Judicial Independence in Albania: Challenges in an EU Candidate Country

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Various scholars have discussed the factors principally determining the judicial independence in both western democracies and totalitarian regimes. Previous researches have shown that either exogenous or endogenous influences such as socio-cultural, economic, and/or political factors, legacies of the past, judicial institutions etc., may have a direct impact on judicial independence.

In this paper, the aim is to bring out and analyze the main factors influencing the judicial independence in post-communist Albania. Both institutional shields and political factors are taken into account in order to analyze the impact that they may have on judicial independence.

The main finding of this study is that the combination of political interference (the exogenous factor), with the lacunas in the legislative framework (the endogenous factor) has a great significance on the quality of judicial independence in the country. Additionally, it is discussed that the extent of democratization is very relevant, and may be the match point to determine the judicial independence in such a transitional democracy.

I Introduction

The status of the courts in post-communist countries was considered constantly at risk. Over the past two decades, Albania has been confronting new challenges in the consolidation of its judicial institutions. In both national and international reports, the judicial independence has been continuously mentioned, to be one of the major challenges of the country. The judiciary was often marked as the key factor of the Albanian democratization.

The literature on democratization has regularly emphasized the judicial role in the development of the rule of law, which is at the heart of the

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consolidation of political democracy. As Dickerson puts it, “While judicial independence is not explicitly provided for in the Copenhagen Criteria, it is difficult to imagine a well-functioning democracy in the absence of an independent judiciary.”

The aim of this paper is to explore the key factors affecting the judicial independence in the Albanian judiciary. For this case study, I will borrow from an analysis by Hayo and Voigt, in which concepts of both de jure and de facto judicial independence are theorized. Consequently, the paper is divided into two sections where two main variables determining the judicial independence are analyzed. The first variable takes into account the institutional shields such as the organs administering the judiciary, the tenure guarantees, methods of appointment, conditions of removal and the salary guarantees (de jure independence). The second variable takes into account the external factors such as the international assistance, political interference and public trust (de facto independence). Firstly, it argues that institutional shields such as tenure guarantees, method of appointment and removal, and salary guarantees for the judges, conditions of judicial removal a bearing on judicial independence. Secondly, it argues that external factors such as the international assistance, political interference and public trust are decisive factors to set limits on the weakness or strength of judicial independence.

Primarily, the paper takes into account the major political turning points in the justice system. More precisely, the strong impact that state institutions had in the Albanian judiciary, the role played by judges as a counterweight to political processes and the institutional legacy factors affecting the judicial independence are discussed. As Herron and Randazzo put it, the development of an independent judiciary may be constrained by a weak institutional legacy and the strength of other political actors. In fact, decisional judicial independence exists if no actor can consistently secure judgments that are in line with his

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5 B. Hayo & S. Voigt, Explaining de facto Judicial Independence. 27 Int’l Rev. of L. and Econ. 271 (2007).