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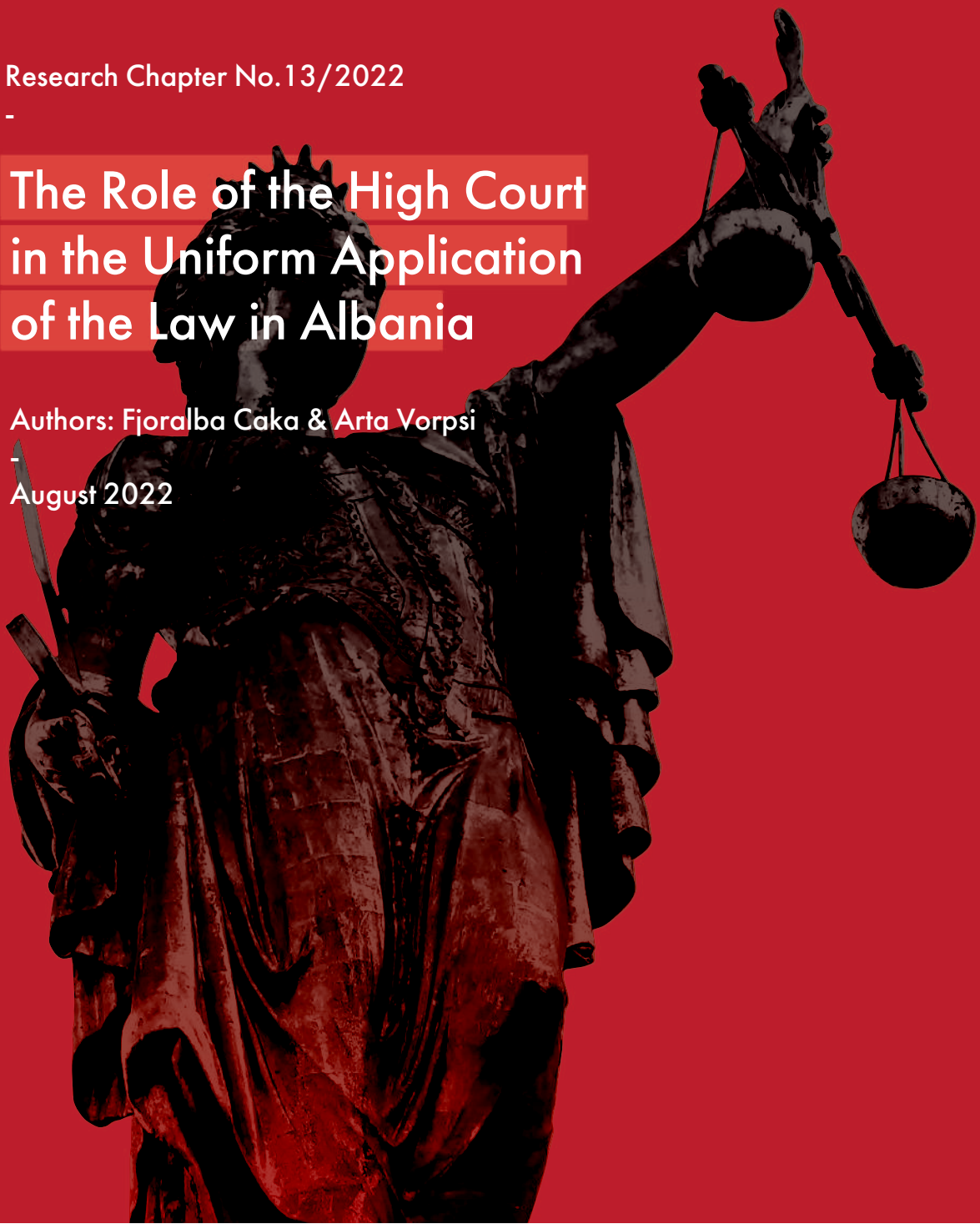

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THE ROLE OF THE HIGH COURT IN THE UNIFORM APPLICATION OF THE LAW IN ALBANIA

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INTRODUCTION

The ultimate goal of legal certainty is to ensure predictability in the implementation of the legislation. Different application of the same legal provision or different interpretation by the court of the same issue undermine the principle of equality. The different application of the same provision weakens the integrity of law itself as a basis to regulate business and relationships. It also weakens the legitimacy and reputation of justice institutions, because when different standards are applied by the same court panel, the losing party can associate the different application of the law with discrimination, or have allegation of undue influence, corruption, or abuse of power.

In most of countries the role of ensuring and preserving the legal uniformity is given to the supreme jurisdiction. The High Court, being in the apex of the judicial system, is in better position to oversee the application of the law by lower courts and check on the quality of their decisions and how they apply the law. However, although the High Court might be vested with all the legal and formal mechanisms to ensure the uniform application of the law, this mission is not easily achieved and depends on other factors such as the level of access in the High Court, the application of the filters of appeal, the role of lower courts, especially the courts of appeal, as well as the existence of semi-formal and informal mechanism which facilitates or hinders the uniform application of the law.

This paper will focus on the role of the High Court in Albania in ensuring the uniform application of the law. It will give an overview of the position of the High Court and some ideas on effective mechanisms used and local challenges which affect the uniform application of the law.

1. THE ALBANIAN HIGH COURT STRUGGLING FOR A BALANCE BETWEEN ITS PUBLIC AND PRIVATE MISSION. A BRIEF HISTORICAL OVERVIEW

The formal proceedings before the supreme jurisdiction aim to achieve private and/or public goals depending on the jurisdiction. The private interest is achieved when the supreme jurisdiction corrects grave errors made by the lower courts, thus guaranteeing a correct and just decision in the individual case.[1] The private purpose of the court provides legal protection in individual cases and as such serves to the individual justice, since its purpose is to give to a losing party the possibility to have a final judgement that is in harmony with justice.[2] In such a case, the activity of the supreme jurisdiction is predominantly oriented towards the past – by checking whether the law has been applied correctly in the lower courts.[3]

The public purpose on the other hand is giving guidance for future similar cases[4].The public aspect of High Court proceedings is observed in its main function to ensure uniformity of the application of the law and the development of the law in the public interest[5]. Despite the wishful expectations that the High Court would perfectly fulfill both its private and public missions, the reality shows that keeping the perfect balance is not always possible.

In determining which of these two functions of the High Court would take prevalence, a crucial element is the designed jurisdiction of the High Court and the filters/criteria to access the High Court. The scope of jurisdiction of the High Court shows what is intended to be the courts' main business. On the other hand, the access in the High Court is defined by the filters for recourse in the High Court, which have a variable nature depending on the goals they serve[6]. The filters of access in the High Court can be broadly defined, either giving to every citizen the possibility to access the High Court for a conflict or restricting the access only for important issue related to the development of the law.

Historically, if we have a quick look at the supreme jurisdiction in Albania, it is clear that the focus of the court has been more on the private function rather than its public function. The Albanian High Court (Court of Dictation) was established in 1913 after the declaration of independence from the Ottoman Empire.[7] The Court of Dictation was the highest

1 Domej, Tanja, Alan Uzelac, and Cornelis Hendrik van Rhee. "What is an important case? Admissibility of Appeals to the Supreme Courts in the German-Speaking Jurisdictions." (2014): 277-287. pg. 277

2 Lindblom, P. H. "The role of the Supreme Courts in Scandinavia." Scandinavian Studies in Law 39 (2000): 341. 337

3 Galič, Aleš. "A Civil Law Perespective on the Supreme Court and its Functions." *Studia Iuridica* 81 (2019): 44-86. Pg.49

4 Lindblom, P.H, cit supra, fn.2 pg. 337

5 Galič, Aleš, *cit.supra, pg.49*

6 *Mekki, Soraya Amrani. "L'Accès aux cours suprêmes–rapport français." Studia Iuridica 81 (2019): 172-190. Pg.173*

7 Kanuni i Zhurisë, was the first constitutive document on the judicial system after the independence. The high court in this document, Gjykata e Diktimit,

judicial authority, having both the revision power and the competence to adjudicate as a first instance court in some specific cases. The fundamental legal act (known as Kanuni i Zhurise) did not have any specific competence granted to the Court of Dictation to ensure the uniform application of the laws.[8] The unfavorable historical[9] circumstances did not allow for a normal and consistent development of this court and the judicial system in general. The period between WWI and WWII was characterized by several constitutional designs which produced further political and legal instability.

Nevertheless, one could notice that the Court of Dictation adjudicated criminal and civil cases as a second instance of appeal.[10] The Court of Dictation would adjudicate on cases which presented divergent approaches over the same legal issue.[11] This function of the Court of Dictation was specifically stipulated further, during the Monarchy regime, in the laws on organization of the judicial power. The law provided that the Court of Dictation had the competence to decide on legal cases in its General Council (General Meeting of all Judges), which were important for the development of the judicial practice. The Court of Dictation delivered legal opinions for important legal issues upon request of the highest state institutions. However, the focus of the Court of Dictation also during the Monarchy was more based on its private function, meaning that not only was it a court of cassation but it also reviewed the merits of a given case, based on the Swiss model.[12]

The end of the WWII found Albania with a new regime, the beginning of the communist party ruling. For the first time a High Military Court was established and the Court of Dictation was abolished and replaced with the High Court for Civil and Criminal Justice (Gjykata e Nalte). The High Court had full revision jurisdiction on issues of law and facts and initial jurisdiction for charges against high officials. The High Court had also nomophylactic powers, since it could give guidelines for the change or uniform application of the judicial practice. The scope of competences and procedure before the High Court was further regulated and subject to subsequent changes in 1951, 1953, 1958, 1968 1979 and 1988. Some of the crucial changes of these legal amendments was the power of the High Court to subtract a case from the lower courts and solve it itself. Moreover, the High Court would serve also as a second forum of appeal against decisions of lower courts. The important aspect of the functions of the High Court however, as for each state insti-

8 Nova, Koço, *"Zhvillimi i organizimit gjyqësor në Shqipëri",* Shtypshkronja "Mihal Duri", Tiranë 1982, fq.65. See also Kalaja, Florjan & Arjana Fullani " *Gjykimi në Gjykatën e Lartë*", UET Press, Tiranë, 2019, pg. 3

9 This court was short-lived since only one year later the WWI began. During the World War I, Albania was occupied by the Greek, Serbian, Montenegrin, Austro-Hungarian, Italian and French armies. Each of the occupiers tempted to organize an administrative regime in their zone of occupation. For example, the Austro-Hungarian administration operating in the country adopted laws in the field of the judiciary, i.e. the Law on the first instance courts (Ligji pwr gjyqet e paqit) of 1916, while the French administration, also established its first instance courts with competence over criminal and civil cases that were urgent Nova, Koço, *"Zhvillimi i organizimit gjyqësor në Shqipëri",* Shtypshkronja "Mihal Duri", Tiranë 1982, fq.65.

10 For cases of significant importance an ad Hoc high court would be summoned with 5 senators and the chairs of the branches of the court of Dictation.

11 Kalaja, Florjan & Arjana Fullani " *Gjykimi në Gjykatën e Lartë*", cit.supra, pg.7

12 Law on the organization of justice 1.4.1929, cited at Nova, Koco, pg.77

tution, was to "follow and advance the line of the party" and "defend the socialist order."

In 1992, after the fall of communism, Albania emerged into a deep legal, economic and institutional transformation. The previous High Court was abolished, and the supreme jurisdiction was exercised by the Court of Cassation of Albania. The Court of Cassation would have review jurisdiction on the points of law. The Law on the Organization of the Judiciary in 1997 (Law 8265), added to the Court also initial jurisdiction to review the disciplinary decisions of the High Council of Justice against judges and prosecutors.[13]Although the main constitutional provision did not foresee any special function of the Court of Cassation towards the uniform application of the law, both the code of criminal and civil procedures acknowledged that the High Court may decide to unify the judicial practice in its Joint Panels, when there were contradictory judicial practices among its panels, or when the recourse made in the High Court was of a special importance (Article 481 of the Civil CP and Article 438 of the Criminal Code of Procedure).[14]. However, the public function of the court was still accessory.

The Albanian Constitution of 1988 changed the designation of the court from Court of Cassation to High Court. Article 141 of the 1998 Constitution made clear that the High Court had initial and review jurisdiction, assigning the nomophylactic function to the High Court, for the first time at a constitutional level.[15] The High Court that emerged from the 1998 Constitution had both cassational and revisional jurisdiction. Practically, this balance has not been retained, and for almost 25 years the High Court has operated more like a forum to solve private conflicts rather than focusing on its public function of unification of the judicial practice. If the High Court would find procedural violations of the law, it would squash the decision of the lower courts and return the case for reevaluation (cassational). In the event of misapplication or misin-

13 The first organic law on the functioning and organization of the High Court. (Law 8352, 01.07.1998). regulated the nomophylactic function of the court. Article 7 and 9 of the law determined that the proceedings to unify the judicial practice would be initiated by a request of the President of the Court of Cassation, a simple panel or the joint panel of the Cassation. Differently from the current regulation, a stronger majority of votes were required for the adoption of a unifying decision or decision that would change a unified judicial practice, i.e the majority of votes of all judges of the court. The law also clarified that the unifying/modifying decision would extend its effects pro futuro (again for the first and last time). See further Kalaja, Florjan and Arjana Fullani, cit.supra, fn.8, pg. 43

14 The first organic law on the functioning and organization of the High Court. (Law 8352, 01.07.1998). regulated the nomophylactic function of the court. Article 7 and 9 of the law determined that the proceedings to unify the judicial practice would be initiated by a request of the President of the Court of Cassation, a simple panel or the joint panel of the Cassation. Differently from the current regulation, a stronger majority of votes were required for the adoption of a unifying decision or decision that would change a unified judicial practice, i.e., the majority of votes of all judges of the court. The law also clarified that the unifying/modifying decision would extend its effects pro futuro (again for the first and last time).

15 Article 141(2) More specifically, the unification or change of the judicial practice was granted to the Joint Panel of the High Court. The unifying judgments were not abstract but delivered in individual cases. This competence was further detailed in the organic law of the High Court. The triggering mechanism to unify or change the judicial practice was activated by a request of the President of the High Court, each of the panels of the high court or the Joint Panel. In each case, the Joint Panel would sit and judge cases with a constitutive quorum of 2/3 of the High Court and a decision was taken with the majority of judges present. See Law law no. 8588 "On the Functioning and Organization of the High Court "Law, Nr.8588, date 15.03.2000, Official Journal Nr.7, Faqe:274 article 16 and 17.

terpretation of substantive law, the High Court would resolve the case itself (revisional).[16]

The filters for revision of cases on points of law were very broadly defined. The High Court would review a case when the law had not been respected by lower courts; b) the law had been badly implemented by lower courts or if there had been serious violations of procedural law by lower courts[17]. The law also recognized special recourse to the High Court for specific cases such as the conflicts of lower courts on jurisdiction and competence,[18] the request to expel a judge,[19] the request on precautionary measure [20], etc. Another extraordinary reviewing competence was that of ruling on the request to review a final decision given by the court[21]. The High Court had also initial jurisdiction and acted as a first instance court when adjudicating criminal charges against the President of the Republic, Chairman and members of the Council of Ministers, deputies, judges of High Court and judges of the Constitutional Court.[22] It also adjudicated in first instance the High Council decisions on dismissal of judges.

Despite the special relevance that the 1998 Constitution attributed to the High Court in ensuring the uniform application of the law by issuing unifying decisions, the High Court's main activity was still focused in solving private disputes. The access to the High Court was wide open not only because of the broad competences granted to the HC and the broadly formulated filters for review, but also because of its case law to grant leave to most of the appeals. There where cases where the HC would go beyond its jurisdiction and accept appeals not only on points of law but also to review the facts of the case. This has fueled the attorneys to bring almost every case before the High Court, contributing more to the image of the HC as a forum to solve private conflicts as well as adding more cases to the actual backlog. This shifting of the High Court jurisdiction from a court of law to a court of facts was criticized by the Constitutional Court, which continuously pointed out that whenever the High Court would make an assessment of evidence different from the lower courts, such decision would be considered as taken "*by a court not established by law*" and would be stricken down as anti-constitutional[23].

16 Article 485 of the Code of Procedure Civil cases, in Article 433 of the Code of Criminal Procedure for criminal cases and Article 63 of the Law on Administrative Trials of Cases administrative.

17 Article 467 Civil Code of Procedure

18 Article 59CPC paragraph (2), article 60 paragraph (1) and article 62 CPC provide for the right of appeal directly to the HC against a decision that determines the jurisdiction of a court.
Article 64 paragraph (2) CPC provides the right of a court to involve directly the HC in cases of conflict of competence;
Article 73 CrPC provides the right of the HC to deal with conflict of jurisdiction disputes

19 Article 22 CrPC paragraph (4) provides the right of appeal in the HC against the decision on the request to expel a judge

20 Article 249 paragraph (8) provides the right to appeal the precautionary measure in the HC

21 Articles 497 and 498 provide the obligation of the HC to adjudicate requests for reviewing a final decision.

22 Article 141 of the Constitution. 75/b i Kodit të Procedurës Penale

23 See decision of the CC 31/2005, 17/2007, 7/2009, 32/2009

Therefore, the combination of the broad jurisdiction and the behavior of the High Court itself largely contributed to a high volume of backlog, making impossible the implementation of its main role in unifying the judicial practice. Due to the high number of appeals, the High Court became overloaded, afterwards ineffective. In 2014, the backlog at the High Court reached 9451 cases[24]. The average caseload for each judge of the High Court in 2014 was approx. 454 cases per year.[25] Judges could not devote enough time to complex cases which were valuable for the development of the law and the judicial practice[26]. There was also inconsistency between different court panels on similar issues, creating more unpredictability and offering different prospects of the success of a case in the High Court.

2. THE TRIUMPH OF THE PUBLIC MISSION OF THE HIGH COURT: FORMAL MECHANISMS FOR A UNIFORM APPLICATION OF THE LAW

There were serious concerns about the role of the High Court in the judicial system, which were also presented in the Analyzes of the Justice System upon which the entire idea of the 2016 justice reform was based. This reform brought a major paradigm shift with regards to the main function of the High Court from the private function of solving individual cases to the promotion of public interest. The new Article 141(1) of the Constitution foresees that "The High Court shall decide cases relating to the meaning and application of the law in order to ensure the unification or evolution in the judicial practice, in accordance with the law" which is quite a different approach in comparison with previous formulation.[27] The initial jurisdiction of the High Court was removed, the review jurisdiction and the filters for leave of appeal were also changed, shift-

24 Analiza e Sistemit të Drejtësisë në Shqipëri. Komisioni i Posacëm Parlamentar për reformën në sistemin e drejtësisë. Grupi i Ekspertëve të nivelit të lartë. 2015 Tirana (Analysis of the Justice System in Albania. Document prepared by the High Level Expert, Special Parlamentary Committee for Justice Reform 2015. Accessed: http://www.reformanedrejtesi.al/sites/default/files/dokumenti_shqip_0.pdf Pg.108

25 Analiza e sistemit te drejtesise, cit supra, faqe 92

26 Galič, Aleš. "A Civil Law Perespective on the Supreme Court and its Functions." Cit.supra, pg. 52

27 The "old" constitutional provision foresaw: The High Court has review and initial jurisdiction.

ing the focus of the High Court towards the uniform application and development of the law.
Further, the selection criteria for granting leave to appeal to the *High Court* clearly emphasize the public function of the High Court.[28] The High Court would grant permission to appeal on points of law, if there is a wrong/ill application of the material or procedural law, or if there is an issue of fundamental importance for the uniform application of the law, legal security and/or development of case law. It seems that by imposing such selection criteria the legislature opted for the public function model, which means that questions put before the High Court should be relevant beyond the limits of the individual case. Cases where the lower courts may have decided the case erroneously is not anymore ground to grant leave for appeal in the High Court. The second reason for appeal is when the appealed decision is different from the case law of the Panels of the High Court or the standard practice of the Joint Colleges of the High Court. The High Court, which is functionally positioned in the apex of the judicial system, has a better insight and supervision into the jurisprudence of lower courts and the implementation of judicial decisions, which is why it is in the best position to judge on this ground. The third reason for appeal is when there are serious violations of procedural norms, which cause the invalidity of the decision or affect the trial procedure.

Not only are there new filters to address the High Court, but procedural requirements are also put in place to safeguard the public function of the High Court. Access to High Court is controlled not only through the admissibility criteria but also by the procedure in which these criteria are assessed and evaluated. That is why the new legal framework has also intervened in this regard. Procedurally now, it is obligatory for a litigant to make evident and clear the reasons for which the decision of a lower court is being challenged before the HC, as well as the arguments that support the allegation that one of the above causes for recourse exist.[29] The recourse shall be considered not to have been lodged and it shall be returned to the party, along with the other acts submitted by them if their application fails to specify the arguments why the causes for the leave of appeal exist.[30] A selection panel is established in the High Court to filter the upcoming cases and evaluate their admissibility[31].

The new legal framework introduced a three-tier system to avoid overloading the High Court with inadmissible cases. The first tier are attorneys at law. The 2017 and 2021 amendments provide that appeals made to the High Court should be signed by attorneys at law.[32] The representation only by attorneys at the supreme jurisdiction is observed also in other countries such as France or Italy.

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29 Article 475 Content of recourse (Paragraph I letter "ç" amended and paragraph II added by law no. 44/2021, Article 21) Civil Code of Procedure; Article 434/a Criminal Code of Procedure, Article 56(a)(cc) Law on Administrative Court

30 Article 475 (4) Civil Code

31 In the administrative and civil procedures, a single judge can evaluate the "fulfillment of the formal conditions and deadlines of a recourse according to the law." However, differently from the selection committee the single judge would only assess whether the formal conditions, i.e., is the recourse singed by an attorney, is it deposited within time etc. and not interpret the criteria of admissibility.

32 Article 96/a, Article 474 of the Civil Code of Procedure.

The requirement to have a lawyer representation serve as an indirect filter of appeals in the High Court, since the legal advice from a lawyer on the possibility to appeal a case or have success in the High Court can discourage certain recourses.[33] Moreover, the presence of an attorney raises the level of judicial debate and the quality of reasoning before the High Court. The presence or signing of claims by attorneys (for both public and private law subjects) is presumed to be accompanied by a professional debate on matters of law (rather than facts) both between the parties and the Court. In this sense, attorneys should prove why a certain case is worth considering for unification or change of practice, instead of submitting an appeal merely because they deem there have been an erroneous application of the law. To improve this first tier filter, the High Court has prepared and published on its website special formats and guidelines on how to fill a recourse before the High Court, which would contribute in more qualitative recourses, giving the High Court the possibility to play its guiding role of judicial practice.

The second tier in the civil and administrative procedure are the lower courts. The procedural laws have recognized the obligation of the lower courts to verify leave for appeal in the High Court[34]. So, another legal professional, the judge, has to check if the admissibility conditions for a recourse in the High Court are fulfilled. The third tier is the High Court itself. If the lower judge did not grant an appeal, the High Court can filter the appeals that are defective (or when they are openly ill-founded).[35]

However, unfortunately in the current situation the appeals are mostly being filtered by the High Court. The verification by the first two tiers, i.e., attorneys at law and court of appeals, are either completely absent or ineffective or only formally performed, which has led to an unnecessary increase of resources affecting the ability of the High Court to select the issues that need to be unified and are important for the case law.

In order to prevent the income of futile cases before the High Court and reduce the backlog as much as possible, a fine for abusive requests to Court has been already implemented[36]. A considerable number of recourses have been filed over the years in the High Court, which could not have had a chance to be accepted for trial because of their wrong stated reasons. The High Court has currently used the power to impose fines on lawyers to curb abuse of appeal and remove futile cases[37]. In the Civil Procedure Code, the legislator has also provided that a recourse which is declared inadmissible by the High Court may not be filed again, even in cases when

33 Mekki, Soraya Amrani. "L'Accès aux cours suprêmes–rapport français." *Studia Iuridica* 81 (2019): 172-190. pg 183.

34 The appellate court in civil proceedings Article 475(3) and (4) Civil Code of Procedure; the first instance court in administrative procedures article 57(2)-4 and article 60 of the Law on Administrative Court

35 Article 475(7), 480 of the Civil Code of Procedure, article 60 of the Law on Administrative Court

36 Article 34 of the Civil Code of Procedure.

37 See: http://www.gjykataelarte.gov.al/web/Vendime_per_kundershtim_vendimesh_te_denimit_adm_6804_1.php and http://www.gjykataelarte.gov.al/web/Vendime_per_kundershtim_vendimesh_te_denimit_civ_6805_1.php

the deadline set by law has not yet expired.[38]

Since May 2021, when the last changes were made, the pace of adjudication has been increased, by not holding public hearings on cases that do not merit the classical court debate. This, in fact, does not come simply as a measure to reduce the stock of cases[39] but to make the High Court more effective in its constitutional role[40].

Lastly, the leave of appeal before the High Court would be denied for low value cases (*ratione valoris*). The Constitution acknowledges the restriction of appeals for criminal offences of a minor character, for civil and administrative matters of minor importance or value.[41] This is further detailed in the respective Code of Procedure. The Civil Procedure Code provides that no recourse is allowed against the decisions of the court of appeal in the High Court for lawsuits worth up to ALL 150,000. In the administrative process no leave of appeal is granted for recourses worth less than forty times the national minimum wage[42].Although the analysis of the judicial system, which proceeded the justice reform, recommended to include in the Criminal Procedure Code the possibility to exclude from the right of appeal lenient criminal offences, or cases when the interested party has been adjudicated by the highest court, or found guilty and convicted following an appeal against their innocence, this is not properly reflected in the current legal framework. Having into consideration the huge workload of the High Court, this might be another solution to reduce the actual backlog of cases in the court.

38 Article 489 of the Civil Code of Procedure

39 It is worth mentioning that during 2020 until April 2021 the High Court worked with only 3 judges and the pace was quite satisfactory (over 2500 decisions).

40 482/a of Civil Code of Procedure; Neni 436/a Criminal Code of Procedure; Article 60 and 61(1) of the Law on Administrative Courts

41 Article 43 of the Constitution 2016.

42 Article 56 of the Law on Administrative Court.

3. CURRENT AND PROSPECTIVE CHALLENGES OF THE ACTUAL HIGH COURT IN ENSURING UNIFORM APPLICATION OF THE LAW

Due to the vacancies created in the High Court due to the vetting process, the actual High Court started to work in March 2020, initially with 3 judges. Now there are 12 judges[43] in the High Court and the full configuration is not yet complete. Although 2 years of activity may not be enough to extensively judge on the activity of the High Court, the authors of this paper are of the belief that even after the new justice reform, the High Court has not yet fully grasped its public function. We will shortly mention some of the obstacles faced by the High Court that might hinder its natural new function of a body which mainly ensures the uniform application of the law and its development and why the main focus of the court is still individual justice.

Firstly, the reform has still left room for solving individual disputes in cases of serious violations of procedural norms. Despite the Constitutional provision that shifted the High Court towards its public nomophylactic function, the High Court continues to be overloaded with different types of recourses. Apart from the normal resources mentioned above, there is a relatively high number of special recourses in civil, administrative and criminal procedure. Looking through the official website of the High Court, one can easily realize that the unifying decisions of the High Court are only one line in the long list of decisions and other special recourses of the court.

One of the unavoidable aspects that will continue to keep the High Court in the realm of the old regulation is the issue of cases registered to the High Court before the 2016 reform. The legislator has stipulated that the recourses registered to the High Court before the entry into force of the legal amendments will be evaluated according to the previous legislation[44]. The transitory provisions of the new regime before the High Court provide that cases that are pending in the court of first instance and the court of appeal, on the date of entry into force of the amendments, will be adjudicated according to the law of the time of filing the lawsuit.[45] This is a rational solution and serves to the principle of continuity and perpetua juridictiones. Having into consideration that the new High Court

43 The last member is appointed on 26 April 2022.

44 Neni 619 kodi civil Rekurset kundër vendimeve të gjykatës së apelit dhe kërkesat për mbrojtje të ligjshmërisë përpara Kolegjit Civil të Gjykatës së Lartë të regjistruara deri në ditën e hyrjes në fuqi të këtij Kodi do të shqyrtohen sipas dispozitave të kodit të mëparshëm.

45 See the transitional provisions of the Civil Code of Procedure.

was made operational only in March 2020 and the backlog of cases registered in High Court at the end of 2020 was 36288 cases[46], one can easily name the situation a paradox that makes it almost impossible for the court to devote itself in the public function. All these cases registered in court should be assessed with the wide open criteria that existed in the previous legal system.

Moreover, there are views that changes made recently in 2021 in fact cast doubt on the true cassational nature of the High Court. The amendment provides that the High Court may decide to change the decision of the lower courts and adjudicate the case itself, when the application of the material and procedural law is not dictated by the need to review and re-evaluate the facts or evidence of the case"[47] Despite the official explanation of the High Court on its website that this provision does not make the High Court a court of evidence, we understand that by this provision the High Court has trespassed the limits of a pure cassation court. There is a high risk that this legal provision might shift the balance of the High Court towards individual justice, and its public purpose would become submerged by the high number of individual cases for revision. However, on the other hand there are contradicting views that consider this legal amendment necessary to respond the urgent need of the system and the high backlog of cases in the High Court. They retain that the aim of this provision is to shorten the time for solving a dispute and save the citizens from the hurdles of going back to the lower courts to find a solution for their case after waiting for a long time in the High Court. The effect of this instrument is till to be tested and will depend on how much the High Court justice would avail it to resolve individual cases.

And to add more to the current pressing needs of the High Court towards individual judgements, there is an emerging jurisprudence that puts pressure to the High Court to solve the cases before it within a reasonable time. The jurisprudence of the Constitutional Court after the justice reform did not accept the argument of the High Court that the delays in proceedings within a reasonable time are related to the backlog. The Constitutional Court, both in decision 27/2017 and 3/2018, observed that the proceedings before the High Court lasted more than 3 years, which was beyond the reasonable time limits determined in the law[48]. The Constitutional Court stated that "***a strict observance of the law*** *constitutes an obligation for the High Court, owing to its role and position as a court of*

46 High Judicial Council report 2020, pg. 56 http://klgj.al/wp-content/uploads/2021/06/Raporti-Vjetor-KLGJ-2020.pdf.

47 Article 485 (dh) Civil Code of Procedure; 441(dh) Criminal Code of Procedure; 63(dh) Law on Administrative Court

48 The concept of reasonable time is transcripted in mandatory obligations in the Civil Code of Procedure. After the cases of Luli and others vs. Albania where the EctHR acknowledged the unreasonable length of proceedings before the Albanian courts, the Parliament adopted changes in the Civil Code of procedure aiming to accelerate the proceedings and/or pay just compensation for the fair trial violation. According to article 399/2 termination of proceedings before the High Court should not go beyond 2 years.

law examining the application of substantive and procedural law by the lower courts ... [T]he backlog does not constitute a [valid reason] justifying non-compliance with the time-limits laid down by the legislature."[49] The same position was upheld even in the ECtHR in the case *Bara and Cola v. Albania*. The ECtHR emphasized that "*While not disregarding the understandable delay stemming from the far-reaching justice system reforms and the vetting process, the Court notes that States have a general obligation to organize their legal systems so as to ensure compliance with the requirements of Article 6 § 1, including that of a fair hearing within a reasonable time*." Therefore, in light of the national and international obligations, the High Court should avail itself of all its tools and mechanisms, in order to judge cases within a reasonable time, i.e., not exceeding two years. In this regard, there is a pressure from the Constitutional Court and the ECtHR to have speedier proceedings, which inevitably pushes the High Court to somehow give precedence to the solving of individual cases.

3.1 From the Land of Volume Toward the Land of Selection

The backlog of the High Court remains high. In 2020 the volume of the backlog piked in 36.590 cases[50]. The work load assigned for each judge in 2021 was 5 341 cases a year.[51] During 2021, the High Court has issued 646 decisions on ordinary recourses and 700 decisions on special recourses (jurisdiction, competence etc). Meanwhile the number of unifying decisions during 2021 is 6 decisions. The figures show for an extraordinary work of judges. It is clear that judges are being stretched to meet both the private and the public functions of the High Court. However, despite all the effort made by the actual High Court to meet both ends, keeping the balance between the private and the public function of the court is quite impossible.

If the High Court has to judge and reason on every case on appeal, even ones that are not of essential importance, less time will be devoted to hearing important cases, thereby making it more difficult to address them promptly and give them the attention they deserve.[52] Moreover, unless the problem of the backlog is being properly addressed, the main focus of the court will always remain solving disputes and evading cases. This would risk the authority of the

49 Gjykata Kushtetuese Vendim 27/2017

50 Raport vjetor mbi performancen 2021. Gjykata e larte, published 17 February 2022 pg.30: http://gjykataelarte.gov.al/web/analiza_vjetore_2021_copy_1_8160.pdf

51 klgj 2021, fq 38 http://klgj.al/wp-content/uploads/2022/04/RAPORT-VJETOR-2021.pdf

52 Galič, Aleš. "A Civil Law Perspective on the Supreme Court and its Functions.", cit supra, pg. 53

High Court in providing guidance and developing the law being compromised since too many cases are dealt with and probably *the overall thrust of decided cases is thereby perhaps obscured rather than clarified.*[53]

Although the Constitution is clear that the High Court's main mission is the public function of ensuring uniform application, the other statutory provisions mentioned above and the situation on the ground pose a significant threat of detaching the High Court from the constitutional model.

In this regard, the High Court itself should continue to be active in driving a way through the land of volume to the land of selection. The selection committee in the High Court should be strict and stringent in applying the filters of admissibility and not create new open doors. Although it might be controversial it should be explored the opportunity that the selection process as established in Article 480 of the Civil Code of Procedure and 432 of CPC be done by a single instead of three. The court might also use legal mechanism and interpretative tools to render a solution through one judgement to similar/identical cases, or try to resolve a multitude of legal problems through one unifying decision.

Another solution employed in the countries is the power granted to the High Court to omit reasons for cases which were not accepted for full review. The function of this intervention in practice is considered to have a psychologic and a pedagogic value on the attorneys, i.e., to discourage them from unsuccessful application. On the other hand, its aim is to give more time to the High Court judges to concentrate their reasoning on issues which are important for the development of the court. [54] Neither the goal of reducing backlogs in supreme courts, nor the goal that supreme court judges fully devote their capacities to deciding and diligently reasoning cases of general importance *pro futuro*, nor the goal that the amount of "output" of the highest courts be kept relatively low would be attained if the High Court had to substantially reason every decision of inadmissibility.[55]

Since our Constitution has sanctioned the obligation of the court to reason their opinion, the options might be to not give a substantive reasoning, adopt a standardized format of decisions or have a summary dismissal. This solution would also be in compliance with the jurisprudence of the ECtHR which has noted that a detailed reasoning of the jurisdiction of the recourse is not required in cases where there is an obligation for the court to reason their opinions, which on the basis of a specific legal provision, dismisses an appeal as having no chance of success[56]. Although the two last recommendations bare the risk of arbitrariness and infringement of individual justice, they should be brought into discussion as measures that would strengthen the public function of the court. They might be premature, especially in the current

53 Ibid, pg. 57

54 Mekki, Soraya Amrani. "L'Accès aux cours suprêmes–rapport français." *Studia Iuridica* 81 (2019): 172-190. pg, 179.

55 Galič, Aleš. "A Civil Law Perspective on the Supreme Court and its Functions.", cit supra, pg. 65

56 Stepinska v. France, Case no. 1814/2, Judgment 15.6.2004 ; Burg v. France, Case no. 34763/02, Judgement 28. 01. 2003.

situation where the trust in the judiciary is still low and the lower courts are not optimally rending justice. However, unless drastic measures are taken, it will be difficult to expect seeing a High Court as designed by the theoretical constitutional framework in the years to come: one that is in the apex of the judiciary to ensure the uniform application of the law. If the number of cases before the High Court is high, it will be impossible to maintain an overview of the uniform application of the law and focus on the development of the law. The history of success of the High Court in fulfilling its mission will depend on managing the backlog and controlling the flux of new cases in the court.

However, this burden should not rest only on the shoulders of the high court. Each of the actors in the system has a specific role to play to save the design of the new system.
Firstly, the courts of appeal should be more aware that they now have the final word for a lot of issues and should rise to the responsibility of their new tasks. It is true that the vetting process has created a huge number of vacancies and judges at the appeal level are extremely overloaded. The workload of cases however should not serve as an excuse to decide formally on the admissibility criteria of the cases to the High Court. The court of appeals should find mechanisms to properly respond to this task and be a proper filter for cases reaching to the High Court. Although this is not a topic of this research, we believe that only a strong judicial system at general, with good first instance and appeal court, would be able to turn the High Court into a court which does not solve conflicts, but contributes to guide the lower courts and legal practitioners to uniformly implement the law. If there is a will to turn the High Court into a court which is focused on the public function of development and uniform application of the law, as defined in the Albania Constitution, it is indispensable to strengthen primarily the Court of Appeals. Without strong, efficient and qualitative court of appeals, applying strong filters of admissibility would mean denying justice to individual cases and not necessarily contributing to the public function of the High Court.

Secondly, the attorneys at law should abandon the mindset of giving cases a chance in the High Court, when they are well aware that the case in question does not have the chance to pass the admissibility criteria. This not only burdens the court with futile cases, but it is also an unethical client representation. The statistics of cases submitted after the implementation of the reform shows that for the 2019-2020 period more than 12 thousand new cases were registered in the High Court (12242). Conversely, the High Court declared inadmissible around 2.322 cases in 2021 alone. The attorneys need to raise awareness about the new criteria and procedures of admissibility in the High Court. Apart from sanctions for the recourse abuse mentioned above, it would be advisable to have activities with the Bar Association to properly inform lawyers on the new changes.

Thirdly, a special role in ensuring the uniform application of the law will also fall on the will of the legislator. It is the legislation that is the first body that has both the obligation and the democratic legitimacy to preserve the uniformity of the legal order. When the uniformity of the legal order is not attained through the activity of the legislator and its political will, then it becomes a difficult task of the court to accomplish this duty. However, in practice we have observed two tendencies of the legislator in Albania that hamper the uniform application of the law. One is the tendency to change the law very frequently. As shown above with the example of the legislation on expropriation, the frequent change of legislation impacts the High Court, which has to engage in repeatedly changing its unifying decisions in order to be in compliance with the latest regulation. Moreover, perhaps a rudiment of the past, but even in the course of the long democratic transition there is still a tendency of the legislator to regulate everything on its own and be the main regulator of the public arena. The regulation details a multitude of laws and bylaws of every aspect of the public life, not leaving much room for the development of the courts' interpretation, thereby impinging on the importance of the jurisprudence.

In addition, we are aware that the filters of leave of appeal in the High Court are by their nature a reflection of the political will. It is the will of the political powers either to have a court which serves as the last resort to seek individual justice, or a high court that preserves the uniformity of the legal system and promotes its development. Attaining both is desirable, but the legislator still has to make a choice. In this regards, if so convinced that it is time to have a High Court focused only on its public function, the political power in Albania should work towards the accomplishment of this mission and take measures to reduce the High Court backlog and the flux of new cases[57].

57 Such as the measure taken very recently by the Ministry of Justice to withdraw from around 3800 recourses to the High Court made by the public administration bodies. https://ata.gov.al/2022/05/26/qeveria-miratoi-udhezimin-per-heqjen-dore-nga-rekursi-ne-gjykaten-e-larte/

3.2 Horizontal Uniform Application of the Law in the High Court

The uniform application of the law is not only ensured by the lower courts following the case law of the High Court, but also through uniform application of the law within the High Court itself. If the different panels of the High Court had different interpretation of similar issues in similar cases, this might create jurisprudential confusion for the lower courts. This situation was often experienced before the justice reform in Albania. Instead of ensuring the uniform application of the judicial practice, as the highest supreme jurisdiction in a country, the High Court was in fact itself part of the problem. There were numerous cases where different colleges of the High Court would give different interpretation for similar cases. There was a hesitation of the Joint Panels to react properly to resolve conflicting issues among panels of the High Court. The lack of a prompt reaction by the High Court to manage its different interpretations among different panels, inevitably added more cases to the backlog; all the parties seem to find a legitimate reason to address the High Court, and despite being winner or losers in the lower court they would find a court practice in one of the panels of the high court to back their position. As such, we can extend the same comment as for the Italian Supreme Court, i.e., it too resembles a supermarket where every client could find what he/she needed.[58]

In the current framework, the cases for the unification and development of the case law are adjudicated by each of the panels of the High Court, while the change of the judicial practice rests on the Joint Panels of the Court[59]. Thus, unlike the previous legal framework where only the Joint Panel would issue unifying decisions, now each of the panels of 5 judges are entitled to release unifying judgements. The proceeding for the unification of the judicial practice is initiated by each of the Panels of the High Court, *ex officio* or with request of the parties and the case is judged in a panel of five members, where three members are of the actual college which judges the recourse and the two other judges are appointed by lot[60]. The proceeding for the change of the judicial practice is initiated by each of the Panels of the High Court or by the Chair of the High Court. Thus, the Joint Panels can be seized only by a panel of three judges and not by the individual litigants. The change of judicial practice is conducted by the Joint Panels with a constitutive forum of 2/3 of the High Court.

Neither of the Codes of Procedures, nor the law on the administrative court defines explicitly who takes the initiative to unify the judicial practice in case of

58 Galič, Aleš. "A Civil Law Perspective on the Supreme Court and its Functions." *Studia Iuridica* 81 (2019): 44-86. Pg 53

59 Article 14/a of the Criminal Code of Procedure, Article 35 Civil Code of Procedure

60 Article 481 of the Civil Code of Procedure; Article 438 of the Criminal Code of Procedure; neni 62/a Law on Administrative Court.

divergent opinions among different chambers of the High Court. Even the previous provision of the Law on Judicial Power which granted to the Joint Panels the power to review "cases where the same legal issue has not been interpreted in the same way by different panels of the High Court, or where there is a risk of different interpretations by different panels of the High Court" is abolished with the legal changes adopted in march 2021. The abolishment of this provision in 2021 is aimed to preserve the demarcation of the constitution, where the Joint Panels deal only with the change of practice. Moreover, these regulations rest somehow on the presumption that the competences of each of the panels are clearly defined and in principle there should not be any conflict. Although the need to unify the divergent judicial practice among panels of the High Court has not yet been brought up before the court, such outcome is to be expected. Once the High Court has been complete and there are more judges and a higher volume of cases, it will be harder for the High Court to keep track of its jurisprudence.

The lower courts need guidance in deciding issues at hand. The uniform application of the law will be hampered if the horizontal precedents of different chambers of the High Court are not observed. It will be hard to expect a vertical binding effect of the ruling of the High Court, if there are different position on the same issue of law within the High Court itself. That is why the role of the Joint Panels of the High Court is important. The provision of a legal mechanism is indispensable and in the absence of an explicit regulation by the legislator, it is logical that the Joint Panels of the High Court will be willing to unify the divergent judicial practices of the joint colleges whenever the case would arise. The Joint Panels is the largest body of a court ruling on a case in the High Court. This formal or institutional legitimacy is based not only on the size of the chamber but also its functions, which is why the joint panel can be seen as hierarchically superior formation to smaller chamber of the same jurisdiction.[61] The common denominator and the justification for grand chambers in such systems is functional: to establish an authoritative arbiter who decides on interpretative conflicts amongst the individual chambers of the given court.[62]As emphasized also by CC "the uniformity of the application of the law asks that one and the same voice emanates not only from each panel but also from the High Court."[63]

61 Bobek, Michal. "More Heads, More Reason? A Comparative Reflection on the Role of Grand Chambers at National and European Levels." *Évolution des rapports entre les ordres juridiques de l›Union européenne, international et nationaux: Liber amicorum Jiří Malenovský (Larcier, 2020)* (2020): 523-550.

62 Ibid.

63 Charruault, Christian. "Le pourvoi en cassation en matière civile." *Studia Iuridica* 81 (2019): 87-102.

3.3 The Reasoning and Publication of the Unifying Decisions

The unifying decisions will be of little value if the level of interpretation of the law and the quality of the decision is poor or ambiguous. The lower court will not be able to apply the law uniformly if the interpretation rendered by the high court is not clear, logical and able to respond to the legal challenges in a dispute. If a unifying decision does not go to the root of the problems and does not give clear, unambiguous explanation about arguments of the High Court, it can create controversy and different understanding from different courts.

A well written, reasonable, argumentative and logical decision of the High Court serves to lower court judges as a good basis to solve the conflicts presented before them. It serves better to the citizens to calculate the costs and benefits of addressing the court in similar disputes. It also benefits the judicial system because when judges have a well-reasoned opinion of the High Court on how to interpret a certain provision or solve a specific case, they will be faster to evade similar cases. As a consequence, this will also indirectly affect the level of backlog of cases in the court. Thus, as pointed out by the CCJE opinion, the "quality of judicial decisions is major component of quality of justice."[64]

With regards to the reasoning quality of the High Court decisions in Albania, although it is not a systematic problem, there are cases where the level of interpretation and reasoning is unclear, poor in arguments and sometime not appropriate for a judicial decision. There are decisions where only the legal text is being introduced without giving any orientation on its interpretation or a proper line of reasoning, balancing arguments and showing the logic of the lower courts deliberation. The lack of proper reasoning was even more noticeable in the Joint Panels decisions which would change the actual judicial practice settled by a High Court decision. For the purpose of illustration, we can mention the judicial practice on expropriations. The unifying decisions from 2009 to 2014 on this issue have changed their position 4 times[65] whether the expropriated owners should exhaust administrative remedies before going to court or whether the case pertains to the administrative or civil jurisdiction. It is true that in most of the cases the changes in the judicial practice are conditioned by legislative amendments. However, the High Court should be in the position to better explain and elaborate why its previous precedents do not constitute a good law. Similar oscillations can also be observed in the practice of the court with regards to the nature of the

64 CCJE Opinion No.11 "On the quality of judicial decisions", para 1 and 2. Accessed: https://www.coe.int/en/web/ccje/opinion-n-11-on-the-quality-of-judicial-decisions

65 Decisions of the High Court no. 2/2009, 2/2011, 4/2013, 3/2014

proceedings of pensions/against the Social Health Institute, the appointment of an attorney for a charged person in absentia etc.

It is to be expected that the High Court should contribute to the culture of legal reasoning and increase the level or argumentation in the unifying decisions, serving as a good model for lower courts. The effectiveness of the unifying decisions of the High Court will depend on the practical relevance for lower court judges in their administration of justice. Moreover, the current High Court is even more exposed to the risk of overruling previous judicial precedents since almost all judges are newly appointed. This calls for a judicial self-restraining behaviour in order to avoid any negative impacts on the judicial practice if there are not enough reasons to do so.[66]

On the other hand, the legislator should reflect a more conservative approach in introducing new legal provisions, both material and procedural. As we have also highlighted in previous papers during this project, the frequent and fast changes in the legislation interfere with the ability of the courts to develop jurisprudence. The legislator should not intervene immediately in the event of a conflict or a problem that has come about with regards to the application of a certain law, but give time to the courts to seek the best solution to the problems and take informed decision based on the judicial practice to introduce new legislative changes. Moreover, the current court is also handling the biggest workload in history and as annotated even above, the excessive number of cases leaves little room for drafting good and elaborated opinions. Being also faced with the new procedure and the pressure to adjudicate within a reasonable time, makes the pressure on judges even higher and brings the focus more on the quantity of the decisions rather than the quality. Moreover, not reasoning within the settled timelines provided by law amounts to a disciplinary procedure and the High Inspector of Justice may initiate proceedings against the judge. Put under the institutional pressure, judges might tend to give priority to the solution of the case and case evasion rather than the proper drafting of opinion and their quality. This would be detrimental for the system and inevitably affect the application of the law. Taking decisions within a reasonable time should be a priority for the High Court, but without ceding from the quality of their decision. CCJE Opinion no.11 highlights that "Proper reasoning is an imperative necessity which should not be neglected in the interests of speed"[67] Therefore, the institutions which will charge a judge of the Court for failing to issue a decision within a reasonable time, should be careful to take this balance of interests into consideration.

Lastly, with regards to the reasoning of judicial opinion, it is clear that this is a mastery which is improved by practicing. At the risk of sounding idyllic, some authors depict judicial reasoning as a

66 Kalaja, Florjan & Arjana Fullani " *Gjykimi në Gjykatën e Lartë*", cit.supra, pg. 92

67 CCJE Opinion no.11 "On the quality of Judicial Decisions", para 20. Accessed: https://www.coe.int/en/web/ccje/opinion-n-11-on-the-quality-of-judicial-decisions

craft or as an art in order to emphasize that, much like the legal crafting, reasoning an opinion involves "skillful use of materials and tool".[68] Judges should become skillful to use materials such as sources of law, principles and ideals of law and various sets of rules and guidelines and learn how to apply them in specific cases[69]. Crafting is based not only in theory and knowledge, but through guided apprenticeship and practice. In this regard, special and continuous focus should be given to trainings on drafting court decisions and how properly reason an opinion.

Another important issue related to the uniform application of the judicial practice is the timely publication of High Court decisions. Parties, lawyers and even courts can fully rely on a unifying decision of the High Court only when they are aware of the arguments, analysis and the reason beyond the judgement. That is why the CCJE highly recommends the publication of High Court decisions, as well as summaries, including factual background of the case which would make the search easier[70]. The delays in the publication and reasoning of opinions of the unifying decisions of the High Court also deter the uniform application of the law. In Albania, the High Court did not escape the common problems of other courts in reasoning an opinion within the settled time limit. The law before the new justice reform provided that a judgement should be reasoned within 30 days from the last court session. The Unifying decisions should be published also in the recent number of the Official Journal, a period calculated to be approximately 15 days: 5 days for the institution and 10 days for the Office of Official Publication.[71] A study conducted by a local NGO in Albania (INFOCIP) shows that for the study period 2011-2013, almost every unifying decision of the High Court was published with delay. Statistics show that there was an average of 320 days of delay from the last court session to the publication of the unifying decision in the Offical Journal, and an average of 287 days beyond the settled time period prescribed by law (30+15 days). The biggest delay found by this study is that of the publication of the unifying decision no.6, dt. 1/6/2011. This decision turns out to have been published in the Official Journal about 880 days (absolute delay) after closing the trial or 835 days beyond the expiration of legal deadlines for its publication.[72]

Although there are no empirical data as of yet with regards to the delays of the reasoning of the current High Court, it is obvious that in the light of the problems mentioned above, it is hard for the court never

68 Scharffs, Brett G. "The character of legal reasoning." *Wash. & Lee L. Rev.* 61 (2004): 733.

69 ibid

70 CCJE Op. No. 20, par 40-42, accessed: https://www.coe.int/en/web/ccje/the-role-of-courts-with-respect-to-uniform-application-of-the-law

71 Article 5 and 6 of the Law 96/2012 "On the Centre of Official Publications"

72 Study on the Delays in reasoning and submission of court decisions. Published by Qendra për Çështje të Informimit Publik INFOÇIP, 17 May 2014, accessed https://www.infocip.org/al/wp-content/uploads/2015/05/vonesat-ne-arsyetimin-dhe-dorezimin-e-vendimeve-gjyqesore-2014-web-INFOCIP.pdf pg. 44-46.

miss the deadline. However, some positive aspects can be mentioned. The High Court is using the web-site and the social media to publish the essence of its decisions in a very concise form. Without prejudicing the importance of the publication of unifying decisions in the Official Journal, which is a binding procedural stage, the Court is using the information technology to disseminate knowledge and the position of the High Court on important issue.[73] We strongly support the High Court to continue reaching the internal audience of judges and the external audience (academia, civil society, general public) with informative bulletins and explore new lines of communication. This would improve the awareness and knowledge about the law and its uniform application.

3.4 Semi-formal and Non-formal Mechanism

The problems of formal mechanisms for the uniform application of the law are also coupled with a weak or non-functional semi-formal mechanisms that would help the proper application of the unifying decisions of the High Court. Although the legal framework provides for periodical meetings of judges within the court and discussions on the unifying decisions of the High Court or other courts[74], it was obvious from the interview that these meetings were merely focused on the administrative management of the court and the distribution of cases and workload among the judges.

Especially with the situation on the ground brought about by the vetting reform, where around 60% of judges were dismissed from office, the main issue in the meeting of judges within the court is how to distribute the workload of a judge that is suspended or dismissed from office. We would recommend that such meetings of judges in each court put the discussion of the unifying decisions and their application in specific cases high in their list of priorities. This will not only help the uniform application of the law but might also have a slight impact on the workload of judges in terms of reasoning an opinion and deciding

73 The recently introduced newsletter gives priodically the most important decisions of all three chambers of the High Court, despite the dayle publication in the web site under "Decision" http://www.gjykataelarte.gov.al/web/Buletini_informativ_2022_1_15161_1.php

74 Article 40 of the Law on Judicial Power No 98/2016, point cc.

a case. Where the Panels of the High Court has ruled on the interpretation and application of a certain law in a given situation, judges of the lower courts are clearer and have elaborated arguments prepared with regard to how a case should be solved and therefore save time in judging a case before them.

It was clear from our interviews that there is a lack of alternative horizontal and vertical semi-formal mechanisms that would improve the uniform application of the law. Since there were no meetings among courts of first instances in different regions, or courts of appeals in different regions to share and discuss the problems of interpretation and application of a certain law, judicial practices or unifying decisions, we encourage the High Court to take the initiative for organizing them. Such a meeting would be necessary to avoid different interpretation of the law depending on the regions where the law is applied. A vertical meeting between the courts would be helpful to assist the uniform application of the law. Periodic common conferences between the judges of the High Court and lower courts would be also advisable to discuss the unifying decisions of the High Court and its implementation in practice. Uzelac also suggests some softer instruments and activities to reinforce the role of high courts in guiding the judicial practice. For instance, he suggests that High Court Judges either participate in the education and professional training programs of the current and future legal professionals, or sit on the examining commissions that control the entry to the judicial and other legal professions.[75] On the other hand, having a High Court that speaks in one voice gives rise to the need for coordination and discussions of opinions within the High Court. A good example might be the practice of the Supreme Court in France. The chairs of each of the panels, assisted by the most senior advisors, have a special role in preserving the horizontal uniform application of the law in the High Court. At least one week before each hearing, they hold a pre-hearing conference studying the drafts prepared by each rapporteur and, where appropriate, noticing the possible risks of divergence between the proposed project and the case law of the chamber[76].

In cases where there is a need to change the judicial practice, the Chair of the Supreme Court may decide to invite all the magistrates of the chamber to discuss issues that need to be refined or modified[77]. In addition, if there is a new case that needs a unifying position, or if it appears necessary to modify or refine the jurisprudence of the panel, the president may decide to invite all the magistrates of the chamber to listen to their opinion by bringing them together in a plenary chamber formation. Moreover, a panel may seek the opinion of another panel on a point of law falling within its jurisdiction. There is another formation specially oriented towards the eradication of divergences in internal jurisprudence at the Court of Cassation. This is the mixed panel which brings together magistrates belonging to the

75 Uzelac, Alan. "Supreme Courts in the 21st Century: should organisation follow the function?" *Studia Iuridica* 81 (2019): 125-139. pg. 131

76 Charruault, Christian. "Le pourvoi en cassation en matière civile." *Studia Iuridica* 81 (2019): 87-102, pg.89

77 Ibid, pg. 89

chambers called upon to hear the same question. Furthermore, the composition of each mixed chamber depends on the question asked. Chaired by the first president, it is composed, by decision of the latter, of magistrates belonging to at least three chambers, namely the president, the senior advisor (doyen) and two advisors of each of the interested chambers.[78]

Lastly, the good quality of judicial decisions can only be achieved if there is a contribution by all the actors in the system. Lawyers, public notaries, bailiffs and other legal professionals are as responsible for the quality of judicial decisions as the judges, albeit their responsibility is of a different nature.[79] There is a need to create a communication platform where all these actors will be able to exchange their practice and discuss points of law together with all judges, including those of the High Court. There is a possibility to invite actors giving amicus curiae if the Court deems necessary to contribute for the clarification of a legal issue.

There is always room for professional improvement by attorneys at law in presenting their clients submitting qualitative recourses before the High Court. That way, they could not only help their clients but also the Court and the whole judicial system in making it more effective. On the other hand, the bailiffs and notaries should keep abreast of the practice of the High Court because the proper enforcement of the law depends on the good understanding of the law. Lastly, the academia should make use of all the publications of the High Court and the Center of Documentation for the purpose of preparing encyclopedias, legal commentaries and scholarly articles on the jurisprudence of the High Court.

Unless all the actors of the judicial system consider the quality of judicial decisions as a common good and contribute in their everyday practice, the road towards the improvement of the uniform application of the law will continue to be difficult.

78 Ibid. pg.90.

79 Hanbook on improving the quality of judicial decisions, Partnership for Good Governance 2019-2021 Project "Support to the judicial reform – enhancing the independence and professionalism of the judiciary in Armenia March 2021, pg. 47accessed https://rm.coe.int/handbook-on-improving-the-quality-of-judicia l-decisions-eng/1680a2ecf3.

CONCLUSIONS AND RECOMMENDATIONS

Since its establishment in 1913, the Albanian High Court has served more as forum solving individual disputes, rather than as the highest court in the judicial system, overseeing the consistent and uniform application of the law. Instead of focusing on the development and uniform application of the law (its public function), the High Court in Albania has been more focused in correcting grave errors made by the lower courts and render individual justice in specific cases (the private function). The public function of the High Court has been a supplementary activity of the court and accessory to its main private function. As a result, it did not significantly assist to preserving legal stability and predictability, which are two essential components of the rule of law.

The 2016 Justice Reform made a substantial turn in terms of the role of the Albanian High Court in the Judicial System. For the first time, the High Court main mission shall be to oversee the application of the law by lower court in order to ensure the uniformity and the stability of the judicial practice. The High Court's authority to handle a particular legal situation and the formal mechanism for obtaining leave to appeal to the High Court were clearly formulated. To discourage the submission of applications that are not of great importance for the development of the law, some filters are introduced, such as a minimum value of a case, the possibility to put fines, if there is an abuse with legal remedies by the lawyers etc. Although the new legal framework has introduced a three-tier system to filter the cases and avoid overloading of the High Court (attorneys, court of appeals and high court), the first two tiers are either completely absent or only formally performed and as such ineffective

Despite the transformative legal framework and the efforts of the HC to adapt to the new role as a court of law, there are still challenges to cope with new legal requirements. The first and serious one is the backlog of cases in the High Court accumulated over the years, which hampers the Court to focus on judgments which could impact the uniform application of the law by lower courts. Although the judges are eager to reduce the backlog the new cases arriving at the Court negatively impact the filter process of cases. The lower courts and lawyers are still struggling to adapt with the new role of the High Court, thus not contributing in the backlog reduction and also in unification of legal practice.

Based on the findings of this research some of the main suggestions and recommendations would be:

1. The history of success of the High Court in fulfilling its mission will depend on managing the backlog and controlling the flux of new cases.

1.1. The high court should make a strict interpretation of the filters of leave to appeal in the High Court, which are to be followed by the appeal

courts in granting leave The "old" backlog should be considered parallel to the inadmissibility of ungrounded new cases in order not to continue creating new backlog.

1.2. The court might also use legal mechanism and interpretative tools to render a solution through one judgement to similar/identical cases, or try to resolve a multitude of legal problems through one unifying decision. Too many decisions for the same issue, written differently by different pannels, would obscure rather than clarify the issue of law.

1.3. Having in mind the constitutional obliga¬tion to deliver only reasoned court's opinion there is room for consideration, that in case of inad-missibility of recourses to adopt standardized format of decisions or have a pilot judgements. Since the inadmissibility criteria are very clear in the law, there is no need to substantial¬ly reason every decision of inadmissibility, which require much more time and human resources.

2. The High Court should continuously observe the uniform application of the law amongst its own panels. The uniform application of the law will be hampered if the horizontal precedents of different panels of the High Court are not observed. It will be hard to expect a vertical binding effect of the ruling of the High Court, if there are different position on the same issue of law within the High Court itself.

3. The unifying decisions of the High Court will be of little value if the level of interpretation of the law and the quality of the decision is poor or ambiguous. The lower court will not be able to apply the law uniformly if the interpreta¬tion rendered by the High court is not clear, logical and able to respond to the legal challenges in a dispute.

4. The High Court should be especially clear when it is departing from its established case law to elaborate the reasons for doing so and why its precedents do not constitute a good law any-more.

5. The disciplinary proceeding of lower courts judges on grounds that they did not follow a uni-fied decision of the High Court should be careful and balanced. Disciplinary measures in such cases should not be automatic The opposite will hamper the independence of judges as well as the development of the legal practice.

6. The courts of appeal should undertake their role as a filter in granting recourses to the High Court. They have to examine every single criterion foreseen by the law and only if there are legal grounds, there could grant the recourse. Shifting this responsibility to the High Court itself not only is against legal framework, but it contributes in rising the backlog of the Court with unnecessary cases.

7. To effectively ensure a uniform application of the law it is crucial to strengthen the courts of appeals. Without strong, efficient and qualitative court of appeals, despite foreseeing effective filters of admissibility would have a negative impact to individual cases and also it could not con¬tribute to the mission of the High Court

8. The meeting of judges in each court should prioritize the discussions on the High Court judicial practice. This will not only help the uniform application of the law but might also have a slight impact on the workload of judges in terms of reasoning an opinion and deciding a case.

9. Semi formal mechanisms such as meeting among courts of first instances in different regions, or courts of appeals in different regions to share and discuss the problems of interpretation and application of a certain law, judicial practices or unifying decisions, would help the uniform application of the law.

10. A vertical meeting between the courts , also called by the High Court would be helpful to assist the uniform application of the law. Periodic common conferences between the judges of the High Court and lower courts would be also advisable to discuss the unifying decisions of the High Court and its im¬plementation in practice.

11. The attorneys at law should abandon the mindset of giving cases a chance in the High Court, when they are well aware that the case in question does not have the chance to pass the admissibility criteria. This not only burdens the court with futile cases, but it is also an unethical client represen¬tation.

12. The bailiffs and notaries should keep abreast of the practice of the High Court because the proper enforcement of the law depends on the good understanding of the law. Lastly, the aca¬demia should make use of all the publications of the High Court prepared and distributed by a special unit at the Court, the Documentation Centre. Unless all the actors of the judicial system consider the quality of judicial decisions as a common good and contribute in their everyday practice, the road towards the improvement of the uniform application of the law will continue to be challenging.

13. The law faculties and School of Magistrate should prioritize in most of the curricula the scientific analysis of the judicial practise and also deliver dedicated trainings how to draft, analyse, discuss an legal opinion of the court.

14. Lastly, not directly related to judicial practice, it should be consider the role of legislator in filling the gaps of legislation and contributing in the stability of normative framework of the country.

Any tendency of the Parliament to overregulate, will negatively impact the uniformity of judicial practice. The meticulous regulation of every aspect of life, with a multitude of laws and bylaws, does not leave much room for the develop¬ment of the courts' interpretation, thereby impinging on the importance of the legal certainty and clarity. Moreover, the Parliament should be careful not to intervene too early when there is a problem in the application of the law. Courts who are closer to the application of the law, through their decisions can inform better on the problems with the application of the law. A frequent change in the legislation does not leave space for the development of jurisprudence.

Information about the project

The underlying objective of this project is to *complement the European Commission's process of vertical judicial Europeanization with an internal, horizontal, initiative that would combine an academic and practical approach in detecting and noting the main shortcomings of our judicial culture,* and through consultations with international and regional experts, outline recommendations for future steps in the Europeanization of judicial culture.

The project is coordinated by the **Institute for Democracy "Societas Civilis" Skopje (IDSCS)** from North Macedonia, in cooperation with **T.M.C. Asser Instituut** from the Netherlands, the **Judicial Research Center (CEPRIS)** from Serbia, and the **Albanian Legal and Territorial Research Initiative (ALTRI)**, and supported by the **Dutch Fund for Regional Partnership (NFRP)/Matra**. The project will be carried out and have impact in **Skopje (North Macedonia)**, **Belgrade (Serbia)** and **Tirana (Albania)**.

Information about IDSCS

IDSCS is a think-tank organisation researching the development of good governance, rule of law and North Macedonia's European integration. IDSCS has the mission to support citizens' involvement in the decision-making process and strengthen the participatory political culture. By strengthening liberal values, IDSCS contributes towards coexistence of diversities.

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The Role of the High Court in the Uniform Application of the Law in Albania

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