

Draft 24.09.2015

LAW

No __/2015

**ON SOME AMENDMENTS TO THE LAW NO 8417, DATED 21/10/1998
“CONSTITUTION OF THE REPUBLIC OF ALBANIA”, AS AMENDED**

In reliance on Articles 83, point 1, and 177, point 1, of the Constitution, upon the proposal of more than one fifth of the members of the Assembly,

**ASSEMBLY
OF THE REPUBLIC OF ALBANIA**

DECIDED:

The following amendments shall be affected to the law no 8417, dated 21/10/1998, “Constitution of the Republic of Albania”, as amended:

**PART ONE
BASIC PRINCIPLES**

Article 1

The phrase “European values” shall be inserted into the Preamble of the Constitution. The Preamble of the Constitution shall be amended to read as follows:

We, the people of Albania, proud and aware of our history, with responsibility for the future, and with faith in God and/or other universal values, with determination to build a social and democratic state based on the rule of law, and to guarantee the fundamental human rights and freedoms, with a spirit of religious coexistence and tolerance, with a pledge to protect human dignity and personhood, as well as for the prosperity of the whole nation, for peace, well-being, culture and social solidarity, with the centuries-old aspiration of the Albanian people for national identity and unity, with a deep conviction that European values, justice, peace, harmony and

cooperation between nations are among the highest values of humanity, Decide this Constitution:

Article 2

The fourth paragraph shall be inserted in Article 2, next to third paragraph, to read as follows:

4. "The Republic of Albania participates in the European Union to jointly assume along with other member states the state powers, based on an agreement ratified with majority of all Members of Assembly"

Article 3

Point 4 shall be inserted in Article 12, next to point 3, to read as follows:

4. "The military forces of the allied states may be deployed and pass through the Albanian territory, as well as the Albanian military forces may be dispatched abroad, upon a decision of the Council of Ministers in compliance with the ratified international agreements".

Article 4

The phrase "sexual orientation" shall be added up in Article 18, point 2, next to the phrase "religious and philosophical". Article 18, point 2 shall be amended as follows:

"No one shall be discriminated against unfairly due to such causes as gender, race, religion, ethnicity, language, political, religious or philosophical conviction, sexual orientation, economic, educational, social situation or parental affiliation".

Article 5

Article 39, point 2, shall be amended as follows:

“Extradition shall only be permitted if explicitly provided for in the international agreements where the Republic of Albania is a party, only upon judicial decision, as well as in case it is provided by the legislation of the European Union”.

Article 6

Article 43 shall be amended as follows:

“Anyone shall be entitled to file a complaint against a judicial decision before a higher court provided in case the court decision is final. The law can provide differently in cases of minor significance or value.

Article 7

Point 4 shall be added up in Article 64 to read as follows:

4. “Albanian citizens shall elect their representatives to the European Parliament by direct voting.”

Article 8

Article 80/1 shall be added up next to Article 80 to read as follows:

80/1. “The Council of Ministers shall report to the Assembly on the decisions being prepared in the context of participating at the institutions of European Union, whereof the Assembly shall draw conclusions and draft resolutions”.

Article 9

Point 3/1 shall be added up next to point 3 in Article 109 to read as follows:

3/1. “This right shall be mutually recognised to the European Union citizens being resident in Albania, under the legislation of the European Union and the rules set out in the Electoral Code”.

Article 10

Article 122 point 3, shall be repealed.

Article 11

Point 2/1 shall be added up next to point 2 in Article 122 to read as follows:

2/1. "The European Union law shall prevail over the domestic law of the Republic of Albania".

Article 12

Paragraph 2 shall be added up next to paragraph g) in Article 131 to read as follows:

"The Constitutional Court cannot declare unconstitutional a law approved by Assembly to the effect of revising the Constitution".

Article 13

Point 2/1 shall be added up next to point 2 in Article 161 to read as follows:

2/1. "The Bank of Albania shall, in compliance with the agreements with the European Union, delegate to the institutions of this Union powers from those provided for in point 1 of this Article".

PART EIGHT

CONSTITUTIONAL COURT

Article 14

Paragraph 3 shall be added up to Article 124:

Article 124

1. The Constitutional Court shall guarantee the observation of the Constitution and make its final interpretation.
2. The Constitutional Court shall be subject only to the Constitution.
3. The Constitutional Court shall have a separate budget, which it administers independently.

Article 15

Article 125 shall be amended as follows:

Article 125

1. The Constitutional Court shall consist of 9 (nine) members, from which three (3) shall be appointed by the President, three (3) members by the Assembly of Albania and three (3) members shall be elected by the joint meeting of the High Court and the High Administrative Court. The members being appointed by the President and the Assembly shall be selected from the list drafted by the Justice Appointments Council. The appointment procedure of the members of the Constitutional Court shall be foreseen by law.

2. The judges of the Constitutional Court shall be appointed for a 12year mandate without the right to re-appointment and they shall be selected out of the ranks of the lawyers of at least 15 years' experience as judges, prosecutors, advocates, law professors, senior employees in the public administration, with a renowned activity in theconstitutional, human rights and other areas of law. The candidates shall not have been sentenced beforein connection with the commission of a criminal offence and they shall not have been involved in the leading forums of the political parties. The detailed criteria for the appointment of the members of the Constitutional Court shall be provided for by law.

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

4.The Chairman of the Constitutional Court shall be elected by secret voting, by the absolute majority of the members of the Constitutional Court, for a period of 4 years, without the right to re-election. The election procedure of the Constitutional Court Chairman shall be provided for by law.

5. The Constitutional Courtjudge shall continue to stay in office until the appointment of his successor.

Article 16

Article 126 shall be 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.

Article 17

Article 127 shall be amended as follows:

Article 127

1. The mandate of Constitutional Court judges shall end, upon:
 - a) reaching the age of 70 years;
 - b) the expiry of the 12 year mandate;
 - c) his resignation;
 - ç) being declared incapable to act by final court decision;
 - d) being sentenced by final judicial decision in connection with the commission of a crime or by a final decision in a disciplinary procedure;
2. The end of the mandate of the Constitutional Court member 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 125/1 shall appoint a new judge, the latter staying in office until the expiry of the mandate of the outgoing judge.
4. Where the mandate of the judge ends due to one of the causes set out in subparagraphs c), ç) and d) of paragraph 1 of this Article or as a consequence of the disciplinary violation under Article 128, the procedure for appointing the next judge shall start immediately and it shall end within 60 days since the declaration of the end of the mandate upon the decision of the Constitutional Court.

Article 18

Article 128 shall be amended as follows:

Article 128

The Constitutional Court member shall be disciplinarily liable under the law.

Article 19

Article 128/a shall be added up next to Article 128 to read as follows:

Article 128/a

In the case of the member of the Constitutional Court resigning, he shall submit his resignation to the Chairman of the Constitutional Court, the latter immediately informing the appointment body to the effect of having the vacancy filled in under Article 125.

Article 20

Article 129 (no amendment)

The Constitutional Court judge shall assume office after swearing in before the President of the Republic.

Article 21

Article 130 shall be amended as follows:

Article 130

Being a Constitutional Court judge shall not be compatible with any other compensated professional activity, unless otherwise provided by law.

Article 22

Letter f in Article 131 shall be amended as follows:

f) final examination of the complaints of individuals against judicial acts and the acts of the public power, impairing the fundamental rights and freedoms guaranteed by the Constitution, following exhausting the entire legal remedies for the protection of these rights, unless provided elsewhere by the constitution.

Article 23

In Article 131 letter g) shall be added with the following content:

The Constitutional Court shall decide on:

g) examination of jurisdictional, as well as material and functional power disputes between the High Court and the High Administrative Court, as well as between the Constitutional Court itself and the High Administrative Court.

Article 24

Article 132 shall be amended a follows:

Article 132

1. The decisions of the Constitutional Court shall be final and binding forenforcement.
2. Unless otherwise provided by the law, the decisions of the Constitutional Court shall, normally, enter in force on the day of their publication in the Official Journal. The Constitutional Court may decide that the law or any other normative act be repealed on another date. The minority's opinion shall be published along with the decision.

Article 25

Article 133 (no amendment)

1. The admission of complaints for adjudication shall be decided by a number of judges as determined by law.
2. The Constitutional Court shall decide with the majority of all its members.

Article 26

Article 134 shall be amended to read as follows:

Article 134

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 parliament;
 - ç) Ombudsman;
 - d) Head of High State Audit;
 - dh) any court, in the event of Article 145, point 2, of this Constitution;
 - e) Personal Data Protection Commissioner;
 - ë) Commissioner against Discrimination;
 - f) High Judicial Council and High Prosecutorial Council;
 - g) local governance units;
 - gj) religious communities forums;
 - h) political parties and their organisation;
 - i) individuals.

2. The entities provided for in sub-paragraphs ç, d, 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.

PART NINE

COURTS

Article 27

Article 135 shall be amended to read as follows:

Article 135

1. The judicial power shall be assumed by the High Court, High Administrative Court, as well as by the Appeal Court, first instance courts, which shall be set up by law.
2. The administrative adjudication shall be organised in two instances and it shall encompass the Administrative Court of First Instance and the High Administrative Court.
3. The Assembly may establish specialized courts; however, under no circumstances shall it establish extraordinary courts.

Article 28

Article 136 shall be amended to read as follows:

Article 136

1. The members of the High Court and High Administrative Court shall be appointed by the President of the Republic, upon the proposal of the High Judicial Council, with a 12 year mandate, without the right to re-appointment.
2. The members of the High Court and High Administrative Court shall be selected from the ranks of the judges with at least 15 years' experience and from among the renowned lawyers with not less than 20 years' experience having worked as advocates, law professors, or in the senior public administration. They shall not have been sentenced earlier in connection with the commission of a criminal offence, as well as not be involved with the leading forums of the political parties. 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.

3. The Chairman of the High Court and that of the High Administrative Court shall be elected for a 5-year period without the right to re-election, by secret voting and by the absolute majority of the members. The procedure of election shall be provided for by law.

4. The other judges shall be appointed by the High Judicial Council.

5. Judges may only be Albanian citizens with higher legal education. The selection conditions and procedures shall be set out by law.

Article 29

Article 137 shall be amended to read as follows:

Article 137

1. The judges shall enjoy immunity in connection with the opinions expressed and decisions made in the course of assuming their functions.

2. The judges shall be disciplinarily liable under the law.

Article 30

Article 138 shall be amended to read as follows:

Article 138

The time of stay in office for judges cannot be restricted, unless provided for differently in the Constitution. The salary and other benefits cannot be reduced, except in cases of a sanction given to the judge.

Article 31

Article 139 is changed as follows:

1. The mandate as High Court or High Administrative Court judge shall end, upon:

- a) reaching the age of 65 years;
- b) the expiry of the 12 year mandate;
- c) his resignation;
- ç) being declared incapable to act upon final court decision;
- d) being sentenced by final court decision in connection with the commission of a crime.

2. The end of the mandate of the High Court or High Administrative Court member shall be declared upon the decision of the High Court or High Administrative Court respectively.

3. Where the position of a judge remains vacant, the body having appointed the preceding judge under Article 136/1 shall appoint a new judge, the latter staying in office until the expiry of the mandate of the outgoing judge.

4. Where the mandate of the judge ends due to one of the causes set out in subparagraphs c), ç) and d) of paragraph 1 of this Article as well as a consequence of the disciplinary violation, the procedure for appointing the next judge shall start immediately and it shall end within 60 days since the declaration of the end of the mandate upon the decision of the High Court or High Administrative Court.

Article 32

Article 139/a shall be added next to 139 to read as follows:

Article 139/a

Where the member of the High Court or High Administrative Court resigns, he shall submit his resignation to the Chairman of the High Court or High Administrative Court, the latter immediately informing the appointment body, while the latter filling in the vacancy within 60 days.

Article 33

Article 140 repealed

Article 34

Article 141 shall be amended to read as follows:

Article 141

The High Court and the High Administrative Court shall have revising jurisdiction and ensure the unified implementation of the law by the lower courts. Falling under its scope of their jurisdiction shall be the judicial matters being examined by the lower courts, except those matters falling under the jurisdiction of the Constitutional Court.

Article 35

Article 142 (no amendment)

1. Judicial decisions must be reasoned.
2. The High Court and High Administrative Court must publish its decisions as well as minority opinions.

3. The state bodies are obliged to execute judicial decisions.

Article 36

Article 143 shall amended to read as follows:

Article 143

Being a judge shall be compatible with no other compensated professional activity, unless otherwise provided by law.

Article 37

Article 144 repealed (incorporated into Article 147)

Article 38

Article 145 (no amendment)

1. Judges are independent and subject only to the Constitution and the laws.
2. When judges find that a law comes into conflict with the Constitution, they do not apply it. In this case, they shall suspend the proceedings and send the case to the Constitutional Court. Decisions of the Constitutional Court are binding for all courts.
3. Interference with the activity of the judges entails liability according to law.

Article 39

Article 146 (no amendment)

1. Courts shall render their decisions in the name of the Republic.
2. The judicial decisions shall, under all circumstances, be announced publicly.

Article 40

Article 147 shall be amended to read as follows:

Article 147

1. The High Judicial Council shall guarantee the independence, accountability as well as appropriate functionality of the judicial power in the Republic of Albania
2. The High Judicial Council shall be composed of 11 members. Six of the members are judges being elected by the judges of all levels of the judicial power. The criteria and procedure of election of the judge members shall be regulated by law. Five other members come from: from the legal profession, 1

member;from law professors, 2 members;from lay professors of the School of Magistrates, 1 member; and from the civil society, 1 member. The lay members shall be appointed by the Assembly with three fifth of all the members and based on the proposals from the respective structures and the opinion of the Justice Appointments Council.

3. 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 Appointments Council shall provide an opinion 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 of the Appointments Council. If this majority is not reached even in the second voting, the candidates ranked highest by the Appointments Council shall be deemed appointed.
4. The Minister of Justice shall attend the meetings of the High Judicial Council as an observer. The Minister of Justice may request the initiation of the investigation of disciplinary misconduct against judges.
5. 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.
6. The Chairman of the High Judicial Council is elected in the first meeting of the Council from the ranks of the lay members by a 2/3 vote of all members. When in the first voting, the High Judicial Council does not reach a two-thirds majority, within 7 days from the first voting,a second voting shall be held. If even in the second voting this majority is not reached, the Chairman of the High Judicial Council is elected by a simple majority within 7 days. The mandate of the Chairman shall match that of the member of the High Judicial Council.

Article 41

Article 147/a shall be added up next to Article 147 to read as follows

Article 147/a

1. The High Judicial Council shall exercise the following powers:
 - a) Appoints, evaluates, promotes and transfers judges, except judges of the Constitutional Court;
 - b) decides on disciplinary measures on judges, 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.
 - d) Approves the rules of judicial ethics and monitors their observation.
 - e) Directs and manages the administration of the courts;
 - f) Proposes and administers the budget of the courts;
2. The High Judicial Council shall do the strategic planning for the judicial system, reports publicly and before the Assembly on the state of the judicial system and exercises other powers defined by law.

Article 42

Article 147/b shall be added up next to Article 147/a to read as follows:

Article 147 / b

1. The mandate of the member of the High Judicial Council shall end upon:
 - a) reaching the pension age;
 - b) expiry of the 5 year mandate;
 - c) his resignation;
 - ç) being convicted upon final judicial decision in connection with the commission of a crime or by a final disciplinary decision;
 - d) is declared by the court unable to fulfil the function.
2. The expiry of the mandate 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. Where the mandate of the member ends due to the causes provided for in points c), ç) and e) of this Article and due to the disciplinary violations under Article 147/c, the appointment procedure for the new member shall start immediately and end within 60 days since the entry into effect of the decision declaring the end of the mandate of the preceding member.

5. Where a member of the High Judicial Council resigns, he shall submit his resignation to the Chairmen of the High Judicial Council, the latter shall inform forthwith the appointment body, the latter filling in the vacancy under Article 147.

Article 43

Article 147/c shall be added next to Article 147/b to read as follows:

Article 147 / c

The member of the High Judicial Council shall be held disciplinarily liable under the law.

Article 44

Article 147/ç shall be added next to Article 147/c to read as follows:

Article 147/ç

Being a High Judicial Council member shall be compatible with no other compensated professional activity, unless otherwise provided by law.

Article 45

Article 147/d shall be added next to Article 147/ç to read as follows:

Article 147/d

1. The High Inspectorate of Justice shall be responsible for investigating the disciplinary violations and complaints against the judges, prosecutors, members of the High Judicial Council, High Prosecutorial Council and Prosecutor General, as well as for the initiation of the disciplinary proceedings against them. The High Inspectorate of Justice shall also be responsible for inspecting the courts and prosecution offices.

2. The High Inspectorate of Justice shall be composed of 5 members, 3 coming from the judiciary and 2 from prosecution office. They shall be appointed by the Assembly with three-fifths of all the members, from among the candidates selected by the High Judicial Council and the High Prosecutorial Council.

3. The High Judicial Council shall select and rank six candidates from among the ranks of the judges or former judges with at least 20 years' experience as a judge, demonstrating good performance and high integrity, based on the proposals of the judges. The selection and ranking procedure for the candidates shall be regulated by law.

4. The High Prosecutorial Council shall select and rank four candidates from among the ranks of the prosecutors and former prosecutors with at least 20 years' experience as prosecutors, demonstrating good performance and high integrity, based on the proposals of the prosecutors. The selection and ranking procedure for the candidates shall be regulated by law.
5. The Assembly shall vote separately for each group of candidates. Where in the first voting the Assembly does not reach the majority of three-fifths for any of the candidates of each group, the candidates ranked on the first three positions by the High Judicial Council and first two positions by the High Prosecutorial Council shall be deemed appointed.
6. The members of the High Inspectorate of Justice shall have the status of the High Court member.
7. The candidates for the High Inspectorate of Justice shall be subject to a thorough verification of the property, integrity and their past.
8. The procedures for making the decisions by the High Inspectorate of Justice shall be regulated by law.
9. The Minister of Justice shall attend the meetings of the High Inspectorate of Justice as an observer and he may request the initiation of the investigation of the disciplinary misconduct against judges, prosecutors, members of the High Judicial Council, High Prosecutorial Council, Prosecutor General as well as the conduct of inspection and verification of complaints.
10. The members of the High Inspectorate of Justice shall assume their office on full time basis for a period of nine years, without the right to immediate re-election. Upon the expiry of the mandate, the members shall return to their previous working positions.
11. The Inspector General of the High Inspectorate of Justice shall be elected from among the ranks of the judge members with two-thirds of the votes of the members of the Inspectorate. Where in the first voting the majority of two-thirds is not reached, a second voting shall occur within 7 days from the first voting only for the candidate having obtained more votes in the first voting. Where this majority is not obtained in the second voting, the Inspector General shall be elected by the Assembly by simple majority within 7 days.
12. The Inspector General shall preside over the meetings of the High Inspectorate of Justice and it shall coordinate and supervise the activity of the administration.

Article 46

Article 147/dh is added after article 147 / d, with this content

Article 147/dh

1. The mandate of the member of the High Inspectorate of Justice ends when that member:

- a) Reaches the age of retirement;
- b) Ends the mandate of 9 years;
- c) Resigns;
- ç) Is declared by the court unable to fulfil the function;
- d) Is punished by a final court decision for committing a crime or by a final decision in a disciplinary procedure.

2. The end of the mandate of a member is declared by decision of the High Inspectorate of Justice. When a member of the High Inspectorate of Justice resigns, he submits it to the Inspector General, who shall immediately notify the appointing authority to fill the vacancy in accordance with article 147 / d, item 2/3/4.

3. When the seat of the member remains vacant, the body that has appointed the previous member, according to Article 147 / d, shall appoint a new member, who remains in office until the end of the mandate of the outgoing member.

4. When the member's mandate is terminated for reasons provided in items c), ç) and d) of this Article or for disciplinary offenses according to Article 147/e, the procedure of appointment of the new member begins immediately and ends within 60 days from the date of entry into force of the decision declaring the end of the mandate of the previous member.

Article 47

Article 147 / e is added after Article 147 / dh, with this content:

Article 147/e

A member of the High Inspectorate of Justice bears disciplinary responsibility according to law. The inspection in this case is done by the Minister of Justice.

Article 48

Article 147/ë is added after Article 147/e, with this content:

Article 147/ë

Being a member of the High Inspectorate of Justice is incompatible with any other compensated professional activity, unless provided otherwise by law.

Article 49

Article 147/f is added after Article 147/ë with this content:

Article 147/f

1. The Disciplinary Tribunal of Justice reviews the cases of disciplinary violations and takes disciplinary measures against members of the High Judicial Council, the High Prosecutorial Council and the Prosecutor General, the High Inspectorate of Justice and Independent Qualification Commissioners and their staff, and considers appeals against disciplinary measures imposed on judges and prosecutors by the High Judicial Council and the High Prosecutorial Council.
2. The Disciplinary Tribunal consists of the Chairman of the Constitutional Court, the Chairman of the High Court, the Chairman of the High Administrative Court, the Prosecutor General, the Minister of Justice, the Chairman of the National Chamber of Advocacy, the oldest member of the Constitutional Court, the oldest member of High Court and the oldest member of the High Administrative Court.
3. The Chairman of the Constitutional Court is the Chairman of the Disciplinary Tribunal of Justice. The Chairman of the High Court is Vice Chairman of the Disciplinary Tribunal of Justice.
4. Organization and functioning of the Disciplinary Tribunal of Justice is regulated by law.
5. The appeals against decisions of the Disciplinary Tribunal shall be adjudicated by the Constitutional Court.

PART TEN

PROSECUTOR'S OFFICE

Article 50

Article 148 is changed as following:

Article 148

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. Prosecutor's office is an independent body and it functions on the principle of decentralization, according to the law.
3. In the exercise of their powers, prosecutors are subject to the Constitution and laws.
4. Prosecutors are appointed by the High Prosecutorial Council upon proposal of the High Prosecutorial Council after finishing the School of Magistrates and after a passing an evaluation and audit of their assets and their background.
5. Prosecutors have disciplinary liability in accordance with the law.

Article 51

Article 148/ a is added after Article 148 with this content:

Article 148/a

1. The High Prosecutorial Council is responsible for issues of the status and career of prosecutors. Elements of the status, modes of assessment and professional development of prosecutors are regulated by law.
2. The High Prosecutorial Council consists of 11 members. Six of them are prosecutors elected from among prosecutors at all levels of prosecution. The criteria and procedure for selecting the prosecutor members shall be regulated by law. Five other members come from: advocacy, one member; from professors of law, two members; from teachers of the School of Magistrates, one member; and from civil society, one member. The non-prosecutor members are appointed by the Assembly by three-fifths of all members, based on proposals from the relevant structures and the opinion of the Justice Appointments Council.

3. The Assembly votes separately for each group of candidates. In the event that the Assembly, in the first voting, fails to reach the three-fifths majority, the proposing structure makes a new proposal within 15 days. The Appointments Council gives a new opinion within 7 days from the submission of new proposals. The Assembly votes on the new nominations within 7 days from the submission of the opinion of the Appointments Council. If even in the second voting the majority is not reached, the candidate ranked highest by the Appointments Council is considered appointed.

4. The Minister of Justice takes part in meetings of the Prosecutorial Council as an observer. The Minister of Justice may request the initiation of the investigation of disciplinary misconduct against prosecutors.

5. 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.

6. The Chairman of the High Prosecutorial Council is elected at the first meeting of the Council from among the lay prosecutor members by 2/3 of the votes of all members. When in the first voting, the High Prosecutorial Council does not reach the two-thirds majority, within 7 days from the first voting there is a second voting. If even in the second voting this majority is not reached, the Chairman of the High Prosecutorial Council is elected by simple majority within 7 days.

Article 52

Article 148/b is added after Article 148/a with this 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 drafts strategic plans for the Prosecutor's Office, reports publicly and before the Assembly on the state of the Prosecutor's Office and other responsibilities defined by law.

Article 53

Article 148/c is added after Article 148/b with this content:

Article 148/c

1. The Prosecutor's Office of the Special Anti-Corruption Structure is responsible for the criminal prosecution and representation of accusation against judges, prosecutors and senior officials, as established by law, at the Anti-Corruption Court of First Instance and the Court of Appeal.
2. Prosecutors of the Special Anti-Corruption Structure are independent.
3. Prosecutors of the Special Anti-Corruption Structure must have 10 years of experience as prosecutors, should not be convicted, should have high reputation for integrity, and must complete a statement and successfully pass a review of their assets and their background, as well as periodic reviews of their financial accounts and telecommunications as well as of their close family members.
4. Prosecutors of the Special Anti-Corruption Structure shall be appointed for a term of 10 years by the High Prosecutorial Council.
5. The National Bureau of Investigation conducts investigations under the direction of prosecutors of the Prosecution Office of the Special Anti-Corruption Structure.

Article 54

Article 149 is changed as following:

Article 149

1. The Prosecutor General is appointed by three-fifths of members of Parliament, upon the proposal of the High Prosecutorial Council and with the opinion of the Justice Appointments Council, for a 9-year term with no right of re-appointment on duty. The procedure for selection and appointment of the Prosecutor General is determined by law.
2. The prosecutor general shall be selected among highly qualified lawyers, with no less than 15 years of professional experience, of high moral and professional

integrity, that have graduated from the school of magistrates or have a university degree in law at the master's level or above in a reputable university in Albania or abroad. He must not have been punished before for a criminal offence and not to have held a political post or a post in a political party during the last 10 years before running for the position of Prosecutor General.

3. The Prosecutor General bears disciplinary responsibility under the law.

4. The Prosecutor General exercises these powers:

- a) Represents accusation in the High Court and the Constitutional Court;
- b) Issues only written general guidance to prosecutors of the Prosecutor's Office, with the exception of those of the Special Anti-Corruption Structure;
- c) Represents the Prosecutor's Office before foreign countries, with the exception of the Special Anti-Corruption Structure;
- ç) Manages the Prosecutor's Office administration, with the exception of the Special Anti-Corruption Structure;
- d) Proposes and administers the budget of the Prosecutor's Office;
- dh) Makes the strategic planning for the Prosecutor's Office, reports publicly to the Parliament on the state of the Prosecutor's Office, and exercises other powers defined by law.

Article 55

Article 149/a is added after Article 149 with this content:

Article 149/a

1. The mandate of the Prosecutor General ends when:

- a) Reaches the age of 70;
- b) Resigns;
- c) Is declared by the court unable to fulfil the function;
- ç) Is convicted with a final decision for a criminal offense or by a final decision in a disciplinary procedure.

2. The termination of the mandate of the Prosecutor General is declared by decision of the High Prosecutorial Council or occurs after a decision of the Disciplinary Tribunal that the Prosecutor General has committed a serious disciplinary offense.

3. After the end of a 9-year mandate, the Prosecutor General shall be appointed as a judge in the Court of Appeal.

Part Ten/1 is added after Part Ten with this content:

Article 56

Article 149/b

1. The Justice Appointments Council is responsible for verifying the fulfilment of legal requirements and professional and moral criteria of lay members of the High Judicial Council, lay members of the High Prosecutorial Council, the candidate for Prosecutor General as well as the candidates for members of the Constitutional Court. In the exercise of its responsibilities, the Justice Appointments Council examines and ranks the candidates proposed by the proposing institutions and advises the Assembly and the President in making appointments.
2. The Justice Appointments Council meets whenever it is necessary.
3. The Justice Appointments Council is composed of the Chairman of the Constitutional Court, the Chairman of the High Court, the Chairman of the High Administrative Court, the Chairman of the High Judicial Council, the Prosecutor General, the Chairman of the High Prosecutorial Council, the Minister of Justice, the Chairman of the National Chamber of Advocacy, the oldest judge of the Constitutional Court, the oldest judge of the High Court and the oldest judge of the High Administrative Court.
4. The Chairman of the High Judicial Council is Chairman of the Justice Appointments Council. The Chairman of the High Prosecutorial Council is Vice Chairman of the Justice Appointments Council.
5. The Chairman of the High Judicial Council, through the administration of the Council, creates working conditions for the operation of the Appointments Council as well as for the documentation of this activity.
6. The functioning of the Appointments Council is regulated by law.

PART EIGHTEEN

TRANSITORY AND LAST PROVISIONS

Article 57

Article 179 shall be amended to read as follows:

Article 179

1. The mandate of the constitutional bodies that will exist after the entry into force of this law ends according to the provisions of the law no.8417, dated 21.10.1998 "The Constitution of the Republic of Albania", as amended.
2. 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 and by the Assembly, and they shall stay in office until 2026.
 - 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 and the High Administrative Court, and shall stay in office until 2026.
 - c) the new members who are due to replace the members whose mandate ends in 2019 shall be appointed, respectively, by the President, by the Assembly and by the meeting of the High Court and the High Administrative Court, and they shall stay in office until 2030.
 - ç) the new member who is due to replace the member whose mandate ends in 2020 shall be appointed by the President, and he shall stay in office until 2030.
 - d) the new members who are due to replace the members whose mandate ends in 2022 shall be appointed, respectively, by the Assembly and by the meeting of the High Court and the High Administrative Court, and they shall stay in office until 2034.
3. Members of the High Court shall continue their activities as members of the High Court in 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 members of the High Administrative Court shall be appointed within 3 months since the constitution of the High Judicial Council under this law. The initial appointments to the High Administrative Courts shall be staggered to ensure continuity in the work of the Court.
5. Members of the High Council of Justice shall end their activity as members of the High Council of Justice three months after the entry into force of this law.

Election of new members to the High Judicial Council shall be made within 3 months after 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.

6. The Prosecutor General shall hold office until the appointment of the new Prosecutor General, in accordance with this law. The current Prosecutor General shall be appointed as a judge at the Tirana Court of Appeal within three months from the date of termination of the mandate.
7. The High Prosecutorial Council shall be established within 3 months from the entry into force of this law. Three prosecutor members and two lay members of the High Prosecutorial Council shall be appointed initially for a 3-years term, with the purpose of partial renewal of this body.

Article 58

After article 179 shall be added article 179/1 with the following content:

In accordance with the provisions of Annex 'Transitional Qualification Assessment of Judges and Prosecutors' all judges, including members of the High Court and Constitutional Court, prosecutors, members of the High Council of Justice unless replaced according to Art. 179 no. 5 of this Constitution, the Prosecutor General of the Republic of Albania unless replaced according to Art. 179 no. 6 of this Constitution and their legal advisors shall be, *ex officio*, assessed and re-evaluated in order to re-establish public trust and confidence in these essential democratic institutions.

Transitional Qualification Assessment of Judges and Prosecutors

Article 1

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 corruption, criminal influence and the poor proficiency of some members of the judiciary or prosecution, the application range of

some articles of this Constitution, in particular Articles 128, 131 f, 135, 138, 140, 145 Nr. 1, 147 Nr. 6, 149 Nr. 2 of the version before the entry of this amendment, are limited to the extent necessary to give effect to this Part. All judges, including members of the High Court and Constitutional Court, prosecutors, members of the High Council of Justice (unless replaced according to Art. 179 Nr. 5 of this Constitution), the Prosecutor General of the Republic of Albania (unless replaced according to Art. 179 Nr. 6 of this Constitution) and legal advisors shall be, *ex officio*, assessed and re-evaluated in order to re-establish public trust and confidence in these essential democratic institutions. The re-evaluation shall cover all persons listed in sentence 2, regardless of whether they are on secondment or other leave from their position.

2. An Independent Qualification Commission shall be established and a Qualification Assessment shall be conducted.

3. The Independent Qualification Commission shall operate and decide independently according to the provisions of this Part. The procedure of the President to eliminate candidates not matching the criteria, the structure, jurisdiction and procedures of the Independent Qualification Commissions, the personal protection and the timing of the assessments shall be regulated by special law.

Article 2

International Monitoring Operation

1. The international monitoring operation is a cooperation between the European Commission, the United States of America, other international organizations and bilateral international assistance. It shall be empowered to appoint International Observers in both instances of the Independent Qualification Commissions. It is chaired by and acts through the European Commission, who coordinates international assistance.

2. International Observers shall have qualifications similar to the Commissioners of the Independent Qualification Commission. International Observers shall have full access to the files at all levels of the Qualification Assessment, may file findings or opinions at any stage of the Qualification Assessment, may present and request evidence.

3. International observers may send unreasonable decisions to the alternative commission of first instance or the extended appeal commission, in particular if the international observer finds sufficiently convincing indications that the proposed decision is inappropriate, ignores facts or important evidence, is not based in law, or results from improper influence. If the International Observer sent the case to the alternative or extended commission, that commission shall decide instead of the one which was previously competent. The assessee can appeal the decision of the international observer of the first instance commission to the international observer of the appeal commission within a week.

4. In the case that Parliament selects one Commission of first instance, the alternative commission of first instance consists of the three substitute Commissioners. If Parliament selects two Commissions of first instance, the alternative commission of first instance for a case shall be the Commission that has not heard the case. If Parliament selects three Commissions of first instance, the alternative Commission for a case shall consist of one of the other Commissions of first instance.

Article 3

Independent Qualification Commission

1. An Independent Qualification Commission shall consist of two public commissioners, up to three First Instance Commissions consisting of three first instance commissioners each, and a Second Instance Commission with three appeal instance commissioners, and at least three substitute commissioners (“Commissioners”). If only one Commission of first instance is implemented, then at least six substitute commissioners must be appointed. They shall serve from January 1, 2016 until December 31, 2019. The commissions cease to have effect automatically by this date if their duration is not prolonged with simple majority by Parliament.

2. The Independent Qualification Commission shall operate with accountability, integrity and transparency and with the objective of promoting an independent and competent system of justice free from corruption.

3. All commissioners, directors, and other personnel 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 for the period of ten years. All asset declarations shall become public.

4. All commissioners shall have a university degree in law at the master's level or above, obtained in Albania or abroad, and no less than fifteen years' experience as a judge, prosecutor, advocate, notary, law professor or attorney in ministries or public administration, or other legal profession related to the judiciary, and shall have a high reputation for integrity. Nominees for commissioner may not have been judges, prosecutors or legal advisors in the two years prior to their nomination. Nominees for commissioner may not have been an elected official, as a political appointee, or as an official of a political party in the ten years prior to their nomination. Nominees shall not have been convicted for a crime which may have been punished with imprisonment, either inside or outside of Albania.

5. All candidates applying for the position of commissioner shall provide their curriculum vitae, copies of their degrees and passport, and a signed recent full asset declaration in accordance with the Law, No. 9049, Date 10.04.2003, "On the declaration and audit of assets, financial obligations of elected persons and certain public officials," as amended.

6. Within one month of the entry into force of this Part, the Ombudsperson shall invite the public to apply for the position of commissioners within one month of the advertisement. All Albanian courts and State institutions may propose candidates and include their consent to be nominated and any Albanian citizen meeting the qualification requirements may apply. Within one month, the Ombudsperson shall assess whether the criteria are met, and compile the applications which meet all criteria into a list of names of those who are qualified, and send the list with the applications to Parliament. International Observers shall have the necessary access to people and documents to monitor the application and qualification process for commissioners.

7. Within one month of receiving the pool, Parliament shall decide with a simple majority whether to have one, two or three first instance committees, shall decide the number of substitute commissioners with a simple majority, and shall appoint with a 3/5 majority the First Instance and Appeal Instance Commissioners and the two Public Commissioners from the pool of qualified candidates provided by the Ombudsperson. Parliament shall also select at least three substitute Commissioners by 3/5 majority with a priority numbering to facilitate the assignment. If the

Parliament fails to select all or some commissioners with a 3/5 majority within one month of the pool being received by Parliament, the President of the Republic shall select in public the missing commissioners out of the pool of those candidates matching the criteria by lot within a month. International Observers shall have the necessary access to people and documents to monitor the appointment process for commissioners.

8. All Commissioners shall work full time and may not hold any other position or employment during their mandate, in accordance with Article 143 of this Constitution. All Commissioners shall have a status equal to that of a High Court Judge for the duration of their mandate. All commissioners shall receive a gross salary of 600.000 Lek monthly. The commissioners shall receive their salary, regardless of the duration of their active mandate, for ten years, unless they have been removed by the disciplinary tribunal. They shall receive an additional yearly pension, which is for each complete year of service 2 % of the annual salary. For periods of less than a year the pension shall be calculated accordingly. The pension shall be paid monthly after the end of the tenth year.

9. The Public Commissioner shall represent the public interest before each instance of the commission, may request and present evidence and may appeal the decision of the first instance commission

10. The Independent Qualification Commission shall have a Registrar and at least three Directors, one who shall oversee the asset declarations, one to oversee the proficiency assessments and one who shall oversee background assessments. They shall submit reports on each person's assessment and recommend action to the Commission, with other duties established by law.

11. The Independent Qualification Commission and the international observers shall have a budget, staff and facilities established by law sufficient to support their duties.

12. The official language of the Independent Qualification Commission shall be Albanian and English, and it shall have translators and interpreters accordingly.

13. The Commissioners of the Independent Qualification Commission are subject to disciplinary liability to be determined by the Disciplinary Tribunal established under Article 147/g.

14. Commissioners, international observers, Commission staff, and their families shall be protected at highest level in accordance with the law.

Article 4

Qualification Assessment

1. All officials subject to re-evaluation under Art. 184, paragraph 1, shall be subject to Qualification Assessment by the Independent Qualification Commission. They shall undergo an Asset Assessment under Article 188, a Background Assessment under Article 189 and a Proficiency Assessment under Article 190. 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 under this provision may no longer serve as a judge at any level, prosecutor, member of the High Judicial Council or High Prosecutorial Council, or Prosecutor General for the duration of ten years.
2. The Commission may publish information and take into account comments obtained from the public. It respects the balance between privacy and investigation needs.
3. Official bodies of the Republic of Albania shall cooperate with and disclose requested information to the Independent Qualification Commission, grant direct access to their databases and may provide opinions and proposals in accordance with the law.
4. The Commission's directors, the Commissioner, the Public commissioner and the 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 review the veracity and accuracy of the disclosure. The Independent Qualification Commission and the international observers shall have direct access to all relevant government databases and files if not classified. They shall have in particular access to the assesseees' 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. The Registrar shall compile a dossier of the reports, recommendations and files on the asset, background and proficiency assessments, and shall submit it to the Commission.

6. The Commission shall review all three assessment dossiers in accordance with procedures established by law, and shall decide, based on an assessment of all three reports and the information obtained.

7. International Observers shall have access to all stages of the Asset Assessment, Background Assessment, and Proficiency Assessment, as well as the First Instance and Appeals Instance of the Independent Qualification Commission.

Article 5

Asset Assessment

1. The Independent Qualification Commission shall conduct an assessment of assets of the officials subject to re-evaluation under Art. 184, paragraph 1, 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. Assesseees shall submit a fully detailed, new asset declaration to the Commission as regulated by the Law, No. 9049, date 10.04.2003, "On the declaration and audit of assets, financial obligations of elected persons and certain public officials", as amended.

3. The High Inspectorate for the Declaration and Audit of Assets and Conflict of Interests shall review the asset declaration and submit to the Registrar of 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.

4. Legitimate income shall be defined by law. Income shall only be considered legitimate if it has been declared and taxes have been paid.

5. If the assessee has assets greater than twice the amount justified by legitimate income, 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.

6. 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 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 6

Background Assessment

1. The Independent Qualification Commission shall conduct a background assessment of the officials subject to re-evaluation under Art. 184, paragraph 1, with the purpose of identifying assesseees with regular and inappropriate contacts with members of organized crime,

2. Assesseees 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.

3. If the assessee has regular and inappropriate contact with members of organized crime, 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.

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 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 7

Proficiency Assessment

1. The Independent Qualification Commission shall conduct a proficiency assessment of the officials subject to re-evaluation under Art. 184, paragraph 1, with the purpose of identifying assesseees 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.

3. The Commission's director overseeing proficiency assessments shall review the documents and information and shall provide a report to the Commission and may submit a recommendation of disciplinary measures.

4. 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.

5. 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.

6. 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 8

First Instance Qualification Assessment

1. For each assessee, the Registrar of the Commission shall combine the files, reports and recommendations from the Asset, Background and Proficiency Assessments. The Commission shall assign according to transparent criteria one member of the First Instance Commission to be a Rapporteur.
2. The Rapporteur can seek additional information, and shall draft a proposed finding and disciplinary measure for 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 first instance commission shall provide the assessee with a hearing. It can include oral or written tests based on the field of work experience of the assessee.

Article 9

Disciplinary Measures

1. If the Independent Qualification Commission determines that an assessee required disciplinary measures, the first instance or appeals Commission 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 European Commission. Assesses failing the test are dismissed by the first instance commission and shall enjoy the appeal to the appeal commission. The appeal 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 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 Appeal Instance Commission.

5. An assessee can agree with the Commission to retire early and to receive 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.

Article 10

Appellate Instance Qualification Assessment

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.

2. The international observer takes part with the same rights like those in first instance. If the observer exercises the right to transfer the decision to the extended Commission. In the case one first instance commission exists, the extended Commission shall be the original members of the appeal Commission and those three substitute members, who have not decided in first instance, If two or three commissions of first instance exists, the extended Commission shall be the original members of the appeal Commission and another Commission, or if not available, those three substitute members, who have not decided in first instance.

3. The Appeal Instance Commission shall uphold or modify the decision of the first instance commission in a reasoned, written decision. It may not impose a more strict disciplinary measure without providing the assessee with sufficient notice to prepare and respond in a hearing.

4. If an assessee resigns, retires or agrees to a report and recommendation, there can be no appeal.

5. The Appeal Instance Commission is the final instance. There is no further remedy within Albanian jurisdiction.

