

## RECOMMENDATIONS

### National Convention on European Integration

2021-2023

#### Working Group I (Judiciary and Fundamental Rights)

#### Session 3, Topic: The Impact of EU Legislation on the National Judicial System

#### During and After EU Accession

February 21, 2023, 16:30-18:00

*The European integration process of a country is usually characterized as a transformative and reformative process for that country, in order to meet the requirements of the Copenhagen criteria known as accession criteria. The political criterion for a functional democracy and democratic institutions, the economic criterion for having an economy able to compete within the European market, the Acquis criterion related to the harmonization of national legislation with European legislation and a fourth criterion of ability and administrative capacity to implement all the harmonized legislation. In this regard, for Albania it was essential the beginning of the reform of the judicial system known as the Justice Reform. A reform that brought radical changes both in the legal framework and in the structure of the judiciary and the role of institutions, and which aims, through the vetting (reassessment of magistrates), to create an independent, professional and accountable judiciary. Despite this, some challenges have been encountered during the process, while from various experts, but also from the experience of other already EU Member States, EU accession as a reform process does not automatically mean that the country is immune from corruption or the malfunctioning of democracy.*

- For institutions to be functional, they should be based on the principles of good governance, transparency and accountability. It must again be understood that the process of setting up these institutions must go hand in hand with the process of creating a democratic culture for the system and personnel, but also for society as a whole. Therefore, the principles of democracy and good governance should be embedded in the system and be the foundation for the establishment and functioning of institutions.
- The integration of a country's judicial system into the European Union implies that the judges of that country take on a new status - that of the European judge. It is very important that the courts and judges of the Member State have the capacity and willingness to cooperate with the Court of Justice of the European Union, but also with the courts of other Member States.

- It is recommended that before joining EU, the judges should have full and accurate information on the jurisprudence of the CJEU, on European legislation in order to facilitate their work to refer issues based on both national and European jurisprudence - for this it is recommended to start training of judges on EU Law, as this increases the ability to implement European law by the national court of a Member State.
- It is essential that the judiciary be characterized by effectiveness, independence and impartiality throughout its work and that appropriate monitoring and evaluation mechanisms be created to ensure that these qualities of the judiciary are not compromised.
- It is as important to have a judicial system based on the principles of the rule of law as it is to have the individual element in this process. Therefore, even though it may be a well-structured system, it is essential for individuals to have the right approach to operate this system. For this reason, it is necessary for the judges involved to be persons of integrity, impartial and with the right will to protect the principles of the rule of law.
- The independence of the judiciary from other governing powers, especially from the executive and from the influence of politics, is vital for having a functional and fair judicial system. The principle of judicial self-governance is one way to ensure this independence. However, experience has shown, as in the case of Slovakia, that granting such independence to a certain structure, such as the Judicial Council, without any monitoring or balancing of power mechanism, may have the opposite effect by giving a power that cannot be controlled, while influencing the performance of judges and courts.
- It should be emphasized that both the EU and the Member States are not immune to the risks and challenges related to the independence of the judiciary – from practice, external risks to the independence of the judiciary, political influence, and internal ones – the case of the Judicial Council in Slovakia, which is using its power and independence as a tool to arbitrarily remove or appoint magistrates in court. For this it is important for the Member State to have the right protective and monitoring mechanisms for the judicial system, as well as to be well informed about the mechanisms and measures that can be taken at EU level by the EU institutions or by the CJEU.
- A wider and more comprehensive Public Communication Strategy should be made with the citizens for all the changes and effects on the framework of the judicial system reform. It is necessary for citizens to have trust in the justice system, and although there has been a small increase in this trust after the beginning of the reform in Albania, in general terms the judicial system is still perceived as corrupt and not independent.