Albania “EU Enlargement in SEE6 and Country Reforms – The Justice Reform in Albania as a Case Study”. <https://cdinstitute.eu/wp-content/uploads/2020/09/EU-Enlargement-in-Balkans-and-Justice-Reform-in-Albania-1.pdf>

6) Ibid.



Lessons learnt

The justice reform in Albania is one of the deepest, largest and most complex institutional reforms in the country. Approved in July 2016, the justice reform is known mainly for the vetting process and the long time it took to put the new justice institutions into operation. But the Albanian experience is much broader. It first involves mobilising political will as a prerequisite for the successful start and implementation of any reform, and not just in the justice sector. The political will is needed to bring forward change though the reform has a systemic importance. Inducing and implementing systemic changes when corrupt elites are still in charge requires a broad basis of participation to succeed. It is highly unrealistic for those complex tectonic changes to happen in a short period of time, to be quantifiable in minute detail, and to be implemented with non-political instruments.

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While intergovernmental partnerships are the way the EU works to support good governance, to be successful in such endeavours, the main local partners of the EU should include broad national coalitions. If they do not exist, the contribution of the international community could be to identify them, and then support in becoming both broad and powerful.

The process of reform monitoring and reporting should be more inclusive and extend also to those actors (i.e. Civil Society Organisations) outside from the captured institutions. The institutional reform programmes should be designed taking into account this political approach. While, the EU instruments for political dialogue should also act in line with the assistance and conditionality, promoting representative local pro-reform actors and avoiding the ‘professionalisation’ of reforms by limiting it to a circle of ‘experts’ only.

From the good governance perspective, five years after the adoption of the justice reform allow to identify and assess different issues impacting the good governance components. By all acknowledging its undeniable achievements, with the hindsight it appears that the main hurdles faced by the justice reform in Albania are rooted in the design phase, accompanied with the need to show swift results demanded by the EU integration agenda.

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In addition, the short time allocated to complete deep changes (including amending one third of the Constitution), the socio-cultural context, the oversized role of current political elites in the design and implementation, the overriding of good governance promotion by other strategic priorities, insufficient involvement of the citizens and an overestimation of the country’s abilities to produce new qualified members of the judiciary willing to become part of the new institutions, are some of the main setbacks of the reform implementation.

In this context, it should be understood that the complexities of this reform especially when it comes to implementation partially arose from systemic flaws that altogether need to be tackled in the broader reform’s framework suggested by the EU.

Due to the decade long scepticism over the impartiality and fairness of the justice system before the reform, a sense of doubt from the general public (the citizens) over the results of the reform is present. Therefore, it is important that the efforts in the future with regard to the justice reform should be in the good governance aspect of the new institutions as it is about time that they gain their own value and legitimacy.



Conclusions and recommendations

The justice reform in Albania has demonstrated the complexities of associating the progress of a country towards complying the EU conditionality while undergoing into a costly and long process of deep reforms, and of showing quick tangible outcomes and results. Yet, notwithstanding its downsides and imperfections, the scope and depth of the justice sector reform in Albania represents a case study to understand, assess and adapt the systemic importance of EU membership-driven reform processes in the Western Balkans. Having amended more than one third of its Constitution, Albania can be considered as a reform front-runner when compared with other EU candidate countries in the region. Seen from this perspective, the experience of the justice sector reform in Albania and the lessons learned during design and implementation of the justice reform can be applied in other sectors as well as in the other Balkan countries.

As a consequence, an important part of the EU foreign policy instruments of political dialogue, conditionality and assistance applied to the Balkan country must be re-oriented and redesigned to focus on the good governance and resilience of new justice institutions.

“In the case of Albania, the process of reforming the justice system, though it had the political will of the government, many times also pulled out the confrontation between the government and the opposition, and most recently with the president.”

The role and impact of both political will and of good governance are essential in the progress of Albania towards the EU membership.

The *political will* of the domestic political elites – or the lack of it – should be considered when initiating such deep reform(s); a clear political will is necessary to conduct the required changes and produce the desired results in an effective way. In

the case of Albania, the process of reforming the justice system, though it had the political will of the government, many times also pulled out the confrontation between the government and the opposition, and even the president. Nonetheless, in terms of EU enlargement process, the challenges for the country now have shifted towards the functioning and efficiency of the newly established structures. The frontloading of conditionality has allowed Albania to mark a significant progress in many areas covered by Chapter 23, despite the setbacks or weaknesses of the EU enlargement policy.

“[...] the challenges for the country now have shifted towards the functioning and efficiency of the newly established structures.”

The *good governance* features should apply to the newly established judicial institutions and structures. Implementing good governance in the newly established justice institutions and structures is crucial in determining the outputs and the long-term impact of the reform.

The *citizens* who are the main beneficiaries of the reform should be involved throughout the whole process from the design of the reform to its implementation and operation. Thus, there is a need to prepare information in a way that makes it easier for citizens to understand and create external mechanisms involving representatives such as the civil society, academia or bar associations to monitor the strategic action plans of the new justice institutions.

Through the weight given to the “fundamentals” chapter, the EU finally brings to the fore of its relations with the six Western Balkan countries (WB6) the democratic legitimacy of the institutional framework and ensures the sustainability and efficiency of its functioning. This development provides a much-needed contribution for the WB6 countries to raise the political will of their citizens to exercise their democratic rights and obligations and to ensure the good governance of their democratic institutions.



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Albania, justice reform, political will, good governance, European Union

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