



## Albanian Law for Creating the Organizational Structure of the Judiciary

### REPUBLIC OF ALBANIA ASSEMBLY

#### LAW

No. 8436, dated 28.12.1998

### FOR THE ORGANISATION OF JUSTICE IN THE REPUBLIC OF ALBANIA

Based on Articles 81 and 83 point 1 of the Constitution of the Republic of Albania, on proposal of the Council of Ministers,

THE ASSEMBLY OF THE REPUBLIC OF ALBANIA DECIDED

CHAPTER 1

JUDICIAL POWER

Article 1

The judicial power is exercised only by courts, in conformity with the Constitution and powers given by law.

Article 2

The courts have the power to examine all penal, military penal, civil, administrative cases as well as any other case defined in the law.

Article 3

In the exercise of their functions judges are independent and subject only to Constitution and the laws.

Article 4

Prosecutors are organised and function as a centralised organ at the judicial system in all its levels.

The organisation and functioning of the prosecutor's office, as well as defence counsel, is regulated by specific laws.

CHAPTER II

ORGANISATION AND FUNCTIONING OF COURTS

Article 5

Courts of first instance, courts of appeal and the High Court exercise the judicial power.

Article 6

The courts of first instance give judgements according to rules provided in the codes of Procedures, where the composition of the judging body is also defined.

#### Article 7

The Courts of Appeal judge in the second level complaints against decisions of the first instance court.

The Courts of Appeal judge with a judging body composed of three judges.

#### Article 8

Military courts are organised and function within the judicial system according to powers defined in the law.

#### Article 9

Military courts are composed of courts of first instance and of appeal.

#### Article 10

The Military Court of Appeal examines in the second level complaints against decisions of the military courts of first instance. It judges with a judging body composed of three judges.

#### Article 11

The courts of first instance are organised and function in judicial districts in all the territory of the country. The territorial competencies and the centre for exercising the activity for each one of them is defined by Decree of the President of the Republic, on proposal of the Minister of Justice, after having received also the opinion of the High Council of Justice.

The Courts of Appeal function in zones defined by the President of the Republic, on proposal of the Minister of Justice, after having received also the opinion of the High Council of Justice.

There can be created by law courts of first instance or of Appeal also, for specific areas.

#### Article 12

A Decree of the President of the Republic defines the total number of judges of all judicial components, on proposal of the Minister of Justice, after having also received the opinion of the High Council of Justice.

#### Article 13

The High Court is the highest judicial authority, which has initial and reviewing jurisdiction.

The High Court has its seat in Tirana.

The organisation and functioning of the High Court is defined in specific law based on the Constitution.

#### Article 14

At the beginning of each year, the chairman of the court of appeal and chairman of the court of first instance define the distribution of judges in penal and civil houses of the court for the following year.

The house of civil cases includes also the judges of special judgement sections. When the size of court does not allow the organising of at least one civil house and one penal house, the cases are distributed equally among all of the judges.

In all courts of first instance and of appeal, the head-secretaries are also administrators who perform duties similar to those of the Chancellor of the High Court, as well as managing the Court's budget.

#### Article 15

The division of judicial cases in all of the components of the judicial system is done by lottery according to procedures defined in the law.

## Article 16

Judicial decisions can be subject to examination only on the basis of complaints or recourses in judicial way, according to the definitions of the codes of procedures or specific laws.

## Article 17

The Inspector's Office is created at the High Council of Justice.

The High Council of Justice nominates the inspectors who have the task to inspect courts of first instance and of Appeal in order to verify complaints of citizens and institutions, the organisation of judicial services, evidence the professional ability of judges in the meaning of Article 45 of this law, the work-load, and the courts' efficiency in general.

The Minister of Justice makes available his specialists to the group of inspectors to assist in performing the above-mentioned duties, except for those that concern the professional ability of judges.

Lawyers who fulfil the conditions to be appeal judges are nominated inspectors of the High Council of Justice.

They receive the same salary and other rights as an appeal judge.

The organisation and functioning of the Inspector's Office at the High Council of Justice are defined in the Regulation of the High Council of Justice.

## Article 18

The judicial power has a separate budget that it administers itself according to definitions provided for in specific law.

The High Council of Justice is a public juridical person and its activity is financed by the state budget as a separate line.

## CHAPTER III

### CONDITIONS TO BE ACCEPTED A JUDGE OF THE COURT OF FIRST INSTANCE AND OF APPEAL

## Article 19

Albanian citizens who meet the following criteria can be appointed judges:

- 1- Full juridical capacity to act.
- 2- A law degree.
- 3- Graduated from the Magistrates School.
- 4- No criminal record and good reputation.
- 5- No less than twenty-five years of age.

## Article 20

The High Council of Justice can appoint as judges persons that have not yet graduated from the Magistrates School if they meet the other criteria defined in Article 19 of this law and meet one of the following criteria:

- 1- They have been working for more than three years as lecturers in the Law Faculty or the Magistrates School, members of parliament, legal advisers to the Assembly, Presidency or Council of Ministers or specialists in the Ministry of Justice, High Court or General Prosecutor's Office.
- 2- Hold a degree from a long-term post-graduate qualification programme abroad that fulfils the requirements of the Albanian legislation or international agreements.

3- Have been working for five or more years as judges, assistant-judges, prosecutors, advocates, or notaries and have passed a professional qualification exam organised according to this article. Persons who are appointed judges according to point 3 shall be subject to a compulsory theoretical and practical, written and oral exam within six months from the day of appointment. The High Council of Justice shall organise the exam in co-operation with the School of Magistrates and Law Faculty of Tirana University.

#### Article 21

The High Council of Justice must announce the vacancies for judges.

#### Article 22

The High Council of Justice based on a competition appoints in post the candidates for judges. The procedures for selection and presentation of candidates are defined in the regulation of the High Council of Justice. The university graduation results, work-experience as lawyers, work-evaluations, post-graduate qualification, as well as any other objective data that shows the superiority of the candidate over other candidates is also considered in the valuation of the candidates that fulfil the criteria provided in Articles 19 and 20 of this law.

#### Article 23

Before taking the post the judges make this vow:

"I vow solemnly that during the exercise of my duty I will remain always faithful to the Constitution of the Republic of Albania, to the laws in force and will respect the rules of professional ethics."

The newly appointed judges make the vow before the judges of the organ where they are assigned to perform their task.

#### Article 24

The High Council of Justice appoints the court of appeal judges after they have been working for no less than five years in the courts of first instance and have manifested high ethical, moral and professional standards during the exercise of their duty.

The High Council of Justice appoints the chairmen and deputy chairmen of the courts of first instance and of appeal from the ranks of their judges.

#### Article 25

The judges can remain in post up to the age of 65.

### CHAPTER IV

#### THE STATUS OF JUDGES

#### Article 26

Judges enjoy immunity.

Judges of first instance and of appeal can be penally prosecuted only with the approval of the High Council of Justice. The judge can be detained or arrested only if caught committing the crime or immediately after having committed the crime. The competent organ notifies immediately the High Council of Justice. If the High Council of Justice does not give approval within 24 hours to send to court the arrested judge, the competent organ is obliged to release him.

#### Article 27

Judges cannot be removed from office except when:

1) resign;

- 2) reach the age of retiring;
- 3) are penally found guilty by means of a final decision of the court;
- 4) it is concluded that they are physically or mentally unable, or according to the criteria defined in Articles 45 or 48 of this law, it is reached the conclusion of their professional insufficiency;
- 5) the competent organ takes disciplinary measures according to cases provided for by law;
- 6) carry out actions or keep functions that are contrary to Articles 29 to 35 of this law. In the case when criminal proceedings are initiated with respect to a judge, he is suspended from post until a final decision is made. In the cases when incrimination is not proved by final decision of the court, the judge has the right to return to his/her previous post and receive the full salary from the time of suspension.

#### Article 28

Promotion and transfer of the judge from his post is done only with his/her approval except for cases provided for by this law. In case a court does not function normally because of temporary absence of judges or because of work overload, the High Council of Justice, on proposal of the Minister of Justice, delegates judges from one court to another for a period of no more than three months in a year even without the consent of the judge. At the end of this term, the judge returns to his/her previous post.

The High Council of Justice, on proposal of the Ministry of Justice, can appoint a judge to give judgements on a number of cases in another court of the same level, if judges are absent in this court.

#### Article 29

Judges cannot belong to political parties or participate in activities of political nature.

#### Article 30

The function of a judge is incompatible with every elected mandate, as well as every public or private function and other activity. Judges cannot participate in the managing or direction of civil or commercial companies personally or by means of representation.

#### Article 31

Judges cannot be experts or arbitrators of parties in arbitration.

#### Article 32

The judge cannot make declarations related to cases, make known opinions expressed during the hearings that have not yet received the form of a decision, declare the content of official acts or documents of a secret or of a personal nature.

#### Article 33

Judges must respect the solemnity of judgement during the judgement of cases and put on the special robes.

#### Article 34

Judges must preserve their dignity not allowing actions that compromise the profession, the organs of justice and their person in society.

#### Article 35

Judges are free to create associations or organisations to defend their rights and interests as well as professional training.

Judges are not allowed to go on strike.

#### Article 36

In order to guarantee order and security, a continuous police service is organised at the courts, which acts according to the rules of the judicial power.

#### Article 37

No judge is accountable in a civil case, which is related to the exercise of his professional duties, except for cases when this is expressly provided for in a specific law.

#### Article 38

Judges have the right to:

- 1- Have special protection for themselves, their families and property when they require such a thing for serious circumstances, or when it is deemed essential.
- 2- Have a free copy of the official gazette and legal journals.

#### Article 39

Judges enjoy an annual paid holiday of thirty days. The annual leave is taken in the months of July and August.

Judges who are performing urgent tasks during July and August, take the annual holiday at another time with an additional five days.

## CHAPTER V

### DISCIPLINARY RESPONSIBILITY OF JUDGES

#### Article 40

Judges have responsibility for disciplinary violations as well as for committing acts and behaviour that seriously discredits their figure and the authority of justice.

#### Article 41

It is considered as violation of discipline:

- 1- Committing actions that are incompatible with the function of a judge according to law.
- 2- Revealing the secret of investigation, counselling room or other data of intimate nature.
- 3- Grave or repetitive failures to act in carrying out the duty.
- 4- Failure to respect the rules of solemnity.
- 5- Unreasonable absence from work.
- 6- Committing indecent or amoral acts during and outside working hours.
- 7- Committing acts contrary to the regular carrying out of the duty or failure to carry out compulsory procedural acts when it does not constitute penal act.
- 8- Unreasonable failure to implement the disciplinary measure granted.

#### Article 42

These measures are taken for violation of discipline as well as other discrediting acts and behaviour:

- 1- Objection;

2- Objection with warning;

3- Salary reduction up to 25 % for a period of three-six months;

4- Suspension from office and transfer to a lower position within the court for a period of six months to one year;

5- Transfer to another court;

6- Removal from office.

#### Article 43

The High Council of Justice takes disciplinary measures against judges on the basis of the valuation of type and nature of their violation.

#### Article 44

The Minister of Justice starts the disciplinary proceeding against judges. The initiation of disciplinary proceeding can be done within three years from the date the violation was made. During the verification carried out by the inspectors, it is defined whether a violation of discipline occurred as defined in the law, type and importance of the violation, incrimination of the person, as well as data on which the deducted conclusions are based.

In any case the judge who has committed the violation must be heard. Verification of claims is compulsory.

The results of the verifications made, as well as documentary data related, are presented in a final act, which is made known to the judge who has committed the violation.

The materials are sent to the Minister of Justice and High Council of Justice.

The High Council of Justice before making its decision must hear in a hearing the claims of the parties. The full materials are made available to the judge ten days prior to the hearing. He has the right to defend himself or have a defense counsel during the hearing.

#### Article 45

The High Council of Justice, no less than once in two years, makes an evaluation of professional ability of judges, based on quality, work-load, speed of judgement, reputation and publication of legal articles as follows:

1- Very well

2- Well

3- Acceptable

4- Incapable

The inspector of the High Council of Justice who has prepared the draft-act of evaluation of professional ability communicates this to the respective judge in a preliminary way, and the judge has the right to present his claims within a term of eight days.

The judge has the right of complaint against the final act of evaluation to the High Council of Justice within ten days from notification. The High Council of Justice investigates the complaint applying the rules provided in the last paragraph of Article 44 of this law.

The valuation "incapable" is a reason for dismissal from work.

#### Article 46

The judge when dismissed from office for one of the reasons provided for in the Constitution, has the right to file a complaint to the High Court within 10 days from notification of the decision to the High Council of Justice. The United Panels judge the case.

## CHAPTER VI

## TRANSITORY PROVISION

## Article 47

In the case of dissolution of a court, the respective act of the competent organ must provide also the possibility of employing the judges in other posts within the justice system.

## Article 48

All judges of first instance who have been working as judges for less than 10 years will take a theoretical and practical, oral and written exam of professional qualification. The High Council of Justice in co-operation with the Albanian Magistrates

School and Faculty of Law of the Tirana University will organize the exam.

It will be held no later than June 1, 1999.

Independently from the definition of Article 27 of this law, judges that do not pass the exam are dismissed from office by decision of the High Council of Justice. They enjoy the right of complaint provided for by Article 46 of this law.

The notice and the topics for the exam shall be announced in the two newspapers with the widest distribution and shall be posted in the courts at least 6 months prior to the exam. Such modalities will be applied also for Article 20. This exam can be organized together with any exam provided in Article 20 of this law.

## Article 49

Law No. 8265, dated 18.12.1997 "On the Organization of Justice in the Republic of Albania" is abrogated.

## Article 50

This law enters into force 15 days after publication in the Official Journal.

CHAIRMAN

SKENDER GJINUSH

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