

**LAW**

**No. 8436, dated 28.12.1998**

**FOR THE ORGANISATION OF THE JUDICIAL  
POWER IN  
THE REPUBLIC OF ALBANIA**

Pursuant to Articles 81 and 83, item 1 of the Constitution of the Republic of Albania, upon the proposal of the Council of Ministers,

**THE ASSEMBLY  
OF THE REPUBLIC OF ALBANIA**

**DECIDED:**

**CHAPTER I:  
JUDICIAL POWER**

**Article 1**

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

**Article 2**

The courts have the authority to try all criminal, military criminal, civil, administrative cases as well as all other cases defined by law.

**Article 3**

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

#### **Article 4**

Public prosecutors are organised and function as a centralised organ within the judicial system at all its levels.

The organisation and functioning of the public prosecutor's [office] and the independent bar is regulated by special laws.

### **CHAPTER II: ORGANIZATION AND FUNCTIONING OF COURTS**

#### **Article 5**

The judicial power shall be exercised by the courts of first instance, courts of appeal and the High Court.

#### **Article 6**

The courts of first instance adjudicate according to rules provided in the codes of procedure, which define also the composition of the panels of judges.

#### **Article 7**

The courts of appeal adjudicate in the second instance appeals of decisions of first instance courts.

The courts of appeal adjudicate in three-judge panels.

#### **Article 8**

Military courts are organised and function within the judicial system with powers defined by law.

#### **Article 9**

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

## **Article 10**

The Military Court of Appeal adjudicates in the second instance appeals of decisions of the military courts of first instance. It adjudicates in three-judge panels.

## **Article 11**

The courts of first instance are organised and function in judicial districts throughout the territory of the country. The territorial jurisdiction and the centre where each of them exercises its activity shall be defined by a decree of the President of the Republic, upon the proposal of the Minister of Justice, after having heard also the [opinion of the] High Council of Justice.

The courts of appeal function in areas defined by the President of the Republic, upon the proposal of the Minister of Justice, after having heard also the opinion of the High Council of Justice.

There can also be established by law courts of first instance or courts of appeal for specific areas [of law].

## **Article 12**

A decree of the President of the Republic shall define, upon the proposal of the Minister of Justice, the total number of judges of all judicial structures, after having also heard the opinion of the High Council of Justice.

## **Article 13**

The High Court is the highest judicial authority, which has original and appellate jurisdiction.

The High Court has its seat in Tirana.

The organisation and functioning of the High Court shall be defined by a special law, in compliance with the Constitution.

## **Article 14**

At the beginning of each year, the chair of the court of appeal and the chair of the court of first instance shall decide the allocation of judges in penal and civil chambers of the court for the current year.

The chamber for civil cases shall include also the judges of the specialised sections.

If the size of a court does not allow the establishment of at least one civil chamber and one penal chamber, the cases shall be distributed equally among all the judges.

In all courts of first instance and courts of appeal, the head secretaries shall be also administrators who shall perform duties similar to those of the Chancellor of the High Court, as well as administer the budget of the court.

### **Article 15**

The assignment of judicial cases at all levels of the judicial system is done by lottery according to procedures defined by law.

### **Article 16**

Judicial decisions can be subject to review only on the basis of appeals or recourses [made] through judicial channels, pursuant to the definitions of the codes of procedure or special laws.

### **Article 17**

An Inspectorate shall be established with the High Council of Justice.

The High Council of Justice shall nominate inspectors, who shall have the task to inspect courts of first instance and courts of appeal in order to investigate complaints of citizens or institutions, the organisation of judicial services, monitor the professional competency of the judges for the purposes of article 45 of this Law, the workload, and the courts' efficiency in general.

The Minister of Justice shall make experts of the Ministry of Justice available to inspector teams to assist in performing the above-mentioned duties, except for those related to the professional competency of the judges.

Lawyers who meet the requirements to be appeal judges shall be nominated inspectors of the High Council of Justice.

Their salary and other rights shall be equal to those of an appeal's judge.

The organisation and functioning of the Inspectorate of the High Council of Justice shall be defined by the Regulations of the High Council of Justice.

## **Article 18**

The judicial power has a separate budget that it administers itself pursuant to terms provided by a special law.

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

### **CHAPTER III: REQUIREMENTS TO BE ACCEPTED AS JUDGE OF THE COURTS OF FIRST INSTANCE AND COURTS OF APPEAL**

## **Article 19**

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

1. possess full legal capacity;
2. hold a law degree;
3. graduated from the Magistrates School;
4. have no criminal record and good reputation;
5. are not less than twenty-five years old.

## **Article 20**

The High Council of Justice can appoint as judges persons who have not graduated from the Magistrates' School if they meet the other requirements defined by Article 19 of this Law as well as one of the following requirements:

1. have worked for more than three years as pedagogues of the Law Faculty or the Magistrates' School, Members of Parliament, legal advisors to the Assembly, the President [of the Republic] or the Council of Ministers or as specialists with the Ministry of Justice, the High Court or the General Prosecutor's Office.
2. hold a degree from a long-term, post-graduate, legal training program abroad that meets the requirements of the Albanian legislation or international agreements.
3. have worked for five or more years as judges, *assistant-judges*, [public] prosecutors, *advocates*, or notaries public and have passed a professional competency exam organised according to this article.

Persons who are appointed judges according to point 3 shall be subject to a mandatory theoretical and practical, written and oral examination within six months from the date of their appointment. The High Council of Justice shall organise the examination in co-operation with the Magistrates' School and the University of Tirana Law Faculty.

### **Article 21**

Vacancies for judges must be announced by the High Council of Justice.

### **Article 22**

The High Council of Justice shall appoint the judges from among the candidates on competitive basis.

The procedures for the selection and the application of the candidates shall be defined by the Regulations of the High Council of Justice.

The university performance, duration of practice as a lawyer, professional performance, post-graduate training as well as any other objective data that show the superiority of one applicant over other candidates shall also be considered in the evaluation of the candidates that meet the requirements provided in Articles 19 and 20 of this Law.

### **Article 23**

Before taking the position the judges shall make the following vow:

“I solemnly vow that in the exercise of my duties I shall **remain** always **faithful** to the Constitution of the Republic of Albania, the laws in force and shall respect the rules of professional ethics.”

The newly appointed judges shall make the vow before the judges of the *instance* [court] to which they are assigned.

## **Article 24**

The High Council of Justice shall appoint courts of appeal judges after they have worked for not less than five years in the courts of first instance and have demonstrated high ethical, moral and professional standards in the exercise of their duties.

The High Council of Justice shall appoint the chairs and deputy chairs of the courts of first instance and courts of appeal from the ranks of their judges.

## **Article 25**

Judges can continue in duty up to the age of 65.

## **CHAPTER IV: STATUS OF JUDGES**

### **Article 26**

Judges have immunity.

First instance and appeal judges can only be prosecuted with the approval of the High Council of Justice. A judge may be detained or arrested only if apprehended in the course of committing a crime or immediately after its commission. The competent organ shall immediately notify the High Council of Justice. If the High Council of Justice does not consent within 24 hours to the presentation of the arrested judge before a court, the competent organ shall be obliged to release him.

### **Article 27**

Judges cannot be removed from office, except if they:

1. resign;
2. reach retirement age;
3. are sentenced by a final court decision;
4. are found physically or mentally incapacitated or professionally incompetent, according to the standards defined in Article 45 or Article 48 of this Law;
5. have been subject to disciplinary measures taken by a competent authority in cases provided by law;
6. take actions or hold functions in violation of Articles 29 through 35 of this Law.

If criminal proceedings are initiated against a judge, he shall be suspended from office until a final decision is reached.

If a final court decision finds the judge not guilty, he shall have the right to return to his previous position and receive full salary for the suspension period.

### **Article 28**

Promotion and transfer of a judge from his position shall be done only with his/her consent, except in the 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, upon the proposal of the Minister of Justice, shall delegate 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 shall return to his/her previous position.

The High Council of Justice, upon the proposal of the Minister of Justice, can appoint a judge to try a number of cases in another court of the same level, if judges are absent in the latter court.

### **Article 29**

Judges are prohibited from taking part into political parties or participating in activities of political nature.

### **Article 30**

The function of a judge is incompatible with every elective mandate, as well as every other public or private function and activity.

Judges cannot participate in the management or direction of civil or commercial companies, either personally or through representation.

### **Article 31**

Judges cannot serve as 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 defence 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 organise 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 organised together with any exam provided in Article 20 of this law.

### **Article 49**

Law No. 8265, dated 18.12.1997 "On the Organisation 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 GJINUSHI**