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## **REPUBLIC OF ALBANIA**

### **HIGH JUDICIAL COUNCIL**

#### **REGULATION**

### **ON THE ORGANIZATION AND FUNCTIONING OF THE AD HOC COMMITTEE FOR THE EXAMINATION OF COMPLAINTS AGAINST THE DECISIONS OF THE HIGH JUSTICE INSPECTOR FOR ARCHIVING COMPLAINTS OR SUSPENDING INVESTIGATIONS AGAINST A JUDGE**

This regulation is issued on the basis and pursuant to the Administrative Procedure Code, Articles 62-63, 66-70, 72-76 and 97, paragraph 3, of Law no. 115/2016 “On the governance institutions of the justice system”, as amended, and Articles 119, paragraphs 4, 121, paragraphs 3, 122, paragraphs 5 and 134, paragraph 2, of Law no. 96/2016 “On the status of judges and prosecutors in the Republic of Albania”, as amended.

#### **CHAPTER I**

#### **GENERAL PROVISIONS**

##### **Article 1**

##### **Purpose**

1. This Regulation sets out detailed rules on the organization and functioning of the Ah Hoc Committee on the Examination of Complaints Against the Decisions of the High Justice Inspector for Archiving Complaints or Suspending Investigations against a Judge (ACEC), filing and examining complaints against decisions of the High Justice Inspector, for archiving complaints or suspending investigations against a judge, and taking decisions.
2. For aspects that do not find adjustment in this Regulation, ACEC shall apply the legal provisions in

force that contain specific regulations regarding them.

## **Article 2**

### **Scope**

1. The scope of this Regulation is:

- a) Determining the responsibilities and competencies of the ACEC, the director and its members, and the duties of the employee of the Committee's Supporting Unit and of the Council's administrative staff;
- b) Determining the relationship of ACEC with the complainant, the judge, the High Justice Inspector, the employee of the Committee's Supporting Unit and of the administrative staff of the High Judicial Council;
- c) Determining the rules for submitting, examining and administering the documentation related to the complaints against the decisions of the High Justice Inspector for archiving complaints or suspending investigations against a judge.

## **Article 3**

### **Definitions**

1. In this Regulation the following terms shall have the following meanings:

- a) "Complaint" shall be the means of objection in the High Judicial Council of the decision of the High Justice Inspector to archive the complaint or to suspend the investigations against a judge;
- b) "Judge" shall be a judge against whom a complaint has been lodged before the High Justice Inspector, a complaint for which archiving or the suspension of the investigation against the judge has been decided;
- c) "Council" shall be the High Judicial Council;
- ç) "Committee" or "ACEC", shall be the Ad Hoc Committee established by the High Judicial Council according to paragraph 13, Article 62, Law no. 115/2016 "On the governance institutions of the justice system", as amended, for the examination of complaints against the decisions of the High Justice Inspector for archiving the complaint or suspending the investigations against a judge;

- d) "Governance Law" shall be the Law no. 115/2016 "On the governance institutions of the justice system", as amended;
- dh) "Status Law" shall be the Law no. 96/2016 "On the status of judges and prosecutors in the Republic of Albania", as amended,
- e) "Special Register" shall be the register held with the Committee for documenting complaints against the decisions of the High Justice Inspector for archiving the complaint or suspending the investigations against a judge, and the decisions given by the Committee in relation to them;
- ë) "Decision of the High Justice Inspector" shall be the decision for archiving the complaint or suspension of the investigation against a judge, taken by the High Justice Inspector according to Articles 121, 122 or 134, of the Law on Status.

#### **Article 4**

##### **General principles of functioning**

1. In its activity, the Committee shall comply with the general principles of administrative procedures and in particular the principles of: legality; transparency; confidentiality protection; personal data protection; justice and impartiality; objectivity; equality and non-discrimination and de-bureaucratization and efficiency.
2. Examination of cases shall be made collegially.
3. Examination of cases shall be made on the basis of documents.
4. Albanian language shall be used in the examination of cases.

#### **Article 5**

##### **Committee's field of activity**

The Committee shall examine all complaints against decisions of the High Justice Inspector. CHAPTER II

### **ORGANIZATION OF THE COMMITTEE**

#### **Article 6**

##### **The Committee**

1. The Committee shall consist of three members, two non-judges and one judge, as well as two substitute members, one non-judge and one judge, elected by lot by the Council.
2. The examination by the Complaints Committee against the decisions of the High Justice Inspector is made collegially by three members. The decision shall be taken by the members who have taken part in



the examination of the complaint.

3. The examination by the Committee of other issues, different from those according to paragraph 2 of this article, unless otherwise provided in this Regulation, is made collegially by five members. In this case, the meetings of the Committee are valid when attended by not less than three members.

4. The decisions of the Committee shall be taken by a simple majority of the votes of the participating members. Abstention is not allowed. The Chairperson of the Committee votes last.

#### **Article 7**

##### **Chairperson of the Committee**

1. The activity of the Committee shall be conducted and organized by its Chairperson.

2. The Chairperson of the Committee shall be appointed by the Chairperson of the Council immediately after the election of the members of the Committee, between the non-substitute members.

3. The Chairperson of the Committee shall have the following competencies:

- a) shall take any necessary organizational measures to ensure the effective functioning of the Committee;
- b) shall convene and chair the meetings of the Committee, setting the date and time of the meetings;
- c) shall inform the Council on the activity of the Committee.

#### **Article 8**

##### **Deputy Chairperson of the Committee**

1. At the first meeting of the Committee, upon the proposal of the Chairperson or of each member, the Deputy Chairperson shall be elected.

2. The Deputy Chairperson of the Committee shall exercise all the competencies of the Chairperson in the absence and inability of the latter, as well as in cases of temporary inability of the Chairperson.

#### **Article 9**

##### **Temporary substitution of the Committee's member**

1. When the Committee is formed by three members, in cases of inability of a member of the Committee, as well as in cases of temporary inability, he/she is replaced by the substitute member of the Committee.



In any case, a judge member of the Committee may only be replaced by another judge member. A non-judge member of the Committee may only be replaced by another non-judge member.

**Article 10**  
**Committees' Supporting Unit**

1. The member of the Committee, in the case of examination of the complaint against a decision of the High Justice Inspector, shall be assisted by the employee of the Committees' Supporting Unit, who exercises advisory and auxiliary activity in the decision-making process of the Committee including: preparation of the case for examination, giving legal opinions and preparing scientific research on issues that are for examination before the Committee, as well as any other task assigned to him/her by the Chairperson or the Committee.
2. The Chairperson of the Council shall appoint an employee of the Supporting Unit of the Committees for each of the members of the Committee.
3. The employee of the Supporting Unit of the Committees at any time when he/she becomes aware of the existence of a conflict of interest or a legal impediment is obliged to declare the nature of the conflict of interest or impediment and to refuse to participate in the activity of the Committee in connection with handling a particular complaint against the decision of the High Justice Inspector on archiving the complaint or suspending the investigations against a judge. In this case, the provisions of the Administrative Procedure Code and the Law "On the prevention of conflicts of interest in the exercise of public functions" on the impartiality of public administration shall apply.

**Article 11**  
**Administrative staff of the Council**

1. The Committee shall be assisted in its activities by an employee of the administrative staff of the Council, who shall carry out ancillary activities, including: keeping a special register, preparing and casting lots and documenting the meetings of the Committee, as well as any other duties assigned by the Chairperson.
2. The Secretary General of the Council shall appoint an employee of the administrative staff of the Council to assist the activity of the Committee.
3. The employee of the administrative staff of the Council at any time when he/she becomes aware of the existence of a conflict of interest or a legal impediment is obliged to declare the nature of the conflict of interest or impediment and to refuse to participate in the activity of the Committee in connection with handling a particular complaint against the decision of the High Justice Inspector on



archiving the complaint or suspending the investigations against a judge. In this case, the provisions of the Administrative Procedure Code and the Law “On the prevention of conflicts of interest in the exercise of public functions” on the impartiality of public administration shall apply.

**Article 12**  
**Submission of complaint**

A complaint to the Council shall be lodged by the person, or the representative elected by him/her, who filed the complaint with the High Justice Inspector, on which the archiving of the complaint or the suspension of the investigation against a judge is decided. In this case, the representative shall attach the representation act to the complaint. In such a case, all notices of the Committee shall be addressed to the complainant’s representative.

1. The complaint shall be submitted in written form in the Albanian language, clearly understandable, and must contain:

- a) the name and address of the High Judicial Council;
- b) the name, surname or denomination, place of residence or stay of the complainant and/or representative;
- c) the decision of the High Justice Inspector against which the complaint is filed;
- ç) submission of the reasons for the complaint;
- d) a copy of the decision of the High Justice Inspector subject to complaint;
- e) documents, evidence, or other materials that accompany the complaint;
- f) the signature of the complainant or his/her representative, as well as the act of representation of the latter.

2. Notwithstanding the provisions of paragraph 2 of this Article, any request addressed to the Council shall be deemed to be a complaint even if it has not been expressly named as such. In this case, the intent to complain against a decision of the High Justice Inspector must be sufficiently clear.

3. The complaint may be filed manually or by mail. In case of sending the complaint by mail, the date of its submission is considered the date of submission to the post office. In case the complaint has been sent incorrectly to another institution and the complaint has been submitted to the Council after the end of the legal deadline, the complaint is considered submitted within the deadline in case it is proven that this has happened in good faith.

4. The complaint shall be registered in the special register held with the Committee.

**Article 13**  
**Lot for the complaint**

1. After registering the complaint, the Chairperson of the Committee, with the help of the employee of the administrative staff of the Council, shall organize the lottery for the appointment of the rapporteur.
2. The lottery shall be organized at least once every two weeks in the presence of the members of the Committee. The participation of lottery members is not mandatory.
3. The Chairperson of the Committee shall examine a smaller number of complaints in relation to other members of the Committee. The load of the Chairperson or his exclusion from participating in the lottery shall be decided by the Committee formed by the five members.
4. Exceptionally, for motivated reasons related to the workload and effectiveness of the work, upon the proposal of the Chairperson or any member, the Committee may decide that the lottery procedures for the appointment of the rapporteur include the substitute members of the Committee. In this case, the Committee is formed by all five members.
5. Through the lottery, the complaints, according to their two categories, are distributed randomly and equally among the members.
6. In order to balance the workload between the members, when the case arises, the Committee, before the draw, upon the proposal of each member, may decide on the number of complaints to be received by each member or on the exclusion from the lot of the member with a greater workload from previous lotteries.
7. For effectiveness, the way of organizing the lottery shall be decided by the Committee, immediately depending on the circumstances, upon the proposal of each member.
8. Minutes shall be kept for the organized lottery, which shall reflect the date, the complaints that will be cast in the lottery identified according to the ordinal number of the register and the identity of the complainant, the lottery participants, the preliminary decisions of the Committee, as well as the lottery results. The minutes shall also reflect any other important data related to the organization of the lottery. The minutes shall be signed by all participants. A copy of the minutes shall become part of the documentary practice of each complaint lotted.
9. The minutes of the lottery documentation shall be protocolled and archived in the Office of the Protocol-Archive of the Council in accordance with the legislation in force over the archives.

**Article 14**  
**Verification of the complaint**

1. The rapporteur shall verify whether the complaint meets the formal criteria provided in paragraphs 2 and 3 of Article 12 of this Regulation.
2. A complaint that does not meet the criteria provided in paragraphs 2 and 3 of Article 12 of this Regulation shall be considered incomplete. The Rapporteur shall notify the complainant to make the necessary additions within 10 days.
3. In case the complainant does not submit the complaint duly completed or within the set deadline, the rapporteur shall decide not to accept the complaint and order its archiving.
4. The documentary practice of the complaint shall be archived in the Office of the Protocol-Archive of the Council in accordance with the legislation in force over the archives.

**Article 15**  
**Preliminary examination of the complaint**

1. After verifying the formal criteria of the complaint, the rapporteur shall verify the conditions of its admissibility for examination.
2. The complaint is admissible for examination if it meets the following conditions:
  - a) has been made against a decision of the High Justice Inspector;
  - b) the complainant has legitimacy in accordance with paragraph 4, article 119, as well as paragraph 3, article 121, paragraph 5, article 122 or paragraph 2, article 134, of the Status Law, as well as with paragraph 1, Article 12, of this Regulation;
  - c) has been submitted within the deadline provided by paragraph 3, article 121, paragraph 5, article 122 or paragraph 2, article 134 of the Status Law.
3. For the complaint that does not meet the conditions of admissibility according to paragraph 2 of this article, upon the proposal of the rapporteur, the Committee shall decide to reject it.
4. In the case of a complaint against a decision of the High Justice Inspector on archiving the complaint or suspension of the investigation against a prosecutor, the rapporteur shall immediately decide to send it to the High Prosecutorial Council.



#### **Article 16**

##### **Suspension of the complaint's examination**

1. The complainant may waive the complaint until the Committee has not taken a decision on it. In this case, upon the rapporteur's proposal, the Committee shall decide to suspend the examination of the complaint.
2. The Committee shall decide in the same manner in the case when the scope for which the examination of the complaint had started or its purpose has become impossible.

### **CHAPTER III FUNCTIONING OF THE COMMITTEE**

#### **Article 17**

##### **Examination of the complaint**

1. The complaint shall be examined at the meeting of the Committee with the participation of the rapporteur, the Chairperson and the other member of the Committee.
2. The meeting of the Committee shall be duly documented through the minutes and, if possible, through the audio system. The minutes shall contain the date, the composition of the Committee, the number of the complaint, the identity of the complainant and the contested decision of the High Justice Inspector, the summary discussions of the members, the proposal for the completion of the complaint's examination and the decision taken by Committee after the voting of the members. The minutes shall be signed by the drafter and the members of the Committee at the bottom of each page. In the case of documentation of the meeting through the audio system, the responsible employee of the Council shall transcript on paper the minutes, which shall be made available to the members for signature. The minutes of the meeting of the Committee shall become part of the documentary practice of the complaint.

#### **Article 18**

##### **Limits of the complaint's examination**

Limits of the complaint's examination shall be within the scope and reasons set out therein.

#### **Article 19**

##### **Calling a meeting**

1. The Chairperson of the Committee, immediately after the notification made by the rapporteur for



the preparation of the case for examination, shall convene the meeting of the Committee by setting its date and time. If the Chairperson of the Committee is unable to participate in the examination of the complaint, the meeting of the Committee shall be chaired by the Deputy Chairperson.

2. The meeting of the Committee, as a rule, shall take place without interruption. In special cases, after obtaining the opinion of the members of the Committee, the chairperson of the meeting may terminate it when necessary.

#### **Article 20**

##### **Rights of the Committee's members**

The Member of the Committee shall be entitled to:

- a) participate in the examination of any case, except in cases when it is prohibited by law;
- b) get acquainted in advance with the content and all the materials of the case under examination;
- c) during the examination, ask questions and ask for explanations of an explanatory nature from the rapporteur of the case;
- ç) participate in the discussion of the case and freely express his opinion on its resolution.

#### **Article 21**

##### **Duties of the Committee's member**

A member of the Committee shall:

- a) take appropriate measures for the organization of the meeting;
- b) vote on the manner of resolving the issue.

#### **Article 22**

##### **Duties of the case rapporteur**

1. The rapporteur must prepare the case for examination at the meeting of the Committee.

2. The rapporteur shall take special care of the following:

- a) the administration of the documentation filed by the complainant, and, where appropriate, the request by the High Justice Inspector and the administration of documentary practice regarding the complaint filed against its decision;
- b) examination of administered documentation;
- c) preparation of an explanatory report on the results of the examination of the administered documentation;

- c) preparation of the draft decision on the manner of completing the examination of the complaint;
- d) coordination with the Chairperson of the Committee for the preparation of the meeting;
- e) notifications to the complainant, judge and High Justice Inspector.

### **Article 23**

#### **Waiver of the examination of complaint**

1. A member of the Committee, at any time during the existence of a conflict of interest or a legal impediment under Articles 72, 73, 74 and 75 of the Governance Law, shall be obliged to declare the nature of the conflict of interest or impediment and to refuse to participate in the examination of the complaint against the decision of the High Justice Inspector for archiving the complaint or suspending the investigation against a judge.

2. The Chairperson of the Committee shall decide on the resignation of any member of the Committee. When the Chairperson of the Committee resigns, the decision shall be taken by the Deputy Chairperson of the Committee.

### **Article 24**

#### **Exclusion of a member**

1. The complainant, at any stage of the examination of the complaint, shall have the right to request the exclusion of a member when any of the cases provided in Articles 73 and 74 of the Governance Law exist and the member shall not waive the examination of the complaint.

2. The request for exclusion of a member shall be examined by the Committee, which in this case is formed by four members, with the exception of the member for whom the exclusion has been requested. The decision shall be taken by a simple majority of votes. In case of draw, the vote of the Chairperson of the Committee shall be decisive.

### **Article 25**

#### **Meeting of the Committee**

The examination of the complaint at the meeting of the Committee shall follow these rules:

- a) The opening of the meeting is announced by the chairperson;
- b) The rapporteur shall submit the results of the examination of the complaint and the relevant draft decision, and, where appropriate, shall provide explanations of an explanatory nature when requested by other members of the Committee;
- c) Members shall discuss about the issue;

- c) The rapporteur shall submit the draft decision on the resolution of the complaint examination, which may be different from the draft decision initially submitted by him;
- d) It is passed to the final decision, initially voting for the draft decision proposed by the rapporteur and in case of non-achievement of the simple majority of votes, it is voted for a draft decision proposed immediately by another member of the Committee.

#### **Article 26**

##### **Final decision of the Committee**

1. At the end of the examination of the complaint, the Committee shall decide:
  - a) Rejection of the complaint as unfounded;
  - b) Repeal of the decision of the High Justice Inspector and, as the case may be, the order of the High Justice Inspector to verify the archived complaint or to continue the investigation against a judge.
2. The approved decision is immediately protocolled and archived in the Protocol-Archive Office of the Council.
3. The decision of the Committee shall be reasoned by the rapporteur. The decision shall be signed by all members who have participated in the examination.
4. The member of the minority has the right to reason his opinion that is attached to the decision.
5. The decision is prepared in as many copies as necessary for the notification of the subjects, and another copy for the documentary practice of the complaint.

#### **Article 27**

##### **Juridical effects of the Committee's decisions**

Committee decisions shall be final and may not be appealed at the plenary meeting of the Council.

#### **Article 28**

##### **Notification and publication of the Committee's decision**

The decision of the Committee shall be notified to the complainant, the judge and the High Justice Inspector in one or several of the following forms:

- a) personally or to the legal representative when present at the time of the decision;
- b) by registered mail to the addressee's place of work;



c) to the e-mail address officially filed by the complainant and to the official e-mail address of the judge.

2. The decision of the Committee shall be made public on the official website of the Council, accompanied by the relevant reasoning, after being edited to ensure the anonymity of the subjects.

#### **Article 29**

##### **Archiving the documentary practice of the complaint**

The documentary practice of the complaint, by order of the rapporteur, shall be archived in the Office of the Protocol-Archive of the Council in accordance with the legislation in force on archives.

#### **Article 30**

##### **Duration of the Committee's Activity**

Duration of the Committee's activity shall be determined by decision of the Council.

#### **Article 31 Entry**

##### **into force**

This Regulation shall enter into force upon its approval by the High Judicial Council and its publication on the official website of the Council.