

**Human Dimension Seminar
Strengthening the Rule of Law in the OSCE Area**

**Written Contribution by the Albanian Delegation
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Independence of the Judiciary in Albania

Bearing in mind the importance of an efficient judiciary for a functioning democracy, the rule of law is one of the most fundamental principles in a modern society; it provides legal certainty and thus economic prosperity. It is impossible to ensure the rule of law, upon which other human rights depend, without providing courts with the independence they need to resolve disputes. The judiciary cannot be efficient if not independent. The independence of the judiciary follows standards of professionalism, integrity and fairness of the judges in the performance of their duties. Education, selection and career advancement procedures as well as effective disciplinary mechanisms, guarantee the effectiveness and independence of the judiciary. During the last 18 years of democracy, the Republic of Albania has accomplished to enhance the independence of the judiciary by providing a constitutional framework to the independence, by establishing the School of Magistrates, and finally, with the adoption of the new Law "On the organization of the judicial power in the Republic of Albania".

Constitutional guarantees

Basic constitutional guarantees are essential to the independence of the judiciary. The constitutional provision of a judicial branch, and the formal assurance that it is separate and independent of other branches, represents the main way by which independence principles can be endorsed. The Constitution of the Republic of Albania provides for a system of government based on the separation and balancing of legislative, executive and judicial powers (article 7). Furthermore, it states the core of the guarantees to independence by providing that *judges are independent and subject only to the Constitution and the laws*¹, that *the time they stay in office cannot be limited; their pay and other benefits cannot be lowered*², that *being a judge is incompatible with every other state, political or private activity*³, their *immunity*⁴ to the criminal prosecution, and that *courts have a separate budget which they administer themselves*⁵.

Education

The Magistrates' School

In order to comply with the professionalism standards, judges must have an adequate education and training. The Albanian Constitution states that *only citizens with higher legal education may*

¹ Article 145, paragraph 1 of the Constitution of the Republic of Albania

² Article 138 of the Constitution of the Republic of Albania

³ Article 143 of the Constitution of the Republic of Albania

⁴ Article 137 of the Constitution of the Republic of Albania

⁵ Article 144 of the Constitution of the Republic of Albania

be judges. The Albanian Law “On the organization of the judicial power in the Republic of Albania” requires that education criteria are met to be appointed as a judge. Thus, for this appointment, except a higher legal education, one must have completed the Magistrates’ School⁶. Law No. 8136, dated 31 July 1996, as amended by Law No. 9414, dated 20 May 2005, established the Magistrates’ School as a public budgetary institution with the status of a legal person which assures the professional formation of magistrates. The Law grants the Magistrates’ School administrative, academic and financial autonomy. The School is entered through competition which is given in writing before a jury consisting of five persons designated by the Steering Council of the Magistrates’ School. In conformity with the list of vacant places determined by the High Prosecutor for candidates for prosecutor, the Director of the School makes announcement for the submission of applications of the candidates, making known the documents that should accompany the application, the end date for submitting them and the list of subjects that will serve as the basis for the testing of the candidates⁷.

The initial formation of candidates for magistrate include a three year period consisting of one year of theoretical program with various subjects of the law, one practical year under the care of a pedagogue of the School of Magistrates and under the direction of a judge or prosecutor with high qualification and one year of active practice (period of professional internship) following less complicated cases under the direction of a judge or prosecutor⁸. The theoretical program is the same for all candidates, while the practical year and the year of professional internship are conducted according to the profiles of judge or prosecutor that the candidate has selected. During the professional internship period, the candidates for judge or prosecutor enjoy the same rights and have the same obligations as magistrates.

The final evaluation of the candidates is done by the pedagogical council on the basis of the theoretical results and the practical results of the internship. The Directorate of the School sends the data of the evaluation process to the President of the Republic for making their final appointment to vacant positions in conformity with the level of their evaluation by the school, after the proposals made respectively by the High Council of Justice for judges and the General Prosecutor for prosecutors⁹.

The Law does also provide for the supplementary formation of judges¹⁰. The program of continuous formation is drawn up by the Director of the School after having first received the opinion of the President of the High Court, the General Prosecutor, the Ministry of Justice, the High Council of Justice and the pedagogical council of the School. Participation in these trainings is obligatory.

Appointment, advancement and disciplinary measures High Council of Justice

The way judges are appointed can affect their independence. In their appointment, the Albanian Constitution involves the High Council of Justice¹¹ giving the latter the right to propose

⁶ Article 11 of Law No.9877, dated 18 February 2008

⁷ Article 16 of the Law No. 8136, dated 31.07.1996

⁸ Article 14 of Law No.8136, dated 31.07.1996

⁹ Article 20 of Law No. 8136, dated 31.07.1996

¹⁰ Article 23 of Law No. 8136, dated 31.07.1996

¹¹ Article 147 of the Constitution of the Republic of Albania

candidates. The President of the Republic makes the decision of the appointment upon proposal of the Council. The High Council of Justice is a constitutional body consisting of the President of the Republic, the President of the High Court, the Minister of Justice, three members elected by the Assembly and nine judges of all levels elected by the National Judicial Conference. The Council is chaired by the President of the Republic. The High Council of Justice decides on the transfer of judges, but this cannot be done without consent of the judges, except in case of need for the reorganization of the judicial system. The Council is also entitled to make decisions on judges' disciplinary responsibility pursuant to law. The above-mentioned are basic constitutional statements on the organization and functioning of the High Council of Justice. They are extended to legal provisions included in the Law No.8811, dated 17.05.2001 "On the organization and functioning of the High Council of Justice". The latter makes clear and detailed statements on the procedures followed in the appointment, transfer, evaluation and disciplinary proceeding of a judge. Disciplinary proceeding of a judge is initiated by proposal of the Ministry of Justice on the basis of results from inspections made by the latter. The judge against whom a disciplinary proceeding is initiated is given the right to take part in the session of the Council held for discussing the disciplinary measure. He has the right to a fair hearing and the right to appeal to the Council decision to the High Court.

The Council is given a key role in the appointment process. This does not obstacle the independence of the judiciary because the Council itself consisting in its majority of judges is largely independent from the executive.

Organization and functioning

Law "On the organization of the judicial power in the Republic of Albania"

On February 2008 Albania has adopted a new Law "On the Organization of the judicial power in the Republic of Albania" defining the creation, organization and competences of the courts, the conditions and procedures for the appointment of the judges of the first court and of appeal, the rights and obligations of the judges, disciplinary measures and their discharge, as well as other issues related to the functioning of the courts. When defining the criteria that should be met in order to become a judge, the law states that the candidate must have completed the School of Magistrates. On the basis of this law an exception is made by providing that the High Council of Justice may appoint up to 10% of the total number of judges, persons who have previously worked as judges and meet the other criteria of the law¹². The Law also provides for the evaluation of judges. At least once every three years, the High Council of Justice performs an evaluation of the professional abilities of a judge, in conformity with the decision approved by it on the evaluation criteria.¹³ The evaluation of professional abilities is: a). very good; b). good; c). acceptable; d). incapable. The evaluation "Incapable" constitutes a reason for beginning the procedure for discharge from the office of judge.

As a guarantee to a judges independence the Law provides for the "status of the judge"¹⁴ including the immovability of a judge fro duty, except when he resigns, reaches the age of retirement, is punished by final judicial decision for the commission of a crime or is discharged from duty. The

¹² Article 11 of Law No.9877, dated 18. 02.2008

¹³ Article 13 of Law No. 9877, dated 18.02.2008

¹⁴ Chapter IV of Law No. 9877, dated 18.02.2008

status also provides for consent of the judges in case of transfer and for the rules of delegation of judges. The Law expands the constitutional provisions on independence of the judiciary providing that a judge may not exercise any other state, private or political activity and various restrictions because of office (from being part of political parties, from taking part in the administration or direction of commercial companies, from being experts or an arbiter in the arbitration, from making public declarations in connection with proceedings, from making known the opinions that were given during trial sessions that have not yet taken the form of the decision, etc).

The Law provides the judge with benefits from the office, like that of having a special protection from the state for himself, his family and property, for serious circumstances that endanger life, family and property. The Council of Ministers lately adopted a Decision on this purpose.

All the above-mentioned provisions outline the constitutional and legal framework for ensuring the independence of the judiciary in the Republic of Albania.