

LAW
Nr. 8436, dated 28 December 1998

**ON THE ORGANIZATION OF THE JUDICIAL POWER
IN THE REPUBLIC OF ALBANIA¹**

In reliance on articles 81 and 83 point 1 of the Constitution of the Republic of Albania,
on the proposal of the Council of Ministers,

**THE ASSEMBLY
OF THE REPUBLIC OF ALBANIA**

D E C I D E D:

**CHAPTER I
THE JUDICIAL POWER**

Article 1²

The judicial power is exercised only by the courts, in compliance with the Constitution and the competencies charged by law.

Article 2

The courts have the competency to examine all criminal, criminal military, civil, and administrative cases, as well as every other case specified by law.

Article 3

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

Article 4

Prosecutors are organized and function attached to the judicial system at all its levels as a centralized organ.

The organization and functioning of the office of the prosecutor, as well as the profession of advocacy, are regulated by separate laws.

¹ Translator's note: as amended by law nr. 8546 dated 5 November 1999, law nr. 8656 dated 31 July 2000 and law nr. 8811 dated 17 May 2001 "On the organization and functioning of the High Council of Justice".

² Translator's note: in law nr. 8811, dated 17 May 2001 "On the organization and functioning of the High Council of Justice" as passed and published in the Official Journal, it was stated that this article was repealed. However, actually article 17 was most probably intended to be repealed (as the version returned by the President of the Republic provided).

Article 4/a
The judicial year

1. The judicial year begins on May 10 of every calendar year and ends on May 9 of the following year.

2. The ceremony of inaugurating the new judicial year is done in public and solemn form. Judges, prosecutors, functionaries of the Ministry of Justice, invitees from the Constitutional Court, the Office of the People's Advocate, the National Chamber of Lawyers, the National Chamber of Notaries, and from other institutions or subjects whose activity is connected to the field of justice and the judiciary take part.

3. On the date of inauguration of the new judicial year, the President of the High Court, the General Prosecutor and the Minister of Justice make public a Joint Resolution relating to the administration of and problems in the field of justice in the Republic of Albania, in which, among other things, orientations and recommendations for activity in the new judicial year are given.

4. A copy of the Joint Resolution relating to the administration of and problems in the field of justice is sent to the President of the Republic, the Assembly and the Prime Minister of the Republic of Albania.

CHAPTER II
ORGANIZATION AND FUNCTIONING OF THE COURTS

Article 5

The judicial system consists of the courts of the first level, the courts of appeal and the High Court.

Article 6

Courts of the judicial districts, courts for serious crimes and military courts are the courts of the first level.

Judges of the first level adjudicate according to the rules provided in the codes of procedure, where the composition of the judicial body is also specified.

Article 7

Judges of appeal adjudicate at the second level, with a judicial body consisting of three judges, appeals against decisions of the courts of the judicial districts.

Judges of appeal adjudicate at the second level, with a judicial body consisting of five judges, appeals against decisions of the courts for serious crimes.

Article 8

Military courts are organized and function within the judicial system according to the competencies specified by law.

Article 9

Military courts consist of courts of the first level and of appeal.

Article 10

At the military courts of appeal, appeals are examined at the second level against decisions of military courts of the first level. It adjudicates in a judicial body consisting of three judges.

Serious crimes are adjudicated by five judges.

Article 11

Courts of the judicial districts are organized and function in the judicial districts in the whole territory of the country. Courts for serious crimes are organized and function in one or more judicial districts. The territorial competencies and the center of exercise of activity of each of them is set by decree of the President of the Republic, on the proposal of the Minister of Justice, after the opinion of the High Council of Justice has also been taken.

The courts of appeal function in the zones specified by the President of the Republic, on the proposal of the Minister of Justice, after the opinion of the High Council of Justice has also been taken.

Courts of the first level or of appeals for particular fields may also be created by law.

Article 12

The total number of judges of all judicial levels is set by decree of the President of the Republic, on the proposal of the Minister of Justice, after the opinion of the High Council of Justice has also been taken.

Article 13

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

The High Court has its headquarters in Tirana.

The organization and functions of the High Court are specified by separate law, based on the Constitution.

Article 14

At the beginning of each year, the chairman of the court of appeals and the chairman of the court of the first level specify for the on-going year the distribution of judges into the criminal and civil chambers of the court.

Judges of sections for special trials are included in the chamber of civil cases.

When the size of the court does not permit it to be organized into at least one civil and one criminal chamber, the division of cases is done among all the judges in an equal manner.

Article 14/a

1. Auxiliary services in the court are directed by the Chancellor and fulfilled by the judicial secretariat, the branches and sectors of administration, economy, finance, computerization, recordation and document preservation.

2. The specification of the sectors and the number of personnel [the organic] for each court is done by order of the Minister of Justice.

Article 14/b

1. The chancellor is named and discharged by the Minister of Justice.

2. A person who has a diploma as a jurist and who has work experience in this profession of no less than five years is named chancellor. The chancellor earns a salary and paid annual vacation the same as that of a judge of the respective court where he exercises his functions.

3. The appointment and discharge of judicial secretaries and administrative-technical personnel of the court is done by the Chairman of the Court, on the proposal of the Chancellor.

4. The chairman of the branch of the budget in the court is appointed and discharged by the Minister of Justice.

Article 15

The division of judicial cases in all the levels of the judicial system is done by lot according to the procedures specified by law.

Article 16

Judicial decisions may be the object of examination only on the basis of appeals or recourses by the judicial route, according to the specifications in the codes of procedure or in separate laws.

Article 17³

An Inspectorate is created attached to the High Council of Justice.

The inspectors are appointed and discharged by the President of the Republic, on the proposal of the Minister of Justice.

Inspectors have the duty of inspecting the courts of the first level and of appeals, verifying the complaints of citizens and other subjects about judges, checking the organization and work of the judicial services, taking evidence about the professional

³ Translator's note: article 17 was most probably intended to be repealed by law nr. 8811, dated 17 May 2001 "On the organization and functioning of the High Council of Justice" (see note above).

capabilities of judges, within the meaning of article 45 of this law, the work load, verifying and evidencing the property declared, of questions of compatibility of activity and the behavior of judges, and as a whole the efficiency of the courts.

The Minister of Justice puts the specialists of the Ministry of Justice at the disposition of the groups of inspection to assist in the performance of the above duties, except for those that have to do with the professional capabilities of the judges.

Jurists who fulfill the conditions to be judges of appeals are named inspectors of the High Council of Justice.

They are equal in pay in other rights with the judges of appeals.

The organization and function of the Inspectorate at the High Council of Justice is specified in the Rules of the High Council of Justice.

Article 18

The judicial power has a separate budget, which is administered by it according to the specifications provided by separate law.

CHAPTER III CONDITIONS FOR BEING ACCEPTED AS A JUDGE OF THE COURT OF THE FIRST LEVEL AND THE COURT OF APPEALS

Article 19

Albanian citizens who fulfil the following criteria may be appointed judges:

1. To have full capacity to act;
2. To have higher juridical education;
3. To have completed the Magistrates' School;
4. Never to have been punished and to enjoy a good reputation.;
5. To be no less than 25.

Article 20

Persons who have not completed the Magistrates' School may also be appointed as judges, if they meet the criteria of article 19 of this law and one of the following criteria:

1. They have worked for over three years as pedagogues in the Faculty of Justice or in the Magistrates' School, deputy, legal adviser in the Assembly, with the President or the Council of Ministers, or as specialists in the Ministry of Justice, the High Court or the Office of the General Prosecutor.

2. They have received a diploma from a long-term juridical post-university program of qualification outside the state, which meets the requirements of Albanian legislation or international agreements.

3. They have worked for five or more years as judges, assistant judges, prosecutors, lawyers of notaries and have passed a test of professional qualification organized under this article.

3/a. For the appointment as judges of assistant judges who currently work in the courts of the first level, the time period specified in point 3 of this article is not an obligatory criterion.

Persons who are appointed judges under point 3 shall be subjected to an obligatory theoretical and practical examination, in writing and orally, within six months from the day they are appointed.

Article 20/a

1. On the proposal of the High Council of Justice, the President of the Republic appoints as judges persons who have finished the second year of the Magistrates' School to perform the professional internship contemplated in law nr. 8136, dated 31 July 1996 "On the Magistrates' School of the Republic of Albania," in the courts that have the best conditions for the organization of this internship.

2. The criteria specified in points 3 and 5 of article 19 of this law do not constitute an obstacle to the appointment only of the persons mentioned in point 1 of this article.

3. After the completion of the professional internship, the President of the Republic decrees their designation in the courts of the judicial districts, according to their needs.

Article 21

The places for judges that are not filled shall be announced by the High Council of Justice.

Article 22⁴

Article 23

Before beginning duty, the judges take the following oath:

"I solemnly swear that during the performance of duty I will always be faithful to the Constitution of the Republic of Albania, the laws in force and I will respect the rules of professional ethics."

The oath of the newly-named judges is taken before the judges of the instance where they have been designated to perform their duty.

Article 24

Judges of the courts for serious crime and the courts of appeals are appointed by the President of the Republic on the proposal of the High Council of Justice, on the basis of a competition, after having worked no less than five years in the courts of the first level and having been distinguished for professional capability and high ethical-moral qualities.

⁴ Translator's note: this article was repealed by law nr. 8811, dated 17 May 2001 "On the organization and functioning of the High Council of Justice".

Article 25

Judges may stay in office until the age of 65.

Article 25/a

For filling vacancies and appointing to office psychological specialists who take part in judicial bodies for the adjudication of minors, the procedures contemplated in articles 21, 22 and 23 of this law are applied.

A psychological specialist earns 80 per cent of the pay of a judge of the court of the judicial district where he exercises his functions, as well as paid annual leave of 30 days.

CHAPTER IV STATUS OF JUDGES

Article 26

Judges enjoy immunity.

Judges of the first level and of appeals may be criminally prosecuted only with the approval of the High Council of Justice. A judge may be detained or arrested only if he is caught during commission of a crime or immediately after committing it. The competent organ immediately notifies the High Council of Justice. If the High Council of Justice does not give its consent with 24 hours to send the arrested judge to court, the competent organ is obliged to release him.

Article 27

Judges may not be removed from office, except when:

1. they resign;
2. they reach retirement age;
3. they are punished criminally by a final court decision;
4. it is concluded that they are physically or mentally incapable or, according to the criteria specified in articles 45 or 48 of this law, their professional insufficiency is concluded;
5. disciplinary measures are taken against them by the competent organ according to the cases contemplated by law;
6. they commit actions or hold functions conflicting with articles 29 to 35 of this law.

In a case when the initiation of a criminal proceeding against a judge is decided, he is suspended from office until a final decision is taken.

In cases when guilt is not proven by a final court decision, the judge has the right to return to his/her prior work and to receive full pay from the time of suspension.

Article 28

Promotion in responsibility and transfer of a judge from his work is done only with his/her consent, except for the cases provided by this law.

If a court does not function normally because of the temporary absence of judges or because of a work overload, the High Council of Justice, on the proposal of the Minister of Justice, seconds judges from one court to another for a period of no more than three months per year even without the judge's consent.

At the end of this term, the judge goes again to his prior place.

The High Council of Justice, on the proposal of the Minister of Justice, may name a judge to adjudicate a number of cases in another court of the same level, if the judges in this court are lacking.

Article 29

Judges are prohibited from being part of political parties or taking part in activity of a political nature.

Article 30

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

Judges are forbidden from taking part in the administration or management of civil or commercial companies, personally or by representation.

Article 30/a

Judges may serve in management levels of the cabinet of the Minister and juridical-professional structures of the Ministry of Justice. The period of their civil service in these structures is recognized as a period of seniority in work as a judge for purposes of professional career requirements contemplated in the provisions of the laws on the organization of the judicial power, the High Court, the Constitutional Court and the Office of the Prosecutor.

Judges who serve as civil servants in the Ministry of Justice are re-appointed judges at their request without a competition.

Article 31

Judges may not be experts or arbitrators of the parties to an arbitration.

Article 32

A judge is prohibited from making statements about proceedings or making known the opinions given during adjudication sessions that have not yet taken the form of a decision, or declaring the content of official acts or documents of a secret or personal nature.

Article 33

During the adjudication of cases, judges, prosecutors and lawyers shall respect the solemnity of the adjudication and wear special clothing. The rules about the solemnity of the adjudication and the clothing are set by order of the Minister of Justice, after receiving the opinion of the Chairman of the High Court, the General Prosecutor and the National Chamber of Lawyers.

Article 34

Judges shall keep their dignity, not permitting actions that compromise the profession, the organs of justice and their figure in society.

Article 35

Judges are free to create societies or other organizations to protect their rights and interests, as well as for professional improvement.
Judges are forbidden to strike.

Article 36

To guarantee order and security, a continuous police service is organized at the courts, which acts according to the orders of the judicial authorities.

Article 37

No judge is responsible in a civil lawsuit that is connected with the performance of his professional duties, except for cases when expressly provided by a separate law.

Article 38

Judges have the right:

1. To have special protection for themselves, their family and property, when they themselves ask for it for serious circumstances or it is considered essential.
2. To obtain for free official journals, gazettes and juridical magazines.

Article 38/a

Special personal protection for the family and property of judges of the courts for serious crimes, as well as their special financial treatment, is regulated by law.

Article 39

Judges enjoy annual paid leave of 30 days. The annual leave is taken in the months of July and August.

Judges charged with the performance of urgent duties for the period July-August take annual leave at another period, gaining five additional days.

CHAPTER V DISCIPLINARY RESPONSIBILITY OF JUDGES

Article 40

Judges are responsible for violations of discipline, as well as for the commission of acts and behaviors that seriously discredit their figure and the authority of justice.

Article 41

There are considered violations of discipline:

1. Commission of actions that according to law are incompatible with the function of judge.
2. Issuance of a secret of the investigation, of the consultation chamber or other data of an intimate nature.
3. Serious or systematic delays in the performance of duty.
4. Failure to respect the rules of solemnity.
5. Absences from work without reason.
6. Commission of immoral or indecent actions during or outside of work.
7. Commission of actions contrary to the due performance of duty or failure to perform obligatory procedural actions, when it does not constitute a criminal offense.
8. Failure without reason to implement a disciplinary measure given.

Article 42

For violations of discipline, as well as other discrediting acts and conduct, these measures are taken:

1. Reprimand.
2. Reprimand with warning.
3. Suspension from duty and transfer to another lower duty within the court for a period of from six months to one year.
4. Transfer to another court of the same level or a lower level.
5. Discharge from duty.

Article 43

Disciplinary measures against judges are taken by the High Council of Justice on the basis of the evaluation of the kind and nature of the violation committed.

Article 44

A disciplinary proceeding for judges is put into motion by the Minister of Justice.

The initiation of the disciplinary proceeding may be done within three years from the date of commission of the violation.

During the verification that is done by the inspectors, it is determined whether any violation of discipline was committed from those specified by law, the type and seriousness of the violation, the guilt of the person, as well as the data on which the conclusions that have been drawn rest.

In any case, the judge who has committed the violation shall be heard. The verification of the claims is obligatory.

The results of the verifications made, as well as the written data about them, are reflected in a final act, which is made known to the judge who committed the violation.

Before making a decision, the High Council of Justice shall send the claims of the parties to a session. The full materials are put at the disposition of the judge 10 days before the holding of the session. He has the right to be defended himself or with a lawyer during the session.

Article 45

No later than once every two years, the High Council of Justice makes an evaluation of the professional abilities of the judges, based on the quality, volume of work, speed of adjudication, reputation and publication of juridical works, as follows:

1. Very good.
2. Good.
3. Acceptable.
4. Incompetent.

The inspector of the High Council of Justice who has prepared the draft act of evaluation of professional abilities communicates it to the respective judge beforehand, and the latter has the right to present his objections within a period of eight days.

[A judge has the right of appeal to the High Council of Justice against the final act of evaluation within ten days from receiving notice. The High Council of Justice investigates the complaint, applying the rules contemplated in the last paragraph of article 44 of this law].⁵

An evaluation as “incompetent” constitutes cause for discharge from work.

Article 46

When he is discharged from duty for one of the reasons provided in the Constitution, a judge has the right to appeal to the High Court within 10 days from the notification of the decision of the High Council of Justice.

The adjudication of the case is done by the joint colleges.

⁵ Translator’s note: this paragraph was repealed by law nr. 8811, dated 17 May 2001 “On the organization and functioning of the High Council of Justice”. Probably, it may have been intended to repeal the third paragraph of article 48 instead, as that paragraph had been declared unconstitutional by the Constitutional Court (see note below).

CHAPTER VI TRANSITORY PROVISIONS

Article 47

If a court is abolished, the possibilities for assigning its judges to other places in the justice system shall be provided in the respective act of the competent organ.

Article 48

All judges of the first level who have worked as judges for less than ten years shall be subjected to a qualification examination, theoretical and practical, in writing and orally.

The examination shall be organized by the High Council of Justice in cooperation with the Magistrates' School and the Law Faculty of the University of Tirana. It shall be held no later than June 1, 1999.

[Notwithstanding the specification of article 27 of this law, judges who do not pass the examination are discharged from office by decision of the High Council of Justice. They have the right of appeal provided in article 46 of this law.]⁶

The notification of the examination and the subjects to be treated will be published in the two newspapers with the largest circulation and will be posted in the courts at least six months before each examination. These modalities are also respected for article 20.

This examination may be organized together with each examination contemplated in article 20 of this law.

Transitional provision

The time of beginning of activity of the courts for serious crimes is set by law.

Article 49

Law nr. 8265 dated 18 December 1997 "On the Organization of Justice in the Republic of Albania" is repealed.

Article 50

This law is effective 15 days after publication in the Official Journal.

Promulgated by decree nr. 2292, dated 7 January 1999 of the President of the Republic of Albania, Rexhep Meidani.

⁶ Translator's note: this paragraph was declared unconstitutional by Constitutional Court decision nr. 59/1999.