

DRAFT LAW
NO.____/2016

ON SOME ADDITIONS AND AMENDMENS IN LAW NO.8417, DATED 21.10.1998
‘CONSTITUTION OF THE REPUBLIC OF ALBANIA’, AS AMENDED

Based on articles 83 paragraph1 and 177 paragraph 1 of the Constitution, upon proposal of more then one fifth of the members of the Assembly

THE ASSEMBLY
OF THE
REPUBLIC OF ALBANIA
DECIDED

In law no.8417, dated 21.10.1998 ‘Constitution of the Republic of Albania’, as amended, following changes are made:

PART ONE
BASIC PRINCIPLES

Article 1

In the preamble, after the words ‘with a deep conviction’, the words ‘European values’ are added¹.

Article 2

In article 2, after the third paragraph, it is added a forth paragraph with the following content:

¹ Regarding the provisions on integration of the Republic of Albania in the European Union there are two alternatives. One alternative is to include them in the draft constitutional amendments by providing in the transitory provisions that they shall enter into force upon accession of Albania in the European Union. The other option considers them premature and as such they should not be part of these draft amendments.

Upon accession, the Republic of Albania delegates to the European Union institutions the necessary powers for accomplishment of the obligations deriving from the accession², based on a law approved with three fifth majority of all members of the Assembly.

Article 3

In article 12 paragraph 3 is amended with the following content:

3. Foreign military forces may be situated in or pass through the Albanian territory, as well as Albanian military forces may be deployed abroad based on a procedure provided in the law approved with the majority of all members of the Assembly, except as otherwise provided in an international agreement.³

Article 4

Article 18, paragraph 2 is amended as follows:

No one may be unjustly discriminated against for reasons such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, gender identity, sexual orientation, economic condition, property, education, social origin, birth, disability, social or parental ancestry or for other reasons.⁴

Article 5

In article 39, paragraph 2 is amended as follows:

2. Extradition may be permitted when it is expressly provided in international agreements, to which the Republic of Albania is a party, only by judicial decision as well as in case it is provided by the legislation of the European Union.

Article 6

Article 43 is amended as follows:

Anyone shall be entitled to file an appeal⁵ against a judicial decision before a higher court, except if otherwise provided in the law.

² Venice Commission Interim Opinion, Paragraph 14.

³ Venice Commission Interim Opinion Paragraph 15.

⁴ Opinion of Venice Commission paragraph 13, remark 2; also proposals from roundtables;

⁵ Venice Commission Interim Opinion Paragraph 16.

Article 7

In article 54 paragraph 4 is amended as follows:

In all actions relating to children, the child's best interests must be a primary consideration.⁶

Article 8

In article 64 paragraph 4 is added with the following content:

Upon accession of the Republic of Albania to the European Union, Albanian citizens shall elect their representatives to the European Assembly by direct voting in a manner regulated by law.⁷

Article 9

After article 80 it is added article 80/a with the following content:

Article 80/a

The Council of Ministers shall report to the Assembly on the acts being prepared in the context of participating of Albania at the institutions of European Union. The Assembly may issue a resolution which shall serve as basis for the actions of the Council of Minister in the European Union institutions.

Article 10

In article 109 after paragraph 3 it is added paragraph 4 with the following content:

Upon accession into the European Union, the right to vote and the right to be elected shall be mutually recognized to the European Union citizens who live inside the borders of Albania, under the legislation of the European Union and the rules set out in the Electoral Code.⁸

Article 11

In article 122, paragraph 3 and 4 are amended as follows:

⁶ Obligation deriving from Convention on Children Rights of UN ratified by the Republic of Albania. Proposed by UNICEF and from civil society submissions.

⁷ Venice Commission Interim Opinion Paragraph 17.

⁸ Venice Commission Interim Opinion Paragraph 17.

3. The European Union law which is directly applicable shall prevail over the domestic law of the Republic of Albania.

4. The norms issued by other international organizations have superiority, in case of conflict, on the laws of the country, when the agreement ratified by the Republic of Albania for its participation in this organization, expressly provide for the direct applicability of the norms issued by this organisation.

PART EIGHT CONSTITUTIONAL COURT

Article 12

Article 124 is amended as follows:

Article 124

1. The Constitutional Court is the highest authority which settles Constitutional disputes and makes the final interpretation of the Constitution.
2. The Constitutional Court is subject only to the Constitution.
3. The Constitutional Court shall have a separate budget, which it administers independently.⁹

Article 13

Article 125 is amended as follows:

Article 125¹⁰

1. The Constitutional Court shall consist of 9 (nine) members, from which three shall be appointed by the President of the Republic, three members shall be appointed by the Assembly of Albania and three members shall be appointed by the joint meeting of the High Court and the High Administrative Court. The members being appointed by the President of the Republic and the Assembly shall be selected from the list of candidates drafted by the Justice Appointments Council. The appointment and selection procedure of the members of the Constitutional Court guarantees the standards of an open call, honest competition, transparency and selection of the most qualified candidates.
2. The judges of the Constitutional Court shall be appointed for a 9 year mandate without the right to re-appointment and shall be selected out of the ranks of the lawyers of at least 15 years' experience as judges, prosecutors, advocates, law

⁹ Venice Commission Interim Opinion Paragraph 22.

¹⁰ Other options were discussed

professors or lecturers, senior employees in the public administration, with a renowned activity in the constitutional, human rights and other areas of law.

3. The candidates shall not have been sentenced before in connection with the commission of a criminal offence. During the past 10 years they shall not have held a political post in the public administration or a leadership position in a political party before becoming candidate¹¹. The detailed criteria for the appointment of the members of the Constitutional Court shall be provided for by law.

4. One-third of the composition of the Constitutional Court shall be renewed every 3 years under the procedure set out by law.

5. The Chairperson of the Constitutional Court shall be elected by secret voting, by the majority of the members of the Constitutional Court, for a period of 3 years, without the right to re-election. The election procedure of the Constitutional Court Chairperson shall be provided for by law.

6. The Constitutional Court judge shall continue to stay in office until the appointment of his successor, except under cases under Article 127, paragraph 1, subparagraph c) and d).

Article 14

Article 126 is amended as follows:

Article 126

The Constitutional Court judge shall enjoy immunity in connection with the opinions expressed and the decisions made in the course of assuming his functions, except in cases of a deliberate adoption of an unlawful decision as a result of criminal conduct, personal interests or malice¹².

Article 15

Article 127 is amended with the following content:

Article 127

1. The mandate of Constitutional Court judges shall end, upon:
 - a) reaching the age of 70 years;
 - b) the expiry of the 9 year mandate;
 - c) his/her resignation;
 - ç) dismissed in accordance with the provisions of article 128;
 - d) as a result of the procedures provided in article 179/b;

¹² Venice Commission Interim Opinion Paragraph 49.

- dh) establishing the conditions of inelectability and incompatibility;
 - e) establishing incapacity to exercise the duties;
2. The end of the mandate of the Constitutional Court judge shall be declared upon the decision of the Constitutional Court.
 3. Where the position of a judge remains vacant, the body having appointed the preceding judge under Article 125 paragraph 1 shall appoint a new judge, the latter staying in office until the expiry of the mandate of the outgoing judge.
 4. The Chairperson of the Constitutional Court, not later than 3 months prior to the termination of the mandate of the Constitutional Court judge, according to paragraph 1, sub paragraph a) and b), and immediately in the cases of termination of the mandate prior to the legal term, notifies the appointing body for this vacancy. The procedure for the appointment of the new judge ends not later than 60 days from the decision of the Constitutional Court declaring the end of the mandate.

Article 16

Article 128 is amended as follows:

Article 128¹³

1. The Constitutional Court judge shall be disciplinarily liable according to a procedure set out by the law. The disciplinary procedure against a judge is adjudicated by the Constitutional Court, which decides for dismissal when he/she:
 - a) Commits serious professional and ethical misconduct which discredit the figure and the position of the judge during the exercise of his/her mandate;
 - b) Is convicted with final court decision for commission of a crime;
2. The judge of the Constitutional Court is suspended from its duty upon decision of the Constitutional Court when:
 - a) against him/her the personal security measure of pre-detention or home arrest is given for commission of a criminal offence;
 - b) he/she is accused for a serious crime committed with intention.

Article 17

Article 130 is amended as follows:

Being a Constitutional Court judge shall not be compatible with duty in other state organs, and any other compensated professional activity, except for teaching and

¹³ Venice Commission Interim Opinion Paragraph 28.

academic activities which furthers the development of legal doctrine. The term of the allowed professional activity as well as the amount of remuneration, against which this activity is exercised, shall be provided in the law¹⁴. The exercise of the function of the judge shall not be compatible with being member of a political party or taking part in any public event organized by a political party, as well as with other activities which are incompatible with the duties of a judge at the Constitutional Court.

Article 18

In article 131, letter f) is amended as follows:

f) final examination of the complaints of individuals after all effective¹⁵ legal means for the protection of those rights have been exhausted against judicial acts and the acts of the public power, impairing the fundamental rights and freedoms guaranteed by the Constitution, unless provided elsewhere by the constitution.

Article 19

In article 131, after paragraph 1, it is added paragraph 2 with the following content:

2. The Constitutional Court cannot declare unconstitutional a law approved by Assembly to the effect of revising the Constitution except in the case when the procedure for the approval of this law was infringed¹⁶.

Article 20

Article 132 is amended as follows:

Article 132¹⁷

1. The decisions of the Constitutional Court have general force, shall be final and binding for enforcement.
2. The decisions of the Constitutional Court shall, enter in force on the day of their publication in the Official Journal. The Constitutional Court may decide that its decision, which has examined the act, gives effect on another date. In this case, the Constitutional Court may also order the suspension of the application of the repealed

¹⁴ Venice Commission Interim Opinion Paragraph 29.

¹⁵ Venice Commission Interim Opinion Paragraph 31.

¹⁶ Venice Commission Interim Opinion Paragraphs 19-21 and 137. Alternative option were discussed.

¹⁷ Venice Commission Interim Opinion Paragraphs 32-33;

act toward the complainant with regard to the litigant case, until the decision gives its effects.

3. The minority's opinion shall be published along with the final decision.

Article 21

In article 133, paragraph 2 is amended as follows:

2. Final decisions of the Constitutional Court shall be decided with the majority of all members.¹⁸

Article 22

Article 134 is amended as follows:

1. Recourse to the Constitutional Court shall be only upon the request of:

- a) President of the Republic;
- b) Prime Minister;
- c) Not less than one-fifth of the members of Assembly;
- ç) Ombudsman;
- d) Head of High State Audit;
- dh) Any court, in the event of Article 145, point 2, of this Constitution;
- e) Any commissioner established by law for the protection of the fundamental rights and freedoms guaranteed by the Constitution;
- ë) High Judicial Council and High Prosecutorial Council;
- f) Local governance units;
- g) Religious communities forums;
- gj) Political parties;
- h) organizations;
- i) Individuals.

2. The entities provided for in sub-paragraphs d, dh, e, ë, f, g, gj, h, and i of paragraph 1 of this Article may file a request only regarding the issues connected to their interests.¹⁹

¹⁸ Venice Commission Interim Opinion Paragraphs 34.

¹⁹ Venice Commission Interim Opinion Paragraphs 35, comments from roundtables.

PART NINE
THE COURTS
Article 23

Article 135 is amended as follows:

Article 135

1. The judicial power shall be assumed by the High Court, High Administrative Court²⁰, as well as by the appeal courts, first instance courts, which shall be established by law.
2. The Assembly may establish by law specialized courts; however, under no circumstances shall it establish extraordinary courts.
3. By law, a specialized first instance court and court of appeal shall be established competent to adjudicate corruption and organized crime, and criminal charges by high-level officials²¹. Judges and judicial personnel of these courts as well as of their close family members must successfully pass a review of their assets and their background, as well as periodic reviews of their financial accounts and telecommunications in accordance with the law.

Article 24

Article 136 is amended as follows:

Article 136²²

1. The members of the High Court and High Administrative Court shall be appointed by the President of the Republic upon proposal of the High Judicial Council, with a 9 year mandate, without the right to re-appointment. The President of the Republic within 7 days—following the proposal of the High Judicial Council shall appoint the member of the High Court and High Administrative Court.
2. The President of the Republic has the right to return a proposal only once in a reasoned decree²³. The decree of the President of the Republic to return a proposal to the High Judicial Council loses its effect when the majority of the members of High Judicial Council vote against the decree of the President of the Republic. In this case, as well in case the President does not express himself, the proposed judge by the High Judicial Council shall be deemed appointed and shall take office within 7 days of the date of the Council's decision.

²⁰ Alternative option was discussed

²¹ Venice Commission Interim Opinion Paragraph 42

²² Alternative option was discussed

²³ Venice Commission Interim Opinion Paragraph 45.

3. The members of the High Court and High Administrative Court shall be selected from the ranks of the judges with at least 13 years' experience. One-fifth of members may be selected from among those renowned lawyers with not less than 15 years' experience having worked as advocates, law professors or lecturers, senior employees in the public administration or other practice of law. Members who are not from the ranks of judges must have a university degree and have an academic grade in law²⁴.
4. The lay member must not have been punished before for a criminal offence. During the past 10 years the lay members shall not have held a political post in the public administration and leadership position in a political party before their nomination.
5. The criteria and procedure of selection and appointment of members of the High Court and the High Administrative Court and the conditions for the continuation of the profession as judge shall be provided for by law.²⁵
6. The Chairperson of the High Court and that of the High Administrative Court shall be elected for a 3 year period without the right to re-election, by secret voting and by the absolute majority of the members of each court. The procedure of election shall be provided for by law.

Article 25

After article 136, it is added article 136/a with the following content:

Article 136/a

Judges are Albanian citizens appointed by the High Judicial Council after finishing the School of Magistrates and after a passing a preliminary evaluation of their assets and their background, as provided by the law. Candidates are selected based on a transparent and opened procedure, which ensures a merit based selection of the most qualified candidates having moral and ethical integrity. Additional criteria for the selection of the judged are regulated by law.²⁶

Article 26

Article 137 is amended as follows:

Article 137

²⁵ Venice Commission Interim Opinion Paragraph 46.

²⁶ Venice Commission Interim Opinion Paragraphs 47-58, 51.

Judges shall enjoy immunity in connection with the opinions expressed and decisions made in the course of assuming their functions, except in cases of a deliberate adoption of an unlawful decision as a result of criminal conduct, personal interests or malice.

Article 27

After article 137, it is added article 137/a with the following content:

Article 137/a²⁷

1. Judges shall be disciplinarily liable according to procedures set out in the law. A judge cannot be removed from duty except as a result of:

- a) reaches the retirement age;
- b) resignation;
- c) it is asserted that his/her appointment was done not in compliance with the criteria provided in such regard;
- ç) dismissal after a finding of a serious professional and ethical misconduct after disciplinary proceedings;
- d) dismissal after a final court decision finding the judge guilty of a crime;
- dh) Discharge from duty on grounds of incapacity;
- e) the application of the procedures provided in article 179/b.

Article 28

Article 138 is amended as follows:

Article 138

The salary and other benefits of judges cannot be reduced²⁸, except when:

- a) General economic, financial measures need to be undertaken in order to avoid difficult economic situation of the country or other national emergencies;
- b) the judge return to the previous position which he held prior to this position;
- c) as a result of a disciplinary measure;
- ç) is evaluated professionally 'insufficient' according to the law.

Article 29

Article 139 is amended as follows:

²⁷ Venice Commission Interim Opinion Paragraph 50.

²⁸ Venice Commission Interim Opinion Paragraph 50.

1. The mandate as High Court or High Administrative Court judge shall end, upon:
 - a) reaching the age of 70 years;
 - b) the expiry of the 9 year mandate;
 - c) his resignation;
 - ç) dismissed as provided in Article 140;
 - d) as a result of the procedures provided in article 179/b;
 - dh) establishing the conditions of inelectability and incompatibility;
 - e) establishing incapacity to exercise the duties;
2. The end of the mandate of the High Court or High Administrative Court member shall be declared respectively upon the decision of the High Court or High Administrative Court respectively. The procedure for the reinstatement of the judge as a judge in a different court upon expiry of mandate is regulated by law.²⁹
3. The Chairperson of the High Court or High Administrative Court, not latter then 3 months prior to the termination of the mandate of the judge of the High Court or High Administrative Court, according to paragraph 1, sub paragraph a) and b), and immediately in the cases of termination of the mandate prior to the legal term, notifies the High Judicial Council for this vacancy. The procedure for the appointment of the new judge ends not latter then 60 days from the decision declaring the end of the mandate.³⁰

Article 30

Article 140 is amended as follows:

Article 140

1. The judge High Court and High Administrative Court shall be disciplinarily liable according to a procedure set out by the law. The judge shall be dismissed upon decision of the High Judicial Council when he/she:
 - a) Commits serious professional and ethical misconduct which discredit the figure and the position of the judge during the exercise of his/her mandate;
 - b) Is convicted with final court decision for commission of a crime;
2. The judge of the High Court and High Administrative Court is suspended from its duty upon decision of the High Judicial Council when:
 - a) against him/her the personal security measure of pre-detention or home arrest is given for commission of a criminal offence;
 - b) he/she is accused for a serious crime committed with intention;

²⁹ Venice Commission Interim Opinion Paragraph 52.

³⁰ Venice Commission Interim Opinion Paragraph 41.

Article 31

Article 141 is amended as follows:

Article 141

1. The High Court and the High Administrative Court shall decide cases relating to the meaning and application of the law and ensures the unification or evolution in the judicial practice.
2. The High Court and the High Administrative Court may resolve jurisdictional disputes in a joint meeting of both courts, as regulated by law³¹.

Article 32

Article 143 is amended as follows:

Article 143

Being a High Court and the High Administrative Court judge shall not be compatible with duty in other state organs, or any other compensated professional activity, except for teaching and academic activities which furthers the development of legal doctrine. The term of the allowed professional activity as well as the amount of remuneration, against which this activity is exercised, shall be provided in the law. The exercise of the function of the judge shall not be compatible with being member of a political party or taking part in any public event organized by a political party, as well as other activities which are incompatible with the duties of a judge.

Article 33

Article 147 is amended as follows:

Article 147³²

1. The High Judicial Council shall ensure the independence, accountability and appropriate functionality of the judicial power in the Republic of Albania.
2. The High Judicial Council shall be composed of 11 members, six of which are elected by the judges of all levels of the judicial power and five members are elected by the Assembly among lawyers who are non-judges.

³¹ Venice Commission Interim Opinion Paragraphs 38-40, and 43; Paragraph 2 of this article was removed from Art.135/2 and placed here;

³² Alternative option discussed

3. The criteria and transparent and open procedure for the selection and ranking of the candidates coming from the judiciary is provided in the law. The lay members shall be selected among highly qualified lawyers, with no less than 15 years of professional experience, of high moral and professional integrity. Candidates must not have been punished before for a criminal offence. During the past 10 years the lay members shall not have held a political post in the public administration and leadership position in a political party before their nomination³³.

4. The lay-members shall be elected from the proposals from the proposing bodies by the Assembly with three-fifth of all its members. One shall be from advocates, one shall be from notaries, one shall be a law professor, one shall be from the lay professors of the School of Magistrates and one shall be from civil society. For each vacancy, the proposing bodies present to the Justice Appointment Council three candidates elected based on an open call and transparent process. The Justice Appointment Council ranks the candidates and forwards to the Assembly.

5. The Assembly shall vote separately for each group of candidates. When the Assembly fails to reach the three-fifths majority in the first voting, the proposing body shall make a new proposal within 15 days. The Justice Appointments Council shall provide an examination and ranking of the candidates within 7 days of the submission of the new proposals. The Assembly shall vote on the new candidates within 7 days of the submission of the examination and ranking. If this majority is not reached even in the second voting, the candidate ranked highest out of both rounds shall be deemed appointed.³⁴

6. The Chairperson of the High Judicial Council is elected with the majority of all members in the first meeting of the Council from the ranks of the lay members. If a chairperson cannot be selected within the first meeting, the oldest in age judicial member shall select the chairperson by lot in the next meeting, which is opened. The mandate of the Chairperson shall end when his/her underlying mandate ends.³⁵

7. Members of the High Judicial Council shall practice their duty full-time for a period of five years without the right of immediate re-election. At the end of the term, the judge members return to their previous working positions. The lay members who before the appointment worked full time in the public sector shall return to the previous working positions or, if not possible, to positions equivalent to them.

Article 34

After article 147 it is added article 147/a with the following content:

³³ Venice Commission Interim Opinion Paragraph 57, 61. Also includes points raised in roundtables and submissions.

³⁴ Venice Commission Interim Opinion Paragraph 58-59.

³⁵ Venice Commission Interim Opinion Paragraph 63.

Article 147/a

1. The High Judicial Council shall exercise the following powers:
 - a) Appoints, evaluates, promotes and transfers judges of all levels, except judges of the Constitutional Court;
 - b) decides on disciplinary measures on judges of all levels, except judges of the Constitutional Court;
 - c) Proposes to the President of the Republic candidates for members of the High Court and High Administrative Court, according to the procedure established by law.
 - ç) Approves the rules of judicial ethics and monitors their observation.
 - d) Directs and manages the administration of the courts;
 - dh) Proposes and administers the budget of the courts;
2. The High Judicial Council informs the public and the Assembly on the state of the judicial system and exercises other powers defined by law.
3. The Minister of Justice may participate in the meetings of the High Judicial Council when issues of strategic planning and budget of the judiciary are discussed³⁶.

Article 35

After article 147/a it is added article 147/b with the following content:

Article 147/b

1. The mandate of the member of the High Judicial Council shall end upon:
 - a) Reaching the retirement age;
 - b) Expiry of the 5 year mandate;
 - c) His resignation;
 - ç) dismissal in accordance with the provisions of 147/c;
 - d) as a result of the procedures provided in article 179/b;
 - dh) establishing of incapacity to exercise the duties;
2. The expiry of the mandate of the member shall be declared upon a decision of the High Judicial Council.
3. Where the position of the member remains vacant, the body having appointed the preceding member, shall, under Article 147, appoint the new member, the latter staying in office until the expiry of the member of the outgoing member.
4. The Chairperson of the High Judicial Council, not later than 3 months prior to the termination of the mandate of the member, according to paragraph 1 subparagraph

³⁶ Venice Commission Interim Opinion Paragraph 62

a) and b), as well as immediately in cases of termination of the mandate prior to the legal term, notifies the appointing body on the vacancy. The procedure for the appointment of the new member terminates not later than 60 days from the decision declaring the termination of the mandate.

Article 36

After article 147/b it is added article 147/c with the following content:

Article 147/c

1. The member High Judicial Council shall be disciplinarily liable and shall be dismissed upon decision of the Justice Disciplinary Tribunal when he/she:

- a) Commits serious professional and ethical misconduct;
- b) Is convicted with final court decision for commission of a crime;

2. The procedure for examination of disciplinary misconduct is regulated by law.

Article 37

After article 147/c it is added article 147/ ç with the following content:

Article 147/ç

Being a member of the High Judicial Council shall not be compatible with duty in other state organs, or any other compensated professional activity, except for teaching and academic activities which furthers the development of legal doctrine. The term of the allowed professional activity as well as the amount of remuneration, against which this activity is exercised, shall be provided in the law. The exercise of this function shall not be compatible with being member of a political party or taking part in any public event organized by a political party, as well as with other activities which are incompatible with the duties of a member of the High Judicial Council.

Article 38

After article 147/ ç it is added article 147/d with the following content:

Article 147/d³⁷

1. The High Justice Inspector shall be responsible for the verification of complaints against judges, and prosecutors of all levels, members of the High Judicial Council, High Prosecutorial Council and Prosecutor General, as well as for the investigation of the disciplinary misconduct and initiation of disciplinary procedure against them.

³⁷ Alternative option was discussed; Venice Commission Interim Opinion Paragraphs 74-83

The High Justice Inspector shall also be responsible for inspecting the courts and prosecution offices.

2. The High Justice Inspector is appointed upon three fifth majority of all members of the Assembly, for nine years, without the right to re-election, among the ranks of distinguished jurists with at least 15 years' professional experience, with moral and professional integrity. Candidates must not have been punished before for a criminal offence. During the past 10 years the lay members shall not have held a political post in the public administration and a leadership position in a political party before their nomination. The High Justice Inspector is selected from the list of candidates ranked by the Justice Appointment Council based on a transparent and open procedure of the most qualified and reputable candidates. If the Assembly does not reach the majority of three-fifths for any of the candidates, within 30 days of receiving the proposals, the highest ranking candidate is automatically appointed.

3. The High Justice Inspector shall have the status of the High Court judge. Upon the expiry of the mandate, the High Justice Inspector, if prior to his/her appointed in this position worked full time in public sector, shall return to his/her previous working position, or if not possible in another equivalent position³⁸.

4. The procedures for the decision-making by the High Justice Inspector are regulated by law. Against the decision of the High Justice Inspector on non-initiation or dismissal of the investigation, appeal can be filed at the High Judicial Council or High Prosecutorial Council, respectively. The revision of the appeals is decided by a number of members from these organs, in accordance with the law.

5. The High Justice Inspector shall not decide on non-initiation or dismissal of an investigation when it is requested by the Minister of Justice, unless obviously unfounded.

Article 39

After article 147/d it is added article 147/dh with the following content:

Article 147/dh

1. The mandate of the High Justice Inspector ends when:

- a) Reaching the pension age;
- b) Ends the mandate of 9 years;
- c) Resigns;
- ç) dismissal in accordance with article 147/e;
- d) as a result of the procedures provided in article 179/b;

³⁸ Venice Commission Interim Opinion Paragraphs 80-82. This has also been in comments at roundtables and submissions.

- dh) establishing the incapacity to exercise the duties;
2. The end of the mandate of the High Justice Inspector is declared by decision of the joint meeting of the High Judicial Council and High Prosecutorial Council. The High Justice Inspector remains in duty until the appointment of the new Inspector.
 3. The High Justice Inspector, not later than 3 months prior to the termination of the mandate, according to paragraph 1 subparagraph a) and b), as well as immediately in cases of termination of the mandate prior to the legal term, notifies the appointing body on the vacancy. The procedure for the appointment of the new High Justice Inspector terminates not later than 60 days from the decision declaring the termination of the mandate.

Article 40

After article 147/dh it is added article 147/e with the following content:

Article 147/e

1. The High Justice Inspector shall be disciplinarily liable and shall be dismissed upon decision of the Justice Disciplinary Tribunal when:
 - a) Commits serious professional and ethical misconduct;
 - b) Is convicted with final court decision for commission of a crime;
2. The procedure for examination of disciplinary misconduct is regulated by law.
3. The inspection is done by the Minister of Justice, in accordance with rules provided in the law.³⁹

Article 41

After article 147/e it is added article 147/ ë, with the following content:

Article 147/ë⁴⁰

Being a High Justice Inspector shall not be compatible with duty in other state organs, and any other compensated professional activity, except for teaching and academic activities which furthers the development of legal doctrine. The term of the allowed professional activity as well as the amount of remuneration, against which this activity is exercised, shall be provided in the law. The exercise of the function of the High Justice Inspector shall not be compatible with being member of a political party or taking part in any public event organized by a political party, as well as with other activities which are incompatible with the duties of the High Justice Inspector.

³⁹ Venice Commission Interim Opinion Paragraphs 81-82.

⁴⁰ New article

Article 42⁴¹

After article 147/ è it is added article 147/f, with the following content:

Article 147/f⁴²

1. The Disciplinary Tribunal of Justice adjudicates disciplinary measures against members of the High Judicial Council, the High Prosecutorial Council and the Prosecutor General, and the High Justice Inspector⁴³.
2. The Disciplinary Tribunal of Justice consists of the Chairperson of the High Court, two judges from the High Court determined by law, the Chairperson of the High Administrative Court, two judges from the High Administrative Court determined by law, one prosecutor elected among the ranks of the prosecutors as determined by law.
3. The appeal of the decisions of the Disciplinary Tribunal of Justice as well as the appeals of the High Judicial Council and High Prosecutorial Council shall be adjudicated by the Constitutional Court.

PART TEN PROSECUTOR'S OFFICE

Article 43

Article 148 is amended as follows:

1. The Prosecutor's Office exercises criminal prosecution and represents accusation in court on behalf of the state. The Prosecutor's Office performs other duties as prescribed by law.
2. The Prosecutor's Office is an independent body, which shall ensure the coordination and control of its actions as well as respects the internal independence of prosecutors to investigate and prosecute⁴⁴.
3. By law a special prosecution office and independent investigation unit shall be established competent to investigate and prosecute corruption, organized crime and crimes by high-level officials, which is independent from the general prosecutor. These prosecutors, staff and employees as well as their close family members of this investigation body must successfully pass a review of their assets and their

⁴² Alternative options were discussed

⁴³ Venice Commission Interim Opinion Paragraph 45 and 128.

⁴⁴ Venice Commission Interim Opinion Paragraphs 84-85.

background, as well as periodic reviews of their financial accounts and telecommunications in accordance with the law. The Chief Prosecutor of this office shall be elected from the members of the office in accordance with the law.

4. Prosecutors are Albanian citizens appointed by the High Prosecutorial Council after finishing the School of Magistrates and after a passing an evaluation of their assets and their background in accordance with the law. Candidates are selected based on a transparent and open procedure, which ensures a merit based selection of the most qualified and reputable candidates. Additional criteria for their appointment can be regulated by law.⁴⁵

5. In exercising their competences, prosecutors are subject to the Constitution and the law.

6. Prosecutors have disciplinary liability in accordance with the law.

Article 44

After article 148 it is added article 148/a with the following content:

Article 148/a

1. The High Prosecutorial Council shall guarantee the independence, accountability, discipline, status and career of Prosecutors in the Republic of Albania.

2. The High Prosecutorial Council shall be composed of 11 members, six of which are prosecutors being elected by the prosecutors of all levels of the Prosecutors' office and five members elected by the Assembly by lawyers who are not prosecutors.

3. The criteria and transparent and open procedure for the selection and ranking of the candidates coming from the prosecutors is provided in the law. The lay members shall be selected among highly qualified lawyers, with no less than 15 years of professional experience, of high moral and professional integrity. Candidates must not have been punished before for a criminal offence. During the past 10 years the lay members shall not have held a political post in the public administration and a leadership position in a political party before their nomination.

4. The lay members shall be appointed from the proposal from the proposing bodies by the Assembly with three-fifth of all members. One shall be from advocates, one shall be from the notaries, one shall be a law professor, one shall be from the lay professors of the School of Magistrates and one shall be from civil society. The proposing bodies for lay members, for each vacancy, present to the Justice

⁴⁵ Venice Commission Interim Opinion Paragraph 86.

Appointment Council three candidates elected based on an open call and transparent process. The Justice Appointment Council ranks the candidates and forwards to the Assembly.

5. The Assembly shall vote separately for each group of candidates. When the Assembly fails to reach the three-fifths majority in the first voting, the proposing body shall make a new proposal within 15 days. The Justice Appointments Council shall provide an examination and ranking within 7 days of the submission of the new proposals. The Assembly shall vote on the new candidates within 7 days of the submission of the opinion. If this majority is not reached even in the second voting, the candidates ranked highest by the Appointments Council out of both rounds shall be deemed appointed.

6- The Chairperson of the High Prosecutorial Council is elected with the majority of all members at the first meeting of the Council from among the lay members. If a chairperson cannot be selected within the first meeting, the oldest prosecutor member shall select the chairperson by lot in the next meeting, which is opened. The mandate of the Chairperson shall end when his/her underlying mandate ends⁴⁶.

7. Members of the High Prosecutorial Council exercise this duty full time for a period of 5 years without the right to consecutive re-election. At the end of the mandate the prosecutor members return to their previous work. The lay members who before the appointment worked full time in the public sector, return to their previous work or if that is not possible, in positions equivalent to them.

Article 45

After article 148/a it is added article 148/b with the following content:

Article 148/b

1. The High Prosecutorial Council exercises these responsibilities:

- a) Appoints, evaluates, promotes and transfers prosecutors;
- b) Decides on disciplinary measures against prosecutors;
- c) Proposes to the Assembly candidates for Prosecutor General in accordance with the procedures prescribed by law;
- ç) Adopts rules of ethics for prosecutors and supervises their observance.

2. The High Prosecutorial Council,⁴⁷ prepares reports, informs the public and the Assembly on the state of the Prosecutor's Office and exercises other responsibilities as defined by law.

⁴⁶ Venice Commission Interim Opinion Paragraph 63.

⁴⁷ Venice Commission Interim Opinion Paragraph 88. Deleted wording 'strategic planning' as per VC opinion

Article 46

After article 148/b it is added article 148/c with the following content:

Article 148/c

1. The mandate of the member of the High Prosecutorial Council shall end upon:
 - a) Reaching the pension age;
 - b) Expiry of the 5 year mandate;
 - c) His/her resignation;
 - ç) dismissal according to the provisions of article 148/ç;
 - d) as a result of the procedures provided in article 179/b;
 - dh) establishing the incapacity to exercise the duties;
2. The expiry of the mandate of the member shall be declared upon a decision of the High Prosecutorial Council.
3. Where the position of the member remains vacant, the body having appointed the preceding member, shall, under Article 148/a, appoint the new member, the latter staying in office until the expiry of the member of the outgoing member.
4. The Chairperson of the High Prosecutorial Council, not later than 3 months prior to the termination of the mandate of the member, according to paragraph 1 subparagraph a) and b) as well as immediately in cases of termination of the mandate prior to the legal term, notifies the appointing body on the vacancy. The procedure for the appointment of the new member terminates not later than 60 days from the decision declaring the end of the mandate.

Article 47

After article 148/c it is added article 148/ç with the following content:

Article 148/ç

1. The member of the High Prosecutorial Council shall be disciplinarily liable and shall be dismissed upon decision of the Disciplinary Tribunal of Justice when:
 - a) Commits serious professional and ethical misconduct;
 - b) Is convicted with final court decision for commission of a crime;
2. The procedure for examination of disciplinary misconduct is regulated by law.

Article 48

After article 148/ç it is added article 148/d with the following content:

Article 148/d

Being a member of the High Prosecutorial Council shall not be compatible with duty in other state organs, as well as any other compensated professional activity, except for teaching and academic activities which furthers the development of legal doctrine. The term of the allowed professional activity as well as the amount of remuneration, against which this activity is exercised, shall be provided in the law. The exercise of this function shall not be compatible with being member of a political party or taking part in any public event organized by a political party, as well as with other activities which are incompatible with the duties of the member of the High Prosecutorial Council.

Article 49

Article 149 is amended as follows:

Article 149

1. The Prosecutor General is appointed by three-fifths of the members of Assembly from three candidates proposed by the High Prosecutorial Council. The High Prosecutorial Council shall select based on a transparent and open procedure and ranks three candidates on the most qualified and reputable candidates. If Assembly cannot appoint the Prosecutor General within 30 days of receiving the proposals from the High Prosecutorial Council, the highest ranking candidate is automatically appointed. The procedure for selection and appointment of the Prosecutor General is determined by law⁴⁸.
2. The Prosecutor General shall serve for a seven-year⁴⁹, non-renewable mandate.
3. The Prosecutor General shall be selected among highly qualified lawyers, with no less than 15 years of professional experience as lawyer, of high moral and professional integrity, that have graduated from the School of Magistrates or academic degree in law. The Prosecutor General must not have been punished before for a criminal offence. He/she shall not to have held a political post and a post in a political party during the last 10 years before running for this position.

⁴⁸ Venice Commission Interim Opinion Paragraph 93. Comments from roundtables and submissions regarding anti-deadlock mechanism for the appointment of Prosecutor General.

⁴⁹ Comments from roundtables to change the term of the mandate, with a preference for seven years.

Article 50

After article 149 it is added article 149/a with the following content:

Article 149/a

The Prosecutor General exercises these powers:

- a) Represents accusation in the High Court and the Constitutional Court, unless represented by prosecutors of the specialized prosecution office under article 148 paragraph 3 of the Constitution;
- b) Issues only written general guidance to prosecutors of the Prosecutor's Office, with the exception of prosecutors of the specialized prosecution office under article 148 paragraph 3 of the Constitution;
- c) Manages the Prosecutor's Office administration, with the exception of the administration of the specialized prosecution office under article 148 paragraph 3 of the Constitution;
- ç) proposes and administers the budget of the Prosecutor's Office with the exception of the budget for the specialized prosecution office under article 148 paragraph 3 of the Constitution;
- d)-reports to the Assembly on the situation of criminality;⁵⁰
- dh) exercises other powers defined by law.

Article 51

After article 149/a it is added article 149/b with the following content:

Article 149/b

1. The mandate of the Prosecutor General ends when:

- a) Reaches the age of 70;
- b) Expiry of the 7 year mandate;
- c) Resigns;
- ç) dismissal according to a procedure provided in article 149/c;
- d) as a result of the procedures provided in article 179/b;
- dh) establishing the incapacity to exercise the duties;

2. The termination of the mandate of the Prosecutor General is declared by decision of the High Prosecutorial Council.

⁵⁰ Comment from roundtables.

3. After the end of a 7-year mandate and upon his or her request, the Prosecutor General shall be appointed in the position he/she held before the appointment or as judge in the Court of Appeal.

Article 52

After article 149/b it is added article 149/c with the following content:

Article 149/c

1. The Prosecutor General shall be disciplinarily liable and shall be dismissed upon decision of the Disciplinary Tribunal of Justice when he/she:
 - a) Commits serious professional and ethical misconduct;
 - b) Is convicted with final court decision for commission of a crime;
2. The procedure for examination of disciplinary misconduct is regulated by law.

After part ten it is added part ten/1 with the following content:

Article 53⁵¹

After article 149/c it is added article 149/ç with the following content:

1. The Justice Appointments Council is responsible for verifying the fulfillment of legal requirements and professional and moral criteria of the candidates for the lay members of the High Judicial Council, for the lay members of the High Prosecutorial Council, for the High Justice Inspector, as well as for the members of the Constitutional Court appointed by the President of the Republic and the Assembly. The Justice Appointments Council examines and ranks the candidates.
2. The Justice Appointments Council meets whenever it is necessary.
3. The Justice Appointments Council is composed of the Chairperson of the Constitutional Court, the Chairperson of the High Court, the Chairperson of the High Administrative Court, the Chairperson of the High Judicial Council, the Chairperson of the High Prosecutorial Council,⁵² the Prosecutor General, the Chairperson of the National Chamber of Advocacy, the longest serving judge of the Constitutional Court, and the longest serving judge of the High Court.
4. The Chairperson of the High Judicial Council is Chairperson of the Justice Appointments Council, who creates working conditions for the operation of the

⁵¹ Alternative options were discussed

⁵² Comments from roundtables for removing the Minister of Justice

Justice Appointments Council.

5. Organization and the functioning of the Justice Appointments Council is regulated by law

Article 54

In article 161, after paragraph 2 it is added paragraph 3 with the following content:

3. If Albania enters into an agreement with the European Union to introduce the European Currency, the Bank of Albania shall transfer powers in accordance with the provisions of this agreement.⁵³

PART EIGHTEEN TRANSITORY AND LAST PROVISIONS

Article 55

Article 179 is amended as follows:

Article 179

1. Members of the Constitutional Court shall continue their activity as members of the—Constitutional Court, in accordance with the previous mandate. The composition renewal of Constitutional Court shall be as follows:

a) the new members who are due to replace the members whose mandate expires in 2016 shall be appointed, respectively, by the President of the Republic and by the Assembly, and they shall stay in office until 2025.

b) the new member who is due to replace the member whose mandate ends in 2017 shall be appointed by the meeting of the High Court ⁵⁴and shall stay in office until 2025.

c) the new members who are due to replace the members whose mandate ends in 2019 shall be appointed, respectively, by the President of the Republic and by the Assembly, and they shall stay in office until 2028.

ç) the new member who is due to replace the member whose mandate ends in 2020 shall be appointed by the meeting of the High Court and the High Administrative

⁵³ Venice Commission Interim Opinion Paragraph 12.

⁵⁴ The High Administrative Court will not exist until 2020. Hence the appointment of the member of the Constitutional Court in 2017 will be done without the participation of the High Administrative Court;

Court, and he/she shall stay in office until 2028.⁵⁵

d) the new members who are due to replace the members whose mandate ends in 2022 shall be appointed, respectively, by the President of the Republic, the Assembly and by the joint meeting of the High Court and the High Administrative Court, and they shall stay in office until 2031.

3. Members of the High Court shall continue their activities accordance with the previous mandate. The new members due to replace the members, whose mandate expires, shall be appointed under the provisions of this law.

4. The High Administrative Court shall be established on 01.01.2020⁵⁶. The appointments to the High Administrative Courts shall guarantee the partial renewal of this court. Detailed rules related to the organization and functioning shall be set by law. Until the establishment of the High Administrative Court, the Chairperson of the Administrative Panel of the High Court shall be member of the Justice Appointment Justice.

5. Until 31.12.2019, instead of the three High Administrative Court representatives to the Justice Disciplinary Tribunal, shall serve the Chairperson of the Administrative Panel of the High Court, as well as one judge from the Administrative Panel of the High Court and one judge from the administrative courts at first instance or appeal administrative court each selected by lot, under the lead of the Chairperson of the Justice Disciplinary Tribunal.

6. The High Council of Justice shall be established within 6 months from the entry into force of this law. Three judge members and two lay members of the High Judicial Council shall be appointed initially for a 3-years term, with the purpose of partial renewal of this body. The members of the High Council of Justice shall end their mandate after the establishment of the High Judicial Council, but not later than after all members of the High Judicial Council are selected as determined by law. Until the establishment of the High Judicial Council the oldest lay member in age of the High Council of Justice shall act as member of the Justice Appointment Council.

7. The Prosecutor General shall be appointed within two months after the High Prosecutorial Council is established, but no later than the date of the termination of the mandate of the Prosecutor General in office. The Prosecutor General shall continue his mandate until the appointment of the new Prosecutor General, in accordance with this law, unless that mandate is interrupted under Article 179/b.⁵⁷

8. The High Prosecutorial Council shall be established within 6 months from the entry into force of this law. Three prosecutor members and two lay members of the

⁵⁵ Venice Commission Interim Opinion Paragraph 24. Timing has been changed to reflect 9 year terms and not 12 year terms.

⁵⁶ Venice Commission Interim Opinion paragraphs 37 and 69.

⁵⁷ Venice Commission Interim Opinion paragraph 96.

High Prosecutorial Council shall be appointed initially for a 3-years term, with the purpose of partial renewal of this body. Until the establishment of the High Prosecutorial Council, the Justice Appointment Council shall function without the Chairperson of the High Prosecutorial Council. In case of a tie, the vote of the Chairperson of the Constitutional Court is decisive. The Ombudsman may participate as an observer in the meetings of the Justice Appointment Council until the Council is fully composed.

9. The first instance court and appeals court under Article 135 paragraph 3 shall be established within 2 months of the establishment of the High Judicial Council, in accordance with law. Upon the establishment of these two courts, the Serious Crimes Court and Serious Crimes Appeals Court shall cease to exist. The transfer of cases shall be done in accordance with the law. The existing judges of these courts shall be appointed within the new courts, unless they fail to pass their background check or asset review, or refuse to agree to the periodic reviews of their financial accounts and telecommunications as well as of their close family members. The specialized prosecution office under Article 148 paragraph 3 shall be established and prosecutors appointed within 2 months of the establishment of the High Prosecutorial Council, in accordance with the law. Upon the establishment of this office, the Serious Crimes Prosecution Office shall cease to exist. The transfer of investigations and cases shall be done in accordance with the law.

10. The amendments to articles 39 paragraph 2, 64 paragraph 4, 80/a, 122 paragraph 3, 161 paragraph 3, shall enter into force upon entry into force of the law adopted by the Albanian Assembly ratifying the accession treaty between the Republic of Albanian and the European Union'.⁵⁸

11. The High Justice Inspector shall be appointed within 3 months after the establishment of the High Prosecutorial Council. The transition period and manner of functioning of the existing inspectorates shall be regulated by law.⁵⁹

12. Former judges and prosecutors, who successfully undergo the transitional qualification assessment provided in Article 179/b, are qualified to become inspectors within the High Justice Inspector until 31 December 2026.⁶⁰

13. Judges and prosecutors who have not finished the School of Magistrate shall continue on duty and are subject to the transitional qualification assessment according to article 179/b.

⁵⁸ Venice Commission Interim Opinion paragraphs 9 and 12.

⁵⁹ Venice Commission Interim Opinion paragraph 67.

⁶⁰ This shall provide former judges or prosecutors to be appointed as inspectors only if they also pass the re-evaluation. This prevents judges and prosecutors who have been dismissed for cause from successfully applying.

Article 56

After article 179 it is added article 179/a with the following content:

Article 179/a⁶¹

1. The mandate of officials elected or appointed in the constitutional organs and the organs established by law, which was obtained prior to the entry into force of this law, shall terminate or become invalid, if it is ascertained that the elected or appointed person falls in the ranks of the subjects which are exempted from the right to be elected, under Articles 6/1 and 45, point 3, of the Constitution.
2. Within 30 days from entry into force of this law, the Assembly shall approve the law providing for the conditions and rules for guaranteeing the integrity of the organs elected, appointed or exercising public functions, in accordance with the procedure of Article 81, point 2 of the Constitution.

Article 57

After article 179/a it is added article 179/b with the following content:

Article 179/b

1. In accordance with the provisions of Annex 'Transitional Qualification Assessment of Judges and Prosecutors' all judges, including members of the Constitutional Court and High Court, all prosecutors, including the Prosecutor General, judges members of the High Council of Justice, prosecutors members of the High Prosecutorial Council, the Chief Inspector and the other inspectors of the High Council of Justice and all legal advisors of the Constitutional Court and High Court shall be, *ex officio*, shall be assessed and re-evaluated in order to re-establish public trust and confidence in these essential democratic institutions. Former judges or prosecutors, upon their request, may undergo the evaluation and re-evaluation process, if they fulfil the criteria set out by law.
2. Persons listed in paragraph 1 of this article who successfully pass the re-evaluation procedure shall be considered appointed judges and prosecutors. Persons listed in paragraph 1 of this article who did not act as judges or prosecutors for at least 3 years and who pass the re-evaluation shall undergo an one year training at the School of Magistrates under the conditions set out in the law. After successful completion of the training they shall be appointed as judges or prosecutors.

⁶¹ Article added following the recent approval of the constitutional decriminalization provisions.

3. The Independent Qualification Commission and the Specialized Chamber of the High Court are responsible for the implementation of the evaluation process for all subject provided in paragraph 1 of this article. Members of the Independent Qualification Commission and judges of the Specialized Chamber of the High Court shall be appointed for nine years without right of reappointment.

4. The Annex shall cease to be part of the Constitution on December 31 of the eleventh year after this law goes into effect, or upon the date of accession of the Republic of Albania to the European Union.⁶²

⁶² Venice Commission Interim Opinion Paragraphs 101 and 104. Re-evaluation judges shall be appointed for nine years with no right of reappointment, while the Annex will cease to exist after eleven years in order to provide room for appeals to be completed, which may be completed by the High Court at that time.

Annex

Transitional Qualification Assessment of Judges and Prosecutors⁶³

Article A

Measures to Establish Public Trust

1. In order to safeguard the rights of the citizens of Albania to equally and fairly access courts and to have crimes fairly prosecuted, but to address grounded concerns that this right is denied by the existing corruption in the system, criminal influence and the poor proficiency of a part of the judiciary or prosecution the application range of some articles of this Constitution, in particular provisions regarding privacy, to include Articles 36 and 37, provisions related to the burden of proof, and other provisions, to include Articles 128, 131, paragraph f, 135, 138, 140, 145 paragraph 1, 147/a paragraph 1, letter b), 148/b paragraph 1, letter b), 149/b paragraph 1, letter d), are limited in accordance with Article 17 of this Constitution, to the extent that all judges, including members of the Constitutional Court and High Court, all prosecutors, including the Prosecutor General, judge members of the High Judicial Council, prosecutorial members of the Prosecutorial Council, the Chief Inspector and the other inspectors of the High Council of Justice and legal advisors of the Constitutional Court and High Court, *ex officio*, as well former judges or prosecutors upon their request if they fulfil the criteria set out by law for re-evaluation, shall be assessed and re-evaluated. The assessment and re-evaluation shall cover all persons listed in this paragraph, regardless of whether they are on secondment or other leave from exercising their duties.⁶⁴

2. The assessment and re-evaluation shall be conducted by a transitional Independent Qualification Commission (Commission) and appeals shall be considered by a transitional Specialized Qualification Chamber (Appeals Chamber) which shall function within the High Court. After the Commission and the Appeals Chamber cease operations as provided in article 179/b of the Constitution, any remaining first instance assessments and re-evaluation shall be conducted by the High Administrative Court and any remaining appeals against this decision shall be conducted by the High Court.⁶⁵

3. An Independent Qualification Commission organized and functioning with two separate panels shall be established and a Qualification Assessment shall be

⁶³At the suggestion of the Venice Commission (e.g. Venice Commission Interim Opinion, Paragraph 101), many details have been moved from the Constitutional Annex to the implementing law.

⁶⁴Venice Commission Interim Opinion, Paragraphs 104-106.

⁶⁵Venice Commission Interim Opinion, Paragraph 117.

conducted at first instance by this organ.⁶⁶ Members in this Commission shall be appointed in accordance with this Annex.

4. A Specialized Qualification Chamber shall be established within the High Court and it is organized and functions with two separate decision-making panels which shall adjudicate as the last instance on final appeals of the Assessment.⁶⁷ Judges in this Specialized Qualification Chamber shall be appointed in accordance with this Annex. No High Court judges outside of the panels of the Specialized Qualification Chamber may decide appeals against the qualification assessment under this Annex.

5. The Commission and the Specialized Qualification Chamber shall both operate and decide independently and impartially according to the provisions of this Annex and of the implementing law. The organization and functioning of the Commission and Appeals Chamber, and the procedures of the qualification assessment, shall be regulated by law.

6. Once the persons provided in paragraph 1 of this article have passed the assessment as provided in this Annex, they are subject to the permanent accountability system regulated by the ordinary rules containing the Constitution and the Laws.⁶⁸

Article B

International Monitoring Operation

1. There shall be an international monitoring operation which shall provide transparency, certainty and safeguards against abuse during this transitional qualification assessment process.

2. The organization and functioning of the international monitoring operation shall be established in the framework of international agreements. Its powers shall be established in this annex and by law.⁶⁹

3. International Observers shall be experienced foreign lawyers who qualify to be a judge in their own country.⁷⁰ The Prime Minister of the Republic of Albania, in accordance with international legal framework or diplomatic relationships, shall formally appoint the international observers to this function.⁷¹ The mandate of an International Observer shall only be revoked for gross misbehaviour, based on the

⁶⁶Venice Commission Interim Opinion, Paragraph 117.

⁶⁷Venice Commission Interim Opinion, Paragraph 117.

⁶⁸Venice Commission Interim Opinion, Paragraph 102.

⁶⁹Venice Commission Interim Opinion, Paragraph 130.

⁷⁰Venice Commission Interim Opinion, Paragraph 133.

⁷¹Venice Commission Interim Opinion, Paragraph 132.

request of the international monitoring mission.⁷²

4. International Observers shall have the following duties and authority:⁷³

a. International Observers shall have immediate access to all information, people and documents necessary to monitor the appointment process for members at the Commission and judges of the Specialized Qualification Chamber.

b. International Observers shall have immediate access to all information, people and documents necessary to monitor the Qualification Assessment at all levels and in all stages.

c. International Observers shall be able to file findings and opinions with the Commission and the Specialized Qualification Chamber. In those findings, the International Observer may request that the Commission take evidence or may present evidence obtained from state bodies, foreign entities or private persons, in accordance with the law.⁷⁴

ç. When an International Observer has a sufficiently convincing indication that a decision by a panel of the Commission or Specialized Qualification Chamber is grossly inappropriate, ignores facts or important evidence, is not based in law, or results from improper influence, that observer may require the file to be immediately re-assigned to the other panel within the Commission or Specialized Qualification Chamber.⁷⁵

Article C
Independent Qualification Commission
and
Specialized Qualification Chamber

1. The Independent Qualification Commission shall consist of two public commissioners and two permanent first instance panels consisting of three members each. Public Commissioners shall represent the public interest before the Commission and Specialized Qualification Chamber, may request and present evidence and may appeal the decision of the first instance commission. They shall serve until the Commission ceases to exist but not later than December 31, 2025.⁷⁶

2. The Specialized Qualification Chamber shall consist of two permanent appeals panels consisting of three members each. They shall serve until the Specialized Qualification Chamber ceases to exist, but not later than December 31, 2025.

3. The Commission and Specialized Qualification Chamber shall both operate with

⁷² Venice Commission Interim Opinion, Paragraph 132.

⁷³ Venice Commission Interim Opinion, Paragraph 134.

⁷⁴ Venice Commission Interim Opinion, Paragraphs 133-134.

⁷⁵ Venice Commission Interim Opinion, Paragraphs 135.

⁷⁶ Venice Commission Interim Opinion, Paragraphs 102, 125-126.

accountability, integrity and transparency and with the objective of promoting an independent and competent system of justice free from corruption. The members of the Commission and judges of the Specialized Qualification Chamber shall have the status of a judge at the High Court.⁷⁷

4. All members of the Commission and judges of the Specialized Qualification Chamber, and the staff of both organs as set by law, must consent to the yearly disclosure of their assets, constant monitoring of their financial accounts and waiver of the privacy of their communication related to their work. All asset declarations shall become public.

5. All members of the Commission and the judges Appeals Chamber shall have a university degree in law or academic grade in law, and no less than fifteen years' experience as a judge, prosecutor, law professor, advocate, notary, attorney in ministries or public administration, or other legal profession related to the judiciary, and shall have a high reputation for integrity. Nominees for judges may not have been judges, prosecutors or legal advisors in the two years prior to their nomination. Nominees for judge shall not have been sentenced before in connection with the commission of a criminal offence. They shall not have held a political post in the public administration or a leadership position in a political party for the past 10 years before becoming a nominee.

6. Within one month of the entry into force of this Annex, the Ombudsperson shall conduct an open and transparent application process for members in the Commission and judges at Specialized Qualification Chamber and public commissioner. All candidates shall send applications and asset declarations in accordance with the law to the Ombudsperson. Within one month, the Ombudsperson shall assess whether the criteria are met and compile a list of qualified applicants and send that list to the Assembly. The Ombudsperson shall only exclude those applicants who are not qualified under the criteria under this Annex.⁷⁸

7. Within 30 days of receiving the pool, Assembly shall appoint with a 3/5 majority the members of the Commission and judges of the Specialized Qualification Chamber and the two Public Commissioners from the pool of qualified candidates provided by the Ombudsperson. If the Assembly fails to appoint all members, judges and public commissioners within 30 days, by the thirty-fifth day the President of the Republic shall select by public lot the members, judges or other commissioners.

⁷⁷Venice Commission Interim Opinion, Paragraphs 117-118.

⁷⁸ Venice Commission Interim Opinion, Paragraph 127. The method of selection is clarified and simplified: The Ombudsperson collects the names of applicants and checks to ensure that they are qualified under this Annex. He then forwards the qualified names to Parliament, which has 30 days to pick the judges of the Commission and Appeals Chamber and public commissioners. The President picks names out of a lot as a deadlock breaking mechanism, but also one that removes influence over the names.

Those selected shall be automatically appointed.⁷⁹

8. Members in the Commission and judges of the Appeals Chamber and Public Commissioners shall work full time and may not hold any other position or employment during their mandate.

9. The Commission and Specialized Qualification Chamber shall both have a budget, staff and facilities established by law sufficient to support their duties and the duties of the international observers.

10. The official language of the Commission and Specialized Qualification Chamber shall be Albanian and English, and both organs shall have translators and interpreters accordingly.

11. Members of the Commission and judges of the Specialized Qualification Chamber are subject to disciplinary liability in accordance with this Annex. The disciplinary cases shall be reviewed by a joint meeting of both panels of the Specialized Qualification Chamber, excluding any judges accused, in accordance with the law. Dismissal of the member or judge is only warranted for serious misconduct.⁸⁰

12. The member of the Commission and judges of the Specialized Qualification Chamber shall enjoy immunity in connection with the opinions expressed and the decisions made in the course of assuming their functions.⁸¹

13. The members, judges, public commissioner, international observers, staff, and their families shall be protected at highest level in accordance with the law.⁸²

Article Ç

Qualification Assessment

1. All officials subject to re-evaluation under Article A shall be subject to Qualification Assessment at the first instance by the Independent Qualification Commission and at the appeals instance by the Specialized Qualification Chamber in the High Court. They shall undergo an Asset Assessment under Article D, a Background Assessment under Article DH and a Proficiency Assessment under Article E. At any time, before or during the qualification assessment, an assessee may resign from their office and is not assessed any further. Assesseees who resign

⁷⁹ *Id.*

⁸⁰ Venice Commission Interim Opinion, Paragraph 128. The implementing law will elaborate a process similar to that which will be used in the Constitutional Court in its own disciplinary cases.

⁸¹ Added to ensure that judges in the Commission and Appeals Chamber are not subject to threats of prosecution for the written decisions or oral statements made while on duty. As judges of the High Court, the members of the Appeals Chamber are already covered under the normal constitution.

⁸² Venice Commission Interim Opinion, Paragraphs 128.

under this provision may no longer serve as a judge at any level, prosecutor, member of the High Judicial Council or High Judicial Inspector or High Prosecutorial Council, or Prosecutor General for the duration of ten years.

2. The Commission and Specialized Qualification Chamber shall publish their decisions and may publish information and take into account comments obtained from the public. They shall respect the balance between privacy and investigation needs, and shall guarantee the right to a fair trial. While a review by competent international bodies is available,⁸³ the Constitutional Court shall not have the competence to receive individual complaints from assesses dismissed as a result of the assessment.⁸⁴

3. Official bodies of the Republic of Albania shall cooperate with and disclose requested information to the Commission and Specialized Qualification Chamber, shall grant direct access to their databases and may provide opinions and proposals in accordance with the law.

4. The Commission, through its staff, public commissioner, members and international observers, shall review the assessee's background check questionnaire and declarations, may interview people named in the questionnaire or others, and shall cooperate with other state or foreign institutions to confirm the veracity and accuracy of the disclosure. The Commission and the international observers shall have direct access to all relevant government databases and files, if not classified as state secret, including the assessee's personal files, statistical data, files selected for evaluation, self-evaluations, opinions of supervisors, training records and complaints, verification of complaints, disciplinary decisions against the assessee, property and land registers, bank accounts, tax offices, car registration data bases, border control documentation as well as any other relevant documents.

5. In accordance with the law, the staff of the Commission shall compile a dossier of the reports, recommendations and files on the assets, background and proficiency assessments, and shall submit it to the Commission. The Commission shall review all three assessment dossiers and submissions from the assessee in accordance with procedures established by law, and shall decide, based on an assessment of all three reports and the information obtained.

6. The assessee shall have the right to appeal the final decision of the Commission to the Specialized Qualification Chamber in accordance with the law.⁸⁵

Article D

⁸³ Venice Commission Interim Opinion Paragraph 106.

⁸⁴ Venice Commission Interim Opinion Paragraph 103-105, Footnotes 38-39.

⁸⁵ Venice Commission Interim Opinion Paragraph 116. While the Commission will retain Article 6 qualities, there shall be no doubt that assessee's will have access to a chamber of the High Court, which is a specialized chamber of an ordinary court. This was one of the possibilities which the Venice Commission rapporteurs suggested.

Asset Assessment

1. Assesses shall be subject to declaration and audit of their assets with the purpose of identifying assessees who possess or have the use of assets greater than can be legitimately explained, or those assessees who have failed to accurately and fully disclose their assets and those of their families.
2. Assessee shall submit a new and fully detailed asset declaration in accordance with the law. The High Inspectorate for the Declaration and Audit of Assets and Conflict of Interests shall audit the asset declaration and submit to the Commission a report about the legitimacy of the assets and the accuracy and fullness of the disclosure, and may submit a recommendation about disciplinary measures, in accordance with the law.
3. Income shall only be considered legitimate if it has been declared and taxes have been paid. Legitimate income shall be defined by law.
4. If the assessee has assets greater than twice the amount justified by legitimate income, a presumption in favour of the disciplinary measure of dismissal shall be established which the assessee shall have the burden to dispel. For any criminal proceedings relating out of the procedure the burden of proof remains on the State.⁸⁶
5. If the assessee has not submitted the asset declaration in time or takes steps to inaccurately disclose or hide assets in his or her possession or use, a presumption in favour of the disciplinary measure of dismissal shall be established which the assessee shall have the burden to dispel. For any criminal proceedings relating out of the procedure the burden of proof remains on the State.

Article DH

Background Assessment

1. Assesses shall be required to submit a declaration and be subject to a background assessment with the purpose of identifying assessees with regular and inappropriate contacts with members of organized crime. Those who are members of organized crime shall be determined based on the available evidence, or on Albanian or foreign court decisions.⁸⁷
2. Assessee shall submit a detailed background questionnaire and declaration to the Commission for the period January 1, 2012 to December 31, 2015, as regulated by law. The questionnaire and declaration cannot be used as evidence in any

⁸⁶ Venice Commission Interim Opinion, Paragraph 121.

⁸⁷ Venice Commission Interim Opinion, Paragraph 122.

criminal case against the assessee.⁸⁸

3. If the assessee has regular and inappropriate contact with members of organized crime, a presumption in favour of the disciplinary measure of dismissal shall be established, which the assessee shall have the burden to dispel. For any criminal proceedings relating out of the procedure the burden of proof remains on the State.

4. If the assessee does not submit the background questionnaire or declaration within the deadline or takes steps to inaccurately disclose or hide contacts with members of organized crime, a presumption in favour of the disciplinary measure of dismissal shall be established, which the assessee shall have the burden to dispel. For any criminal proceedings relating out of the procedure the burden of proof remains on the State.

Article E

Proficiency Assessment

1. Assesses shall be subject to a proficiency assessment, with the purpose of identifying assessees with who are not qualified to perform their role and those who have deficiencies which can be remedied with education.

2. The Proficiency Assessment shall be conducted with the assistance of inspectors from the relevant inspection service at the time of the Assessment. The Proficiency Assessment for judges shall assess judicial capacity, organizational skills, written decisions, orders and judgments, ethics and commitment to judicial values, personal quality and professional commitment, based on standards provided by law. The Proficiency Assessment for prosecutors shall assess prosecutorial capacity, investigation, organizational skills, written decisions, orders and requests, ethics, decisions to not prosecute, and commitment to prosecutorial values, personal quality and professional commitment. The Proficiency Assessment for legal advisors shall assess legal research, written product, organizational skills, ethics, personal quality and professional commitment. The Proficiency Assessment shall not consider pending cases.⁸⁹

3. If the assessee has demonstrated inadequate knowledge, skill, judgment, or aptitude, or there is a consistent pattern of work inconsistent with the position, the deficiency shall be identified and a presumption in favor of the disciplinary measure of suspension with education to remedy that deficiency shall be established which the assessee shall have the burden to dispel. For any criminal proceedings relating out of the procedure the burden of proof remains on the State.

⁸⁸ Venice Commission verbal opinion, Venice Commission Plenary Session, December 18, 2015.

⁸⁹ Venice Commission Interim Opinion Paragraph 107.

4. If the assessee has demonstrated inadequate knowledge, skill, judgment, or aptitude, or there is a consistent pattern of work inconsistent with the position, but the deficiency cannot be remedied with education or training, a presumption in favor of the disciplinary measure of dismissal shall be established which the assessee shall have the burden to dispel. For any criminal proceedings relating out of the procedure the burden of proof remains on the State.

5. If the assessee acts to substantially prevent or confound his or her assessment, or has demonstrated such poor knowledge, skill, judgment, aptitude, or a consistent pattern of work which can threaten or diminish the rights of citizens, the assessee shall be considered inadequate and a presumption in favor of the disciplinary measure of dismissal shall be established which the assessee shall have the burden to dispel. For any criminal proceedings relating out of the procedure the burden of proof remains on the State.

Article E

First Instance Assessment

1. For each assessee, the staff of the Commission shall combine the files, reports and recommendations from the Asset, Background and Proficiency Assessments, and any submissions by the assessee and by the international observers. According to transparent criteria, one member of the assigned panel of the Commission shall be a Rapporteur.

2. The Rapporteur can seek additional information, and shall draft a proposed finding and disciplinary measure for the panel of the Commission. The assessee shall be given a copy of the proposed finding and disciplinary measure, and shall have within a deadline set by law the right to agree, object or to submit additional evidence.

3. The Panel shall provide the assessee with a hearing in accordance with the law.

Article F

Disciplinary Measures

1. If either the Commission or the Specialized Qualification Chamber determines that an assessee required disciplinary measures, the Panel shall issue a reasoned decision which orders either the disciplinary measure of one year suspension with education or the disciplinary measure of dismissal.

2. A reasoned decision ordering suspension with education identifies an assessee's deficiency, suspends the official with 60 % of the salary of a first instance judge, assigns the assessee to the School of Magistrates until the education

program starts and orders one year of education and testing available at the School of Magistrates, which is designed to remedy the deficiency. At the end of the education program, the suspended official shall be tested. The test is done with supervision of the International Monitoring Operation. Assessments failing the test are dismissed by the first instance commission and shall enjoy the appeal to the Specialized Qualification Chamber. Its decision shall be final.

3. A reasoned decision ordering dismissal has immediate effect, unless an appeal is filed. In the case of appeal the salary is 60 % of the salary of a judge in first instance. In the case of a successful appeal at the Specialized Qualification Chamber the remaining 40 % are paid, in the case the dismissal comes into effect the paid 60 % of the salary have to be reimbursed to the State. A final decision ordering dismissal has *ex lege* immediate effect.

4. An assessee filing an appeal of a disciplinary measure is suspended pending the decision of the Specialized Qualification Chamber.

5. If an assessee resigns, the assessee shall receive the pension immediately. The pension amount is reduced and takes into account to the years served by the official, and the years remaining until the standard pension age. The qualification assessment or appeal shall be immediately stopped, and the assessee may not be qualified to be a judge, prosecutor, or member of the High Judicial Council or High Prosecutorial Council or High Justice Inspector.

6. The dismissal of a judge or prosecutor does not grant an automatic ground for the re-opening of cases decided or prosecuted by the assessee, except in the cases based on which it can be requested revision.⁹⁰

Article G

Appellate Instance

1. The assessee and each of the Public Commissioners shall have the right to appeal to the appellate instance of the commission within the period provided by the law, unless the assessee resigns, retires or agrees to a report and recommendation. The Appeals Chamber enjoys the power to take specific fact finding steps and shall remedy any procedural errors of the Commission. The Specialized Qualification Chamber shall decide the case and may not transfer the case back to the Commission.⁹¹

2. The international observer takes part with the same rights like those in first

⁹⁰ Venice Commission Interim Opinion, Paragraph 123.

⁹¹ Venice Commission Interim Opinion Paragraph 117. The Specialized Appeals Chamber of the High Court shall be an ordinary court, and shall have final power to fact-find and issue decisions.

instance.⁹²

3. The Specialized Qualification Chamber shall uphold or modify the decision of the Commission in a reasoned, written decision. In cases of appeal by the Public Commissioner, it may not impose a more strict disciplinary measure without providing the assessee with sufficient notice to prepare and respond in a hearing.⁹³

⁹² Venice Commission Interim Opinion Paragraph 135.

⁹³ Venice Commission Interim Opinion Paragraph 106.