

# ANALYSIS OF THE 2021-2025 CROSS-CUTTING JUSTICE STRATEGY

## ABBREVIATIONS

EU	European Union
MBI	National Bureau of Investigation
CAMS	Albanian Prosecution Office Case Management System
ECtHR	European Court of Human Rights
CC	Constitutional Court
CCOC	Court against Corruption and Organized Crime
HC	High Court
HIJ	High Inspector of Justice
IPSIS	Integrated Planning Information System
IT	Information Technology
CoE	Council of Europe
ECHR	European Convention on Human Rights
HJC	High Judicial Council
HPC	High Prosecutorial Council
CoM	Council of Ministers
SAC	Special Appeals Chamber
CPC	Civil Procedure Code
IQC	Independent Qualifications Commission
MoJ	Ministry of Justice
MoFE	Ministry of Finance and Economy
NPEI	National Plan for European Integration
GPO	General Prosecution Office
SoM	School of Magistrates
CJS	Cross-Cutting Justice Strategy
NSDI	National Strategy for Development and Integration
SPAK	Special Anti-Corruption Structure

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## INTRODUCTION

The analysis of the Plan of Measures of the 2021-2025 Cross-cutting Justice Strategy was carried out in the context of the "All Eyes on Justice" project funded by the MATRA Program of the Dutch Embassy in Albania and was implemented by the Institute for Public and Legal Studies (IPLS). The project covers the 2020-2022 period, when the 2021-2025 Cross-cutting Justice Strategy (CJS II) was drafted and its five-year implementation begins.

CJS II is a continuation of CJS I and is developed as an answer to the needs of justice reform, already considered by all national and international stakeholders as currently the most important reform in Albania. The progress and outcomes of this reform affect to a considerable extent the process of Albania's integration into the European Union. Led and coordinated by the Ministry of Justice and supported by the EU Euralius program, the 2021-2025 Cross-cutting Justice Strategy is a result of the cooperation among all current institutions of the justice system, as well as a consultation process with various international stakeholders and members of the Albanian civil society. This strategic document becomes more concretely implemented through an integrated Action Plan and a considerable number of indicators which will enable the monitoring and evaluation of its implementation.

In this context, the Institute for Public and Legal Studies (hereinafter "IPLS"), as one of the interested civil society stakeholders, is committed, in the context of the "All Eyes on Justice" project to support and assist in the most effective implementation of 2021-2025 Cross-cutting Justice Strategy, primarily by providing justice institutions and other stakeholders engaged in this reform with: a critical constructive analysis of the strategic and operational document itself (Action Plan and its indicators); a methodological basis for a more objective and efficient monitoring of a significant number of key measures of the Action Plan; and, on this basis, a one-year independent and objective monitoring process of the implementation of the Action Plan. In relation to the latter, the methodology selected in this project does not prejudice the methodology that the government will employ to monitor the measures and outcomes of the Action Plan, but rather offers an alternative that reinforces and perhaps complements it. The implementation of the project is based on an effective cooperation with the institutional stakeholders of CJS II.

As a first step in its implementation, the project's group of experts has prepared a detailed analysis of the 2021-2025 strategic document, its action plan and indicators of its implementation. The analysis aims to: clarify to a wider public the meaning of the goals, objectives, outcomes and measures of CJS II; point out the strengths but also the incomplete or inappropriate elements in relation to the needs of the justice system; and, suggest possible improvements to decision-makers. Also, this analysis will serve as a basis for drafting a monitoring methodology and a more efficient cooperation with justice institutions that are the focus of this project.

The analysis below is structured according to the CJS II strategic document and its action plan, and follows its ranking, selecting four (4) policy goals, nine (9) specific objectives, nineteen (19) outcomes, forty-one (41) measures and eighteen (18) indicators. The selection made from the complete list of CJS II is based on the special interest presented by these objectives, outcomes, measures and indicators for the purposes of monitoring by civil society of the progress made by justice institutions in the implementation of the 2021-2025 Strategy.

*Tirana, on November 23, 2021*

## ANALYSIS OF THE 2021-2025 CROSS-CUTTING JUSTICE STRATEGY (CJS II)

### Policy Goal 1

*“Comprehensive and professional functioning of the governing institutions of the justice system in accordance with the constitutional and legal requirements and European standards, ensuring independence, efficiency and accountability”.*

The policy goal 1 of the 2021-2025 Cross-cutting Justice Strategy (CJS II) contains the idea and spirit of an essential part of justice reform, the one that relates to the structure of the new mechanism produced by this reform. This new mechanism, defined in the Constitution of the Republic of Albania, and further in the law<sup>1</sup>, provides as part of it several institutions, namely the High Judicial Council (HJC), the High Prosecutorial Council (HPC), the High Inspector of Justice (HIJ), the Judicial Appointments Council (JAC) and the School of Magistrates (SoM), which would govern all links of the judiciary as an autonomous power within the judiciary, free of any interference from other powers. Thus, all ties of the judiciary with the Ministry of Justice and the President were severed, ties that, before the reform, hindered the independence and impartiality of the judiciary. These institutions have specialized and separate responsibilities to carry out some key processes related to the proper functioning of the justice system and serve as complementary links to each other.

The HJC is responsible for the administration and management of the judiciary (auditing and management of their special budget, administration and management of the courts), and is the decision-making body for any issue related to judges (selection of candidates for judges and appointment of judges, promotion of judges, evaluation of judges' performance, disciplinary and ethical issues, training of judges, etc.). The HJC responsibilities are not only related to the internal organization of the judiciary but, in particular, this body bears the responsibility for the functioning of the judiciary vis-a-vis the users of the court and society as a whole.

The HJC is also the governing body of the Prosecution, responsible for any decision-making related to prosecutors (selection of candidates for prosecutors, their appointment, promotion and evaluation of the performance of prosecutors, disciplinary and ethical issues, etc.).

In order to oversee the members of the Councils, judges and prosecutors of all levels, the General Prosecutor's Office and to conduct institutional inspection of courts and prosecution offices (aspects related to institutional rules and administrative services), the HIJ was established as an independent constitutional institution. with the exclusive function of disciplining judges and prosecutors. According to the motto ‘no one is untouchable and everyone must be held accountable for legal violations’, all these activities are necessary to ensure the implementation of the principle of accountability and responsibility that all members of the justice system should abide by. Only an accountable system that operates within the legal framework, is efficient and transparent and ‘embraces’ the best standards of accountability can contribute significantly to restoring public confidence in the justice system.

The JAC is the body that verifies compliance with legal criteria and evaluates the professional and moral criteria of the candidates for High Inspector of Justice and the candidates for members of the Constitutional Court. The JAC was designed to be an independent body, which is formed every year by lot and aims to have the nature of a specialized and decentralized body. Its members, given that they normally continue their duties in the courts or prosecution offices where they come from, will be "tasked" with another

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<sup>1</sup>Law 115/2016 “On governing bodies of the justice system”.

duty, which due to its short longevity, will not be able to establish any relationship of dependence or interest of any kind.

Finally, one of the governing bodies of the judiciary is the School of Magistrates, which, according to the Constitution, is the only gateway to the judiciary (through the recruitment process by examination, based on vacancies announced by the HJC and HPC) and the only institution responsible for training incumbent magistrates.

The proper functioning of these institutions is the first fundamental prerequisite for the proper functioning of the entire justice system.

Policy Goal 1 contains two directions: the first direction requires that the governing bodies work in accordance with the requirements of the law and European standards, while the second direction requires that the governing bodies be able to work fully, be independent and work professionally, efficiently and in accordance with accountability standards. So, from the way Policy Goal 1 is formulated, it is concluded that, while the first direction is related to the exercise of functions by these bodies in accordance with European law and standards, the second direction is broader. The latter is related, firstly, to their functioning at full capacity, and secondly, to the observance of all the principles of law that should guide the work of these bodies. Principles such as professionalism or efficiency are general principles that should be applied by all justice institutions, including courts and prosecution offices of all levels.

So, first, these institutions, during the second four-year term of the justice strategy, must have achieved their full consolidation, whether in structure, the legislation that regulates them, their internal regulatory acts, etc., and second, they must produce genuine results related to their decision-making, results that show that these bodies are independent, professional, produce efficient solutions for the system and are established on the basis of accountability.

It is worth noting that the governing bodies of the justice system have a fundamental characteristic: they are not intended to remain merely bodies that solve only the internal problems of the system, whether of the court or the prosecution office. Rather, they must be able to understand the needs and demands that come from outside the judiciary, in order to serve the justice and citizens of a country, anticipate the needs of the system, and be a step forward in the strategic development of justice in a country. The demands of courts and prosecution office users to receive services from the judiciary is the duty of the governing bodies of justice and we estimate that, if it had been expressed in Policy 1, it would have marked a progress of the Strategy itself as regards this component.

In the Cross-cutting Justice Strategy 2017-2020 (CJS I) the first strategic objective was expressed in a similar way: "Strengthening the independence, efficiency, effectiveness and accountability of the justice system institutions". From a literal comparison of the two strategic goals, it seems that they stand on the same provisions. However, as will be analyzed below, CJS II comes at a new moment, when all governing bodies have been set up and are functioning. CJS II therefore clarifies the role of each of these bodies.

The aim is to achieve Policy 1 by setting three specific main objectives: 1.1 Continuation of the implementation and completion of the process of transitional re-evaluation of judges and prosecutors in an effective and efficient manner in compliance with provisions of the Constitution and the law; 1.2 Update and improve justice reform legislation based on findings from analysis and monitoring of reform implementation, including, but not limited to, legislation on competencies, transparency, efficiency, and coordination; and 1.3 Strengthening and consolidating the governing bodies of the justice system in accordance with European standards, through the creation and development of capacities to carry out their activities with independence, efficiency and professional standards, and the way the governing institutions of the judiciary provide their services complies with the relevant rules and standards.

This study has chosen to address only specific objectives 1.2 and 1.3, given that the first specific objective continues to be closely linked to the vetting bodies, the Independent Qualification Commission (IQC) and the Special Appellate Chamber (SAC), and, even if they delegated their competencies to the HJC and the HPC, as required by the Constitution, again this transfer would be hasty and would risk that any analysis of the work of these bodies in a short time be a superficial one.

Meanwhile, the other two selected objectives are complementary to each other and give a more complete picture of how the strategic development of governing bodies is expressed / required during this four-year period.

## **Specific Objective 1.2**

*“Update and improve justice reform legislation based on findings from analysis and monitoring of reform implementation, including, but not limited to, legislation on authority, transparency, efficiency, and coordination”.*

This objective implies the need to, after a three-year period in 2017-2020, make an analysis of the functioning and activity of the governing bodies of the justice system to check for the possibility of making interventions in the law governing these bodies. This objective, in its content, envisages the main areas where the analysis will be extended, such as the authority of the bodies, transparency, efficiency and coordination among them.

First, the way this objective is expressed, using the words “update” and “improve”. It is worth mentioning here that the purpose of the changes in the legal framework is related to the improvement of the functioning of the bodies in cases when the law has hindered or made difficult their work, as well as when the new reality requires a review of existing provisions. It is not the duty of the law to make an update, so this language does not fit the nature of the objective and should be avoided.

Secondly, from the analysis of the way this objective is expressed, it is clear that it has predetermined that there will have to be changes in the law and/or regulations, without even waiting for the results of an analysis of the legislation adopted in 2016 and also it does not take into account the recent changes of 2021 that affect important elements of the functioning of the justice system. Even the way the required outcomes are expressed and the measures planned for meeting the objective, it is clear that the review of laws and regulations is one of the goals of this objective and the deadline set for these changes is 2021-2022, i.e., the beginning of CJS II implementation. It is worth recalling here that the strategic performance of the justice sector is based on an in-depth analysis of the previous system and the reform laws are the product of this analysis. In light of Policy Goal 1, it is debatable whether this objective adds value to the functioning of the governing bodies of the judiciary or acts in the opposite way, producing institutional uncertainty and making it impossible for these bodies to carry out their duties independently of the legislative and the executive.

Also, the functioning of the mechanism, in light of the strategy of the justice system, has not been fully operational throughout CJS I and still continues to be incomplete. Such is for example the case of HIJ, where the institution has not yet hired all inspectors. Likewise, the cases of HJC and HPC, which are still drafting entirely new internal regulatory frameworks, so it cannot be said that this regulatory framework is mature enough to be ready to undergo an analysis process or – even further – an amending process.

Thirdly, the very focus of Policy Goal 1 lies in implementing the reform, in strengthening the capacity of the justice governing institutions and not in redesigning it. Although the authors of the strategic document may have been oriented towards a functional approach aimed at

improving the elements that are seen as problematic in the law (keeping in mind that a law or regulation, no matter how well they have provided for or how close they are to meeting their objectives, there may be elements that will need to be analyzed *ex post* and improved), setting legal reviews as a separate objective, with concrete measures planned for governance institutions (analysis of law enforcement by justice institutions, preparing the response on the analysis of the law review, finalizing the review of the legal framework in the 2021-2025 strategic document), is not appropriate. Failure to provide for this objective in CJS II would certainly not remove or dilute any initiative or analysis of legislative bodies or powers to intervene in these laws, but would, however, avoid the idea that amending the laws regulating the governance of the judiciary is again undergoing a process of strategic change.

**Conclusion:** *Setting legal reviews as a separate objective of CJS II, with concrete measures planned for governance institutions is not appropriate. Failure to provide for this objective in CJS II would not remove or dilute the initiatives or analysis of legislative bodies or powers to intervene in these laws, but would, however, avoid the idea that changing the laws regulating the governance of the judiciary is again undergoing a process of strategic change. At this stage, the emphasis of the Strategy should be on the implementation of the legal framework and the tasks of the new governing bodies of the justice system. This framework and these tasks are relatively new and sufficient implementation time should be left to be analyzed significantly.*

### Outcome 1.2.1

*“Judicial governance structure (HJC)/legislation revised/amended, including but not limited to internal regulations”.*

In meeting Objective 1.2, analyzed above, the achievement of three main outcomes is planned, related to the review of the organizational structure of HJC, HPC and HIJ, their revised or amended legislation, and the development of all their internal regulations (HPC and HIJ will be analyzed below). Specifically, for the HJC, it is required to develop an analysis and decision-making process for at least three aspects of its functioning: first, the organizational structure of this body; secondly, the laws governing the activity of this body; and, thirdly, the internal regulations and acts of generic power issued by this body.

This outcome is in line with Objective 1.2 and constitutes a positive step towards the breakdown of this objective in practice. The outcome consists of three main components, which will have to be analyzed separately, to make it clearer how it can be achieved, i.e., what measures should be taken in order to fully meet the requirements of this outcome.

While these three components can be identified, the outcome does not contain the aim of analyzing these three components, which is what the objective and goal of the policy expresses: these bodies’ compliance with European standards by acting with professionalism, efficiency, transparency and accountability. In conclusion, any review of the structure, law or internal rules, should aim to meet these principles, so the desired outcome should be a structure and legal basis that provides the HJC with the conditions to act professionally, with efficiency, transparency, etc. Although these principles are contained in Objective 1.2, they should have been explicitly set out in each outcome.

Seen in this light, i.e., to what extent will the analysis of these components produce harmonization and progress towards the established principles, the success of this outcome is debatable.

Theoretically, the HJC is able to self-analyze its structure, the law that regulates its activity and also the regulatory acts it has developed so far. In practical terms, given the progress of the

activity of this body, with its first meeting held on December 20, 2018, the long time it took to draft important internal documents, approximately a year or more<sup>2</sup>, etc., there is the risk that this control by the HJC be more formal rather than substantial, because these new acts have not matured and have not been tested for a long time in practice, so they have not had the opportunity to produce sufficient results. As a rule, any subsequent analysis, *ex post*, of laws or regulations, requires a period of implementation of the law or regulation, and then the implementation monitoring process can begin and, eventually the analysis of this implementation can be done – after which concrete outcomes will emerge, otherwise there is a need for change<sup>3</sup>.

**Conclusion:** *The projected outcome is in line with the objective; however, it is debatable whether it will benefit Policy 1. This is because, both the review of the law regulating the HJC and the review of bylaws issued by this body, although likely to be achieved, the analysis they will produce will be substandard. This is directly related to the insufficient time to produce a complete analysis on the problems that may have been caused by the law or bylaws in the functioning of this body as one of the bodies of the justice system.*

### Measure 1.2.3

*“Finalize the review of the legal framework related to the governance of justice based on the HJC-related component; consult on and adopt acts”.*

This measure envisages the review, after an analysis process regarding the status and governing structure of the HJC<sup>4</sup>, of the legal framework regarding the functions and responsibilities that the HJC has in carrying out its mission to govern the judicial system in Albania. This measure also provides for the consultation on and approval of new acts that will come as a result of this process. So, this measure envisages three consecutive activities: first, the finalization of the review of the legal framework, which means ensuring an internal decision-making regarding the analysis and the outcomes/proposals resulting from it, which should contain concrete changes in laws and regulations; second, the implementation of a consultation process with stakeholders involved in the process that the CJS II action plan does not detail; and thirdly, the adoption of amendments to acts or adoption of new acts.

Especially for the last two activities foreseen in this measure - consultation on and approval of acts, since the outcome and objective from where this measure originates provides for the amendment of the law that affects the HJC, the measure should have at least included the Ministry of Justice, but also the Assembly. Law 115/2016 itself, in its Articles 71 and 93, provides for two cases of cooperation between the Ministry of Justice and the High Judicial Council. Specifically, the law stipulates that the Minister of Justice coordinates the development and implementation of state policies and the justice sector strategy and is responsible for the

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<sup>2</sup>HJC Decision no. 264, of 21.11.2019, "Scoring methodology in order to determine the level of evaluation of the judge"; HJC Decision no. 209, dated 11.10.2019, "Methodology for the evaluation and scoring of non-judicial candidates for the High Court"; HJC Decision no. 316, dated 14.09.2020, "On the approval of the regulation "On disciplinary procedures in the High Judicial Council"; HJC Decision no. 622, dated 10.12.2020, "On parallel transfers, promotion and admission to the civil judicial service"; HJC Decision no. 171, dated 22.04.2021, "On the approval of the Code of Judicial Ethics", etc.

<sup>3</sup> OECD (2018), Ex-post assessment of regulation: Practices and lessons from OECD countries, OECD Publishing, Paris, pp. 11;

<sup>4</sup>CJS II Action Plan, Measure 1.2.1 and 1.2.2;

development of legal drafts in the field of justice, for which s/he also takes into consideration the opinion of the High Judicial Council.

The law also stipulates that the High Judicial Council cooperates with the Minister of Justice to ensure that the strategic and budgetary plans of the judicial system, approved by the Council, are in line with state policies and the justice sector strategy. Specifically, the HJC: a) examines the functioning of the rules of civil, criminal or administrative court procedure; b) makes recommendations for amending the rules of civil, criminal or administrative court procedure; c) responds to requests received from ministers to give an opinion on a draft law or any other issue that may affect the judicial system or the courts; and ç) may give an opinion on a draft law or any other matter that may affect the judicial system or the courts, by referring it to a ministry or other body. In conclusion, the HJC proposes to the Minister of Justice to initiate legal changes in relation to any matter that is under his/her responsibility.

It is worth mentioning that according to the IPA III instrument (2021-2027), for Albania's membership in the European Union, which provides for the obligations of the Albanian state related to the funding provided by EU funds, the HJC and HPC will need to strengthen the capacities for the rules that they create and apply for career development, while for issues related to the analysis and changes in the legislation, the instrument mentions the strengthening of the Ministry of Justice capacities.

There are no indicators for this measure, but only monitoring through reporting by the relevant institution.

**Conclusion:** *This measure meets the outcome, is in line with the specific objective set, but needs to be complemented by the institutions, which will have to participate in this measure. For the measure to be implemented, the work of the HJC alone is not enough, because it is responsible only for the first phases - study, analysis and proposal/consultation, therefore the concrete tasks of the other involved institutions must be carried out. Whether the measure has been implemented or not, this will have to be inquired with several institutions at once (MoJ and the Assembly)*

## Outcome 1.2.2

*“Prosecution (HPC) governance structure/legislation revised/amended, including but not limited to internal regulations”.*

The second outcome that predicts the successful fulfillment of objective 1.2, analyzed above, is that the HPC, after an analysis process, reviews the legislation that regulates its activity, its internal regulations and other acts with generic authority and the HPC structure, which means its internal organization.

First, it is worth noting that, unlike the functioning of the judiciary, the prosecution system provides for a division of powers between the HPC and the Attorney General, where the HPC is only responsible for ensuring the independence, accountability, discipline, status and career of prosecutors of the Republic of Albania, and not for the management or administration and budget of prosecution offices - these responsibilities belong to the General Prosecution Office. So, any analysis related to HPC in this paper will take into account this division of functions, although for certain specific objectives and measures these two bodies contribute simultaneously to the well- functioning of the prosecution system.

By analogy with the outcome set in the case of the HJC, in the case of the HPC, the outcome does not contain the aim of analyzing the legislation, its structure and acts, which is what the objective and purpose of the policy state: the action of the HPC- in accordance with European standards, with professionalism, efficiency, transparency and accountability. In conclusion, any

review of the structure, law or internal rules, should aim to meet these principles, so the desired outcome should be a structure and legal basis that guarantees the conditions for the HPC to act professionally and with efficiency and transparency.

The same reasoning applies to HPC as to the real possibility of achieving this outcome. Here we keep in mind that, even in the case of HPC, the delayed establishment of this institution<sup>5</sup>, the infrastructural difficulties, which have made it difficult to work efficiently<sup>6</sup>, and the beginning only in 2019 to develop the regulatory acts, some of which were only passed towards the end of 2019<sup>7</sup>, have allowed a situation where the acts that can be evaluated have been in operation for approximately two years. This is a short time to make a full analysis of their effectiveness or identify a need for improvement. This reasoning is the same as the analysis conducted above in relation to the HJC case.

**Conclusion:** *The projected outcome is in line with the objective; however, it is debatable whether it will serve Policy 1. This is because, both the review of the law governing the HPC and the review of bylaws issued by this body, although likely to be accomplished, the analysis they will produce will be deficient. This is directly related to the insufficient time to produce a complete analysis on the problems that may have been caused by the law or bylaws in the functioning of this body as one of the justice system bodies.*

### Measure 1.2.7

*"Finalize the review of the legal framework related to the administration of justice based on the HPC-related component".*

This measure has the same wording as the measure provided for the HJC and goes through the same analysis process, provided in measures 1.2.5 and 1.2.6, as provided for the HJC. Thus, even in the case of HPC, it is planned to conduct a review of the status and governing structure of HPC, of the legal framework regarding the functions and responsibilities that HPC has in fulfilling its mission to govern the prosecution system in Albania. This measure also provides for the consultation on and approval of new acts that process will produce.

For matters of internal decision-making of the institution (HPC structure, staff and acts), this measure is complete and clear, as the HPC can and has a duty to assess these elements itself to understand how much they conform to the notion of good governance, which involves the operation of the HPC in terms of transparency, independence, accountability, etc. For issues related to legal changes, this measure should have provided as responsible institutions the Ministry of Justice and the Assembly, as a minimum. Law 115/2016 itself, in Articles 169 and 187, provides that the Minister of Justice is the institution responsible for the development of

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<sup>5</sup>HPC was established per Order no. 1, of 19.12.2018;

<sup>6</sup>HPC has worked in the absence of facilities and has had some offices available, temporarily provided to them by the General Prosecution and the Prosecution at the Tirana Court of Appeals, and only in 2020 moved to suitable working spaces at the Pole of Justice building " - information taken from the HPC 2019 Annual Report, accessed at: [www.klp.al](http://www.klp.al);

<sup>7</sup>Regulation "On the procedure of verification of legal conditions and criteria for recruitment, appointment of magistrates and prosecutors, as well as for the development of prosecutors' careers", approved by Decision no. 171, of 27.09.2019, of the High Prosecutorial Council.

legal drafts in the field of criminal justice after obtaining the opinion of the High Prosecutorial Council.

The HPC issues and approves individual administrative acts related to the professional status of individual prosecutors or judicial administration officials; collective administrative acts, related to the status of all prosecutors or judicial administration officials; bylaws, pursuant to this law or other laws, with general binding effect on all prosecutors, prosecution administration, private persons and public bodies, as well as acts for the approval of internal procedural rules. In particular, procedural rules may include provisions regarding the coordination of the activities of the committees, the engagement of experts in the work of the Council, the distribution and division of responsibilities of the Council administration, the quorum required for committee meetings, the rules for publishing information on Council proceedings, etc.

In the analysis of whether or not the measure has been implemented, only these acts, which are a direct responsibility of the HPC, will have to be taken into account. For other issues related to the law, the MoJ and the Assembly will have to be involved.

**Conclusion:** *This measure meets the outcome, is in line with the specific objective set, but needs to be completed by the institutions, which will have to participate in this measure. For the measure to be implemented, the work of HPC alone is not enough, because it is responsible only for the first phases, those of study, analysis and proposal/consultation, but the concrete tasks of the other involved institutions must be solved. Whether the measure has been implemented or not, this will have to be verified with several institutions at once (MoJ and the Assembly)*

### Outcome 1.2.3

*“Accountability bodies (HIJ)/legislation revised/amended, including, but not limited to, internal regulations”.*

The third outcome that relates to the successful fulfillment of Objective 1.2, analyzed above, is that HIJ, after an analysis process, shall review the legislation that regulates its activity, its internal regulations and other acts with general force, as well as the structure of HIJ, which means its internal organization.

This outcome has the same content as the results required for the HJC and HPC. However, the problem of spending enough time to conduct this analysis of the law and bylaws, or the structure and staff of HIJ in order to understand the level of transparency, efficiency and accountability exercised by this body, is even more evident, as HIJ is the last body to have been established. It has yet to be fully effective<sup>8</sup>. Due to these issues, HIJ also proposed legal amendments<sup>9</sup>, but they were not approved to be included in the changes made to Law 115/2016.

The only measure foreseen by the Action Plan as partially fulfilling this outcome is Measure 1.2.11 “Review and consolidation of HIJ internal regulations”. All the measures planned for HIJ have a timeframe until 2022, a very short timeframe both to initiate the analysis process, taking into account that HIJ acts have only been implemented for less than a year, as well as to

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<sup>8</sup>HIJ started working only in February 2020 and it has been challenging to make this institution effective due to the lack of inspectors, especially magistrate ones. Recruiting non-magistrate inspectors has also been difficult, and so far, HIJ has decided to allow eleven candidates to run.

<sup>9</sup>The two main interventions proposed were, firstly, the abolition of the ratio between non-magistrate and magistrate inspectors, but keeping a preference for those who are magistrates, and, secondly, making all salaries of all inspectors equal, based on the fact that they carry out the same duty and the law should provide the same guarantees.

reach conclusions about their effectiveness or the necessary changes that could improve the functioning of HIJ.

The projected outcome for HIJ is a step further from the previous outcome set out in CJS I (2016-2020), which provided for the “establishment of a single independent inspectorate responsible for investigating disciplinary violations committed by judges and prosecutors, and to develop other inspection services in courts and prosecution offices in accordance with European standards” and another concrete measure was the “developing of internal rules and manuals”. However, the delay in the establishment of this body and in its functioning, makes it difficult for this outcome to be successful in the years 2021-2022.

Referring to the Passport of CJS Indicators I, one of the indicators (namely no. 2) was related to improving the administration of complaints against judges and prosecutors according to the new legal deadlines. This document also defines the targets for HIJ as well as the verification methods. Respectively, for 2019, they would verify internal procedures, inspection manuals, data protection and public access, 10 employed inspectors, buildings, etc. As a result, for 2020/2021 the indicator would be the number of complaints received and processed, which are divided by the number of complaints received by November 30 of the respective year. Processing means: final HIJ decision, with listed reasons, on whether or not to open investigation, close after *prima facie* verification or dismiss the complaint.

The objectives in the Passport Indicators were related to the grievance (complaints) system as the key to understanding the proper functioning of the accountability system. This means independence in the exercise of duty, transparency in the way complaints are handled, efficiency in their management, coordination with the HJC and HPC, as well as harmonization of procedures between magistrate judges and prosecutors. All of this requires the right time to see them implemented. Only during the implementation of the above, HIJ may be able to understand/assess how much the law prevents it from exercising its functions according to the above-mentioned standards and how many other factors are influencing (e.g. the recruitment of magistrate inspectors, especially judges, who so far have shown no interest in running for this position). Establishment of a professional body of inspectors (lawyers, judges and prosecutors) ensures independence in the exercise of authority, transparency and efficiency in the handling of complaints.

Although there is a certain coherence, which means that the listed activities are necessary and sufficient prerequisites to achieve the specific objectives, Specific Objective 1.2 partially creates a natural/harmonious connection between the provisions of CJS I and its Passport Indicators. This is a solution dictated by the circumstances, as during the CJS I lifetime, HIJ had not yet been created and the Specific Objectives, Outcomes and Measures failed to be implemented during the validity of that Strategy. Basically, they were just 'theoretical provisions'. Given this situation, the drafter of the Strategy has considered integrating those provisions into CJS II, as long as they have judged them to be valid, re-considering/re-evaluating some aspects. The re-evaluation also came as a result of the role played by HIJ itself during the drafting of CJS II, giving concrete 'input' to the drafting and commenting on its aspects based on the problems/challenges that have arisen from the implementation of the legal framework. There is already a 'concrete voice at the Strategy table' to consider. Furthermore, it is worth noting that HIJ itself has adopted its institutional strategy. Whereas CJS I was designed/conceived at a time when HIJ existed only on paper and the Objectives, Outcomes and Measures had a more abstract character.

Even the preliminary provision of the IPA III Action Plan, foresees the improvement of the rules on career and oversight of magistrates in a time frame until 2027.

**Conclusion:** *Seen as a whole, although this outcome appears in line with the objective and in line with it and is in chronology with CJS I, the success of this outcome is debatable. Its time span should*

*be longer. Together with the other outcomes analyzed for the HJC and HPC, it is estimated that these outcomes are in place to assist in achieving the set Strategic Objective. Doubts that may exist about the outcomes are in fact related to the very purpose of Specific Objective 1.2; Institutions exercising their authority in accordance with applicable requirements and European standards (so that they are independent and work professionally, efficiently and maintain standards of accountability) does not necessarily mean reviewing legislation. This is because it is presumed that the legal framework adopted in 2016/2017 provides guarantees for independence, professionalism, efficiency and accountability standards.*

### **Measure 1.2.9**

*“Prepare analysis of the implementation of justice system reform based on the HIJ-related component”.*

This measure has the same wording as measures 1.2.5, 1.2.6, 1.2.7 provided for the HJC and HPC. It seems that the drafter of the Strategy has paid attention to maintaining the same standards for all three justice institutions.

This measure (i.e., 1.2.9) and the following one (1.2.10) seem to be interrelated. Basically, it is intended to prepare two types of analyzes. The analysis of the implementation of the system reform for HIJ will be developed first, and then, the findings/recommendations of this analysis will eventually be reflected in the analysis for the revision of the laws that regulate the HIJ activity (measure 1.2.10).

It remains unclear which institution will conduct this analysis – HIJ itself or another balanced structure that will analyze the work of other justice institutions, in addition to HIJ. We say this because HIJ's work, although it can be analyzed separately, must also be seen in terms of the decision-making of HJC and HPC. Councils are the decision-making institutions for a proposal and investigation conducted by HIJ. The entirety of the activities of the three institutions can provide a clear picture of the implementation of the HIJ reform in terms of accountability, responsibility and professionalism.).

***Conclusion:*** *Based on the above in relation to the intended outcome (updating of legislation that implies revision of laws or bylaws), it is estimated that these measures are in themselves appropriate for as long as they will be taken to benefit this Outcome and Strategic Objective. However, it remains to be assessed the 'moment' when this update will take place, given the short lifespan of HIJ and, consequently, of the implementation of the legal framework governing the activity of this institution.*

### **Measure 1.2.10**

*“Preparation of the response on the analysis of the review of the law on the status and governance structure of HIJ (draft-proposals)”*

Regarding this measure, since it has a natural connection with measure 1.2.9, we refer to the above analysis.

However, for this measure to be implemented, it is considered necessary to involve other institutions in the analysis phase on the activity of HIJ; Moreover, HIJ is limited in terms of making legal proposals, as legal changes can either come as a legal initiative of the MoJ, or as a proposal of MPs, based on concrete suggestions submitted by HIJ itself in the Assembly. Such parliamentary procedures are often encountered in the Assembly. In all cases, the changes proposed by HIJ itself will be subject to a process of public consultation with other justice

institutions, the executive, civil society, partners, etc., as appropriate. Then they are passed with the votes of 3/5 of the MPs.

**Conclusion:** *The success of the measure (in terms of legal changes) depends on a number of factors (technical and political will), including reaching a necessary parliamentary majority as the amendment to Law no. 115/2016 can be made only by a majority of 3/5 of the Albanian MPs. Consequently, this measure cannot be the sole responsibility of HIJ.*

### Measure 1.2.11

*“Review and consolidation of HIJ internal rules”*

Measure 1.2.11 refers to the review and consolidation of HIJ internal rules. This measure contains two elements: review and consolidation. The review implies a process of internal analysis, with a consequent action (as long as the findings justify it) an intervention on the bylaws of the HIJ itself. Since it is a matter of internal rules, the institution has the opportunity (as well as flexibility) to change them whenever the need arises.

Consolidation is a time-consuming process, the results of which come after a certain period of time and a decision-making process.

The way it is formulated, this is more of an 'outcome' than a measure. An outcome for this strategic objective is the updating of legislation which implies the review of laws or bylaws. Moreover, given the longevity of the HIJ, the time it takes to implement the legal framework, the effects that are expected to come, and the timelines of the strategy that is intended to be adopted, it seems that this measure is a bit hasty and does not fully match the portfolio of measures. Regarding the above, it is suggested to review this measure, either by replacing it with another measure, or by removing it completely from the 'series of measures'.

**Conclusion:** *This measure seems more like an 'outcome' than a measure. In any case, it is suggested to review this measure, in order to be more realistic in terms of the Strategic Objective and the outcomes that are expected to be achieved, or to replace it with another measure.*

### Measure 1.2.12

*“Develop an HIJ operational plan to process the complaints' backlog”*

Another planned measure refers to the drafting of an HIJ operational plan for handling backlog complaints. This measure relates to what was planned in CJS I as a target in the Passport Indicators. Given that HIJ was established in the last year of CJS I, it is understandable that this measure remained unimplemented and was included in the list of measures for CJS II. The methodology to be used for the treatment of 'backlog' acquires a special importance that can be related to the measures 1.2.9. as well as 1.2.10. Linking it to these measures can create overlap and confusion in the implementation of the Strategy, therefore a necessary step could be to review it in order to make it clearer.

**Conclusion:** *It is suggested to review this measure and harmonize it with measures 1.2.9 and 1.2.10 in order not to create overlap and confusion in the implementation of the Strategy.*

### Specific Objective 1.3

*Strengthening and consolidating the governing bodies of the justice system in accordance with European standards, through the creation and development of capacities to carry out the activity*

*independently, efficiently and with professional standards; services provided by justice governance bodies meets relevant rules and standards.*

Objective 1.3 is in line with Policy Goal 1. It even seems to be the objective that is directly related to the fulfillment of this policy.

The objective includes the activity of three institutions, namely HJC, HPC and HIJ. Its main focus is the strengthening/consolidation of the governing bodies of justice according to European standards. This strengthening will be oriented in two directions: First, the creation and development of capacities for carrying out the activity of these institutions with independence, efficiency and professional standards. Second, the services that these institutions provide as part of their authority, to the judiciary and the prosecution office, shall meet the rules and standards of the respective field.

A prerequisite for the independent, efficient operation of justice governing institutions, as well as for their provision of services according to standards, is their consolidation. The latter means at the same time adequate financial and infrastructural resources, as well as adequate human capacities for development according to the standards of services for the administration and management of the judicial system, and that of the prosecution office. It is clear that the more consolidated the institutions are, the greater the guarantees that they will exercise their authority independently, efficiently and in accordance with the highest professional standards. Consequently, the exercise of powers conferred by the Constitution and the law on these bodies, such as appointments, promotions, transfers, verifications, disciplinary proceedings and inspections, will also be a consequence of a meritocracy process, thus affecting the restoration of public trust in the system.

This Objective increases the trust in the activity of these institutions. Independence and impartiality in enforcing legislation as regards the appointment, transfer and promotion of judges, prosecutors and legal advisors, as well as transparency in the applied procedures, would increase trust in the HJC and the HPC. On the other hand, the operation of these bodies in accordance with the standards of this domain, would bring about as a final product the increase of the efficiency of the judicial system and the prosecution office. Also, investigations conducted by HIJ should be thorough, comprehensive, based on facts and evidence, and transparent. They should be carried out free of external or internal influences, making the most objective assessment of the situation. Only all of these together would affect the citizens' trust in these institutions and in the justice system itself. So, then we could see the accomplishment of one of the main goals of the Justice Reform.

The objective is formulated in a single sentence that leaves room for ambiguity. In this regard, we suggest avoiding one of the terms strengthening/consolidation, as long as they carry the same meaning. We also suggest that the term "creation and development of capacity" be revised, because as long as institutions have been established and are operational, the capacity creation phase seems to be over and, at the moment, we are more concerned with further capacity development and growth of. In order to clarify the language, the part "*services provided by government institutions meet the relevant rules and standards*" could be reviewed, as long as its distinction from the second part of the sentence is not very clear (*to perform the activity with independence, efficiency and professional standards*). Clarification of this language would make the Objective more understandable in relation to the outcomes expected of it or the respective measures.

The objective is relevant in relation to the current and near-future needs of the justice system. We are currently at the stage when institutions have been set up, have infrastructure and resources, and, to a considerable extent, have completed their legal basis, both in terms of the rules of their operation, and in relation to the role and authority they have against the

judiciary and the prosecution system. At this stage, it is important to consolidate them through further capacity development, replenishment of resources where needed at the HJC, HPC, HIJ, as well as the impartial, independent and transparent application of the rules on appointments, promotions and transfers, professional ethics, disciplinary proceedings, inspections, etc. The realization of this objective within the timeframe of the Strategy is deemed as realistic and is related to the public's expectations of an independent and qualitative justice system.

It is further concluded that this specific objective was partly found in CJS I. Specifically, Objective 1 provided: *Strengthening the independence, efficiency, effectiveness and accountability of the justice system institutions*. Basically, both the wording of Objective 1.3 in CJS II and that of Objective 1 in CJS I mean the same thing, despite the fact that CJS I used a more comprehensive term. Consequently, this remains an objective in line with the needs related to justice system policies.

Also, Specific Objective 1.3 is in coherence with the strategic documents of the bodies involved in it: HJC, HPC and HIJ.

It complies with the 2018 – 2020 Strategic Plan of the High Judicial Council for the Judicial System, specifically with its Goals 2 and 4, which envisage as objectives of the HJC, respectively "Improving standards of judicial excellence, implementation and monitoring of their implementation in practice" and "Strengthening the internal capacities of HJC."

Coherence is also observed between this objective and the objective foreseen in HPC Program 1: *Prosecutors' career advancement based on their individual professional performance*, as well as in Program 3: *Prosecutors' accountability ensured through the disciplinary system of "2021 – 2024 Strategic Plan for the High Prosecutorial Council"*.

There is also a connection with the 2020-2022 Action Plan and Strategic Plan of the HIJ Office, namely Strategic Objective 1, which provides: *'Strengthening and exercising the activity of the Office of the High Inspector of Justice in an independent, efficient and professional manner'*; as well as Objective 2: *'Development of the process of verification, disciplinary investigation and inspection in accordance with the principles of disciplinary proceedings and international standards'*

All of the above Objectives are in line with CJS II Strategic Objective. This means that it is a common objective and that work is ongoing to achieve it.

This objective will be finalized in 3 expected outcomes, which will be analyzed and which are in coherence with it. Achieving the objective will firstly enable the HJC, HPC and HIJ to be consolidated, with the necessary capacities and resources to fulfill the duties and responsibilities, and secondly, in function of this premise, their authority in relation to the judiciary and the prosecution office shall be exercised according to the relevant required standards.

What is seen as a shortcoming in the overall treatment of this objective is the lack of concrete measures envisaged to achieve all the intended goals and the lack of indicators that would make the progress made in relation to the Objective itself a measurable one. These shortcomings will be addressed below, but it should be noted that their incompleteness affects its actual realization.

**Conclusion:** *Specific Objective 1.3 is in line with Policy Goal 1. It is also in line with CJS Strategic Objective 1. The objective is also in line with the objectives of justice reform, one of the aims of which has been to allow justice institutions to exercise their authority completely independently (from other powers), efficiently and in accordance with professional standards (i.e., appointments, promotions and transfers based on the principles of meritocracy and transparency), as well as the performance of verifications/relevant investigations, disciplinary proceedings and inspections be based on a clear, transparent and accountable legal framework.*

*What can be revised in this objective is the language, which once clarified, as suggested above, would enable a more accurate understanding of the directions of this objective and would create greater coherence with the measures and the expected outcomes which will be analyzed below. On the other hand, it would be necessary to complement it with additional measures, which would enable its application in practice. Also, to measure progress in achieving this objective, it would be necessary for CJS II to add indicators that would measure each outcome listed in this Objective (see below analysis).*

### **Outcome 1.3.1**

*“The HJC capacities (including processes, capabilities and management) and resources (financial, equipment and infrastructure) are adequate for it to carry out its activities. HJC appoints, promotes and transfers the required number of judges and/or legal advisors according to required and approved rules and standards”.*

This result is specifically related to HJC, as one of the institutions included in Objective 1.3.

With the fulfillment of Objective 1.3, the expected outcome for HJC will be oriented in two directions. First, we will be dealing with a consolidated institution, which has the necessary capacities and resources to fulfill its duties and responsibilities. Secondly, in relation to this premise, the authority provided to this institution vis-à-vis the judiciary will be exercised according to the relevant standards of the domain.

Currently the HJC, in these first few years of operation, is increasing its capacity and performance. HJC has set up constituent structures, has recruited staff and has an infrastructure that has enabled it to establish the necessary legal basis to exercise its activity. It has adopted a series of decisions on appointment, transfer criteria and has set standards on performance measurement and career system<sup>10</sup>. Throughout the duration of CJS II, capacity building and impartial discharge of responsibilities, based on the principles of meritocracy and transparency, will enable the achievement of the objective to strengthen this body and act in accordance with domain standards. As a result, Outcome 1.3.1 is logical and in coherence with Objective 1.3 as well as with the current situation.

The outcome is in line with the provisions of CJS I, but also in line with the expected outcomes of the measures listed in the CJS 1 2019-2021 Action Plan (specifically measures 1 and 3 of sub-objective 1/a, as well as measure 1 of sub-objective 1/b)

This outcome is as a matter of fact also expected upon fulfillment of certain measures in goals 2 (2.1 1) and 3 of the 2019-2020 HJC Strategic Plan for the Judicial System in the Republic of Albania.

Outcome 1.3.1 is logical and deemed as necessary and expected in terms of the goals of Policy 1 and Objective 1.3. However, the elements set out in this outcome that guide the understanding of capacity, i.e., the part "including processes, capabilities and management" remains unclear. This difficulty is also emphasized by the lack of completeness of the measures that have been foreseen in order to achieve this outcome. To achieve this, CJS II only contains the measure "Completion of procedures for the appointment, promotion, transfer of magistrate graduates from the SoM". In addition to incorrect wording, as will be analyzed below, the measure appears to have a partial effect on achieving this outcome. For this reason, it is recommended that measures be added to CJS II to make the outcome realistic, or to link this outcome with the eventual measures that HJC plans to include in its Strategic Plan for the following years, which is in the development stage.

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<sup>10</sup>For more information, please read approved bylaws in <http://klgj.al/akte-normative-nenligjore/>

In CJS II, there are currently no indicators to measure this outcome. Referring to the CJS I 2019-2021 Action Plan, to measure its progress, the following is provided as an indicator: “% of judges and prosecutors who believe that judges have been appointed/promoted, transferred, for reasons other than skill and experience in the last two years (separate values for judges and prosecutors)”. The inclusion of the indicator “% of judges who believe that judges have been appointed/promoted based on meritocracy and career system”, related to the judiciary, would provide quantitatively and qualitatively the perception of the achievement of the outcome for the implementation of standards in the exercise of its activity and would make it more realistic. To measure the appropriate financial resources an indicator could be “% of the state budget dedicated to HJC in relation to the draft budgets proposed by the institution itself”. For the capacity measurement part, a measurement indicator would be “% of HJC advisors/administration who have been trained on their functional duties.” Meanwhile, other indicators, which will show the degree of fulfillment of this outcome, will depend on the measures to be envisaged for capacity building and infrastructure.

**Conclusion:** *The outcome is required and meets Specific Objective 1.3. It should clarify the elements that imply capacities in order to identify measures and indicators for their measurement. Also, the drafters should consult the HJC on the measures that will be determined and that should be taken in order to fully achieve this outcome. We also suggest that these indicators be included to monitor this outcome: “% of judges who believe that judges are appointed/promoted based on a meritocracy and career system”, “% of the state budget dedicated to HJC in relation to the budget projected and proposed by the institution itself”, as well as % of HJC advisors/administration who have been trained on their functional duties”.*

### Outcome 1.3.2

*“The HPC capacities (including processes, capabilities and management) and resources (financial, equipment and infrastructure) are sufficient to carry out its activities, and the HPC appoints, promotes and transfers the required number of prosecutors and/or legal advisors according to the required and approved rules and standards.”*

This outcome contains the same provisions as Outcome 1.3.1, and focuses on HPC. It presumes that with the fulfillment of Objective 1.3, for the HPC part, the expected outcome will be oriented in two directions. First, we will be dealing with a consolidated institution, which has the necessary capacities and resources to fulfill its duties and responsibilities. Secondly, in function of this premise, the authority given to this institution in relation to the prosecution office will be exercised according to the relevant standards of this field.

HPC is a functional institution since 2018, in the process of consolidating its capacities and performance. This institution is near the complete finalization of the legal basis for the appointment, transfers, promotions, measurement of the performance of prosecutors, disciplinary proceedings in the prosecution system<sup>11</sup>. Also, transparency in decision-making is considered as one of the most important achievements of this institution. Due to the work done so far, during the implementation of CJS II, it is expected an increase in the capacity and implementation of responsibilities in relation to the prosecution office with impartiality and based on the principles of meritocracy. This will enable the achievement of the objective of strengthening this body and operating in accordance with the standards of the field. Due to the above, Outcome 1.3.2 is in line with Objective 1.3, expected and in coherence with reality.

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<sup>11</sup>Read HPC 2020 Annual Report, pp. 9-10

This outcome is a continuation of the outcomes targeted by CJS I and the CJS I Action Plan for the years 2019–2021 of CJS 1 (specifically the outcomes of measure 1 of sub-objective 1/a, as well as measure 1 of sub-objective 1/b.)

Also, the outcome is a logical consequence to the intended outcome of Program 1 "Prosecutors' career management based on their individual professional performance" provided by the HPC Strategic Plan for 2021-2024.

In terms of wording, the same suggestion applies as for the outcome above. The elements defined as constituent components of the institution's capacity need to be clarified.

Regarding this Outcome, CJS II does not contain concrete measures that affect capacity building or related to HPC resources. Even in this case, as for the HJC, the only measure provided refers to that in 1.3.1 "Completion of procedures for the appointment, promotion, transfer of magistrates graduated from the SoM". HPC, although it has foreseen in its Strategic Plan as an expected outcome "Prosecutors' career management based on their individual professional performance", does not contain concrete measures that are directly related to capacity building or resources. Therefore, coordination with the HPC is needed on the measures that will need to be taken to successfully implement all components of this outcome.

The same suggestion applies as above on the Outcome 1.3.2 measurement indicators. Currently CJS II has no defined indicators for measuring this outcome. Even in this case the following can serve as an indicator: "% of prosecutors who believe that they have been appointed/promoted based on meritocracy and career system", which, regarding the part of the prosecution, would provide quantitatively and qualitatively the perception on the achievement of the outcome for the part of the implementation of the standards in the exercise of its activity and would make it more realistic. To measure adequate financial resources an indicator could be "% of the state budget dedicated to HPC in relation to the draft budget proposed by the institution itself". An indicator to measure the increase of capacities (skills) could be "% of advisors/HPC administration who have been trained on their functional duties". Meanwhile other indicators, which will show the degree of fulfillment of this outcome will depend on the measures that need to be taken to increase capacity and infrastructure.

**Conclusion:** *The outcome is expected and meets objective 1.3. It should clarify the elements that imply capacities, in order to have a clearer understanding of it, as well as to identify measures and indicators for their measurement, which would make this outcome realistic. The drafters should also consult with HPC about measures that will serve to achieve these outcomes. We also suggest that the following be included as indicators to monitor this outcome: "% of prosecutors who believe that prosecutors have been appointed/promoted based on meritocracy and career system", "% of the state budget dedicated to HPC in relation to the draft budget foreseen and proposed by the institution itself", as well as the "% of HPC advisors/administration who have been trained on their functional duties".*

### **Measure 1.3.1**

*"Completion of procedures for the appointment, promotion, transfer of magistrates graduated from the SoM"*

This measure is valid for both outcomes 1.3.1 and 1.3.2, given the fact that judges and prosecutors are appointed, promoted, transferred respectively by the HJC and HPC upon their graduation from the SoM. This measure, from the way it is developed, looks more like an outcome than a measure in itself, and for that it needs to be reformulated. First, the process of appointing, promoting or transferring magistrates is an ongoing and annual process and should be rewritten to avoid it being a single process (derived from the use of the word "completion"). Secondly, performing the procedures of appointment, promotion, transfer of magistrates

graduated from the SoM, constitutes a basic functional task of these institutions and does not necessarily lead to the achievement of the outcome for the performance of this task (appointment, promotion, transfer of magistrates graduated from SoM) according to standards. Third, Outcomes 1.3.1 and 1.3.2 focus, inter alia, on the capacities and resources of the HJC and HPC, and this measure alone does not meet the above Outcomes in their entirety. It should therefore be accompanied by measures leading to increased resources and capacities in all elements or components mentioned in Outcomes 1.3.1 and 1.3.2 and Objective 1.3. There are currently no such concrete measures in the HPC Strategic Plan, whereas the HJC Strategic Plan is still being drafted.

One measure that could affect the appointment, promotion and transfer of magistrates according to the rules and standards required and approved could be: *Increasing the transparency of decision-making in the process of their appointment, transfer and promotion*. Such a measure is currently foreseen in the CJS I 2018-2021 Action Plan.

Also, despite the fact that the results focus only on the capacities of the HJC and HPC, the current situation in which the judicial and prosecution system finds itself, due to the reduction of the total number of magistrates, as well as due to the still unapproved judicial map, may result in failure to achieve the above outcomes only through this measure. It should also be remembered that this year (2021) there will be no initial appointments by HJC and HPC due to lack of admissions for this purpose in 2018-2019. An exception in this case are legal advisors, who have completed the 1-year training course.

**Conclusion:** *The possibility of rewriting this measure should be considered to adapt it to Outcomes 1.3.1 and 1.3.2, namely with the performance of the activities of the HJC and the HPC for the appointment, promotion and transfer of judges, prosecutors and/or of legal advisors according to the required and approved rules and standards. Also, this measure should be accompanied by additional measures aimed at consolidating institutions both in terms of capacity and resources and transparency. Regarding the latter, we suggest to include as a measure “Making the decision-making process transparent regarding the appointments, transfers and promotions of magistrates”.*

### **Outcome 1.3.3**

*“HIJ capacities (including processes, skills and management) and resources (financial, equipment and infrastructure) have been strengthened and consolidated and this institution exercises its functions independently, efficiently and professionally, developing the verification process, disciplinary investigation and inspection in accordance with the principles of disciplinary proceedings and international standards. These activities will be carried out as deemed necessary for the proper functioning of the judiciary and the prosecution office and in accordance with the legal requirements, the regulatory framework and the required standards.”*

This result, like the other two above, is related to the presumption that with the fulfillment of Objective 1.3, the expected outcome for HIJ will be oriented in three directions. First, the capacities and resources of HIJ will be adequate to carry out the activity according to the constitutional and legal framework. Second, based on these premises, this institution will perform its functions independently, efficiently and professionally, developing the process of verification, disciplinary investigation and inspection in accordance with the principles of disciplinary proceedings and international standards. Third, (although it is not clear) the activity of this institution will affect the functioning of the judiciary and the prosecution, according to the relevant legislation and standards related to accountability.

Regarding the latter, we would suggest that the judiciary be included in the Objectives and Outcomes envisaged in function of Policy Goal 2, which is dedicated to the performance of the judicial system. Also, the last sentence contains generic and vague provisions. It seems that the "as deemed necessary" part leaves a margin of subjectivity for HIJ, although this may not be its goal. Due to this reason, the third sentence can be revised in function of its clarity, but also without exceeding Policy Goal 1 and Specific Objective 1.3

Regarding the wording of this outcome, the same suggestion applies as for the two previous outcomes. The elements defined as constituent components of the institution's capacity need to be clarified.

HIJ was established and has been operating since February 2020. During this initial phase of its operation, the inspector positions have been partially filled and, in the meantime, the administrative staff is almost complete. HIJ has also largely completed the legal basis for its organization, functioning and exercise of powers conferred by law and the Constitution. A series of acts and measures have also been taken to address the backlog inherited from the HCJ<sup>12</sup>. At this moment it is important to further build the capacity of the institution and its performance in accordance with the principles of disciplinary proceedings and international standards. In this respect the projected Outcome seems coherent and necessary.

Despite the above-mentioned inaccuracies, Outcome 1.3.3 contains a provision that is in line with those of CJS I. It is a logical continuation of the achievement of the objectives set out in the "2020 – 2022 Strategic Plan and Action Plan of the Office of the High Inspector of Justice", as well as of a series of measures provided in the latter, in order to achieve these objectives.

Regarding the measures of this outcome, CJS II has provided for a series of such measures that enable its realization. As will be analyzed below, the coherence of these measures in relation to the strategic provisions and the degree of their implementation in the HIJ Action Plan should be assessed, in order to have a greater coherence between these two strategic documents and to make the results as realistic as possible.

To achieve this Outcome, CJS II provides two indicators: First, "% of initiated disciplinary proceedings for complaints against judges or prosecutors" and, second, "The indicator for resolving backlog cases of discipline and appeals filed with the HIJ". Both of these indicators measure the efficiency of this body, but do not provide complete data on the implementation of standards by it. As in the Outcome above, the polls conducted with the judges and prosecutors could serve as an indicator to calculate the percentage of those who think that HIJ has or has not met the standards in the process of verification, disciplinary investigation and inspection. Meanwhile, measures and indicators for the consolidation of capacities and resources can be found in the Action Plan of the HIJ Office.

***Conclusion:*** *The outcome is required and meets Specific Objective 1.3. It should clarify the elements that imply capacities, in order to have a clearer understanding of it, as well as to identify measures and indicators for their measurement. Also, in order to make this result as realistic as possible, a greater coherence is needed between the measures foreseen for its achievement and the deadlines foreseen in the HIJ Action Plan or the degree of their realization. While measures and indicators for the consolidation of capacities and resources can be found in the Action Plan of the HIJ Office, we suggest that, in the framework of monitoring the implementation of CJS II, the following indicator be included (based on surveys conducted with the panel of judges and prosecutors) "percentage of judges/prosecutors who think that HIJ has/has not respected the standards in the process of verification, disciplinary investigation and inspection".*

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<sup>12</sup>For more information, read: <https://ild.al/sq/legislacion/akte/>

### Measure 1.3.2

*“Completion of procedures for the appointment of magistrate and non-magistrate inspectors at the HIJ, as well as completion of the recruitment of the Office of the High Inspector of Justice staff”*

The above measure, together with those listed below constitute the necessary steps to be taken in order to achieve Outcome 1.3.3. It should be taken in order to meet Outcome 1.3.3 and achieve the goals of Specific Objective 1.3.

Measure 1.3.2, ranked first, is about the completion of staff recruitment procedures (appointment of magistrate/non-magistrate inspectors as well as support administrative staff). Unless vacancies in human resources are filled, HIJ cannot be fully functional in performing the powers assigned to it by law. This measure creates a natural continuation with the measures (activities) that were foreseen in CJS I, where activity 1.03 mentioned the recruitment of employees<sup>13</sup>. CJS I also assessed that recruitment, together with infrastructure (buildings, including furniture, relevant IT equipment) are basic conditions for the establishment and functioning of the institution. Meanwhile, this measure is in coherence with the measure "Filling vacancies in the Institution", provided in the framework of Specific Objective 1.2 "Ensuring financial and administrative autonomy of the Office of the High Inspector of Justice" provided in the Action Plan of this institution. The deadline for the implementation of this measure according to the HIJ Action Plan is 2020-2021. For this reason, its fulfillment in accordance with the current situation should be re-evaluated. Meanwhile, HIJ also has indicators for its measurement, whose data can be borrowed to measure its implementation.

**Conclusion:** *Given that HIJ still has vacancies in its organization, both in terms of inspectors and administrative staff, the measure is considered appropriate and in line with the current situation in order to achieve the required result for HIJ.*

### Measure 1.3.3

*“Justice inspectors’ capacity building and strengthening through job-specific training”.*

Measure 1.3.3 is the next step in relation to increasing the capacity of inspectors/staff. It is very important that the staff knows well and correctly understands the legal framework, inspection methodology, investigation techniques, etc. This can be achieved through training dedicated to various aspects of the work depending on the respective task (immediate inspections in case of suspected ethical-professional violations or thematic inspections that should be planned long before). During the first year of its existence, HIJ has organized and also been provided by various donors many training courses dedicated to the correct understanding of the catalog of disciplinary violations, ECtHR standards for disciplinary proceedings against magistrates, etc.

Over time, the high number of trainings during the first years of the institution's existence will naturally start to decrease, as it is considered that the staff is trained to a satisfactory level to perform their tasks. In this regard, importance should be given to follow-up training courses on increasing performance and efficiency, in accordance with the needs. This measure coincides with Specific Objective 1.5 "Increasing the professional knowledge and skills of inspectors and civil servants, so that each of them, in their respective position, can efficiently fulfill their functional tasks" of the 2020 -2022 Strategic Plan of the Office of the High Inspector of Justice. Whereas the activity "Capacity building through job- specific training " is seen as a measure

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<sup>13</sup>[https://www.drejtesia.gov.al/wp-content/uploads/2018/06/278-2016\\_fletore\\_zyrtare\\_SND.pdf](https://www.drejtesia.gov.al/wp-content/uploads/2018/06/278-2016_fletore_zyrtare_SND.pdf)

whose deadline is 2021, while the cooperation with ASPA, the School of Magistrates and foreign experts on providing training and developing training terms are seen as follow-up activities.

In this regard we could say that capacity building is towards completion, while the objective could be further capacity building through ongoing training aimed at enhancing staff performance.

**Conclusion:** *In light of the above, it may be necessary to reformulate the measure taking into account the lifetime of the HIJ, and the time when CJS II was adopted, as this may constitute a partially fulfilled measure that does not have the relevance it was expected to have, especially for the capacity-building aspect. Consequently, this measure can be replaced by a more realistic measure related to ongoing training to strengthen and further increase capacities. Moreover, the aim of CJS II according to its drafters is not to duplicate the measures of sectoral strategies<sup>14</sup>.*

#### **Measure 1.3.4**

*“Development of analysis reports of working groups for the identification and categorization of complaints carried over by other institutions, according to their topic”.*

Item 1.3.4 includes as a necessary measure the categorization of complaints carried over. This is nothing more than developing a methodology to address the backlog. From the way it is formulated, it seems that there is an overlap with the measure 1.2.12 mentioned above (1.2.12 “Preparation of an HIJ operational plan for handling backlog complaints”).

This measure also coincides with the HIJ 2020-2022 Strategic Plan, specifically with measure 1 “Establishment of working groups to identify and categorize complaints carried over by other institutions”, and “Priority review of complaints according to the findings of working groups for the identification and categorization of complaints carried over by other institutions, according to their topic” which are in fulfillment of Specific Objective 2.4 “Increasing the number of complaints handled in accordance with legal deadlines”. These measures have a deadline of December 2020 and March 2021, respectively. Therefore, we should review how relevant is measure 1.3.4 with the activity of the Office of the High Inspector of Justice and the current backlog.

We also suggest that the strategy should divide into specific objectives the accountability of the judiciary, part of which are decisions made in the context of disciplinary processes, addressing of complaints, reviewing the backlog, with the increase of HIJ capacity and their compliance with standards while performing their activities. A clearer distinction is required between Objective 1.3 and the accountability of the judiciary included in the measures under Objective 2.4.

**Conclusion:** *Regarding the above, it is suggested to review/reformulate this measure in relation to measure 1.2.12 as well as with the measures foreseen in the 2020 -2022 Strategic Plan of the Office of the High Inspector of Justice, in order to avoid any ambiguity in the implementation, as well as to make it relevant to the current situation. We also suggest a clearer division between the Objectives, Measures and Outcomes related to the strengthening of HIJ capacities, with those related to the accountability of the judiciary (which is reflected, among other things, in the decisions made by the HIJ on disciplinary violations), stipulated within Policy Goal 2.*

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<sup>14</sup>See SNDII, pp. 13 <https://drejtesia.gov.al/wp-content/uploads/2021/02/Draft-Strategjia-Nd%C3%ABrsektoriale-Drejt%C3%ABsis%C3%AB-2021-2025-p%C3%ABr-konsultim.pdf>

### Measure 1.3.5

*“Preparation of necessary interventions for the infrastructural and logistical improvement of HIJ and providing all HIJ employees with work stations/logistics”.*

As stated above, HIJ has only been in existence for a little over a year. Another measure, 1.3.5, has to do with infrastructural and logistical aspects. Ensuring the necessary infrastructure is essential in the exercise of duties, given the problems encountered by many justice system governance institutions in the beginning of their activity. This measure is in line with the above measures and is related to activity 1.03 a. of CJS I.

Although this measure is in itself necessary, the question that arises is how relevant is it currently, given that HIJ already has its building, equipped with the necessary infrastructural elements. Furthermore, in the 2020-2022 Action Plan of the Office of the High Inspector of Justice, measures under Specific Objective 1.1 “Development of the necessary infrastructure for the exercise of functions by the Office of the High Inspector of Justice through the provision of space, facilities, equipment and working conditions” are for December 2020, March 2021 and March 2022. Therefore, this measure should be revised in relation to the measures and deadlines provided in the HIJ Action Plan in order to be relevant with the two documents, as well as the current situation.

**Conclusion:** *It is suggested to assess the relevance of this measure against the developments and time passed since the establishment of HIJ, as well as not to create overlap with the measures provided in the HIJ Strategic Plan.*

### Policy Goal 2

*“Strengthen transparency, efficiency of the judiciary and access to justice in line with constitutional, legal requirements and European standards”.*

Policy Goal 2 relates to the effect that justice reform has had on the judiciary. Since a new mechanism is provided in Policy Goal 1, different from the previous one, analyzed as problematic as it did not provide impartiality, efficiency, transparency, accountability, etc., the new mechanism, through new institutions and new laws, must have positive effects on the judicial system.

These desired effects are clearly expressed in Policy Goal 2 and relate to the performance of the judiciary as a whole. The judiciary will need to build a more transparent relationship with the public and its users, be accessible to the parties, act quickly and efficiently. Also, Policy Goal 2 states that in meeting these standards, work should take into account Albanian law and European standards.

CJS I contained an almost identical strategic objective, Strategic Objective 3: “Improving the operation of the judicial system by strengthening its efficiency, transparency and approach in line with European standards”. This provision seems to fit perfectly with the approach of the 2015-2020 National Strategy for Development and Integration (NSDI), according to which the judiciary should be transparent and should gain the trust of the public. However, CJS I, under this strategic objective, also provided measures related to public access<sup>15</sup>.

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<sup>15</sup>CJS I, in strategic objective 3, provided several measures: '3.01. Improve legislation in order to improve the efficiency of court proceedings in particular through: -improvement of the notification system; -provision of means to prevent adjournment of trials; launching accelerated trials; - filtration criteria; - requiring reasoning at the same time as the court decision/announcement of the decision; 3.02. Establish a reasonable and proportionate system of

Whereas the new Strategy contains a specific objective which was drafted separately, Specific Objective 2.3, which is related only to increasing the professionalism of the judiciary. So, it seems that the new Strategy contains a new requirement for the judiciary related to the increase of its professional capacity, which should have been stated within Policy Goal 2. This is a very important requirement and with long-term consequences, therefore it is indispensable that it be in written form and be further broken down into concrete objectives and measures.

The importance of this policy is also noted due to it defining five specific objectives<sup>16</sup>, four of which will be analyzed below due to their importance to the functioning of the justice system. This study did not analyze the objective related to the Constitutional Court, due to its special character outside of the three-level judicial system and special rules related to trials at the CC.

Given the way it is formulated, it seems that the focus of this policy goal is 'the judiciary' and not the 'justice system', although there is a connection with the prosecution and its organization, as in the case of the adoption of the judicial map, which directly impacts the functioning of the prosecution office.

**Conclusion:** *Policy Goal 2 has a special weight in the Strategy and a great importance for this study, due to the concrete outcomes that its fulfillment requires. For this reason, it is suggested to complement it with a requirement for professionalism of the judiciary.*

### Specific Objective 2.1

*"Review the legal framework regarding the judiciary, in accordance with the need to further improve professional capacity, accessibility, transparency and efficiency".*

Objective 2.1 stipulates the first instance of intervention that should be conducted in order to increase the performance of the judiciary and access to the judiciary; this intervention is a review of all laws that relate to or affect the implementation of these principles. The law is the first means, in the hands of the institution and the individual, that provides for the obligations and guarantees the rights in the fulfillment of these obligations. The principles or standards that this objective seeks to establish for the judicial system require an in-depth assessment of a large number of laws, material and procedural, and for the most part, organic laws, of fundamental importance for rule of law in Albania.

These laws should identify what are the arrangements that affect the enhancement of the professional capacities of the judiciary, those that affect access to the judiciary, those related to transparency and those that make the system more efficient. This is not an easy task, given that these principles lie in provisions that do not necessarily refer to the principle, but lie in the

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court fees to ensure the financing of justice services, as well as guarantee access to court; 3.03. Establishment of a fair and functional system of free legal aid for individuals and groups in need; 3.04. Improving the relationship between the court and the media and ensuring public access to information in cases of public interest.

<sup>16</sup>Policy 2, Specific Objective 2.1 "Specific Objective 2.1. Review the legal framework regarding the judiciary as needed to further improve professional competency, accessibility, transparency and efficiency"; Specific Objective 2.2 "Institutional strengthening and capacity building of the Constitutional Court (CC), provision of adequate resources and its professional functioning, transparently and effectively"; Specific Objective 2.3 "Increasing the efficiency and professional ability of the training system which ensures advancement towards European practices and quality in the field of justice, providing an adequate number of magistrates and legal advisors trained on the justice system in Albania"; Specific Objective 2.4 "Improving the judicial system in order to increase the effectiveness and efficiency of all levels of the judicial system, including the High Court, and ensuring the provision of transparent justice, without delays and accessible to citizens" and Specific Objective 2.5 "Effective access to justice provided through legal aid, alternative dispute resolution and appropriate court fees".

concept of solutions that the legislator has given to the various institutes of law, and often come up and are interpreted by the spirit and letter of the law.

From a glance at – as a minimum - the main laws governing these principles, we manage to identify some of them. Thus, issues related to professional skills will have to be sought in the laws governing the terms and criteria for being a judge/prosecutor, on training, career, evaluation, etc. Law 115/2016 and Law 96/2016 are taken into account here. Also, the issues of professionalism of the judiciary are related to the professionalism of the judicial administration, starting from the chancellor, as the highest judicial clerk, to every clerk who has the status of judicial civil servant.

Issues related to access to court and transparency are issues related to procedural laws (Code of Civil Procedure, Code of Criminal Procedure, Law on Administrative Courts and Adjudication of Administrative Disputes), while those for adjudication in the Constitutional Court are issues related to law “On the Constitutional Court of the Republic of Albania”.

Issues related to efficiency are both issues of procedural laws and substantive laws (Civil Code, Law on Commercial Enterprises), as the latter provide special tools that can be used by the parties/court and are related to the efficiency of the court. Also, efficiency is regulated by laws on the organization of the judiciary or prosecution office (Law 115/2016, Law 98/2016, Law 97/2016).

Thus, it is noted that the legal framework, which will need to be reviewed to check the possibility of improving it in terms of transparency, access, efficiency and quality in the judiciary, is very broad. However, the importance dictated by this process and the need for these laws to be harmonized, both amongst themselves and with international standards, makes it necessary for this analysis to be as thorough and exhaustive as possible.

Regarding the coherence of this Objective, given that the latest amendments entered into force in May 2021, which affect a large part of these above-mentioned laws and are focused, in particular, on the proper functioning of, unblocking and making the judiciary efficient, despite the few resources, it should be said that this inspection will have to start in 2023 at the earliest, leaving the necessary time for the changes made to the laws to give their effects.

Two Outcomes are envisaged for the fulfillment of this objective: the first is related to the revision of some procedural and material laws that affect the decision-making and the procedure followed by the judge, i.e., entirely judicial authorities, and the second relates to the revision of the laws on the organization of the judiciary and the filling of some gaps with bylaws related to the functioning of the courts in the institutional aspect, having in mind the judicial administration.

This provision is correct because, as analyzed above in the analysis part of Policy Goal 2, the goals sought to be achieved through it include laws of various natures. Their separate analysis helps to understand, organize and make recommendations on possible changes.

**Conclusion:** *The principles or standards that this objective seeks to establish for the judicial system require an in-depth assessment of a large number of laws, material and procedural, and for the most part, organic laws, of fundamental importance for legislation in Albania. The importance dictated by this process and the need for these laws to be harmonized, both between them and with international standards, makes it necessary for this analysis to be as thorough and exhaustive as possible. Since the latest changes entered in force in May 2021, which affect a large part of these laws and are focused on, in particular, the proper functioning of, unblocking and making the judiciary efficient, even with few resources, this inspection will have to start in 2023 at the earliest, leaving the necessary time for the changes made to the laws to give their effects. Two results are foreseen for the fulfillment of this objective, which if they will be further fulfilled (see the analysis of the results below) and met, will fully meet Specific Objective 2.1*

### Outcome 2.1.1

*“Reviewed Code of Civil Procedure, Law on Administrative Courts and Administrative Dispute Resolution, and Family Code, to increase transparency and efficiency and ensure accessibility, deterring the filing of unfounded cases”.*

Outcome 2.1 requires a review of some procedural and substantive laws to amend provisions that provide for compliance with the principle of transparency, the provisions governing access to court, or the provisions relating to the efficiency of the court, including cases where the court cannot be efficient due to unfounded requests which slow down its work.

This outcome is consistent with the objective intended to be achieved, but is incomplete referring to the laws that will need to be analyzed in order to meet a component of Specific Objective and Policy Goal 2.

Thus, this outcome provides for the revision of the Code of Civil Procedure, the Law on Administrative Courts and the Adjudication of Administrative Disputes and the Family Code, but does not provide for other basic laws that will have to be reviewed to see the impact it may have on arrangements related to transparency, accessibility and efficiency. Such basic laws are the Code of Criminal Procedure, the Civil Code and the Law on Commercial Enterprises. All three of these laws contain specific provisions governing the purposes of Outcome 2.1. As for the Code of Criminal Procedure and the Civil Code, there is no doubt why they should be part of the review - due to their primary role in regulating the judicial process, in balancing the rights of the parties and the court, in conceiving and implementing principles through binding rules, deadlines, notices, penalties, etc. It is also worth noting the reason why the Law "On Commercial Enterprises" should have undergone the same analysis. Firstly, because this law, in addition to being a substantive law, contains certain provisions of a procedural nature that are directly related to the court adjudication, which affect its efficiency, and, secondly, because commercial disputes constitute a large number of disputes taken to court, which adds to the impact of the rules governing the progress of trials for these disputes.

**Conclusion:** *This outcome is consistent with the objective intended to be achieved, but is incomplete referring to the laws that will need to be analyzed. It does not contain provisions for all laws that have a substantial impact on its implementation, such as the Code of Criminal Procedure, the Civil Code and the Law on Commercial Enterprises. In addition to such provisions, the outcome should contain specific measures aimed at reviewing these laws, similar to the measures provided for laws that are already posted as part of the outcome.*

### Measure 2.1.2

*“Development, discussion and approval of the Civil Procedure Code necessary amendments package”.*

This measure envisages the steps to be taken by the Ministry of Justice to amend the Civil Procedure Code in order to facilitate, assist and promote the effective implementation of some principles required by this code, but also by the justice system in general and related with transparency, access to court and judicial efficiency.

This measure is necessary to be implemented in compliance with Outcome 2.1 as the law is the first limitation of the operation in practice of these principles. Thus, the provisions related to notifications, deadlines for filing claims, deadlines for appeals, conditions for filing lawsuits,

interim decisions during the trial, cases of conflicts of jurisdiction, the means available to the court against abusive dispositions of the parties, provisions regarding court fees, relations with third parties to the process, such as defense counsel, etc., directly affect the effectiveness of courts, increase access to them and their operation in terms of full transparency to the court user.

For the implementation of this measure, it is foreseen that the action will be completed within 2023 and, then, within 2025, it will be analyzed how effective the interventions were. It would be more realistic to set the end of 2025 as the deadline for the implementation of this measure, as the effects that will produce the last changes of the CPC that entered into force in May 2021, which aimed at increasing the effectiveness of courts at all levels, but on the other hand, also affected the principle of adversarial proceedings before the court, allowing more cases where the court conducts the process in the deliberation room, without the presence of the parties. A reasonable period of time, at least two years from the moment of their entry into force, is necessary to start the analysis on these changes, while the analysis of new proposals may be ready by the end of 2025.

**Conclusion:** *This measure is necessary to be implemented in compliance with the Outcome, but the deadline set for the implementation of the measure should have been longer. This is related to the amendments to the CPC that entered into force in May 2021. Insufficient time to analyze the impact of the new law, and further to reach conclusions, risks making this measure unrealistic and ineffective.*

### Measure 2.1.5

*“Development, discussion and approval of the Family Code necessary amendments package”.*

This measure, the same in wording and the reasons for its provision in compliance with Outcome 2.1, sets out the steps to be taken by the Ministry of Justice to amend the Family Code in order to facilitate, assist and promote the effective implementation of certain principles required by this code, which has provisions of both a material and procedural nature and as such affect the judicial review in terms of its efficiency, transparency and access for the parties to the process.

**Conclusion:** *The analysis of the Family Code and the proposal of possible amendments is a necessary measure, as the Family Code is complementary to the CPC in matters of litigation, and the changes in these codes must go in parallel and be harmonized. Given that the Family Code has not been subject to changes recently<sup>17</sup>, an analysis of it, within the deadline provided by the measure (2022-2023), is considered reasonable and appropriate.*

### Measure 2.1.8

*“Development, discussion and approval of the necessary amendments package related to Law on Administrative Courts and Adjudication of Administrative Disputes”.*

This measure, too, is the same both in wording and in the reasons for its provision in compliance with Outcome 2.1, as the other two measures analyzed above. The Law on Administrative Courts and the Adjudication of Administrative Disputes is the basic procedural

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<sup>17</sup>The last amendments were made with Law no. 134/2015, of December 05, 2015 “On some amendments to Law no. 9062, of May 8, 2003, “Family Code”.

law that regulates the process of administrative trial, a special trial in Albania, both in terms of the characteristics of this trial and the competent courts.

This measure provides the steps to be taken by the Ministry of Justice to amend this law in order to facilitate, assist and promote the effective functioning of Administrative Courts, increase transparency and strengthen guarantees regarding the access of parties to the process. It is necessary to be carried out in compliance with the outcome as the law itself is the one that restricts, through its regulation and binding, the rights of the Administrative Court parties and users, on the one hand, and the rights of the court to decide, on the other.

The implementation of this measure is foreseen to be completed by the year 2023, while by 2025 it is planned that the analysis on the effectiveness of the interventions will be concluded. It would be more realistic to set the end of 2025 as the deadline for the implementation of this measure, after analyzing the effects that will produce the latest amendments to the law that entered into force in May 2021. These amendments aimed at increasing the effectiveness of the administrative courts of the first two instances and the Administrative College at the High Court. A reasonable period of time, at least two years from the moment of their entry into force, is necessary to start the analysis on these changes. Therefore, only at the end of 2025 can conclusions be drawn regarding the necessary changes to the law.

**Conclusion:** *This measure is necessary to be taken in implementation of the Outcome, but the deadline set for the implementation of the measure should have been longer. This is due to the amendments to the Law on Administrative Courts and the Adjudication of Administrative Disputes that entered into force in May 2021. Insufficient time to analyze the impact of these changes, and furthermore reach conclusions, risks making this measure unrealistic and ineffective.*

**Conclusion on all three measures:** *All three measures included in this analysis will obtain their true value if they go through a broad and real process of consultation and discussion. CJS II stipulates that the process of analysis and possible amendments will be led by the Ministry of Justice, but the HJC, HPC, General Prosecution Office and courts will be participating institutions. The real measures that will be taken by the MoJ to create an effective cooperation between these stakeholders will be very important. The experience of the last changes of May 2021 was not very positive in this respect, due to the fundamental changes as well as the lack of conviction that these changes came as a result of a wide consultation, given the very short time that the MoJ had to draft, discuss and approve. It would be very interesting if this study followed-up and monitored the concrete steps that will be taken to fulfill these measures.*

### **Outcome 2.1.2**

*“Amendment of legal provisions regarding the judicial system, to allow for a competent, transparent and efficient organization of judicial processes and to attract adequate and qualified staff. Inclusion of specific legislation to ensure transparency and efficiency of the processes implemented by the judicial administration, the efficient management of the quality performance of the judicial administrative staff and the possession of sufficient funding for any costs”.*

This outcome aims to strengthen the court capacities in the institutional aspect. Even from the way the outcome is written, it is possible to identify two main and complementary goals that are intended by it: first, the laws related to the functioning of the judiciary should be analyzed, revised, and second, the appropriate legal, regulatory and institutional mechanisms should be promoted, in order to regulate and continuously manage the work of the judicial administration, including quality control.

The fundamental law that regulates the organization and functioning of the court system in Albania, their internal organization, the functioning of the court administration and the status

of judicial civil servants is Law no. 98/2016 "On the Organization of the Judiciary in the Republic of Albania". However, other laws also provide complementary provisions related to the specifics of the institution that these laws regulate. For example, Law 95/2016 "On the Organization and Functioning of Institutions to fight Corruption and Organized Crime" contains special provisions for employees of the judicial administration of Courts against Corruption and Organized Crime (Articles 44 and 45 of the Law). Also, Law 96/2016 "On the Status of Judges and Prosecutors in the Republic of Albania" requires the chancellor of the court (senior civil court clerk) to make available to the responsible officer who is auditing a certain magistrate assigned to that court, the necessary conditions for the exercise of duties (Article 91 of the Law). The HJC also has a very significant role in determining the progress of the courts' activities. By issuing acts of general force and its instructions, the HJC has the right and obligation to regulate the way in which the courts will have to act on certain issues, or the form of acts they will have to issue and implement.

It is important that, after some time has passed since the entry into force of these laws, we analyze the extent to which these laws are compatible with each other, how harmonious they are and how capable they are, being used by various bodies, to yield the desired product in practice. It is also very important that, in accordance with the law, the tasked institutions develop the regulatory basis and ensure the accountability process for judicial civil servants.

The fulfillment of this outcome, according to the plan of measures, will be realized in two parts – the analysis of the law and regulations will be carried out within 2021 and the development of changes or new acts within 2022. In addition, the end of year 2025 is intended as a deadline for a complete and thorough analysis of the developed regulations, to check how efficient they have been and whether they have managed to enhance the transparency and efficiency of the courts; as well as whether the judicial administration has managed to increase its level of performance by improving the quality-of-service delivery/fulfillment of duties.

This time scheduling does not seem to be very realistic because the greatest weight in the accomplishment of this result will fall on the development of the regulatory framework and the amendment of the existing legal framework, in case obstacles are identified that affect the good administration of courts. Given the pace with which the HJC has acted in issuing instructions to the courts<sup>18</sup> and also the recent amendments to the laws that entered into force in May 2021 which also affect issues of courts' structural character, for example introducing the position of assistant in district courts, it is almost impossible to develop the entire support framework in such a short time. Also, the creation of a new judicial map should be considered as part of this outcome. It would be a mistake to claim that even prior to a clear distribution of courts, general, long-term policies and rules can be developed with real impact on issues of justice administration and court efficiency.

What clearly stands out as a shortcoming in the plan of measures that meet this outcome is that no measure provides for the revision of the fundamental legislation, as required by the Outcome and Specific Objectives outlined above. All measures refer to analyzing, amending and complementing secondary legislation only. Consequently, these measures cannot fully fulfill the outcome. If we take only one example, hiring of qualified staff for the judiciary – a requirement of this outcome – it is clearly impossible to claim that amending and complementing regulatory acts would suffice, given that the job positions' criteria, financial remuneration, etc., are part of the fundamental laws. It is appropriate to mention the case of legal assistants - vacancies that

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<sup>18</sup>Decision of the HJC, no. 78, of May 30, 2019 "On the calendar of cases at the Court of Appeals"; Decision of the HJC no. 47, of February 11, 2021 "On the approval of the "Guide "For maintaining and filling in tables with statistical data for the purpose of measuring and monitoring courts' productivity and efficiency"".

cannot be filled, for reasons mostly related to the law and the way it has regulated this category. The law does not significantly differentiate between their entry into the system and the magistrates'. It only provides for a substantial difference in the financial remuneration of these two categories.

**Conclusion:** *The Outcome is in line with Specific Objective 2.1 and Policy 2, but it is not realistic due to: the short time left for the agencies to complete their regulatory framework; the failure to take into consideration the time needed to produce the recently-made changes; and the failure to harmonize these deadlines with the resolution of the issue of the new judicial map, which is key to the good administration and efficiency of courts.*

### Measure 2.1.11

*“Development, discussion and approval of the standard rules package related to courts operations”.*

This measure states that the HJC will prepare, by the end of 2022, a set of standard rules related to various court administration processes at all levels, starting from the rules for determining the number of courts as well as of judges that will be part of a court (Article 15 and Article 22 of Law 98/2016), the rules for the establishment of sections and trial panels (Article 23 of Law 98/2016), the rules for the program and procedures for assigning cases by lot (Article 25 of Law 98/2016), rules related to the meeting of the Court Council (Article 28 of Law 98/2016), rules on public relations, etc.

This measure only refers to the standard rules, decisions and instructions issued by the HJC, and not to the laws, for the provisions they contain related to the functioning of courts. Therefore, as explained above, this measure partially meets the outcome – only for the part of the secondary legislation.

Regarding the deadline for completing this measure – 2022 - it seems that this deadline is very close, if we take into account the time it took the HJC to produce such acts, the large number of acts that the HJC must develop and their specific. Also, especially in the circumstances when the definition of the new judicial map is the first basic element that will determine the strategy and policy-making of the judiciary in terms of human and infrastructural resources distribution.

This is why the new judicial map was planned to be completed within CJS I (objective 1.04) and the fact it was not, until 2020, makes these measures, as regards the new map, not be realistic even in 2022.

**Conclusion:** *This measure partially fulfills the Outcome, only in relation to the part about secondary legislation (standard rules, decisions and instructions) and not the law, as required by the Outcome. Also, this measure does not guarantee that it will be possible and effective in the foreseen term, if we take into account the experience so far and the large and substantial gap caused by the lack of a new judicial map.*

### Measure 2.1.13

*“Development, discussion and approval of secondary legislation package on judicial civil servants”.*

This measure provides for the development and approval of all bylaws by the HJC, in cooperation with the courts, which will regulate issues related to civil servants. It is important to note that the law makes a division of powers, in the case of civil servants, between the HJC and the Court Council.

The HJC is responsible for the organization and functioning of all services related to judicial administration (Article 36 of Law 98/2016). The HJC also adopts standard rules related to court services and the requirements that judicial civil servants must meet (Article 41 of Law 98/2016). KLG adopts by decision detailed rules for the preliminary evaluation, establishment, composition and authority of the Admissions Commission, as well as for the evaluation procedure for judicial civil servants (Article 54 of Law 98/2016), parallel transfers and promotion (Article 57 and 58 of Law 98/2016) and on the procedure for termination of employment in the judicial civil service (Article 82 of Law 98/2016). The HJC is also responsible for approving detailed rules on how to calculate the number of candidates for chancellor's position admitted to the initial training program offered by the School of Magistrates, and the vetting of candidates admitted to the entrance exam (Article 53 of Law 98/2016).

Meanwhile, it is the Court Council that makes direct decisions on the status of judicial civil servants, approves the structure and staff of the court administration (according to the model approved by the HJC), cooperates with the School of Magistrates and HJC on issues related to initial and continuous training of judicial civil servants, etc. Also, the Court Council should organize regular meetings with court users in order to increase the efficiency and quality of justice (Article 38 of Law 98/2016) and is responsible for the progress of the work of the judicial civil servant employed to a public relations role at the Court.

This is a very important measure, with a direct and visible impact on the performance of the court. For this reason, its fulfillment as soon as possible is extremely important for the judiciary and the public's trust in justice. According to the CJS II Action Plan, this measure must be implemented by the end of 2022. By analogy with measure 2.1.11, the difficulties related to the chances of implementing this measure within this deadline are the same and can make its fulfillment impossible. It is worth noting that, so far, the HJC has developed an instruction, namely Instruction no. 85, of March 11, 2021 "On the process of filling vacancies in the judicial civil service through the procedure of parallel transfers, promotions and admissions through open competition".

**Conclusion:** *This measure is in line with the Outcome and the Specific Objective and is of great importance in their successful fulfillment. However, although this is an urgent measure and it would be extremely positive to carry it out in due time, again if we take into account the previous experience of the HJC in issuing acts and the large and substantial gap caused by the lack of a new judicial map, it is uncertain whether this measure is realistic and whether it will be effective if implemented so soon.*

**Conclusion on both measures:** *In both analyzed measures, the agency that carries the main weight in their fulfillment is the HJC and the courts are seen as participants. It is important that further into the study we analyze and monitor what will be the steps that the HJC will follow to establish cooperation and discussion with the courts. This is due to the fact that the justice reform changes were aimed at strengthening the courts from within (a provision reflecting this idea, for example, is the creation of a Judicial Council) and it is very interesting to see how the HJC and the courts will cooperate in order to better serve the citizens.*

### **Specific Objective 2.3**

*"Enhanced efficiency and professionalism of the legal training system which ensures the move towards European practices and quality in the legal field, by providing an adequate number of magistrates and legal advisors trained for the judiciary and prosecution in the justice system in Albania".*

Specific Objective 2.3 meets one of the requirements of Policy Goal 2, that of improving the professional capacity of the judiciary and also defining the ways in which this will be achieved. Specifically, the Specific Objective requires, firstly, an enhanced efficiency of the training system and, secondly, improved professional ability of the School of Magistrates in providing training for magistrates. The aim of the objective is to train magistrates (judges and prosecutors) and legal advisors in a quality manner and guide them towards European practices.

The objective should have explicitly provided for the training of judicial civil servants for two reasons: first, because civil servants have a direct impact on the performance of the court or the prosecution office, and second, because it is precisely the justice reform which placed increased importance to the category of employees working in courts and prosecution offices, where in addition to the new status as judicial civil servants, a new system of recruitment and training was set up for some employees. We are referring here to the chancellors of courts and prosecution offices, who will take the exam at the School of Magistrates to enter the system and will attend the Initial and Continuing Education Program (on-the-job training) at the School.

This objective is current and extremely important to be met as it has a tremendous impact on the quality of justice for the coming years. Here we have in mind the fact that the judiciary is being renewed for the most part of it and in a short time at that, due to the departure from the system of judges and prosecutors as a result of vetting and the filling of vacancies by the School of Magistrates. At the same time, Albania's steps towards the EU promise of a new position for Albania, one that is closer to the EU. This would impose not only harmonization of the law, but also its approximated understanding and implementation. The Albanian magistrates will have to start thinking like European magistrates in order to be in coherence with all social and economic developments of the country.

If we look at the outcomes that are intended to be achieved in CJS II, we see that they are in line with what the Objective provides. Specifically, the first outcome is related to the improvement of curricula for incumbent magistrates, thus aiming to make them more efficient and qualitative, whereas the second outcome is related to the study and research on EU legislation and in the field of human rights.

CJS I also provided a series of measures related to the School of Magistrates, generally focused on a needs analysis and review of curricula, but also expanding studies and research at the school and strengthening of School capacities. So, the Justice Strategy has not changed much from its first phase (CJS I) to the next (CJS II), but this should not be seen as a lack of development. Rather, it is the sustainable development of this component that requires an extension of its timeframe. Here we have to consider the fact that Law 115/2016 has vested a large part of the responsibility regarding the training system to the justice system governing bodies (HJC and HPC), the School of Magistrates and the General Prosecution Office. Specifically, these bodies should interact in the process of identifying training needs and further approving the activities and participation of judges and prosecutors in these activities.

At the same time, this objective is in line with the School of Magistrates' Strategy and the Anti-Corruption Strategy, as well as in coherence with IPA III requirements, which extends its implementation until 2027.

***Conclusion:*** *The objective is in line with Policy Goal 2 and the School of Magistrates Strategy; it is also harmonized with other strategic acts related to the quality of justice. This is a current objective and success in achieving it will affect future justice. It is estimated that if this objective included judicial civil servants, it would have been more complete in terms of justice system quality and performance.*

### Outcome 2.3.1

*“Improved and updated School of Magistrate Continued Training Program Curricula”.*

This outcome stipulates that through the continuous improvement and updating of continued education curricula (on-the-job training) the efficiency of training activities and the quality they offer will increase; consequently, the performance quality of the justice system will improve. This connection is logical and sustainable and this is why it is the first step towards achieving the goal.

However, it seems that the outcome has not interpreted the objective well, given that it left out the initial training, i.e., the moment when we have candidate magistrates. Initial training, a three-year long program, does not have to be disconnected as a component when it comes to the quality of justice. Especially when these years and at least in the next two years the number of candidate magistrates is/will be very high, the impact of their three-year education during these years will be the first indicator of the quality of justice in the years to come. While the objective does not make a distinction when it comes to training, the outcome should not only provide for continued training, but also initial training, which, on an ongoing basis, needs improvement and updating. So, the way it is formulated and with the measures it envisages, some of which will be analyzed below, this outcome does not fully meet this component of the specific objective. Due to the above, a review of the outcome and of concrete measures related to the training of candidate magistrates is required.

Regarding the real possibility of timely fulfilment of the outcome, since it provides a large number of measures (2.3.1-2.3.11), with different deadlines for their implementation, this analysis will be done simultaneously with the measure. In general, the deadlines set for the accomplishment of the outcome are sufficient to deliver the product.

**Conclusion:** *The outcome should have been part of the Initial Training Program due to the essential importance of this program in the development of magistrates. In the current conditions, this program gets an even greater value due to the large number of magistrates admitted to this program and who will become part of the system within three years. So, the outcome partially meets Specific Objective 2.3.*

### Measure 2.3.8

*“Development and unification of new methodology for continued training based on compliance analysis results”.*

This measure envisages the development of a new methodology for conducting training sessions with the aim of unifying it and complying with the requirements of European standards of judicial training. This is a necessary requirement in order to enhance the quality of training which guarantees that, first, experts will follow the same methodology in carrying out training activities. This does not constitute a restriction of their academic freedom, but on the contrary, since this new methodology will pass the "test" of verifying its design in accordance with European standards, it is one more guarantee to having a sustained uniformity in the way the trainings are conducted. Secondly, the development of a new methodology, in line with European standards, increases not only the quality of training for participants, but also for trainers, and given that the trainers at the School of Magistrates are 90% incumbent judges and prosecutors, of all levels of the system, this methodology directly affects the level of their engagement, the qualitative approach to training and their training in this regard.

**Conclusion:** *This measure is in line with Outcome 2.3.1 and Specific Objective 2.3. It is also an advanced measure compared to the measures provided in CJS I and has a great impact on strengthening the capacity of the School in terms of providing judicial training, which is its exclusive responsibility as provided by law.*

### Measure 2.3.11

*“Development of continued training programs in compliance with European standards”.*

This measure is about developing continued education programs. From the way this measure is written it is not clear whether it refers to the continued education program as the set of trainings provided in an academic year, or the program of each training separately. This is an important definition and should be quite clear, as the requirements, methodology and process of how the annual program is designed is completely different from the requirements and methodology used in special training.

The only element that can be used in this case to explain the measure in favor of the first option, according to which this measure refers to the full 1-year program of continued education, is the inclusion of the HJC, HPC and GPO as participating institutions. These bodies are required to actively cooperate with the School of Magistrates in order to draft the continued education program (calendar) for every academic year, giving their opinion on certain topics of special interest to be included in the continued education program. Taking into account this option we can proceed with the analysis of this measure.

The development of the continued education program is one of the most important processes carried out by the School of Magistrates, both in terms of time devoted to it (the process starts in April and ends in September of each year), the subjects involved to provide their opinions and consultation (all participants in the activity of the continued education program, international and national partners, HJC, HPC, GPO), discussion of the draft-program (School Pedagogical Council) up to the formality in its finalization and any changes that may be made to the program during the academic year (every decision is made by the Steering Committee of the School of Magistrates, both for the planned activities and for the appointment of experts)<sup>19</sup>. Because this program directly affects the continued training of incumbent magistrates, it must be very effective and ensure that the addressed issues are valuable to the magistrates, that they foster their desire to delve deeper, and are important for the resolution of cases or professional dilemmas during the exercise of duty.

Another requirement of this measure is that this program be designed in accordance with international standards of judicial training. To achieve this, the School of Magistrates should research on European standards in the field of judicial training and enable their implementation in the program it develops.

One of the main demands of the EU is precisely the adaptation of continued education programs to be as efficient and impactful as possible in the magistrate's work. They are conceived as a right of the incumbent magistrate and are based exactly on the will that the magistrate must have to be trained on important issues of his/her work. Although the Albanian law provides for the obligation of magistrates to participate in continued education and this participation has a direct impact on the magistrate's performance evaluation to be carried out by HJC and HPC, the School of Magistrates is still required to offer an appropriate program based on the needs and interests of the magistrate. So, the requirements that must be met by the continued education program are very high and the successful implementation of this program directly reflects the School's success in exercising its duties vis-a-vis the justice system.

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<sup>19</sup>Internal Regulation of the School of Magistrates.

**Conclusion:** *This measure is relevant to the outcome and current. Even setting the year 2022 as the deadline for fulfilling this measure is a reasonable deadline and one that makes it possible to produce results. However, this measure should have been formulated more clearly and it should have made reference to the continued program for one academic year.*

### Outcome 2.3.2

*“SoM transformed into a source of information regarding EU law and European human rights legislation as well as capacity-building for research and publication”.*

This outcome stipulates that the School of Magistrates, as the only institution authorized by the Constitution and the law to provide training for candidate judges/prosecutors, will expand its activity in research, study and publication. This outcome is in line with the objective and achieves its "best": ensures progress towards European practices and quality in the legal field.

Although the objective requires that this be achieved through training, this outcome goes beyond the objective, expanding the ways in which the School will achieve this. This expansion is in line with the stipulation made by the Strategy of the School of Magistrates, where an important place is occupied by the strengthening of its capacities as an institution that not only trains, but comes up with genuine research/scientific products on important issues of the law. The first element that has been identified where this re-design of the School will have to yield results is the European legislation and the one on human rights and their meeting points with the Albanian law.

It is important to carry out studies and publications, with practical values for the justice system in Albania, related to the approach of international principles and international law as a whole, with their regulation and interpretation according to Albanian law. So far, the main works in this field are mainly of an academic nature. The contribution that the School of Magistrates will have to give will have a more practical character, which will orient the users of the law to certain fields, through the study and occasional, special products, thus enabling, in the long-term, a sustainable development of law.

This result requires the School to strengthen its capacities in this regard, including the strengthening of its organizational capacities to establish an appropriate structure to carry out this activity, and, at the same time, the expansion and development of human resources as regards the expertise on which this research work and its products will be based.

Although we explained the required outcome, when we look at the measures provided for in the SND II Action Plan, a total of two measures that will be analyzed below, we are not convinced that they are sufficient to fulfill the outcome, as it does not seem that they are focused on improving human resources and infrastructure/logistics, which are of fundamental importance to the conduct of this activity.

**Conclusion:** *This result exceeds the objective because the School's activity in the training area does not suffice for its fulfilment – a genuine study and publication activity is required. Also, the measures envisaged for the fulfilment of the outcome are not sufficient, as they have left out of focus the necessary elements for the realization of the study and publication, such as human and infrastructural resources and logistics, without which the fulfilment of the outcome is almost impossible.*

### Measure 2.3.14

*“Development and approval of the methodology for School of Magistrates studies and publications in compliance with European standards”.*

This measure is about the accomplishment of the first step towards the functioning of the body that will carry out the study and research in the School in order to publish scientific materials in various fields of law. Specifically, the School of Magistrates must develop a methodology that will be followed by the School itself and by each working group, which will be tasked with the study of a law institute/issue. The requirement is that this methodology be drafted in accordance with European standards.

However, it seems that the development of methodology alone is not enough to meet the outcome and does not develop the measure itself either.

Given that the fulfillment of the outcome is also related to issues of organization of human capacities and infrastructure and logistics, the methodology would be second in line as a guide of the work of the entity set up for this purpose. This is necessary due to the fact that we are facing a new task that aims to bring about a gradual transformation in the way the School's Publications Sector operates to date. So, this measure, in order to be considered complete, will have to provide for the strengthening of organizational capacities, human resources of the institution and the increase of infrastructural and logistical capacities that will have to be made available for the realization of this activity.

**Conclusion:** *This measure is in line with the outcome and complements a part of it, that of the methodological aspect that will have to be followed by the entity set up for the purposes of analysis and publication. Outcome fulfillment is also related to issues of organization of human capacities, infrastructure and logistics. The methodology would be second in line as a guide to the work of the entity set up for this purpose. In terms of methodology, the set deadline, 2022, seems realistic and possible to be reached.*

### Measure 2.3.15

*“Establishment of a database of SoM lecturers and trainers with knowledge of EU law”.*

This measure provides that the School of Magistrates should create a database of lecturers and trainers that it can use in order to carry out its scientific research activity with a focus on EU law.

This measure is incomplete and does not meet the outcome in terms of expertise in carrying out this activity. First, in order to analyze EU law, not only experts who know the EU law will be needed, but also experts who analyze the Albanian law in the issues where a comparative analysis of both laws will be made. Secondly, as the School of Magistrates relies more on the expertise of incumbent judges and prosecutors, and given that these publications focus primarily on the judicial system, the basis for the functioning of this activity will be magistrates. The lack of connection of the Albanian judiciary with the EU law so far will require strengthening of expertise capacities. For this reason, this measure should provide opportunities for the development of skills/capacities of the School's trainers in this regard.

In addition, if by using the term "database", the measure aimed to also provide for the uploading of study materials or documents that may come to the aid of researchers, again this should have been made clear in the wording of the measure.

It is not clear where the stipulation of a long deadline for the implementation of this measure, the year 2025, is based, as from the wording of the measure it seems as if it can be completed as early as in 2021 and then updated continuously thereafter.

Although, as analyzed above, strengthening the expertise capacity is the most important component, without which no activity can be carried out in terms of research, study and publication, this component is not provided in any measure in a clear and correct manner. A reformulation of the measure is necessary, otherwise, even if both measures, 2.3.14 and 2.3.15, are achieved, they will remain illusory in relation to the purpose of providing the Objective and Outcome.

**Conclusion:** *This measure is incomplete and does not meet the outcome in terms of expertise in carrying out this activity. It should have foreseen the possibilities of developing the skills/ capacities of the School trainers in this aspect in order to really serve the desired outcome.*

**Common comment** *on the measures related to Outcome 2.3.2: The School of Magistrates, in its Institutional Strategy 2019-2023, has provided in a more concrete way that this result will be fulfilled, for example, through continuous analysis of research and jurisprudence through publications on a periodic basis; through electronic comments, opinions and information on laws and case law after relevant research work, through publications accessible to all actors and practitioners of law; increased research and translation activities, etc. The study will need to be more oriented by the SoM Internal Strategy to analyze and monitor the fulfillment of this outcome.*

#### **Specific Objective 2.4**

*“Improvement of the judicial system in order to increase the effectiveness and efficiency of all levels of the judicial system, including the High Court and ensuring the provision of transparent, prompt and accessible justice for citizens. (Note: activities involving the HJC as the governing authority in the judiciary are integrated into this Specific Objective due to the integrated character of the judicial system. The expected outcomes below reflect the strategic goals written in the HJC strategic plan).”*

In terms of how it is formulated, Specific Objective 2.4 covers the judicial system as a whole (i.e., the three levels of the judicial system). It is oriented in two directions: First, in order to increase the “effectiveness and efficiency of all levels of the judicial system”. Secondly, to “provide transparent, prompt and accessible justice to citizens”. In this view, this objective is in line with Policy Goal 2.

This Objective is in line with the objectives of the Justice Reform and the legal framework that regulates the governance and organization and functioning of the judiciary. Effectiveness and efficiency are sustainable objectives over time, which are achieved through an ongoing process. In this respect, this objective is current. The key to its success is the accurate identification of measures that fit the current state of the judicial system.

This Objective is partly the same as that of CJS I ‘Objective 1: Strengthen the independence, efficiency, effectiveness and accountability of the justice system institutions’. The objective used to have a broader focus, covering the entire justice system. This is a solution dictated by the circumstances, as at the time of drafting CJS I, the governing bodies of the justice system had not yet become operational. After the establishment of the institutions, the focus has been the approval of the regulatory framework, the acts that regulate the activity of the HJC itself. Furthermore, the High Court has not been functional, and part of the judicial system (appeal level) has been significantly affected by the transitional re-evaluation process. Therefore, the Specific Objectives, Outcomes and Measures of that time failed to be accomplished during the

validity of that Strategy. Given this situation, they have been rightly adapted in order to integrate into CJS II.

The objective is in coherence with the current state of the judiciary and the public's expectations regarding the results of the application of the Justice Reform. It relates to the urgent need of the judiciary (all its levels) to be more effective, more efficient, more transparent, more accessible and to deliver justice without delay. Currently the efficiency of the justice system is being questioned. The vacancies created in the system due to the process of transitional re-evaluation of magistrates (vetting), as well as the accumulated backlog, have placed the judiciary and its governing bodies to face the challenges related to the standards of 'justice without delay' or with "accessible justice". The Objective is therefore in coherence with the current needs of the system. Given that the HJC is operational and has a strategic objective of applying the principles of judicial excellence, this Objective is realistic.

Also, as long as Policy Goal 2 requires a system in line with European standards, we suggest that in addition to efficiency and effectiveness, the independence of the judiciary be included. The years of lack of trust in the justice system and skepticism about the results of the Justice Reform so far would require measurable results related to independence. Also, independence is a sustainable standard, which should be aimed at all times, on an ongoing basis. The independence of the institutions of the judiciary (envisaged in Objective 1.3) should be seen as a separate process from the independence of the judiciary, as long as the measures to achieve them are different. Certainly, the transparency envisaged in this objective in the provision of judicial services would give us qualitative data on the independence of the latter.

This objective is in line with the two sectoral strategies. It coincides with Objectives 1 and 3 of the HJC 2019-2020 Strategic Plan: "*Accelerating the Judiciary Reform and Allocation of Resources*" and "*Efficient Service Delivery and Better Functioning of Courts*"

Fulfillment of this Objective is related to 5 outcomes. First, from the way these outcomes are formulated, for the most part they look more like measures than outcomes and therefore need to be reformulated. Secondly, not all of these outcomes are in line with Objective 2.4. Outcome 2.4.4 on strengthening and increasing the HJC capacity, relates to Objective 1.3 more than with this one. Certainly the strengthening of capacities and resources in the governing institution of the judiciary, leads to an increase in its efficiency and independence. But the goal of efficiency and effectiveness in the judiciary does not result in HJC capacity building and empowerment. Even if in this case the problem lies in the way of formulation, we are still of the opinion that despite the integrated nature of the judiciary, CJS II should separate the objectives, outcomes and measures related to the governing bodies of the judiciary from those that deal with the judiciary itself.

In this way it would be easier to identify the outcome indicators and measure and monitor them. The same goes for Outcome 2.4.5. This Outcome does not clarify how the objective of an efficient and effective, accessible and transparent judiciary will lead to effective external communication and coordination of the judiciary with partners, independent institutions or HIJ. Furthermore, if we look at the measures pertaining to this outcome (Measures 2.4.6 2.4.7-2.4.8 and 2.4.9), we note that they refer more to transparency and coordination between the institutions of the judiciary than to the latter himself. Therefore, as for Outcome 2.4.4, we think that this outcome does not serve this objective and is more related to the coordination and transparency of the institutions of the judiciary itself.

If we refer to the measures in fulfillment of this objective, we find that they should be complete and more detailed for each expected outcome in fulfillment of the goals under Objective 2.4. Since effectiveness and efficiency have several measurable components in themselves, we suggest that each of their components be divided into concrete measures. There are also no measures for the High Court, which is explicitly included in the Objective, and where

the completion of its structure with staff, and addressing the backlog created in this Court and at all levels of the judiciary is one of the main factors that directly affects the efficiency of the judicial system today. Lack of measures or indicators to measure progress in addressing the accumulated backlog affects the efficiency and effectiveness not only of the High Court, but of the entire judicial system.

Regarding the indicators for measuring this objective, it is believed that they are limited in terms of the goals contained in the Objective. While they can measure time in the administration of justice (and this without involving the High Court), they leave out of the focus of their monitoring a number of other components related to the effectiveness and efficiency of the judiciary, or transparency and accessibility. Also, these indicators are difficult to relate to the measures envisaged (at least in the current way of their formulation).

**Conclusion:** *Specific Objective 2.4 is in coherence with the current need of the judiciary (at all levels) to be more efficient and effective, more transparent, more accessible and to deliver justice without delays. This is an essential objective for the proper functioning of the judicial system. We suggest that in addition to the efficiency and effectiveness of the judiciary, the goals of this Objective include its independence in decision-making, as one of the priorities of the Justice Reform and the legitimate expectations of the public from the latter. We also suggest that, in relation to this objective, the expected outcomes be reviewed, both in the way they are formulated (i.e., to use the most appropriate language for the outcomes, as most of them look like measures), and the connection that they have with Objective 2.4. (because not all outcomes are in fulfillment of the objective and some are more suitable for Objective 1.3). We consider that it is necessary for this objective to be supplemented with additional measures that meet the outcomes listed as expected in the context of this objective. Following this, the indicators would be clearly identified as well. Also, it is important in relation to this objective that it includes only Outcomes and Measures that refer to the judiciary and not its governing bodies, which are addressed in the objectives of Policy Goal 1 or the coordination between justice institutions that are addressed in the objectives of Policy Goal 4.*

### **Outcome 2.4.1**

*“Accelerated Justice System Reform, including improved judicial infrastructure and staffing as soon as possible, while maintaining a focus on service quality. This field includes ensuring the optimal functioning of the High Court and the Court against Corruption and Organized Crime.”*

An expected outcome in meeting Objective 2.4 is an effective and efficient judicial system, which performs to the highest quality standards. And in this line, in compliance with the current needs of the system, which is working with a limited number of judges, an expected outcome, a prerequisite for efficiency, is the optimal functioning of the judiciary at all its levels. This, starting with the courts that have not been functional and are currently understaffed (High Court and CCOC) and up to the courts of the first two instances which are increasing vacancies with every day that passes as a result of the advancement of the vetting process.

Therefore, in this regard, in order to achieve the intended efficiency and effectiveness of Objective 2.4, the outcome of the measures to be taken should be a functional court with the necessary judicial and administrative staff, which should reflect the European standards for the ratio of staff vs. number of inhabitants, as well as operate according to the best standards of human resource management.

This outcome is a continuation of the expected outcomes from the measures envisaged under the 2019-2020 HJC Strategic Plan. In this regard, the measures to achieve it, provided in

CJS II, should reflect and be coordinated with the measures that HJC will provide for achieving efficiency in the judiciary in the Strategic Plan for the coming years, which is being developed.

In terms of wording, Outcome 2.4.1 needs to be revised in its entirety. First, by clearly setting out the expected outcome and avoiding language that constitutes measures that lead to its achievement. Whereas "accelerating the Reform" is more of an objective than a result, and "improving infrastructure or staffing" are measures that result in the optimal functioning of the judicial system, both in terms of human resources and infrastructure. Also, since staffing and human resource management are intertwined processes, especially at the stage when inflows from the School of Magistrates are limited, it should be checked whether Outcomes 2.4.1 and 2.4.2 could be merged. Of course, the measures in achieving them would reflect each process.

Second, in order to be realistic, Outcome 2.4.1 needs to be further supplemented with measures related to the improvement of court infrastructure, including the measures for information technology systems (listed in Objective 4.1), as well as measures leading to staffing.

Third, the outcome needs to be adjusted in order to be more measurable and monitorable. Often, during the implementation of CJS I, ambiguities were encountered, which were reflected in the non-identification of the institution responsible for monitoring. For this reason, the outcomes should be drafted using clear and simple language, in order to be as measurable as possible during the Strategy implementation and monitoring. In this regard, an indicator for measuring the outcome of having a functioning court with sufficient staff, in the current state of the system (with a significant number of cases carried over), could be: "*the average number of cases per judge in a year*", Or "*the percentage of the number of solved cases in relation to new cases within a period of time*".

**Conclusion:** *The above outcome should be reviewed in its entirety. It should be reworded in accordance with Objective 2.4, as well as the nature of an outcome (avoiding wording that is consistent with the nature of the measures or objectives). It should also be supplemented with indicators that are measurable and monitorable. In this regard, we suggest including as an indicator "the average number of cases per judge in a year", or "the percentage of the number of solved cases in relation to new cases within a period of time".*

### **Outcome 2.4.2**

*"Establishment and Implementation of Judicial Excellence Standards for the implementation of best human resource management practices at all levels of the judiciary, focusing on standards to ensure judicial excellence."*

This outcome is related to the concept of efficiency in human resource management. The efficiency of a system is inextricably linked to costs. A system, including the judiciary, is considered to increase its efficiency if with the same resources, but properly managed, it yields a higher result or maintains efficiency with even fewer human resources.

In view of Objective 2.4 aiming at an effective and efficient judiciary, the expected outcome will be a system that efficiently and effectively manages resources of all natures, including human. In this respect, Outcome 2.4.2 complies with Objective 2.4.

This outcome is also current. The vacancies that the application of the vetting process brings to courts, and the limited inflows from the School of Magistrates, at least for the years when CJS II will apply, require an efficient management of human resources. In this regard, an optimal and appropriate reallocation of human resources, within the judicial system, would make the judicial system more efficient.

Although “*Ensuring adequate resources for the implementation of judicial reform, including infrastructure and judicial staff*” and “*approving the judicial map*” was one of the main objectives of the 2019-2020 HJC Strategic Plan, it still remains unfulfilled.

The outcome in itself does not fully and alone meet the efficiency objective, but it is one of the outcomes that necessarily comes in its fulfillment and aims at human resource management, at all levels of the judiciary, in line with European standards in the field. This outcome can be merged with the first outcome, as the completion of staff together with the optimal management of human resources bring about a functional and efficient system.

To measure this outcome, we could make use of the indicators that measure in their entirety the efficiency of the judiciary, the indicators proposed in Outcome 2.4.1, as well as the “*number of court administrative staff per one judge*”, which, compared to the European average as processed by CEPEJ, would give us data on the implementation of European best practices.

**Conclusion:** *This outcome is in line with Objective 2.4. It addresses the current needs of the system and is realistic. We suggest merging it with Outcome 2.4.1. In addition to the proposed indicators for Outcome 2.4.1, we suggest adding “number of court administrative staff per judge”.*

#### **Measure 2.4.2**

*“Conduct consistent, independent and comprehensive evaluations of courts to measure performance versus set standards”*

Measuring the performance of courts in the Republic of Albania, an enterprise never carried out before, is a necessity. This measure is related to both outcomes 2.4.1 and 2.4.2. In this regard, it is particularly important that the HJC first identifies the performance components of a quality judicial system operating according to field standards (i.e., components related to independence, efficiency, effectiveness, transparency, access to justice, accountability, etc.), defining at the same time the manner and methodology of their evaluation/measurement.

A performance evaluation would help the HJC, but also the courts themselves, to internally evaluate, control, budget, motivate, promote, evaluate achievements, as well as improve the services that the court ‘provides’. Performance measurement is a tool of self-check and accountability. And for this assessment to yield realistic outcomes it must be consistent, independent, and include all measurable performance components. Also, in order to be comprehensive, the evaluation must include all actors in the system (including citizens, lawyers, etc.).

Based on the above, the inclusion of such a measure is essential for achieving the Strategic Objective. What is important about this measure is the accurate identification of the components that make up a quality judicial system, the evaluation methodology, as well as their measurement. The required outcome will be achieved only if the data of the assessments are analyzed and result in measures that will address the problems identified as an obstacle in achieving the required performance.

The measure does not create confusion with the outcome of achieving an efficient and effective judiciary operating according to standards. But, to be complete and in line with the outcome, it must be accompanied by all of the above (identifying components/performance indicators, methodology for measuring them, analyzing and identifying results/issues, and addressing them with appropriate measures). Only in this way the evaluation would be complete and the measure would be realistic and would bring about the required result in accordance with Objective 2.4. In other words, this measure alone would not give the required result. In

addition to the above, this measure should be accompanied by another measure, which will focus on identifying and addressing issues identified by performance evaluations.

**Conclusion:** *Measuring the performance of courts is essential. Something that is not subjected to evaluation cannot be evaluated and cannot be improved, since we do not know the shortcomings of the system and where to intervene. However, in order to be realistic and bring about the expected outcome, all the procedural steps that enable its application must be identified (identification of components/performance indicators, methodology of their measurement, analysis of data and identification of problems, addressing as well as the institution responsible for these processes). The latter can be listed as constituent elements within this measure as long as they serve a single process, regardless of its complexity.*

### Measure 2.4.5

*“Approval and implementation of the new judicial map”.*

This measure, pursuant to Law 115/2016, implies the approval of a decision by the Council of Ministers based on the co-proposal of the HJC and the MoJ. One of the most important issues resolved by the High Judicial Council is the determination of the total number of judges needed in the Republic of Albania and the evaluation of the organization of judicial districts and the territorial jurisdiction of the courts, or in other words, the approval of the judicial map. This is a technical-political decision-making with very large effects on the efficiency of the judiciary and access to justice for Albanian citizens.

The approval and implementation of the new judicial map is a necessary measure in order to achieve Outcome 2.4.1 and 2.4.2 and Specific Objective 2.4. The judicial map is one of the most important instruments in ensuring the efficiency and effectiveness of the courts. The challenge in drafting this map, in line with the current needs of the judiciary, lies in finding a reasonable balance between the efficient functioning of the courts and public access. It requires a careful study of the state of the courts, and here we refer to the flow of cases, backlog cases, decisions rendered, number of judges, number of support staff, court infrastructure, budget, etc. On the other hand, in order not to impede access to justice, the population of the existing regions or judicial districts, which may be affected by the reorganization, the economic development trends of each region, should be taken into account; the quality of infrastructure, both rail and motorway, distance and financial costs of transport, access and level of use of information technology, the possibility of benefiting from free legal aid services, etc.

The analysis used to develop the map should also take into account the recent changes made to the Justice Reform package, which affect the jurisdiction of the courts, changed the composition of the judiciary, reducing the number of judges needed before the changes, and changed the trial procedures, moving a large number of cases to the counseling room, which aimed at the efficiency and effectiveness of the judiciary.

This measure was foreseen in Activity 1.04 *‘Reorganization of the judicial and prosecutorial map, as well as other investigative authorities and distribution of courts, in accordance with the new territorial division, population and blocking of court cases, in order to strengthen the role and functioning of the courts and to ensure access to justice’*, of Objective 1 (see above) of the CJS I. This measure had also been included in the list of measures implementing Goal 1 *“Acceleration of the Judiciary Reform and Resource Allocation”*, part of the 2018-2020 HJC Strategic Plan. However, although four years have passed since the adoption of the Reform laws, the map has not yet been approved, despite the discussions that have taken place for its implementation. Provision of this measure is certainly necessary. While it is an

immediate process, it seems that involvement in CJS II creates the premise that this process will continue to take time.

This measure remains current as long as it has not yet been approved and is at the stage of a draft proposed by HJC. This measure is also considered necessary in order to optimize human and financial resources, increase the efficiency and effectiveness of the courts, as well as minimize the costs and consequences of the transitional re-evaluation (vetting), without compromising access to justice. In this respect, this measure is necessary to achieve the above-mentioned outcomes 2.4.1 and 2.4.2.

All EU countries that have adopted new judicial maps have faced this challenge. The measure is clearly formulated and creates a natural connection with Measure 2.4.2.

**Conclusion:** *The measure is appropriate to achieve Specific Objective 2.4. It is clearly formulated, and it is current and realistic. The adoption and implementation of the judicial map remains the 'key' that guarantees increased efficiency and effectiveness in the first two levels of the judicial system, while maintaining access to the courts intact.*

### Outcome 2.4.5

*“Established effective communication and external coordination: improved relations between the judiciary, its partners, independent institutions such as HIJ and the public by developing and implementing a clear communication strategy”.*

This outcome means that in order to meet Specific Objective 2.4 we must have effective communication and coordination between the judiciary, its partners and independent institutions, such as HIJ. The premise for this outcome will be the development and implementation of a clear communication strategy.

From the way it is formulated, it seems that this outcome corresponds only partially to Objective 2.4, specifically the part of transparency in the services provided.

Communication with the public affects the transparency of the judiciary, citizens' access to information, increases public confidence in justice and makes the system more accountable. Also, the existence of a communication strategy per se, constitutes a positive step for any institution or system. Such a strategy has been approved by the HJC<sup>20</sup> on behalf of the 'judiciary'. This type of strategy is expected to bring effects to the public and users of courts of all levels. The communication strategy is comprehensive in nature and provides for forms of communication and interaction with the public and court beneficiaries. To make this outcome realistic, it would be of interest to include in SND II, in consultation with the HJC, measures which are still in the framework of the Strategic Communication Plan adopted for the judiciary. Thus, the progress of the transparency of the judiciary with the public and the degree of implementation of the Strategic Communication Plan itself would be monitored and measured. In this way, the indicator that measures this outcome "*% of court cases for which basic information is available online and updated*" would be more valuable. Another indicator in order to measure this outcome could be "*% of court cases for which decisions are published on the website*", or "*% of court performance outcomes published on the court and HJC website*."

The rest of the outcome is unclear and at least the way it is formulated does not meet Objective 2.4. It is not clear how communication with independent institutions (and it is not clear

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<sup>20</sup>See HJC Decision no. 590, of November 26, 2020 "On the approval of the Strategic Communication Plan for the Judicial system", <http://klgj.al/ep-content/uploads/2020/12/PLANI-STRATEGJIK-I-KOMUNIKIMIT-P%C3%8BR-SISTEMIN-GJYQ%C3%8BSOR.pdf>

which are these institutions), its partners (unclear and non-legal term), or HIJ (whose function is related to accountability) will affect efficiency, effectiveness or transparency of the judiciary.

Also, the measures that are in implementation of Objective 2.4 and related to this Outcome seem to refer to the increase of institutional cooperation between the institutions of the judiciary, as well as their transparency with the public, focusing on HIJ. These measures further affect the consolidation and transparency of governance institutions, stipulated in Objective 1.3 of CJS II Policy 1.

**Conclusion:** *Outcome 4.2.5 should be reviewed in its entirety. First, we suggest reformulating it in line with Objective 2.4, focusing on the judiciary's communication with the public and avoiding parts that do not meet Objective 2.4. Secondly, in order to make this clarification and to make it as realistic as possible, the established measures that will enable its achievement should be reviewed.*

### Measure 2.4.8

*"Creation of infrastructure to establish a public reception unit at the HIJ".*

This measure is designed to achieve the outcomes related to the establishment of an office for public information at HIJ. This measure contains elements that almost every institution of the justice system has in its structure, as they relate to the proper exercise of powers given to them by law.

The measure is not in coherence with Objective 2.4. Such a measure further serves the transparency of HIJ and the access of citizens to this institution, in order to cooperate to increase the accountability of the judiciary.

Secondly, the measure is closely related to the consolidation of the institution. It is envisaged as such in the 2020-2022 Strategic Plan for the Office of the High Inspector of Justice, as an activity for the realization of Strategic Objective 4: *Increasing transparency and public access to the activity of the Office of the High Inspector of Justice*, with implementation deadline of March 2021. In this regard, we think that the measure is not current or realistic.

**Conclusion:** *The measure does not meet Objective 2.4. It is not necessary to be included in the level of the Cross-cutting Strategy (i.e., the Umbrella Strategy), as long as it is included as a short-term (March 2021) activity at the strategy of the institution itself.*

### Measure 2.4.9

*"HIJ capacity building to provide assistance/advice to the public on completing the grievance form".*

This measure seems to complement Measure 2.4.8 as it deals with HIJ's capacity building to provide services to the public in order for the latter to start reporting on disciplinary violations committed by judges. Providing assistance with completing the form helps in the success of a disciplinary proceeding and in raising citizens' awareness of their rights, of behaviors/actions/inactions that may constitute violations, as well as how to report on them in a convincing manner.

However, as we mentioned in relation to the above measure, the two measures combined (Measure 2.4.9 and 2.4.8), are about strengthening the capacities of the HIJ in the context of accountability of the judiciary, also increasing the transparency and public access to this

institution. In this respect, we think that this measure does not meet Objective 2.4. which focuses on the judiciary and not its governing institutions.

Also, this measure is included in the HIJ Strategic Plan within Specific Objective 4.1: *“Increasing public access through communication and cooperation with citizens”*, where the provision of training for persons responsible for public reception is seen as a measure which shall be completed by the end of 2020. For this reason we think that the measure is not in coherence with the plans made by HIJ themselves.

**Conclusion:** *The measure does not meet Objective 2.4 because it does not focus on the judiciary but on its governing institutions. The measure should also be in coherence with the provisions of the HIJ Action Plan. This measure, accompanied by other measures, could be included in the Strategy, if Objective 2.4 would also add the accountability of the judiciary as a goal.*

### Specific Objective 2.5

*“Efficient access to justice ensured through legal aid, alternative dispute resolution and appropriate court fees.”*

Improving access to the justice system has been one of the main goals of the reform. In order for this access to be as effective as possible for the citizens, 'investments' must be made in many aspects. In terms of how it is formulated, this Objective focuses on three areas: (i) legal aid; (ii) alternative dispute resolution; and (iii) setting appropriate court fees. All three of these aspects, though not the only ones, are very important to ensure access to justice.

The right to legal aid provides effective access to justice for those who have insufficient financial resources to cover the costs of litigation, such as court fees or legal representation costs.

Alternative Dispute Resolution (ADR) refers to dispute resolution procedures - such as mediation and arbitration - that provide out-of-court dispute resolution. Applying them improves the efficiency of justice, reducing the workload of the courts and providing individuals with an opportunity to resolve disputes more quickly and at a lower financial and social cost.

Court fees need to be well-thought in order to assist in the efficient administration of justice. They, on the one hand, should not burden the parties with excessive costs that prevent them from going to court for violations of rights, and, on the other, should cover administrative costs and prevent parties who abuse the right to go to court.

This Objective is in line with Policy Goal 2, one of the areas of which is to strengthen access to justice in accordance with constitutional, legal and European standards. Objective 2.5 also follows the objectives of SNDI. Specifically, Sub-objective 3/b: *“Improving access to the justice system”*, was part of Objective 3 of CJS I: *“Improving the functioning of the judicial system by strengthening efficiency, transparency and access to court in line with European standards.”*

Objective 2.5 also responds to the current needs of society. The legal aid system is in a consolidation phase. After the development of the legal framework and the increase of the network of legal aid delivery centers, the challenge remains to raise the awareness of the citizens on the prerequisites to benefit from it and the increase of the number of those who receive free primary and secondary legal aid.

Alternative dispute resolutions, despite the assistance they could provide to citizens and the judiciary, remain ineffective and, in addition to raising awareness, an analysis of the current legal framework should be conducted, highlighting weaknesses as well as bringing it in line with successful models, which avoid these problems and are adapted to the Albanian reality.

Also, court fees need to be reviewed, taking into account the organization of the system based on the new judicial map.

This objective materializes in 3 results<sup>21</sup>. These results are complete and in line with Objective 2.5. We suggest that Outcome 2.5.2 be reworded in the form of an outcome, as it has more of the nature of a comprehensive measure. For example, it could be formulated: "*Effective mechanisms for alternative dispute resolution*". The same remark applies to Outcome 2.5.3. Even this outcome must be reworded in accordance with the nature of an outcome. E.g., "*Well-thought fees that maximize access to justice, with a focus on vulnerable groups*." The way this outcome is written, it provides for fee increases, prejudging the outcome of an in-depth analysis of the charging system, which in itself must find a healthy balance between access to justice, administrative costs of the process, and the accurate identification of categories that are excluded from judicial service fees.

This analysis should also take into account the organization and distribution made according to the new judicial map. Referring to the measures envisaged for this objective, we think that among the participating institutions should also be the National Chamber of Advocacy (for the aspect regarding the training of lawyers), the School of Magistrates and the Judiciary (for the aspect of awareness-raising and continued training of judges regarding free legal aid).

**Conclusion:** *This objective is in line with Policy Goal 2. It is clear, necessary and realistic. We suggest reviewing the terminology used for the outcomes that are intended to be achieved by meeting this objective, as well as the inclusion as one of the participating institutions of the National Chamber of Advocacy (for the aspect regarding the training of lawyers), the School of Magistrates and the Judiciary (for the aspect of awareness-raising and continued training of judges regarding free legal aid).*

### Outcome 2.5.1

*"The primary and secondary legal aid system is fully functional and provides equal access to justice for citizens throughout the country (human resources, primary legal aid offices, secondary legal aid providers; appropriate tools, technical ability, etc.)."*

This outcome is related to two aspects: first, the functionality of the primary and secondary legal aid system, and, second, the application of this system throughout the country, without discrimination, in accordance with the categories that benefit from it. Regarding the part in brackets, related to the activities that need to be completed to increase the capacity of legal aid, we suggest that they either be included as part of the outcome (consolidation of resources and infrastructure) or be avoided and reworded as measures.

Outcome 2.5.1 is in line with Objective 2.5. As we explained above in the framework of Objective 2.4, one of the ways to achieve access to justice is the effective functioning of free legal aid. While the legal framework for legal aid has been completed, the challenge remains to implement it throughout the territory, apply it equally, increase the capacity of Free Legal Aid (FLA) and raise public awareness. This outcome is considered realistic and necessary.

This outcome is in line with CJS I provisions: Objective 3: *Improve the operation of the judicial system by strengthening its efficiency, transparency and accessibility in line with European*

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<sup>21</sup>Outcome 2.5.1: *The system of primary and secondary legal aid is fully functional and provides equal access to justice for citizens throughout the country (human resources, primary legal aid offices, lawyers providing secondary legal aid; appropriate tools, technical ability, etc.). Outcome 2.5.2: Improved mechanisms for alternative dispute resolution by ADR bodies (legal changes, institutional and capacity development). Outcome 2.5.3: Court fee system (increase fees and determine fee exemptions) reviewed periodically to maximize access to court and ensure access for all vulnerable groups and establish cost recovery systems for court user parties.*

standards; Activity 3.03: *Establishment of a fair and functional system of free aid to individuals and groups in need.*

Measures to meet this Outcome (2.5.1 -2.5.9) are assessed as complete and clearly formulated.

The indicators for this outcome are "*% of applications received for free primary legal aid*" and "*% of applications received for free secondary legal aid*". The greater the number of persons who benefit from legal aid, the more functional the system is and consequently the access to justice for the vulnerable. Another indicator that measures the impact of assistance for access to justice is the indicator "*% of the state budget allocated to the FLA.*"

**Conclusion:** *This outcome is related to the functionality of one of the most important systems for access to the justice system – that of legal aid. It is in line with Objective 2.4; it is current and indispensable.*

### Measure 2.5.1

*"Informing and raising the awareness of the subjects of the law "On free legal aid" about their rights to assistance and access to institutions which can resolve their disputes."*

Raising public awareness on the provision of legal aid and the conditions for obtaining it is a legal requirement (Article 8 of Law 111/2017) and at the same time a premise for the functioning of the legal aid system and strengthening citizens' access to justice. In this view, the measure is necessary to achieve Outcome 2.5.1 and is also in line with the goals of Objective 2.4 to increase access to justice.

Referring to the Annual Report on the activity of Free Legal Aid Directorate (FLAD) for 2020, it is concluded that this directorate has paid increased attention to information about the free legal aid system by focusing on the development and publication of awareness materials. However, a priority in the focus of the primary legal aid service centers is planned to be the awareness-raising and education of citizens on the legal aid guaranteed by the state and which are the conditions to benefit from it, as one of the factors that directly affects the increase of the number of cases handled. In this regard, this measure comes in response to problems encountered in the field regarding the lack of information on the legal aid system. In this respect, the measure is current and in coherence with reality. A similar measure was found in CJS I, under Activity 3.03 f) '*Awareness-raising campaign between the Ministry of Justice, the Chamber of Advocacy, and HJC*'. The fact that this measure is included again shows that insufficient steps have been taken or accomplished in this regard and such a provision is in line with the conclusions and recommendations of the FLAD.

**Conclusion:** *Raising public awareness on the legal aid system and other aspects of access to justice is a very important measure in function of the Strategic Objective to be effective in the system of free aid and access to justice. The measure is clearly formulated, is coherent and current.*

### Policy Goal 3

*"The criminal justice system is evolving based on the modern principles of European justice, supporting the re-socialization, reintegration and rehabilitation and respect of human rights within an integrated approach and with strong crime prevention practices".*

Policy 3 defines as its goal the criminal justice system orientation towards the prevention of crime, and to ensure that convicts, at the end of their sentence, or during it, have the

opportunity to be re-socialized, reintegrated into society and have real opportunities for rehabilitation. These are the modern principles of European justice and they aim to focus the criminal justice system, through the criminal justice, state and judiciary institutions, towards the overall reduction of the crime rate in society and the mitigation of the negative consequences that come from a society with crime problems in all age groups and strata of society.

Achieving the goals set in this policy does not only affect the issues of criminality and criminal policies, but also marks a step forward towards the social emancipation of Albania and the acceptance of social differences and respect for human rights.

Regarding criminal policy, CJS I provided two main focuses: first, enhancing the efficiency of the criminal justice system and anti-corruption measures by consolidating the mission, status and functions of criminal justice institutions (Policy 4) and increasing the protection of human rights in the penitentiary system (Policy 6). These two directions were in full coherence with the very goal of justice reform, the key to which was precisely the punishment of crime through an independent judiciary and the strengthening of state and justice capacities in this regard.

The wording found in CJS II, failing again to provide for the need to consolidate institutions responsible for the investigation and trial of criminal offenses, especially corruption, is not complete, as the need to consider this component again as a goal of reform for the second four-year term is very important and current. This opinion is reinforced by the objectives set by CJS II, where one of the objectives with more measures is precisely Objective 3.2, which requires an efficient and proactive operational prosecution system according to European standards and efficient investigation, as well as the pursuit of corruption and organized crime, which will be fully addressed below (including the General Prosecutor's Office, SPAK and NBI).

So, in order to have a logical and chronological continuity, referring also to the establishment of new bodies, links of the same mechanism (such as NBI), which were not foreseen in CJS I, Policy 3 should stress the importance of efficient and effective functioning of investigative bodies. Given that one of the biggest "investments" in the prosecution sector was the establishment of SPAK and NBI, also due to the high public sensitivity of the issues investigated by these bodies, the good governance of the prosecution and investigation in Albania will also depend from the success of these bodies. It cannot be claimed that in the four years of CJS I the criminal policy of "punishment" was accomplished, given that the abovementioned bodies were created late and began to yield the first results only the last two years<sup>22</sup>. The most appropriate approach requires a coexistence of both punitive and restorative methods.

Policy 3 is implemented through five objectives:

1. The Criminal Code and the Code of Criminal Procedure have been updated, aiming at an integrated approach to the chain of justice institutions and a restorative approach to justice, replacing the existing punitive approach;
2. An efficient and proactive operational prosecution system according to European standards, as well as efficient investigation, prosecution of corruption and organized crime;
3. Improvement of juvenile justice, guaranteeing juvenile-friendly justice, which protects their best interests;
4. An effective and efficient probation service that uses operational standards, oversight methodologies and individualized case management, but also supports re-socialization,

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<sup>22</sup>Author's note: On December 19, 2019, eight prosecutors were appointed and the functioning of the Special Prosecution Office began. During 2020 (on 31 January 2020, 21 May 2020 and 14 July 2020) five more prosecutors were appointed. For the other two prosecutors, selected by the High Prosecutorial Council, the appointment procedure had not yet been completed as of the end of 2020, because they had not passed vetting by final decision yet. Currently, there are fourteen prosecutors in the Special Prosecution Office. Taken from [www.spak.al](http://www.spak.al).

reintegration and rehabilitation and works in line with EU best practices and standards and has been accepted by the courts and the prosecution as a good alternative to imprisonment; and 5. Development of an efficient prison system based on the ongoing prison reform strategy, which ensures full respect for human resources and uses individual case development plans.

The five objectives combined meet Policy Goal 3, but it has been decided that this Study shall analyze Objective 3.2 due to its urgent importance and the high impact that the success of the investigation of corruption and organized crime would bring to the justice system. Also, the fight against these phenomena is one of the main requirements for Albania for its European integration process.

### **Specific Objective 3.2**

*“An efficient and proactive operational prosecution system according to European standards and efficient investigation and prosecution of corruption and organized crime”.*

The objective is for the prosecution to fulfill its mission for a comprehensive, independent and prompt investigation, and to pay special attention to corruption and organized crime cases.

Thus, initially, in these cases, the prosecution is encouraged to conduct a proactive investigation, which means: first, the type of investigation where the evidence-gathering process is conducted simultaneously with the emergence of a suspected criminal offense; second, the kind of investigation launched by the prosecutor in the absence lack of a report; and third, any investigation which is significantly more extensive than the original report. In addition, the prosecution is encouraged to work especially on complex cases, for example, those cases where the subject of investigation is a senior public official, cases which have a large number of defendants, or a large number of criminal offenses that have serious consequences for the life and property of persons or cause great economic damage, which result in the confiscation of high-value assets, etc.

Also, for the investigation to be efficient, it is required to use special investigation techniques, such as special investigation methods pursuant to the Code of Criminal Procedure and other legal provisions, the use of which is not authorized for all types of criminal offenses. Such are sting operations, undercover operations in a criminal group, controlled delivery, witness protection, as well as other techniques such as: search warrants in cases of investigation of corruption offenses; sending letters-rogatory to obtain evidence found abroad; obtaining computer evidence; use of medical forensic evidence (DNA, etc.); use of accounting expertise; electronic surveillance; receiving and using information from foreign countries; the use of justice collaborators or cooperation through plea bargains; etc.

It is essential that this investigation is successful, i.e., that the proceedings be sent to trial, and at the end of it the defendant is found guilty, or the prosecutor manages to show that the investigative actions were exhaustive regardless of the court decision.

**Conclusion:** *This objective is current and achievable within the duration of CJS II due to its essential character for the Albanian state, for the public trust in the justice system, for the creation of a culture of punishment instead of that of impunity, as well as for the country's process of EU integration. The outcomes and measures on which this objective is supposed to be achieved will be analyzed and in the end it will be possible to conclude whether, in their entirety, they meet the objective or not. A valid indicator for measuring outcomes in terms of proactive prosecution efficiency would be “% of proactive investigation cases compared to cases referred by the police or reports filed with the prosecution office”.*

### Outcome 3.2.1

*“The General Prosecutor's Office has improved mechanisms for monitoring local activities, defined operational procedures, adequate staffing, enhanced efficiency and productivity in anti-money laundering investigations, improved implementation of the investigation process, involvement in research work on crime and relevant analytical work, and an effective system for implementing the guidelines of the General Prosecution Office and the Directorate General of State Police”.*

The first outcome required to be achieved is related to the improvement of the work of the General Prosecutor's Office. Judicial reform brought about fundamental changes in the functioning of the prosecution system as a whole, the role of the General Prosecution Office and the "delegation" of many of the powers of the former GPO to the newly established HPC. Thus, the General Prosecution: proposes and administers the budget of the prosecution office, with the exception of the budget of the Special Prosecution Office; ensures the smooth running of the work in the prosecution office administration; issues general written instructions to prosecutors; reports to the Assembly on the state of criminality; represents the prosecution in the High Court and cases in the Constitutional Court, unless the state is represented by SPAK; directs, coordinates and supervises the activity of the Judicial Police, etc. The High Prosecutorial Council has responsibilities of a different nature. It ensures the independence, accountability, discipline, status and career of prosecutors of the Republic of Albania.

To exercise these functions, Outcome 3.2.1 requires that the GPO achieve both of these sub-outcomes simultaneously:

The first sub-outcome requires that GPO improve its measurement and monitoring mechanisms for prosecutors in judicial districts, develop rules and guidelines for the development of their activity and provide sufficient and necessary staff for the efficient implementation of its activities, including setting up an efficient system to check whether or not its guidelines are being implemented by prosecutors. Also, GPO should collect and analyze data, which serve to determine the state of criminality, type of crime, its progress, etc., in order to determine, in a researched way, the criminal policies to be followed.

Regarding the second sub-outcome, the GPO is required to increase its productivity in anti-money laundering investigations and to improve the investigation process as a whole. This sub-outcome is directly related to its action as a body that exercises criminal prosecution and represents the prosecution in the High Court and the CC. Here the outcome should have been formulated a little more clearly because, since it refers only to GPO, it should adhere to the responsibilities and tasks of GPO. Regarding the fact that the GPO acts as a body that investigates and represents the state, it should have become clearer that this is an authority that is exercised only in some cases, as provided by law.

In the case when the second sub-outcome should remain as it is, then the measures provided should include not only GPO, but also SPAK, as well as the prosecution offices of the system as a whole. In fact, separate outcomes and concrete measures are provided for SPAK and NBI, as will be seen below.

Preliminarily, we note that the measures envisaged in function of this outcome are related to the review of the Law on Prosecution Office, the review of bylaws issued by GPO (for example, general mandatory instructions for prosecutors and judicial police officers, according to the restrictions set by law; determines the general structure and standard regulation for the organization and functioning of the prosecution offices of general jurisdiction<sup>23</sup>) and the training of prosecutors and judicial police officers on the Law on Prosecution Office. These measures do not fully meet the outcome as they do not fully cover the GPO structure. Recruitment and training

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<sup>23</sup>Law 97/2016, “On the organization and functioning of the Prosecution Office in the Republic of Albania”;

of GPO administrative staff, increase of IT capacities, are also very important components in the overall performance of GPO and at least one separate measure should have been provided for them.

**Conclusion:** *This outcome refers exclusively to the GPO and it should contain only GPO-related components. The way it is written leaves room for ambiguity. However, it is concluded that the proper interpretation of the purpose of this outcome emerges by linking it closely with the two main roles of the GPO, that of its influence on the prosecution system and that of the investigative body and the prosecution representative in certain cases.*

#### Measure 3.2.4

*“Consultation of the package of proposals with magistrates/prosecutors/lawyers/NGOs (workshop)/development of consultation reports/finalization of the package and approval of the organic law of GPO”.*

This measure stipulates that the General Prosecutor's Office will take the initiative to review its organic law, and before approval, will go through an extensive consultation process with magistrates, lawyers and NGOs, and will develop reports based on recommendations resulting from the consultation process.

**Conclusion:** *This measure is considered necessary and important to be implemented according to the deadlines provided in CJS II – year 2021 – because all institutions and stakeholders involved in the prosecution system need to provide their insight in order to analyze whether the division of authority among some bodies (HPC, GPO, SPAK, NBI) has created any challenges in practice, or any overlap that hinders the efficient operation of these bodies. The connection that the law has with the efficiency of the body makes this measure be in line with the objective.*

#### Outcome 3.2.2

*“Prosecution offices are reorganized based on the new judicial map; they are well-supplied and their operations are improved, and their efficiency is consistent”.*

The justice system efficiency is directly related to the organization of its capacities and this applies to both the court and the prosecution office. For this reason, one of the outcomes that is intended to be achieved is concretely related to the issues of reorganization of the prosecution offices after the approval of the new judicial map. This is a process which is carried out by the HJC in cooperation with the MoJ, but the consequences of this process affect the entire criminal justice system, starting from the prosecution, to prisons or the Probation Service.

**Conclusion:** *This outcome is in line with the objective and Policy Goal 3. This outcome is interdependent on the definition of the new judicial map, which is why CJS II contains no concrete and special measure to achieve this outcome. However, measure 3.2.1 can be considered as a measure that meets this outcome, because it refers entirely to the improvement of the structural management and administration of the prosecution. It could be extended indefinitely, starting from 2021 – as stipulated by the CJS II Action Plan – and onwards until the new judicial map is approved.*

#### Measure 3.2.1

*“Improvement of the structural management and administration of the prosecution through efficient planning and management of human resources (additional 152)”.*

This measure requires the GPO to, first of all, improve the structural management of the prosecution body, by defining a general structure of the prosecution as functional as possible and, secondly, to assist in the prosecution administration process, by adopting the standard regulation of the organization and functioning of prosecution offices of general jurisdiction, but also by setting detailed rules for case distribution procedures, which provide transparency and sufficient opportunities for verification, or criteria for case distribution based on the workload and specialization of prosecutors, etc.

The measure itself also requires efficient planning and management of human resources and this is directly related to the structure of prosecution offices, determining the total number of prosecutors in the Republic of Albania, the responsibility of the GPO, the number of prosecutors in judicial and appellate prosecution offices, in cooperation with the HPC, but also with issues related to the budget and the proper operation of the administration of the prosecution offices of general jurisdiction (GPO proposes and administers the budget of the prosecution offices of general jurisdiction).

The measure also includes a provision for 152 additional seats. This provision shows that the need to increase the capacity of human resources in the prosecution office is high and urgent. However, it is worth mentioning that concrete figures or forecasts should be avoided in the wording of the measure.

**Conclusion:** *This measure is relevant to the outcome and feasible, even prior to the final approval of the judicial map. Restructuring, internal transfers, redistribution of resources, planning process, etc., are activities that the GPO and prosecutors themselves will have to carry out on a frequency of at least 5 years, in order to increase their performance.*

### Outcome 3.2.3

*“SPAK is established and its activity is consolidated”.*

The outcomes and measures related to SPAK are carried over from CJS I due to their non-implementation in the foreseen time, as a result of the delay in the establishment of the SPAK and due to the significant and current importance of the SPAK functioning at full and improved capacity.

These are the reasons why the outcome requires SPAK to be established and to have a consolidated activity. The creation of SPAK should not be interpreted literally, as it is accepted that SPAK has been functioning since December 2019, but will have to be interpreted as complementing the entire legal and sub-legal framework for its functioning and completing the structure and staff of this institution. The second goal set in this outcome is the consolidation of the activity of SPAK, which is related to the sustainability, normal continuity of its activity and the improvement, through the training process, of its capacities.

To meet the outcome, the CJS II action plan provides three measures, which are analyzed below.

**Conclusion:** *This outcome is in line with the Objective and Policy Goal 3, which requires, in particular, efficiency and proactivity in matters within the SPAK authority. SPAK can fulfill this goal only when it offers sustainability, normal continuity of its activity and improvement, through the training process, of its capacities.*

### Measure 3.2.10

*“Conduct regular inter-institutional analyses on the efficiency of money laundering investigations; develop analysis reports on the identification of problems and a package of recommendations”.*

This measure requires SPAK to conduct analyzes on the efficiency of its investigation of money laundering cases, reports in order to identify problems encountered and provide recommendations where necessary. For the implementation of this measure, the CJS II Action Plan has defined SPAK as a separate and completely independent body in the implementation of its tasks. However, the measure requires that regular inter-institutional analyzes be conducted.

It is not very clear which other bodies will contribute to these analyzes. The role that the Prosecutor General could play, as a result of his/her right to collect information, to process it and to report annually on the crime situation in the country, including the criminal offenses that are the authority of the SPAK. Also, part of these analyzes can be HPC, which analyzes the annual reports of SPAK.

**Conclusion:** *This measure is in compliance with the outcome and assists in matters of accountability, responsibility and communication with the public. However, although the purpose of the measure is very valuable as it relates to the possibility for the SPAK to control and improve itself, in order to enable its fulfillment a more detailed explanation of the actions that can be taken and the bodies that may be involved in this process is needed. This measure is expected to be implemented by the end of CJS II, a forecast which is positive, because it provides clarification on more concrete tasks of this measure and allows it to be effective.*

### Measure 3.2.11

*“Consolidation of human resources for the full functioning of SPAK (5 + administrative capacities)”.*

It was mentioned above during the analysis that the consolidation of SPAK human resources is one of the main components of the development of its activity and essential to its success. Consolidation of human resources for a new institution like SPAK and, most importantly, for one of the key institutions of the justice system reform, makes this measure an emergency in its implementation.

Although SPAK has been established as the institution responsible for its implementation, the law stipulates that the process of recruiting SPAK members is the responsibility of the HPC. SPAK on the other hand is fully in charge of administrative capacities, planning process and budget

**Conclusion:** *This is a relevant measure and in line with Outcome and Objective 3.2 but should also include the HPC as an implementing body.*

### Measure 3.2.14

*“Training of SPAK institutional capacities (training events/workshops)”.*

This measure stipulates that SPAK shall carry out the training process for the institution’s administration staff. Although this measure has been provided in CJS I, specifically measure 4.02 f, “Training of SPAK members and administrative staff. Establishment of pilot curricula/training”, it is still necessary to include it in CJS II, as a result of the partial functioning of SPAK throughout CJS I, both in terms of time and human resources.

It is appropriate to emphasize the importance of training for this institution. In the Constitution, and further in the law, SPAK is designed as an investigative body that is

characterized by the fact that it is a specialized body. Thus, the SPAK should be composed of the best professionals in the field, who should undergo specialized training to be able to operate as employees who use any kind of advanced and special methods for the detection, prosecution and punishment of criminal offenses for which they are responsible. The administrative staff of SPAK also has difficulties of a special nature, due to the restriction of some essential elements of their rights, which is a result of their work in this institution. All employees must meet special conditions, provided by special law, to be suitable for these positions.

Also, SPAK, more specifically the Head of the Special Prosecution and heads of departments, perform the administrative supervision tasks related to hiring, training, disciplining and conducting performance evaluations of employees and experts of the Special Prosecution Office, and assigning them to work with prosecutors.

**Conclusion:** *This measure continues to be relevant, although it has been foreseen in CJS I. This is because of the delay in the establishment of SPAK and the partial functioning of SPAK so far both in terms of the number of prosecutors and support staff and infrastructure.*

#### Outcome 3.2.4

*“NBI is established and its activity is consolidated”.*

The National Bureau of Investigation (NBI) is a specialized structure of the Judicial Police, which investigates criminal offenses in the criminal jurisdiction of the Special Prosecution Office.

The final outcome that is desired to be achieved in order to complete the prosecution system is the establishment and consolidation of NBI, an investigative structure that was lacking until 2020<sup>24</sup>. Due to SPAK’s significant lack of human resources and the need to have this very important link of the investigative process functional as soon as possible, this outcome has an urgent need to be met.

Consolidation of its activity means that NBI is performing its duties in a completely sustainable manner, due to a clear and complete structure and staff, according to the developed and approved rules and instructions, and with professionalism.

In fulfillment of this outcome, the CJS II plan of measures includes a total of two measures, which will be analyzed below.

**Conclusion:** *This result requires the creation and consolidation of the link that has been missing so far and is a novelty for Albania - the NBI. Achieving this result is an important step for the investigation.*

#### Measure 3.2.12

*“Consolidation of human resources for the full functioning of the NBI (60+ administrative capacities)”.*

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<sup>24</sup>Author's note: After the establishment of the Special Prosecution Office and the start of operation of this Prosecution Office on December 19, 2019, the process of selecting the Director of the National Bureau of Investigation was the most important process organized in the Special Prosecution Office, in terms of setting up the National Bureau of Investigation. The High Prosecutorial Council, with decision No. 183, of July 30, 2020 has appointed the Director of the National Bureau of Investigation, for a five-year term, which starts from September 01, 2020. Immediately after the start of the work of the NBI Director, the procedure for the selection of NBI investigators began, which could not be completed within 2020 and in April 2021 a new announcement was made for the opening of thirty-two vacancies for investigators.

This measure is about staffing (director, deputy director, investigators, Judicial Police service officers and NBI administrative staff), ensuring their sustainability and financial remuneration<sup>25</sup>.

**Conclusion:** *Making the NBI operational is an essential measure for the progress of the investigative process, so it is relevant and urgent to be implemented. The deadline set in the CJS II Action Plan – by the end of 2022 – is appropriate and achievable.*

### Measure 3.2.15

*“Training of NBI institutional capacities (training events/workshops)”.*

This measure stipulates that the NBI must carry out the training process (a rigorous training and education regime, with a set of assessment modules) for its administration. Candidates for the positions of director, investigators and officers at the National Bureau of Investigation, prior to appointment, must have completed the necessary training program and demonstrated the skills that guarantee the performance of tasks according to the required professional standards.

The measure should have envisaged SPAK as a cooperating institution, because the training and preparation course, professional standards and evaluation systems of the National Bureau of Investigation are approved by the Director of the NBI, upon consent of the Head of the Special Prosecution Office.

**Conclusion:** *NBI training is a relevant and necessary measure to be implemented as soon as possible. NBI is a specialized structure and requires in-depth and advanced knowledge to fulfill its mission. Training programs guarantee professional growth and updating with the latest investigative tools.*

### Policy Goal 4

*“Efficient and effective coordination and management of the sector in all institutions in the justice sector”.*

This goal is related to the efficient and effective coordination and management of the justice system. Institutional coordination has been and remains a challenge that must be addressed by all justice institutions. Coordination is a continuous process. Efficient and effective management is also a challenge for the system, which has not yet been paid due attention by the institutions (HJC, HPC). The reason for this is that justice governing institutions are faced with numerous vacancies.

Despite the fact that these institutions have had shortcomings in the past, the bodies of the justice system are now required to improve their coordination among each other, as well as to manage the resources available to them in an efficient and effective manner.

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<sup>25</sup>In March 2021, the Assembly adopted significant additions to Law 95/2016 to increase and enhance the financial remuneration of the NBI Director, Deputy Director, investigators and the civil court clerks in the Special Courts for Corruption and Organized Crime, in the Special Prosecution Office and in the National Bureau of Investigation. These additions were necessary to guarantee an independent investigation system against any political influence, impartial, accountable, fair and professional.

A similar provision existed in CJS 1. Specifically, Objective 7 provided: 'Improvement of the functioning of the Ministry of Justice and its subordinate institutions which are completely new or fundamentally changed'. Activity 7.06 of this Objective provided: 'Design and implementation of management systems, operational and monitoring activities and the financial operation of the MoJ and other institutions (HJC, HPC, new Inspectorate, Appointments Council) to enable them to manage the reform process (related to Objective 5)'. Whereas Activity 7.07 provided: 'Support shall be provided to all new and changed institutions in order to ensure the implementation of new management systems, operational and monitoring activities as well as the financial operation of the MoJ (HJC, HPC, the new Inspectorate, the Appointments Council) to enable them to manage the reform process'.

Regarding CJS I, referring to the Periodic Monitoring Reports<sup>26</sup> of various periods/years that have been published on the Ministry of Justice official website, the activities of items 7.06 and 7.07 have yet to be achieved, given that HIJ was established in February 2020. This may be one of the reasons why it is included in the CJS II Strategic Document.

**Conclusion:** *Institutional coordination is a challenge for all justice system institutions. It has rightly been set as a Strategic Objective which has an effect on all institutions.*

### Specific Objective 4.1

*"Full development of an integrated electronic justice system (e-justice) with unified identifiers, updated case management systems, Internet-based electronic registration for all three areas (criminal, administrative, civil) and links to registries and relevant national databases".*

Specific Objective 4.1 relates to the development of the information technology sector, in the field of justice where progress is still in its infancy. Although formulated in a long sentence that creates premises for confusion and ambiguity, we understand that the Objective is oriented in several directions: First, in an updated case management system; secondly, in the electronic registration of judicial data for all three areas, as well as the connection between the registers and the database in order to develop an integrated electronic justice system. In practical terms this means interconnection between the systems (that of the prosecution and the judiciary) so that the identification and search of cases (of various natures) is possible with only a 'click' and in real time. This would bring about a more efficient system and avoid delays and bureaucracies in communication and interaction between institutions (Court, HJC, Prosecution Office, HPC). From HIJ's point of view, this means immediate access to this integrated system and complete information on the progress of a specific file, shortening the time of official communication with the court/prosecution office, and making HIJ's work more efficient and effective.

This Objective is fully in line with Policy Goal 4 to achieve an efficient and effective coordination and management of justice. It addresses a major problem that exists in the justice system. The electronic systems of various bodies/institutions (including courts and prosecution offices) are not only outdated, but not integrated. Progress in the information technology sector, both by the judiciary and the prosecution office, remains insignificant. We will only make progress in this regard if case management systems are replaced with new ones. On the other hand, shortcomings in generating statistical performance data affect the measurement, analysis of outcomes and addressing of problems. They also affect the accuracy of the reports made by institutions in the context of obligations arising from the legal framework in effect (according to

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<sup>26</sup><https://www.drejtesia.gov.al/plani-i-veprimit-te-strategjise-ndersektorale-te-drejtetise/>

which the institutions of the justice system, HIJ, HPC, HJC, GPO report annually to the Assembly). This is a major objective that includes not only investments in terms of infrastructure, but also human resources. In this respect, the Objective is current and indispensable.

A similar provision existed in CJS 1. Specifically, Objective 7 provided: *'Improving the functioning of the Ministry of Justice and its subordinate institutions which are completely new or fundamentally changed'*. Activity 7.06 of this Objective provided: *'Designing and implementing management systems, operational and oversight activities and financial functioning of MoJ and other institutions (HJC, HPC, HIJ, JAC) to enable them to manage the reform process (regarding Objective 5)*. Activity 7.07: *'Support will be provided to all new and changed institutions in order to ensure the implementation of new management systems, operational and oversight activities, as well as the financial functioning of the MoJ (HJC, HPC, New Inspectorate, Appointments Council) to enable them to manage the reform process'*.

Referring to the Periodic Monitoring Reports<sup>27</sup> of different periods/years that have been published on the official website of the Ministry of Justice, the activities 7.06 and 7.07 have remained unaccomplished because HIJ was established in February 2020.

Also, referring to the Monitoring Report of the HJC Strategic Plan for the period July 2019-July 2020<sup>28</sup>, Measure 3.1 "Increasing the efficiency, accuracy of data and effectiveness in the management of court cases through the development of a unified electronic case management system according to international standards" within Objective 1: "Increasing the efficiency, accuracy of data and effectiveness in the management of court cases through the development of a unified electronic system for the management of cases according to international standards", is still in process.

Referring to the General Prosecutor's Report on the Crime Situation for 2020, a priority remains the continuation of the work already started regarding the *"case management system" (CAMS), and the adaptation of this system according to the needs of the prosecution office, to enable digitization, with priorities: 7.1 Ensure functionality of the CAMS system/modernization of a new case management system with advanced technologies. i) Network integration; ii) Assessing human and technological capacities, calculating costs and raising funds for the operation of this system or, if that is not possible, for a new case management system in the prosecution office. 7.2 Improve the collection, processing and acquisition of statistical data through an automated and functional system in the prosecution office*<sup>29</sup>

Meanwhile, there is no connection with the Strategic Objectives of the HPC and HIJ Strategic Plan itself.

Consequently, we can say that the Objective is in chronology with the measures and priorities of CJS I, HJC and the General Prosecution Office.

Regarding the participating institutions, we suggest adding the Prosecution Office, as long as it will be part of the integrated system and data retention, or the Information Technology Center for the Justice System, whose mission is to develop policies for the information technology system of the justice system and ensure the effective functioning of information technology and data processing systems.

**Conclusion:** *The Specific Objective is ambitious, but necessary to integrate data between the judicial system and that of the prosecution office, in the framework of effective coordination and*

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<sup>27</sup><https://www.drejtesia.gov.al/plani-i-veprimit-te-strategjise-ndersektoriale-te-drejtetise/>

<sup>28</sup><http://klgi.al/ep-content/uploads/2021/06/Raport-i-Monitorimit-te-Planit-Strategjik-korrik-2019-korrik-2020.pdf>, pp 23, pp. 59

<sup>29</sup> General Prosecutor's Report on Status of Criminality in 2020 [https://www.parlament.al/Files/Kerkese/20210518105256Raporti\\_Vjetor\\_2020\\_Kuvendit\\_Kriminaliteti.pdf](https://www.parlament.al/Files/Kerkese/20210518105256Raporti_Vjetor_2020_Kuvendit_Kriminaliteti.pdf), pp. 263

*cooperation between institutions and to better measure the performance of these institutions. Such a system affects the increase of the efficiency of the judicial system, the prosecution, as well as the accountability system. The objective is necessary in fulfilling Policy Goal 4, current in terms of its importance and realistic. We suggest reformulating it for the sake of clarity.*

### **Outcome 4.1.1**

*“Updated and fully operational court case management system based on electronic registers”*

This result requires that in fulfillment of Objective 4.1 we have a new and functional court case management system. In this respect, Outcome 4.1.1 is in line with Specific Objective 4.1

As mentioned above, HJC is in the process of working on the court case management system (ICMIS and ARKIT). It has set up a special working group and is working with the respective company that will maintain and develop the system<sup>30</sup>. For 2020, HJC reported on the Annual Report on the Activity of the Commission for Strategic Planning, Administration and Budget for 2020 that *“in cooperation with the “KREATX” shpk. company it has made possible the installation of an improved version of the ICMIS case management system, adding to this version 84 new developments, very important for the judicial system and the work of the HJC<sup>31</sup>.”* In this respect, this outcome is in line with the work done so far by HJC and its priorities for the future.

The outcome is measured through the indicator *“% of courts for which the new case management system has been set up and is operating at full capacity”,* as well as *“% of judges/inspectors and administrative staff who are trained on the use of the new case management system”*. These indicators are appropriate for measuring this outcome. Also, another indicator that measures the functionality of the system and its updating can be *“% of court cases for which information is accessible online and updated”*

**Conclusion:** *The outcome is in line with Specific Objective 4.4. It is clearly worded and remains realistic and necessary. We suggest the following be included as an indicator that measures the functionality of the system and its updating: “% of court cases for which information is accessible online and updated”.*

### **Measure 4.1.2**

*“Establishment and implementation of a program for case management system in Courts/GPO/HJC/HPC/HIJ”*

In order to have an updated and functional case management system, it is necessary to design and implement in practice the relevant case management program in courts, prosecution offices, Councils and HIJ. The establishment of the management system also serves as a premise for an integrated system. In this respect, the measure is in line with Specific Objective 4.1 and Outcome 4.1.1.

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<sup>30</sup>See the Monitoring Report on the HJC Strategic Plan (July 2019-July 2020) for the company that will maintain and develop the system, pp. 23

<sup>31</sup>See above-mentioned report, pp. 20. For more: <http://klgj.al/ep-content/uploads/2021/02/RAPORTI-VJETOR-MBI-VEPRIMTARINE%CC%88-E-KOMISIONIT-TE%CC%88-PLANIFIKIMIT-STRATEGJIK-ADMINISTRIMIT-DHE-BUXHETIT-PE%CC%88R-VITIN-2020-BASHKE%CC%88LIDHUR-VENDIM-NR.-39-DATE%CC%88-04.02.2021-.pdf>

Given that the existing court and prosecution office systems are considered 'outdated', the need arose to design a completely new program. This program needs to be further developed and implemented in practice by courts/prosecution offices, as well as system governance institutions (Councils, HIJ). The program should be able to produce data that can be processed and used for the needs of the justice system. A similar measure has been envisaged in the HJC 2018-2020 Strategic Plan. Measure 5.4 provided: "*Increase transparency for the entire judicial system through the timely publication of court decisions on the HJC website*".

In this respect, the measure is necessary. Our only suggestion is to coordinate with HJC in order to understand at which stage work is about establishing the system, so that it is coherent with the current stage of work in this direction and the priorities of HJC.

**Conclusion:** *The measure is clearly formulated and does not create confusion with the outcome and is in line with the strategic objective. We suggest coordinating with HJC to clarify the stage in which the work is on designing/setting up the program.*

### Measure 4.1.8

"Maintenance for the case management system for courts/GPO/HPC/HJC/HIJ".

Measure 4.1.8 provides for the maintenance of the case management system. This measure is a logical continuation of measure 4.1.2. The application of the system program must be accompanied by its maintenance. Maintenance is a prerequisite for the long-term functionality of the system and consequently measure 4.1.8 is in line with Outcome 4.1.1.

As long as the maintenance of the case management system is a necessity, it is considered a realistic measure.

This measure should be reviewed in relation to measure 4.1.13 "*Investments and maintenance for the case management system, and respective hardware and software for courts/GPO/HPC/HJC/HIJ*", as there is overlap. As long as the latter includes "maintenance for the case management system" it is not clear the distinction between or focus of each measure.

**Conclusion:** *The measure is clearly formulated. It is in line with Outcome 4.1.1, and Strategic Objective 4.1, and is deemed realistic. We suggest that this measure be revised in relation to measure 4.1.13 in order not to create overlap.*

### Measure 4.1.11

"*Training of judges/prosecutors/inspectors and administrative staff on the use of the new case management system*"

Finally, in order to have a functioning case management system, its users (judges/prosecutors/inspectors, and relevant administrative staff) need to be trained on the use of the new system. Therefore, this measure is in coherence with measures 4.1.1 and 4.1.8, as well as in line with Outcome 4.1.1 and Specific Objective 4.1.

Knowledge of system features as well as correct use of systems is essential to have an efficiently managed case management system. In this respect, the measure is necessary and realistic.

**Conclusion:** *The above measures (4.1.1,, 4.1.8 and 4.1.11) that are intended to be taken in order to achieve Outcome 4.1.1 are a logical continuation of each-other and their joint application is necessary to enable the outcome. The measures are clearly formulated and do not create confusion*

with the outcome; they are in line with Strategic Objective 4.1. We only suggest a revision of measure 4.1.8 in relation to 4.1.11 to avoid overlaps.

### Outcome 4.1.2

*“Judicial database set up, which can serve for statistics and real-time data based on the concept of using a unified classifier for chain cases of justice institutions”.*

This outcome means the creation of a database for the judicial system. This enables, firstly, the possibility of having and accessing on a real-time basis statistics and other data, and secondly, the creation of a unique system for data involving several institutions. This outcome is in coherence with the Strategic Objective 4.1, which within the integrated electronic system requires the establishment of a database.

CEPEJ<sup>32</sup> data show that Albania together with other countries in the Western Balkans region has the lowest level of use of electronic communication systems between courts and prosecutors and lawyers. The generation of statistical performance data is in the process of being improved. HJC has currently approved the Decision *“On maintaining and filling in tables with statistical data for the purpose of measuring and monitoring the productivity and efficiency of courts”*<sup>33</sup> and it is important at this stage to have a database where these statistics can be found. In this respect, the measure is realistic and in coherence with the current situation. The outcome can be revised in the wording, as the sentence is long, and the language used does not make the meaning clear to the reader. It also does not specify exactly what information will be found in the database. Statistics are mentioned, but without specifying what these statistics will be, and it is unclear what “other data” means. Clarifying them would enable the measurement of this outcome. On the other hand, it would clarify what issues/data require or combine information from some justice institutions (which even in this case it is not clear who they are referring to). No indicators have been identified for measuring this outcome. An indicator that measures the full achievement of this outcome could be *“% of statistics/information entered in the database continuously, vis-à-vis the totality of the data that the database should include”* or *“% of civil society organizations/law scholars who think that the database provides results on the performance of the justice system”*.

**Conclusion:** *This outcome is in line with Objective 4.1 and is considered realistic and necessary. We suggest reviewing the language used in order to clarify the data or information contained in the database. For the measurement of this outcome, we suggest this indicator “% of statistics/information entered in the database continuously, vis-à-vis the totality of the data that the database should include” or “% of civil society organizations/ law scholars who think that the database provides results on the performance of the justice system”.*

### Measure 4.1.1

*“Designing and setting up a program for the digitalization of justice institutions”.*

The first measure listed under Objective 4.1 is the design and establishment of a program to digitize justice institutions. This measure is general and is related to the digitalization of all justice institutions. This measure is a precondition for setting up the database and having a functional and integrated electronic justice system. The measure is therefore in line with

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<sup>32</sup>For more, see: <https://www.coe.int/en/web/cepej/documentation/cepej-studies>

<sup>33</sup>For more, see: <http://klgj.al/njoftim-per-shtyp-date-11-shkurt-2021-2/>

Outcome 4.1.2 and Specific Objective 4.1. In order to clarify, we suggest specifying what is specifically meant by “justice institutions”, which includes a number of bodies.

Given that design and establishment are time-consuming processes (due to the complexity of a new system to be built for the first time), it is estimated that the duration of this measure should be in direct proportion to the following measures, as well as those provided by the justice institutions themselves, or NAIS, which is involved as one of the institutions participating in the context of Objective 4.1. The measure is current, but it remains unclear how much time is needed to design and set up the program, as well as which is the responsible authority.

**Conclusion:** *This measure is in line with Outcome 4.1.2 and Objective 4.1 and is considered realistic and necessary. We suggest specifying the justice institutions to which the measures refer and to which the digitalization will extend, as well as the necessary time and responsible authority for designing and setting up the program.*

### Measure 4.1.3

*“Improving the data processing center”.*

This measure in terms of how it is formulated seems somewhat vague. The concept of data center is not clear, as well as what is intended by improving it.

The data processing center is not provided in Law no. 115/2016. The latter provides in its Article 92 "Information Technology Center for the justice system". Item 2 of Article 92 also mentions the improvement of data as an authority of this Center. Meanwhile, DCM no. 972 of December 02, 2020 was approved, titled 'On the organization, functioning and determination of the authorities of the Information Technology Center for the justice system', with which this Center was established, and the decision 'On the approval of rules for general state policies for the information technology system for the justice system'.

If this measure is related to the obligations arising from Article 92 of Law no. 115/2016, it is suggested that it be reformulated and clarified. Also, the above developments should be taken into consideration and serve as a connecting point for the drafting of the measure.

Data processing is one of the biggest and most problematic shortcomings of the justice system. The data reported by courts and prosecution offices are, for the most part, extracted and processed manually in the relevant registers. Very little data is generated electronically, which, for the sake of their accuracy, need to be frequently verified with data extracted from manual registers.

**Conclusion:** *Given the way it is formulated, this measure remains unclear as long as the concept "Data Processing Center" is not provided in Law no. 115/2016 'On the governance of the justice system'. It is not understood where the data processing center will exist and what data will be stored and processed in this center; only records of courts, or those of the prosecution offices and HIJ as well? It is suggested to clarify this measure in order to be as measurable and achievable as possible.*

### Measure 4.1.4

*“Improving the IT infrastructure in courts”.*

The measure is related to improving the IT infrastructure of the courts. Proper IT systems infrastructure helps in efficient case management, proper functioning of the database and, in

conclusion, is a prerequisite for having a unified electronic justice system. In this respect, the measure is necessary to achieve Outcome 4.1.1 and 4.1.2, and is in line with Objective 4.1

The measure is current as long as the IT system is seen as an impetus for the modernization of all courts, prosecution office and the information or services they provide. Such a measure makes it possible to provide innovative ways to increase cooperation between the institutions themselves and between the latter and the public. It is noted that the IT system of prosecution offices is not mentioned in this measure. Given the aim of creating a unified data system, according to which it is possible to track the progress of a file from the prosecution office to later in court, the wording in relation only to improving the IT infrastructure of courts seems incomplete.

**Conclusion:** *The measure is in coherence with Results 4.1.1 and 4.1.2 as well as Specific Objective 4.1. We suggest that the infrastructure system in the prosecution office be also the focus of the measure. It is therefore suggested to reformulate the measure to be closer to reality and more measurable.*

### Outcome 4.1.5

*"Other justice institutions, including subordinate institutions, rely on the development of their information technology solutions, including coordination with the Information Technology Center"*

Due to the way it is formulated, this result is unclear. First, the sentence in which the Outcome is expressed is incomplete and does not clarify what is expected of its fulfillment in the context of Specific Objective 4.1. Second, the type and nature of support is not clearly identified. It also mentions 'other justice institutions' as well as 'subordinate institutions', making the target group for this outcome evasive. The wording should be clarified by giving an orientation or using an accompanying term to identify 'other institutions' or 'subordinate institutions' which are not clear. Uncertainty in the wording of this outcome makes it difficult to identify measures that serve its achievement. It seems that Measures 4.1.14 and 4.1.15 refer to this outcome, however, read in their entirety (Outcome and Measures), it does not clarify whether the "case management system" to be maintained by the MoJ and subordinate institutions refers to the court/prosecution office management system, or other system managed by the MoJ and its subordinate institutions.

**Conclusion:** *Uncertainty in the wording of this Outcome (relevance to Specific Objective 4.1, the notion of support and subordinate institutions) makes it difficult to identify indicators that will measure the outcome's achievement.*

### Specific Objective 4.4

*"Updating the MoJ legal framework and capacities and making improvements in the field of international legal cooperation and preparing Albania for EU membership through the approximation of Albanian legislation with the EU acquis and other acts of integration with the EU and Member States in the field of justice."*

This objective is oriented in two directions. Firstly, in improving the legal framework and increasing the capacity of the MoJ in the field of international cooperation and, secondly, in harmonizing legislation with the acquis and other EU acts to prepare the country for the EU integration phase. This objective is in coherence with Policy Goal 4, which refers to the efficient and effective management of the justice system in all institutions of the sector.

Although it is not clear from the wording of the Objective, referring to measures 4.4.1 and 4.4.2, we understand that the first part of it refers to the improvement of legislation and the capacity of the MoJ regarding international cooperation in criminal cases. If we understand correctly and this is the purpose of the Objective, it should be noted that Law no. 97/2021 provides for additions and amendments to Law no. 10193, of December 3, 2009 "On jurisdictional relations with foreign authorities in criminal cases<sup>34</sup>". In this regard, we suggest that this Objective be reviewed in relation to the part of improving legislation, which has been amended less than three months ago in terms of improving the procedures for cases of jurisdictional relations, bringing it in line with the conventions of this field. The objective can be focused on supplementing it with bylaws for the adoption of which the Law leaves a period of 6 months from its entry into force.

Meanwhile, given that jurisdictional relations with foreign countries is one of the areas covered by the MoJ, increasing the capacity of the MoJ in relation to international legal cooperation, as well as recent improvements in legislation are considered necessary and current.

The rest of this Objective highlights the need to further harmonize domestic legislation with the Acquis, as a necessity within the EU integration process. This is an ongoing process, whereby each adopted legal act is checked for compliance with the Acquis of the field, and the development of the table of concordance is a legal obligation. As long as Albania continues to meet all its obligations under the SAA and the phase of preparation for EU membership, this objective remains current. Meanwhile, it is necessary to evaluate the capacities in this aspect at this stage and to invest in the staff and persons responsible for this process. This part of the Objective affects, in addition to the MoJ, the MFA and all institutions of the justice system, as well as those of the executive branch (Ministries and the Council of Ministers). Specific Objective 4.4 was newly drafted for the CJS II and was not included in CJS I.

**Conclusion:** *Specific Objective 4.4 is in line with Policy Goal 4. We suggest reformulating it in order to clarify its terminology and purpose, as well as reviewing the part of improving legislation related to international cooperation, which has been recently amended.*

#### **Outcome 4.4.4**

*"The capacities of the MoJ and sectoral institutions to manage the new Instrument for Pre-Accession and other modalities of EU support have been properly developed and the justice sector receives significant financial support from these funds."*

In order to absorb high value funds, all institutions of the justice system must be up to the standard in terms of their capacity. Several prerequisites must be met for this. A prerequisite relates to the professional level of human resources that must have sufficient knowledge, as well as the appropriate level of training. This is observed in some ministries, such as the one for Europe and Foreign Affairs and the Ministry of Finance that have retained their human resources, while for the Ministry of Justice, which has had a large turnover in human resources, professional capacity building is more than necessary. Another prerequisite is related to the existence of specialized structures within the institutions, as well as the level of awareness of their employees regarding the importance of this outcome.

As per the above, this outcome is in compliance with Objective 4.4.

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<sup>34</sup>See Law no. 97/2021 "On some additions and amendments to Law no. 10 193, of December 3, 2009 "On jurisdictional relations with foreign authorities in criminal cases", <https://www.parlament.al/Files/ProjektLigje/20210714135014ligj%20nr.%2097,%20dt.%207.7.2021.pdf>

CJS II does not provide an indicator for measuring this outcome. Meanwhile, the following can serve as an indicator “% of funds absorbed by the EU”.

**Conclusion:** *This is a very important result as it is related to having the right human and institutional capacities to absorb as much funding as possible from all institutions of the justice system and to manage them efficiently. We suggest to include as an indicator “% of funds absorbed by the EU”.*

#### Measure 4.4.4

*“Trainings of MoJ employees in the field of approximation of legislation”.*

In the context of EU integration process, the Ministry of Justice, as the authority responsible for the approximation of legislation in the field of justice, has the obligation to administer the process of approximation of legislation. The first step in the approximation process is the analysis and comparison of EU legislation with the relevant legislation to determine the conformity status of the legal framework and the measures that the state will take to approximate the Albanian legislation with that of the EU. Regarding the transposition of the Directives, there is a well-defined methodology, which the Ministry staff should be able to implement. This relates primarily to the development of the Table of Concordance (ToC). The objective of developing the ToC is to identify legal provisions regulating the same aspect, what has been transposed or not transposed (gaps); and identifying other legal provisions. In this regard, it should be remembered that EU Regulations and Decisions are not part of the approximation process, as they enter into force on the date of the state's EU membership. Nevertheless, EU Regulations and Decisions dictate the adoption of national measures for their implementation and cannot be left out of the integration process.

Due to all of the above, the Ministry staff should be trained at the appropriate level. Consequently, the measure is current and realistic.

**Conclusion:** *This measure addresses the Specific Objective and Outcome 4.4.3. The approximation of Albanian legislation with the EU Acquis is accomplished in one phase and in a quality in accordance with the SAA and the negotiating framework, and is in line with it and Objective 4.4. The measure is clearly formulated and necessary.*

#### Measure 4.4.8

*“Capacity building of MoJ and independent justice institutions (HJC, HPC, HIJ, GPO, SoM) to prepare and manage IPA III funds”.*

The measure is needed to be undertaken related to the development of the capacities of MoJ, HJC, HPC, HIJ, GPO, SoM to manage IPA III funds. IPA III is a mechanism/instrument of pre-accession to the EU. This instrument has its own features with which institutions such as HIJ, HJC, HPC, GPO and SoM should be familiarized. Consequently, the measure is current. It is also seen as necessary in achieving Outcome 4.4.4. as well as in fulfilling Objective 4.4.

**Conclusion:** *This measure is in line with the result 4.4.4. At the same time this is a realistic measure, as the capacities in the institutions of the justice system can (and should) be developed in the coming years. This is a process that has been carried out in other countries before their EU membership (such as Croatia, etc.). Capacities can be developed through dedicated training on this issue.*

## ANALYSIS OF CJS II ACTION PLAN INDICATORS

### Importance of projected indicators for CJS II

For strategic processes, setting the right indicators is essential to measuring the progress that is projected to be made through the measures or goals set out in the Strategy. In particular, the Cross-cutting Justice Strategy, as an umbrella strategy, under which operate many higher bodies of the judicial system and bodies independent of it, has the difficult mission to show to the public, how much this undertaken reform is functioning and is affecting the improvement of justice in the country. Even more important are the benefits that should come from measuring indicators when we consider that the Justice Reform Strategy is not a short-term Strategy, but after CJS II, it is expected to continue with another four years of strategic goals and policies (CJS III). So, the development of appropriate indicators will serve to determine the main issues which will have to "concern" CJS III.

Almost every justice institution has its own institutional strategy, which analogously contains the plan of measures and indicators that show their effectiveness and accomplishment, and yet, the indicators set in this Strategy, never lose their value, as long as they aim to measure, as a whole, the functioning of certain aspects related to justice in the country, for which one or several institutions combined may be responsible.

For the purpose of this study, eighteen indicators will be analyzed out of the thirty two provided by CJS II. This selection was made based on the objectives, outcomes and measures that were analyzed in this study.

### Analysis of Indicators

#### Indicator 1

*"% of transitional re-evaluation subjects who believe that the governing institutions of the justice system are independent and impartial"*

The indicator will measure the performance of the new governing institutions of the justice system, measuring through a survey, the perception of the subjects of re-evaluation in terms of independence and impartiality of these institutions.

This indicator is a direct way of understanding whether the new governing institutions are operating with impartiality and are implementing legal standards or not. The fact that the indicator measures the perception of the directly interested group, i.e., judges and prosecutors, makes this indicator more credible and closer to the truth. It is not understood why the indicator refers only to the subjects of the transitional re-evaluation and not to the whole body of judges and prosecutors. If this is done to measure the activity of these bodies after the end of the term in office of the vetting bodies, we suggest that the questionnaire for measuring the perception be comprehensive, for all the authorities of these bodies in relation to the judiciary. In this aspect, other measures and outcomes included in CJS II would be measured and monitored. In this regard, we suggest to review the list of subjects for the survey.

Referring to the Methodology, the indicator will be measured through an annual questionnaire developed by HJC/HPC and delivered to the subjects of the transitional re-evaluation (judges and prosecutors). In this regard we suggest that the questionnaire be processed by the MoJ and not by the HPC and HJC, given that the MoJ monitors and measures this indicator, as well as since the HPC and the HJC are monitored institutions. The indicator is created for the first time and the first values will be those of 2021. The frequency for measuring this perception – annually – is appropriate and offers a real opportunity for this indicator to be used in order to improve the work of these bodies.

**Conclusion:** *This indicator should specify the subjects to whom the survey will be addressed, as well as the institution that develops and processes the questionnaires. We suggest that, in addition to judges and prosecutors, HIJ be part of this survey, as the institution that oversees judges/prosecutors and monitors from up close the problematic parts of the performance of the judiciary and the prosecution office.*

### Indicator 3

*"% of the state budget dedicated to the governing bodies of the justice system"*

This indicator calculates as a percentage the share of the budget dedicated to the governing bodies of the justice system in relation to the state budget. The larger the latter, the greater the opportunity for consolidating the system's governing bodies, in terms of capacity building, human resources and infrastructure.

This indicator is related to Policy Goal 1 "Comprehensive and professional functioning of the governing institutions of the justice system in accordance with constitutional and legal requirements and European standards, guaranteeing independence, efficiency and accountability." Meanwhile, the Passport of Indicators refers to it in the Specific Objective "Continuation of the implementation and finalization of the transitional re-evaluation process in an effective and efficient manner as provided by the Constitution and the law." The framers of the Strategy seem to have linked this indicator to the continuation of the vetting process by HJC and HPC, after the end of the term of the transitional re-evaluation bodies, while it [the indicator] serves at the same time other objectives related to the consolidation of system governance, in terms of capacity building, human resources and infrastructure, provided in Specific Objective 1.3.

The methodology for measuring this indicator is clear and aims to calculate the percentage of the state budget that is dedicated each year to the bodies of the justice system, according to data obtained from the Ministry of Finance and Economy. The basic value for setting the future objectives is the percentage dedicated to HPC, HJC and HIJ for 2020. While aiming for an increasing trend, if we compare the values from year to year for each institution, we see that this is not always the case.

**Conclusion:** *This indicator should specify the Objectives it relates to and the outcomes it intends to measure.*

### Indicator 4

*"Number of bylaws adopted regarding the authority, efficiency and coordination of the governing bodies of the justice system (separate values for HJC/HPC/HIJ)"*

This indicator aims to measure the fulfillment of the tasks of the councils and the HIJ regarding the completion of the internal sub-legal framework with acts that regulate various issues of functioning and exercising of the duties and authorities of these bodies.

This indicator will provide quantitative data on the number of acts that each body has managed to develop and obtain approval of.

This indicator is set as a measure of Objective 1.2 “Update and improve justice reform legislation based on findings from analysis and monitoring of reform implementation, including, but not limited to, legislation on authority, transparency, efficiency, and coordination”.

First, we consider that this indicator does not fit with Objective 1.2, an objective which does not refer to the internal acts that each body must issue in order to exercise its functions, but an objective that refers to changes in the law for these bodies, if an analysis and experience so far suggest that there are problems in law enforcement that affect issues of normal functioning of these bodies.

Secondly, the outcome that will be obtained from this indicator is a numerical outcome that does not say anything about the efficiency, responsibility, quality of these bodies, but provides "cold" data on a functional task, for which it is not important to create an indicator.

Thirdly, regarding the expectations for the target values, which are related to the number of acts that each body will produce in a year, again the numbers are unclear, unrelated to concrete obligations for issuing acts and how the distribution over the years has been evaluated.

The law provides for concrete obligations for the bodies to complete their sub-legal framework and in compliance with Policy 1 “Full and professional functioning of the governing institutions of the justice system in accordance with constitutional and legal requirements and European standards, guaranteeing independence, efficiency and accountability”; therefore the indicator had to be qualitative, i.e., an indicator which is able to measure whether these bodies have fulfilled in time and with quality their obligations for issuing acts.

**Conclusion:** *Based on the acts adopted so far by these bodies, as mentioned throughout the analysis, the time it took for the bodies to issue them is very long, which has negatively affected the quality of service provided to the judiciary and the prosecution office. It would be of interest to measure this aspect, and not simply how many acts has each body adopted.*

## **Indicator 5**

*“Number of proposals for legal changes made by the governing bodies of the justice system”*

This indicator is logically related to Objective 1.2 and aims to measure the commitment of the governing bodies of the justice system in self-analysis and production of legal solutions to issues that the current law needs to be improved, in order to enhance the functioning of these bodies and increase their efficiency.

However, again, only a numerical set of data is obtained, which fails to convey anything concrete about the quality of the proposals or their success. Putting a downward trend into the methodology – i.e., in the first years of the strategy it is expected to be many proposals and in subsequent years, fewer proposals – is not accompanied by the same idea when setting the target values from year to year for each body (they are the same from year to year). This is because the indicator seems to be unclear to its framers themselves. It is true that the proposal for changes in the law should come from these bodies, but these proposals are not a goal in themselves and cannot be treated as such. This means that measuring how many proposals a body has made does not indicate a higher quality, efficiency or responsibility of that body.

**Conclusion:** *It would be of interest to obtain a set of comparative data on the success of these proposals; for example, how many of these initiatives for change have taken the form of draft laws or actually changed the law.*

## **Indicator 6**

*"% of initiated disciplinary proceedings for complaints against judges or prosecutors"*

It should be said in advance that this indicator is formulated differently from what it intends to measure, an element that is clear from the methodology it has envisaged. Thus, if we take into account the methodology and logical flow with which this indicator is explained, it is clear that it aims to measure the quality of work of HIJ to investigate cases of violations committed by entities that are part of the activity of this body, setting standards and the criteria used by this body in the "preliminary" phase, when it decides whether or not to start the disciplinary investigation, with a second, more consolidated phase of the investigation when, after a more detailed scrutiny, a decision is made to send the case to the HJC/HPC, or close the investigation.

The aim is for the HIJ to take ownership from the moment it launches the disciplinary investigation, in order to avoid situations where investigations begin, but they fail during the more in-depth investigation and fail to produce a serious, council-based proposal. This requires HIJ to apply unified and harmonized rules and criteria from the earliest stages of the investigation.

To accomplish this, the indicator envisages making a comparison (ratio) between the HIJ decisions to initiate a disciplinary investigation and the HIJ decisions to refer the matter to the council for consideration.

To be clear about the methodology and the problem in the wording of this indicator, we need to refer to how HIJ operates step by step. The description of the stages is as follows:

Complaint (1) → examination of the complaint (2) → initiation of disciplinary investigation/archiving (3) → request is submitted to HJC or HPC / investigation is closed (4) → HJC or HPC decides to accept/reject the request (5)

The interpretation of the indicator methodology connects *phase 3*, the beginning of the disciplinary investigation by HIJ, with *phase 4*, the cases when HIJ, after initiating the disciplinary investigation, decides to submit a request to the HJC/HPC or to close the investigation.

It must be acknowledged that the connection of these two phases makes the indicator be evaluated as an accurate indicator, as it provides data on the success of the investigation process within the HIJ itself and the full efficient use of the capacities of this body.

Meanwhile, when we see how the indicator is formulated, using the phrase "complaints against judges and prosecutors", it is expected that it will provide data starting from phases 1 and 2, related to the complaint. Thus, the literal interpretation of the wording of the indicator requires measuring the relationship between complaints and HIJ decision-making to investigate them. If such an indicator were to be created, the only value it would have would be reaching a conclusion on the level of awareness of the entities that file complaints about behaviors or actions that constitute disciplinary violations.

**Conclusion:** *Indicator 6 should be reworded in order to clearly express its purpose. An accurate wording could be: "% of investigated cases sent to the HJC and HPC".*

## Indicator 7

*“Indicator of resolved backlog cases related to the discipline of complaints filed with the HIJ.”*

This indicator seeks to measure the effectiveness of HIJ in dealing with backlog complaints, which have caused a significant backlog over the years, taking also into account the delay in establishing HIJ and making it effective. We suggest a revision of the wording, clarifying the phrase *“discipline of complaints”*, which creates confusion as to what the indicator intends to measure. We also suggest that this indicator be expressed in percentage and not simply remain an evasive and indeterminate indicator.

Indicator 7 relates to Objective 1.3 of CJS II *“Strengthening and consolidating the governing bodies of the justice system in accordance with European standards, through the creation and development of capacities, to carry out the activity with independence, efficiency and professional standards; delivery of service from governance institutions in the judiciary meets the relevant rules and standards”* for the HIJ-related part.

This indicator will be measured by a simple methodology, juxtaposing the number of existing complaints carried over, with the number of complaints under this category which have been solved. This is an accurate indicator and is directly related to two of the measures envisaged for HIJ (Measure 1.2.12 and Measure 1.3.4). Also, since the frequency of its measurement is annual, this indicator can also serve as a guide for changes in the HIJ Strategy or of how HIJ has resolved these cases.

Regarding the target values for the years of CJS II duration, set in the Passport of Indicators, we suggest that they be expressed in percentage value for each year, based on the formula that the Passport calculates the values in percentage for 2021.

**Conclusion:** *This indicator is needed to measure the clearing of the HIJ backlog, as a tool that will increase the efficiency of this institution. We suggest that this indicator measure the percentage of backlog clearance, based on the formula defined in the calculation made for 2021. The intended objectives on the values of this indicator during the years of implementation of CJS II should also be expressed in percentage values.*

## Indicator 8

*“Indicator of resolved backlog cases for the High Court”*

Indicator no. 8 refers to the indicator of resolving backlog cases in the High Court. This indicator did not exist in the CJS I indicator passport and was recently included in the CJS II indicator passport. The inclusion underlines the importance of addressing the backlog of cases for the progress of justice reform as a whole, but also for measuring the degree of achievement of the CJS II Objectives, where the functionality of the HJC is one of the objectives. The handling of the backlog is an indicator of the efficiency of the High Court and the judiciary itself that affects the delivery of justice without delay, goals that are set out in Specific Objective 2.4

It is noticed that as a base value, the Passport of Indicators gets the data of 2020, as the High Court was non-functional until March 2020 (when the first three judges who started examining cases were appointed). From 2018 until March 2020, the number of cases has only increased, as the court has not been functional (i.e. has not examined any cases).

The methodology set for this indicator is *“No case in arrears/no case resolved during the year \*12.”* This methodology is unclear and it is not clear what it measures and how it will perform the measurement, so we suggest revising it.

Furthermore, it remains unclear why the goal has been expressed in duration in years for backlog clearance during the life of the Strategy. An efficient way could be to measure by

percentage of backlog cases that have remained unresolved (or have been resolved). Meanwhile, annually, the target could be the percentage of the backlog left (or cleared) that HJC (High Court) as a responsible institution should aim to achieve in the context of clearing the stock from year to year. Target setting is essential to assess achievement/performance.

**Conclusion:** *The methodology of measuring the indicator is unclear. An effective way could be to measure the percentage of backlogs that have remained unresolved, or have been resolved, year after year.*

## Indicator 9

*"% of laws and bylaws that have been subject to evaluation analysis by judicial bodies"*

In the final analysis, this indicator can only provide a simple numerical value, i.e., not a percentage as in its wording, and as defined in the target values (100%) of the laws and bylaws that will be analyzed by MoJ and HJC, in order to improve the professional capacity, accessibility, transparency and efficiency of the judiciary.

As a matter of fact, the analysis of acts and the adoption of necessary legal changes is part of the measures set out in Policy 2, Specific Objective 2.1 "Review the legal framework regarding the judiciary in accordance with the need to further improve professional competence, accessibility, transparency and efficiency" and the development of an indicator to measure the partial fulfillment of the measure, without the possibility of creating a report or comparison with another data, seems insufficient. This is because no concrete target values have been set, as it is impossible to have a precise expectation of how many laws/bylaws would need to be analyzed to consider this measure fulfilled. Therefore what is left to do, logically, is to measure only a simple numerical value, i.e., the number of analyzed acts, which in itself is a data that does not point towards a concrete product with relevance to the outcome or target measures in Specific Objective 2.1.

**Conclusion:** *It would be reasonable to develop an indicator which would measure how many of the analyzed acts managed to take the form of draft laws or laws (in numerical value), in order to obtain a concrete outcome regarding the commitment and seriousness of the bodies that will cooperate in this process, to give a result in terms of possible legal improvements. Such an indicator would make more sense to be placed after the end of the phase of legal analysis and changes and then pass to the phase of measuring the real impact which these changes have had on the goal for which they were developed.*

## Indicator 12

*"Annual quota for candidates for positions of magistrate, counselor and assistant in the School of Magistrates"*

This indicator refers to the quotas, or maximum number of vacancies, announced by the Councils, for magistrates, advisors and legal assistants.

In its description, this indicator is set as part of the implementation of Policy 2 "Strengthening transparency, efficiency of the judiciary and access to justice in accordance with constitutional, legal and European standards", under Specific Objective 2.3 which provides for "Increasing efficiency and capacity training system, which ensures advancement towards European practices and quality in the field of justice, providing an adequate number of trained magistrates and legal advisors to the justice system in Albania".

Also, this indicator is considered essential for the replacement of judges and prosecutors dismissed due to vetting.

In the description given to the indicator it is worth dwelling on two elements: first, the methodology, according to which this indicator refers to the number of magistrates admitted in a year, and second, the institutions responsible for and participating in the development of and reporting on the indicator, where it is noted that the School of Magistrates is not included.

Both of these predictions are problematic, as is the wording of the indicator when referring to admission quotas, while in fact it refers to the number of magistrates actually admitted by the School in a year.

First, for the indicator to give an accurate result it will have to be based not on quotas, but on the number of magistrates, advisors and legal assistants *appointed* by the HJC and HPC.

The quotas do not indicate how many magistrates/advisors/assistants will enter the system, but indicate how many vacancies have been opened by the Councils and on which the testing at the School of Magistrates is carried out. After the testing process, it is possible to produce a figure regarding how many candidates will be accepted by the School, i.e., the candidates who will be part of the 3-year Initial Training Program (this figure refers to the methodology of this indicator). Then, the established filters (specifically: how many candidates will graduate from the School; how many will be able to be evaluated at least "sufficient"; and, how many will be appointed by the Councils, after the process of assets and background verification) will produce the final number of new entries into the system.

So, both quotas and admissions do not give an accurate result of the number of new entries into the system. For this reason, both the wording and the methodology of measuring the indicator need to be changed.

Regarding the provision of the HJC and the HPC as the most responsible and participating institutions for the creation and reporting of the indicator, it is incomprehensible how the School of Magistrates is not included in the only indicator which is about entries into the justice system and when the Constitution says new incumbents can only enter through the School of Magistrates. As a result, the weight that this body has in creating the indicator and fulfilling the result as a whole, is high and should be reflected. The testing conducted by the SoM and the 3-year Compulsory Training Program at the School are the two main sources from which the number of magistrates that will be added to the system emerges. In this context, the number of quotas that the Councils will open is less important than the number that have successfully passed the entrance exam. The experience of these years has shown that the announced quotas could not be fully met.

Secondly, if we refer to the action plan measures related to the School of Magistrates, we find that they are all related to continued, on-the-job education, and to the development of studies and publications, especially in the field of EU law, international standards and protection of human rights.

In order for the indicator on the quality of the justice system to be complete, it should also provide for the collection of data related to the participation of magistrates in activities related to the formation and training with specialized knowledge during the career, both as experts and as participants. An indicator of this would be how many judges attend the School's training courses during an academic year. The law stipulates that they must attend at least 5 trainings per year, but in the meantime, a very small part of them meet this legal requirement, which, in fact, more than a requirement, should be seen as an opportunity that they are given to deepen their knowledge and skills related to their profession.

This indicator would be used to measure other data that may be related to issues in which they are more interested, or are more active. It would become a leading indicator of the School's

training policies in terms of continued education. Moreover, this indicator will be useful even when the system is complete with judges and prosecutors.

**Conclusion:** *The indicator should be changed: it should refer to the number of appointments made by the Councils, and should add the School of Magistrates to the responsible institutions. Also, a new indicator should be formulated as follows: “% of magistrates participating in the continued education organized by the School of Magistrates”.*

### Indicator 13

*“% of reduction of the average duration of a criminal case (separate values for the first instance and the appellate court, general jurisdiction only)”*

Indicator 13 refers to the % of reduction in the average duration of a criminal case. It will serve to measure the average duration of a separate criminal case for the first instance and the appellate court, not including the trial in the CCOC. Shortening the duration of cases is a key indicator of the efficiency of the judiciary, so measuring it is important to assess the performance of criminal courts of general jurisdiction.

The indicator is about the accomplishment of Objective 2.4 *“Improving the judicial system in order to increase the effectiveness and efficiency of all levels of the judicial system, including the High Court, and ensuring the provision of transparent justice, without delays and accessible to citizens”,* which comes under Policy Goal 2 *“Enhancing transparency, efficiency of the judiciary and access to justice in accordance with constitutional, legal requirements and European standards”.*

This indicator contains language which is similar to Indicator 2 of the CJS I Indicator Passport, with the difference that it specifies that the measurement relates only to general jurisdiction (i.e., it does not include the jurisdiction of special courts and SPAK).

The methodology set for its measurement refers to the Value in % that results from the formula:  $(1 - (\text{Sum of days of duration of all relevant cases in year } n / \text{number of cases in year } n) / (\text{Sum of days of duration of all cases in year } n-1 / \text{number of all cases in year } n-1)) * 100$ .

It is noticed that the baseline value is that of year 2020 where it is determined that the average duration in days of criminal cases in the first instance and appeal: ‘DT Criminal first instance 1 = 66 (days) and DT criminal appeal: = 246 (days), without specifying the court/s to which these values refer, which means a general average referring to all courts according to HJC (CJS I passport of indicators referred to the duration that included the courts of Tirana and Durrës). Taking the year 2020 as baseline is in our opinion closer to reality, as the process of transitional re-evaluation applied in recent years has significantly affected the average duration of cases. Consequently, progress is measured based on a realistic value.

Meanwhile, it is noticed that the objectives of the Passport Indicators during the CJS II years are not expressed in percentage, but in time. As long as the indicator measures the percentage, we suggest that the objective for the years of validity of the Strategy be expressed in percentage. Specifying the target is necessary to assess achievement/performance. Also, although the aim is to reduce the duration of cases, the objectives expressed in days, during the CJS II timeframe, in the Passport Indicators are higher than the baseline value, making the target appear more like a regress rather than progress. We think that such an objective does not correspond to the enhancement of the efficiency of the judiciary, the goals of Policy 2 and Objective 2.4. Although the expected situation in the coming years is not very optimistic due to the effects of the transitional re-evaluation of judges, still the increase cannot be the target, even

if it is temporary. Furthermore, as long as an increase is projected, the indicator measuring the "percentage of reduction in duration" would be unachievable.

**Conclusion:** *We suggest revising the target objectives set to be achieved during the timeframe of the Strategy, both in terms of their expression in percentage and not time duration (it is necessary to use percentages in the context of applying the proposed methodology), as well as in terms of compliance of these values with the strategic objective (enhancing efficiency and shortening the duration of cases).*

#### **Indicator 14**

*"% of the reduction of the average duration of the civil case in the first instance and in the appeal (separate values for each level)"*

Indicator 14 relates to the % of the reduction of the average duration of the civil case in the first instance and in the appeal court (separate values for each level). It will measure the average duration of a civil case separately for the first instance and the appellate court. Reducing the length of time required for a case is a key indicator of the efficiency of the judiciary, so measuring it is important to assess the performance of civil courts.

This indicator, like the one above, serves as an indicator for the accomplishment of Objective 2.4 *"Improving the judicial system in order to increase the effectiveness and efficiency of all levels of the judicial system, including the High Court, and ensuring the provision of transparent justice, without delays and accessible to citizens"*, which comes under Policy Goal 2 *"Enhancing transparency, efficiency of the judiciary and access to justice in accordance with constitutional, legal requirements and European standards"*

A language similar to this indicator can be found in Indicator 3 of the CJS I indicator passport.

It is noticed that the baseline limit is that of year 2020 determined as '192 days in the first instance / 1538 (days) on appeal'

Again, it is noticed that the objectives expressed in percentage for the years of validity of the strategy are missing. Clarification of the target is necessary to assess the achievement/performance. Taking 2020 as a baseline, as we noted above, is closer to reality and, consequently, progress is measured based on a realistic value.

Meanwhile, it is noticed that the target objectives are not expressed in percentage, but in time. As long as the indicator measures the percentage, we suggest that the target for the years of validity of the Strategy be also expressed in percentage and not in duration. Specifying the target is necessary to assess achievement/performance.

Also, although the aim is to shorten the duration of cases, the objectives expressed in days of duration, in the first two years of CJS II application, are higher than the baseline value, making the target unachievable and the objective unmeasurable (as long as it measures the percentage of the reduction in the duration of the case). We think that such a target does not correspond to the increase of the efficiency of the judiciary, the goals of Policy 2 and Objective 2.4. Although the expected situation in the coming years is not very optimistic, again the objectives of the Strategy are aimed at optimizing resources in order to increase the efficiency and effectiveness of the judiciary.

**Conclusion:** *We suggest revising the target objectives set to be achieved during the timeframe of the Strategy, both in terms of their expression in values calculated as a percentage, according to the proposed methodology, and in terms of compliance of these values with the strategic objective. (enhanced efficiency and reduction in case duration).*

## Indicator 15

*"% of court cases for which basic information is available online and updated."*

Indicator 15 measures % of court cases for which basic information is available online and updated. This indicator is related to Objective 2.4 *"Improving the judicial system in order to increase the effectiveness and efficiency of all levels of the judicial system, including the High Court and ensuring the provision of transparent justice, without delays and accessible to citizens"*, part of Policy 2.

The inclusion of this indicator in the passport portfolio is related to the need to increase the transparency of judicial decision-making. Currently, the information found on court portals is not up to date and only litigants can find decisions, but not law scholars or the general public who can request data.

The measurement methodology is defined as *"The HJC IT Center, based on data available on the court website, will be able to calculate the % of cases where basic information is available online."* Whereas the formula is defined as:  $Value = Total\ number\ of\ ongoing\ court\ cases\ with\ basic\ information\ publicly\ available / total\ number\ of\ ongoing\ court\ cases\ during\ the\ reporting\ period * 100$  This methodology measures the percentage of cases for which there is information, but it does not refer to "basic information", and does not provide data on the case when there is basic information, but it is not updated, to which the indicator refers in its content.

Following the clarification of the methodology, it is suggested that the term "basic information" should be specified/defined, to describe the content of this information (i.e., information on the names of the parties, date of registration, name of the judge or status of the proceedings or other data). Clarifying the content of the basic information is important, at least in the content of the methodology.

It is noticed that the basic calculation limit is 2020 with a value of 100%. We think that we are not currently in this percentage, because if something like this had been achieved, we would not have had to evaluate it as a strategic objective for the 5 years of CJS II.

A similar wording with this indicator can be found in Indicator 7 of the CJS I indicator passport.

**Conclusion:** *We suggest revising the target objectives set to be achieved during the timeframe of the Strategy, in order to express them in values that reflect the reality and the current situation. We also suggest revising the methodology, in order to be able to adapt it to the target components expressed in the content of the indicator. A more appropriate methodology could be "Total number of ongoing court cases with basic and up-to-date information available online/total number of ongoing court cases during the reporting period \* 100."*

## Indicator 16

*"% of applications accepted for free primary legal aid".*

Indicator 16 relates to the % of applications accepted for free primary legal aid. The higher this figure, the more aware individuals are about receiving free primary aid and the criteria for receiving it, and as a result the greater the access to justice for the part of the population that cannot obtain legal aid on their own.

This indicator relates to Specific Objective 2.5 *"Effective access to justice provided through legal aid, alternative dispute resolution and appropriate court fees"*, part of Policy 2. It is newly included and was not part of the CJS I indicator passport.

For the measurement of this indicator, the methodology measures the number of those who apply for primary legal aid and are found eligible by the relevant authority to receive such assistance under the law (including as a result of each appeal). Meanwhile, the percentage of applications is calculated as follows: *Value = Total number of beneficiaries of primary legal aid during the reporting period / Total number of requests to centers for primary legal aid during the reporting period \* 100.*

Based on FLA statistics, this methodology measures the % of applicants who meet the legal criteria to receive free primary legal aid. So, it measures the awareness of applicants about the legal eligibility criteria. In this regard, the indicator should be more clearly expressed in relation to the proposed methodology.

Referring to the basic limit, it is the year 2020 in which 4,200 persons received primary legal aid provided by the state. This is a clear language and that creates solid foundation for the future measurement. Meanwhile, the target values have been clearly defined, aiming for an annual increase of 5%.

**Conclusion:** *This is a necessary indicator in the context of measuring access to justice for those who do not have economic opportunities and who benefit from free primary legal aid.*

### **Indicator 17**

*"% of applications accepted for free secondary legal aid".*

Indicator 17 relates to the % of applications received for free secondary legal aid. The higher this figure, the more aware individuals are about free secondary assistance, and the greater the access to justice for the part of the population that cannot obtain legal aid on their own.

This indicator is related to Specific Objective 2.5 *"Effective access to justice provided through legal aid, alternative dispute resolution and appropriate court fees"*, part of Policy 2. This indicator contains a language similar to Indicator 8 of the CJS I passport indicators. The CJS I passport of indicators defined the % of applicants who meet the legal criteria to receive free secondary legal aid. Contrary to this language, the novelty in indicator 13 lies in the fact that the received applications are measured. This wording makes this indicator more measurable.

Even in this case, as for Indicator 16, the formula: *"Value = Total number of beneficiaries of secondary legal aid during the reporting period / total number of requests to the Court for secondary legal aid during the reporting period \* 100"* measures the % of accepted applicants who meet the legal criteria to receive free secondary legal aid.

Referring to the basic limit, it is the year 2020 in which 157 persons received secondary legal aid. This is a clear language and that creates solid foundation for the future measurement

It is also noticed that the objectives are clearly defined, recording for each year an increase of 15% compared to the previous year.

**Conclusion:** *This is a necessary indicator in the context of measuring access to justice for those who do not have economic opportunities and who benefit from free secondary legal aid.*

### **Indicator 20**

*"% of cases gone to trial in which the defendant has been convicted"*

Indicator 20 aims to measure the work of the prosecution body. It is part of Policy 3, which covers criminal justice, and refers to Objective 3.2 *"An efficient and proactive prosecution"*

*system operating according to European standards and effective investigation and prosecution of corruption and organized crime".*

This indicator aims to measure how efficient the criminal prosecution and representation of the prosecution office in court has been. Thus, calculating the ratio between the defendants convicted by the court and the defendants who were sent for trial, it produces a percentage of the "success" of the investigative work conducted by the prosecutor, i.e., how organized and accurate the investigations were and how much the prosecutor has based on law and evidence the charges against the defendant.

Although this report includes two bodies, the prosecution and the court, due to the direct connection they have in this process and the "interdependence" they have on each other, it manages to produce a set of data close to the truth. The reservation that the court is not working with the same efficiency and objectivity remains part of the margin of error of this indicator.

Also, the methodology provided for this indicator, requires the ratio be calculated by separating the defendants who were found not guilty or whose cases were dismissed, from those who were tried, in the first instance courts.

First, the methodology should provide that the separation will be made on the cases of convicted defendants, to be more accurate vis-à-vis the wording of the indicator.

Second, we estimate that it would be worthwhile to create a new indicator to determine this ratio between district courts and appellate courts. This would allow us to assess the ratio between the decisions of these two levels of courts, given that the decision becomes final only after review in the court of appeal (in cases where the decision of the first instance is appealed).

Also, in addition to this measurement indicator for the prosecution system as a whole, it is suggested that the plan of measures should contain a separate indicator for the work of the SPAK. This is because the influence of SPAK in Albania during at least these 4 years, is expected to be high. A step-by-step measurement – annually – of SPAK work, would be a very good indicator of the fight against corruption, especially the one in power, which is one of the main reasons for the justice reform undertaken in Albania. The ratio between the cases that SPAK sends to court, versus those that are accepted by the CCOC and result in a sentence, is an important indicator of the efficiency of SPAK and avoids prejudices regarding this body, whether it is really investigating according to standards, or just sending "empty" files to court.

**Conclusion:** *It is suggested that an indicator be added with the following content: "percentage of cases that go to the CCOC in which a sentencing decision has been rendered by the court".*

## **Indicator 24**

*"Number of EU legal acts properly approximated with the Acquis (Chapter 23)"*

Indicator 24 refers to the number of EU legal acts properly approximated with the Acquis (Chapter 23). This indicator is newly included and was not foreseen in the CJS I passport of indicators.

First, this indicator should be reformulated from a linguistic point of view by specifying the term 'proper approximation'. Indicators should be formulated in clear and understandable language for the responsible institutions in order to be realistically measurable and leave no room for misinterpretation.

This indicator is believed to have been developed taking into account the obligations of the Republic of Albania in the framework of the membership process and the approach of the process of opening negotiations for Chapter 23. This chapter traditionally 'is first to be opened and last to be closed'.

Sub-item 'Institutions responsible for data collection', and sub-division 'participating institutions' determines the MoJ as well as 'some relevant'. The terminology 'some relevant' is very evasive and needs to be clarified so that the reporting process is as transparent as possible and is carried out responsibly.

Again, the baseline value remains an element that needs to be specified in clear value. Consequently, the level of approximation by 2020, defined as a percentage, should be clarified. This percentage will create a clear 'baseline' for the achievement of approximation during the timeframe of the Strategy. Meanwhile, the target is given in absolute figures – 2 acts for 2021 and 5 acts for the following years. We think that there is a need for a clarification in the methodology: which acts does the Passport refer to? Because we think that it is a very low number of acts in relation to the legal acts that are approximated every year by our country. If it is about legal acts in the field of justice, this should be clearly stated.

**Conclusion:** *We suggest that this indicator be reformulated in the interest of clarity. The methodology should also be reviewed in relation to the objectives set to be achieved during the timeframe of CJS II and in order to specify the acts in question.*

## **Indicator 25**

*"% of courts/prosecution offices in which the new case management system has been set up and operates at full capacity"*

Indicator 25 calculates the percentage of courts/prosecution offices in which the new case management system has been set up and is operating at full capacity. The functionality of the Case Management System is a prerequisite for better coordination within the judicial/prosecution system, enhanced effectiveness and increased transparency.

It is related to Specific Objective 4.1, "Full development of an integrated electronic justice system (e-justice) with unified identifiers, updated case management systems, internet-based electronic registration for all three areas (criminal, administrative, civil) and links to relevant national registries and databases", part of Policy 4.

The indicator seeks to assess the full functioning of the new case management system in courts and prosecution offices. It will be measured by calculating the ratio between the number of courts and prosecution offices in which the new system is operational and the number of courts/ prosecution offices nationwide. The formula to calculate this indicator: number of courts/prosecution offices in which the new case management system is functional / total no. of courts / prosecution offices \* 100. We think that the methodology and measurement formula are correct.

While the system is not yet operational, the baseline value for 2020 is zero. For the first two years - 2021 and 2022 - no results were foreseen for the system, neither in the prosecution offices nor in the courts. Meanwhile, the target objective is 5% in the third year, 33% in the fourth year and 100% in the fifth year. Therefore, 2025 will be the year when the new case management system will be operational.

**Conclusion:** *This indicator is clearly expressed. For the first two years - 2021 and 2022 - no results are foreseen for the system, neither in the prosecution office, nor in the courts. Meanwhile, the target is 5% in the third year, 33% in the fourth year and 100% in the fifth year, i.e., 2025.*

## Indicator 26

*“% of judges/prosecutors/inspectors and administrative staff trained on the use of the new case management system”.*

Indicator 26 measures the percentage of judges/prosecutors/inspectors and administrative staff trained in the efficient use of the new case management system. The more trained the users of the system, the more effective is the work with the system, as well as the coordination between the justice institutions. Clearly, the staff training phase runs parallel to that of setting up the system.

It is related to Objective 4.1 *“Full development of an integrated electronic justice system (e-justice) with unified identifiers, updated case management systems, internet-based electronic registration for all three areas (criminal, administrative, civil) and links to relevant national registries and databases”*, part of Policy 4.

The indicator will be measured annually. While the system is not yet operational, the baseline value for 2020 is zero. The target in relation to this indicator depends on the targets set in the previous indicator. For this reason, also related to this indicator, in the first two years - 2021 and 2022 - no results are foreseen for the training of staff, as long as the system is not expected to be functional. Meanwhile, the target is 5% in the third year, 33% in the fourth year and 100% in the fifth year, when not only the new case management system will be functional, but also the judges/prosecutors/inspectors and administrative staff will be fully trained.

**Conclusion:** *This indicator is clearly expressed. In the first two years - 2021 and 2022 - no results are foreseen for the training of the staff, as long as the system is not expected to be functional. Meanwhile the target is 5% in the third year, 33% in the fourth year and 100% in the fifth year.*

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