

**CONSOLIDATED VERSION OF THE CONSTITUTION OF
THE REPUBLIC OF ALBANIA
INTEGRATING THE DRAFT CONSTITUTIONAL AMENDMENTS**

Dated 04 05 2016

This text of the Constitution of the Republic of Albania reflects the following amendments:

Initial law no nr. 8417, dated 21.10.1998 “Constitution of the Republic of Albania”

Amending Law no 9675, dated 13.1.2007

Amending Law no 9904, dated 21.4.2008

Amending law no 88/2012, dated 18.09.2012

Amending law no.137/2015, dated 17.12.2015

Revised draft amendments sent to the Venice Commission as of 12.01.2016

Proposed amendments after Final Opinion of Venice Commission 824/2015

Comment: The proposed changes are suggested by EURALIUS and OPDAT for the purpose of (1) complying with the Venice Commission opinions, in particular the final opinion dated 15 March 2016 (824/2015); (2) complying with political decisions made by the Parliament's *Ad Hoc Committee on Judicial Reform*; (3) addressing certain political concerns raised about particular institutions and offering options which are in blue; (4) offering changes to harmonize or make technical adjustments to the draft which were necessary after the Venice Commission's proposals were incorporated. The proposed draft does not incorporate any political decisions which have not been made, nor does it seek to endorse one political decision over another.

CONSTITUTION OF THE REPUBLIC OF ALBANIA

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 state of law, social and democratic, 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,

WE ESTABLISH THIS CONSTITUTION

PART ONE BASIC PRINCIPLES

Article 1

1. Albania is a parliamentary republic.
2. The Republic of Albania is a unitary and indivisible state.
3. Governance is based on a system of elections that are free, equal, general and periodic.

Article 2

1. Sovereignty in the Republic of Albania belongs to the people.
2. The people exercise sovereignty through their representatives or directly.
3. For the maintenance of peace and national interests, the Republic of Albania may take part in a system of collective security, on the basis of a law approved by a majority of all the members of the Assembly.
4. Upon accession, the Republic of Albania delegates to the European Union institutions the necessary powers for accomplishment of the obligations deriving from the accession, based on a law approved with three-fifth majority of all members of the Assembly.

Article 3

The independence of the state and the integrity of its territory, dignity of the individual, human rights and freedoms, social justice, constitutional order, pluralism, national identity and inheritance, religious coexistence, as well as coexistence with, and understanding of Albanians for, minorities are the bases of this state, which has the duty of respecting and protecting them.

Article 4

1. The law constitutes the basis and the boundaries of the activity of the state.
2. The Constitution is the highest law in the Republic of Albania.
3. The provisions of the Constitution are directly applicable, except when the Constitution provides otherwise.

Article 5

The Republic of Albania applies international law that is binding upon it.

Article 6

The organization and functioning of the bodies contemplated by this Constitution are regulated by their respective laws, except when this Constitution provides otherwise.

Article 6/1

The election or appointment to or exercise of a public function in one of the organs provided in this Constitution or established by law, notwithstanding the regulation contained in other provisions of this Constitution, shall be prohibited **for a specific duration¹**, in case circumstances are established impairing the integrity of the public functionary, under the conditions and rules provided for by law being approved by three fifth of all members of the Assembly.

Article 7

The system of government in the Republic of Albania is based on the separation and balancing of legislative, executive and judicial powers.

Article 8

1. The Republic of Albania protects the national rights of the Albanian people who live outside its borders.
2. The Republic of Albania protects the rights of its citizens with a temporary or permanent residence outside its borders.
3. The Republic of Albania assures assistance for Albanians who live and work abroad in order to preserve and develop their ties with the national cultural inheritance.

Article 9

1. Political parties are created freely. Their organization shall conform to democratic principles.
2. Political parties and other organizations, whose programs and activity are based on totalitarian methods, that incite and support racial, religious, regional or ethnic hatred, that use violence to take power or influence state policies, as well as those with a secret character, are prohibited pursuant to the law.
3. The financial sources of parties as well as their expenses are always made public.

Article 10

1. In the Republic of Albania there is no official religion.
2. The state is neutral in questions of belief and conscience, and also, it guarantees the freedom of their expression in public life.
3. The state recognizes the equality of religious communities.
4. The state and the religious communities mutually respect the independence of one another and work together for the good of each of them and for all.
5. Relations between the state and religious communities are regulated on the basis of agreements achieved between their representatives and the Council of Ministers. These agreements are ratified by the Assembly.

¹ Venice Commission Final Opinion 824/2015 Paragraph 74

6. Religious communities are legal entities. They have independence in the administration of their properties according to their principles, rules and canons, to the extent that interests of third parties are not infringed.

Article 11

1. The economic system of the Republic of Albania is based on private and public property, as well as on a market economy and on freedom of economic activity.
2. Private and public property are equally protected by law.
3. Limitations on the freedom of economic activity may be established only by law and for important public reasons.

Article 12

1. The armed forces secure the independence of the country, as well as protect its territorial integrity and constitutional order.
2. The armed forces maintain neutrality in political questions and are subject to civilian control.
3. Foreign military forces may be situated in or pass through the Albanian territory, as well as Albanian military forces may be deployed abroad based on a procedure provided in the law approved with the majority of all members of the Assembly, except as otherwise provided in an international agreement.

Article 13

Local government in the Republic of Albania is founded upon the basis of the principle of decentralization of power and is exercised according to the principle of local autonomy.

Article 14

1. The official language in the Republic of Albania is Albanian.
2. The national flag is red with a two-headed black eagle in the centre.
3. The seal of the Republic of Albania presents a red shield with a black, two-headed eagle in the centre. At the top of the shield, in gold colour, is the helmet of Skanderbeg.
4. The national anthem is "United Around Our Flag."
5. The National Holiday of the Republic of Albania is the Flag Day, November 28.
6. The capital city of the Republic of Albania is Tirana.
7. The form and dimensions of the national symbols, the content of the text of the national anthem, and their use shall be regulated by law.

PART TWO
THE FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

CHAPTER I
GENERAL PRINCIPLES

Article 15

1. The fundamental human rights and freedoms are indivisible, inalienable, and inviolable and stand at the basis of the entire juridical order.
2. The bodies of public power, in fulfilment of their duties, shall respect the fundamental rights and freedoms, as well as contribute to their realization.

Article 16

1. The fundamental rights and freedoms and the duties contemplated in this Constitution for Albanian citizens are also valid for foreigners and stateless persons in the territory of the Republic of Albania, except for cases when the Constitution specifically attaches the exercise of particular rights and freedoms with Albanian citizenship.
2. The fundamental rights and freedoms and the duties contemplated in this Constitution are valid also for legal persons so long as they comport with the general purposes of these persons and with the core of these rights, freedoms and duties.

Article 17

1. The limitation of the rights and freedoms provided for in this Constitution may be established only by law for a public interest or for the protection of the rights of others. A limitation shall be in proportion with the situation that has dictated it.
2. These limitations may not infringe the essence of the rights and freedoms and in no case may exceed the limitations provided for in the European Convention on Human Rights.

Article 18

1. All are equal before the law.
2. No one may be unjustly discriminated against for reasons such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, **gender identity, sexual orientation, economic condition, property, education, social origin, birth, disability, social or parental ancestry or for other reasons.**
3. No one may be discriminated against for reasons mentioned in paragraph 2 whether reasonable and objective legal grounds do not exist.

Article 19

1. Everyone born of at least one parent with Albanian citizenship gains automatically Albanian citizenship. Albanian citizenship is gained also for other reasons provided by law.
2. An Albanian citizen may not lose his citizenship, except when he gives it up.

Article 20

1. Persons who belong to national minorities exercise in full equality before the law the human rights and freedoms.
2. They have the right to freely express, without prohibition or compulsion, their ethnic, cultural, religious and linguistic belonging. They have the right to preserve and develop it, to study and to be taught in their mother tongue, as well as unite in organizations and associations for the protection of their interests and identity.

CHAPTER II PERSONAL RIGHTS AND FREEDOMS

Article 21

The life of a person is protected by law.

Article 22

1. Freedom of expression is guaranteed.
2. The freedom of the press, radio and television are guaranteed.
3. Prior censorship of a means of communication is prohibited.
4. The law may require the granting of authorization for the operation of radio or television stations.

Article 23

1. The right to information is guaranteed.
2. Everyone has the right, in compliance with law, to get information about the activity of state organs, as well as of persons who exercise state functions.
3. Everybody is given the possibility to follow the meetings of elected collective bodies.

Article 24

1. Freedom of conscience and of religion is guaranteed.
2. Everyone is free to choose or to change his religion or beliefs, as well as to express them individually or collectively, in public or private life, through cult, education, practices or the performance of rituals.
3. No one may be compelled or prohibited to take part in a religious community or in religious practices or to make his beliefs or faith public.

Article 25

No one may be subjected to torture, cruel, inhuman or degrading punishment or treatment.

Article 26

No one may be required to perform forced labour, except in cases of the execution of a judicial decision, the performance of military service, or for a service that results from a state of emergency, war or natural disaster that threatens human life or health.

Article 27

1. No one can be deprived of liberty except in the cases and according to the procedures provided by law.

2. Freedom of person may not be limited, except in the following cases:

- a) when punished with imprisonment by a competent court;
- b) for failure to comply with the lawful orders of the court or with an obligation set by law;
- c) when there are reasonable suspicions that he has committed a criminal offense or to prevent the commission by him of a criminal offense or his escape after its commission;
- ç) for the supervision of a minor for purposes of education or for escorting him to a competent organ;
- d) when a person is the carrier of a contagious disease, mentally incompetent and dangerous to society;
- dh) for illegal entry at state borders or in cases of deportation or extradition.

3. No one may be deprived of liberty just because of not being able to fulfil a contractual obligation.

Article 28

1. Everyone who has been deprived of liberty has the right to be notified immediately, in a language that he understands, of the reasons for this measure, as well as of the charge made against him. The person who has been deprived of liberty shall be informed that he has no obligation to make a declaration and has the right to communicate immediately with a lawyer, and he shall also be given the possibility to realize his rights.

2. The person who has been deprived of liberty, according to Article 27, paragraph 2, subparagraph c), must be sent within 48 hours before a judge, who shall decide upon his pre-trial detention or release not later than 48 hours from the moment he receives the documents for review.

3. A person in pre-trial detention has the right to appeal the judge's decision. He has the right to be tried within a reasonable period of time or to be released on bail pursuant to law.

4. In all other cases, the person who has extra-judicially been deprived of liberty may address a judge at any time, who shall decide within 48 hours regarding the legality of this action.

5. Every person who has been deprived of liberty pursuant to Article 27, has the right to humane treatment and respect for his dignity.

Article 29

1. No one may be charged or declared guilty of a criminal offence that was not considered as such by law at the time of its commission, with the exception of cases, that at the time of their commission, according to international law, constitute war crimes or crimes against humanity.
2. No punishment may be given that is more severe than that which was provided for by law at the time of commission of the criminal act.
3. The favourable criminal law has retroactive effect.

Article 30

Everyone is considered innocent as long as his guilt is not proven by a final judicial decision.

Article 31

During a criminal proceeding, everyone has the right:

- a) to be notified immediately and in detail of the charge made against him, of his rights, as well as to have the possibility created to notify his family or those close to him;
- b) to have the time and sufficient facilities to prepare his defence;
- c) to have free of charge assistance of a translator, when he does not speak or understand the Albanian language;
- ç) to be defended by himself or with the assistance of a defence lawyer chosen by him; to communicate freely and privately with him, as well as to be assured of free defence when he does not have sufficient means;
- d) to ask witnesses who are present and to seek the presentation of witnesses, experts and other persons who can clarify the facts.

Article 32

1. No one may be obliged to testify against himself or his family or to confess his guilt.
2. No one may be declared guilty on the basis of data collected in an unlawful manner.

Article 33

1. Everyone has the right to be heard before being adjudicated.
2. A person who is hiding from justice may not take advantage of this right.

Article 34

No one may be sentenced more than once for the same criminal act, nor be tried again, except for cases when the re-adjudication of the case is decided on by a higher court, in the manner specified by law.

Article 35

1. No one may be obliged, except when the law requires it, to make public the data connected with his person.

2. The collection, use and making public of data about a person is done with his consent, except for the cases provided by law.
3. Everyone has the right to become acquainted with data collected about him, except for the cases provided by law.
4. Everyone has the right to request the correction or expunging of untrue or incomplete data or data collected in violation of law.

Article 36

The freedom and secrecy of correspondence or any other means of communication are guaranteed.

Article 37

1. The inviolability of the residence is guaranteed.
2. Searches of a residence, as well as the premises that are equivalent to it, may be done only in the cases and manner provided by law.
3. No one may be subjected to a personal search out of a criminal proceeding, with the exception of the cases of entry and exit of the territory of the state, or to avoid a risk that threatens public security.

Article 38

1. Everyone has the right to choose his place of residence and to move freely to any part of the territory of the state.
2. No one may be hindered to go freely out of the state.

Article 39

1. No Albanian citizen may be expelled from the territory of the state.
2. Extradition may be permitted when it is expressly provided in international agreements, to which the Republic of Albania is a party, only by judicial decision **as well as in case it is provided by the legislation of the European Union.**
3. The collective expulsion of foreigners is prohibited. The expulsion of individuals is permitted under the conditions specified by law.

Article 40

Foreigners have the right of refuge in the Republic of Albania according to law.

Article 41

1. The right of private property is guaranteed.
2. Property may be gained by gift, inheritance, purchase, or any other classical means provided by the Civil Code.
3. The law may provide for expropriations or limitations in the exercise of a property right only for public interests.

4. The expropriations or limitations of a property right that are equivalent to expropriation are permitted only against fair compensation.
5. For disagreements connected with the extent of the compensation, a complaint may be filed in court.

Article 42

1. The freedom, property, and rights recognized in the Constitution and by law may not be infringed without due process.
2. Everyone, for the protection of his constitutional and legal rights, freedoms, and interests, or in the case of an accusation raised against him, has the right to a fair and public trial, within a reasonable time, by an independent and impartial court specified by law.

Article 43

Anyone shall be entitled to file an appeal against a judicial decision before a higher court, except if otherwise provided in the law for civil and administrative matters of minor importance or value².

Article 44

Everyone has the right to be rehabilitated and/or indemnified in compliance with law if he is damaged because of an act, unlawful act or omission from state bodies.

CHAPTER III POLITICAL RIGHTS AND FREEDOMS

Article 45

1. Every citizen who has attained the age of 18, even on the date of the elections, has the right to elect and be elected.
2. Citizens who have been declared mentally incompetent by a final court decision are excluded from the right of election.
3. Exempted from the right to be elected shall be the citizens being sentenced to imprisonment upon a final decision for commission of a crime, under the rules set out in a law to be approved by three fifth of all the members of the Parliament. In exceptional and justified cases, the law may provide for restrictions of the election right for citizens serving an imprisonment sentence or the right to be elected prior to a final decision being rendered, or the citizens having been deported for a crime or very serious and grave breach of public security.
4. The vote is personal, equal, free and secret.

² Venice Commission Final Opinion 824/2015 Paragraph 76

Article 46

1. Everyone has the right to organize collectively for any lawful purpose.
2. The registration of organizations or associations in court is done according to the procedure provided by law.
3. Organizations or associations that pursue unconstitutional purposes are prohibited pursuant to law.

Article 47

1. Freedom and unarmed participation in peaceful gatherings is guaranteed.
2. Peaceful gatherings in public squares and places are held in conformity with the law.

Article 48

Everyone, by himself or together with others, may direct requests, complaints or comments to the public bodies, which are obliged to reply within the time limits and conditions set by law.

CHAPTER IV

ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND FREEDOMS

Article 49

1. Everyone has the right to earn the means of living by lawful work chosen or accepted by himself. He is free to choose his profession, place of work, as well as his own system of professional qualification.
2. Employees have the right to social insurance of work.

Article 50

Employees have the right to unite freely in labour unions for the defence of their work interests.

Article 51

1. The right of an employee to strike in connection with work relations is guaranteed.
2. Limitations on particular categories of employees may be established by law to ensure required services to the society.

Article 52

1. Everyone has the right to social insurance in old age or when he is unable to work, according to a system set by law.
2. Everyone, who remains jobless for reasons independent of his/her volition, and has no other means of support, has the right to assistance under the conditions provided by law.

Article 53

1. Everyone has the right to get married and have a family.
2. Marriage and family enjoy special protection of the state.
3. The entering into and dissolution of marriage are regulated by law.

Article 54

1. Children, the young, pregnant women and new mothers have the right to special protection by the state.
2. Children born out of wedlock have equal rights with those born within marriage.
3. Every child has the right to be protected from violence, ill treatment, exploitation and use for work, especially under the minimum age for work, which could damage their health and morals or endanger their life or normal development.
4. In all actions relating to children, the child's best interests must be a primary consideration.

Article 55

1. Citizens enjoy in an equal manner the right to health care from the state.
2. Everyone has the right to health insurance pursuant to the procedure provided by law.

Article 56

Everyone has the right to be informed about the status of the environment and its protection.

Article 57

1. Everyone has the right to education.
2. Mandatory school education is determined by law.
3. Public general high school education is open for all.
4. Professional high school education and higher education can be conditioned only on criteria of abilities.
5. Mandatory education and general high school education in public schools are free.
6. Pupils and students may also be educated in private schools of all levels, which are created and operated according to the law.
7. The autonomy and academic freedom of higher education institutions are guaranteed by law.

Article 58

1. Freedom of artistic creation and scientific research, the use and profits deriving from them are guaranteed for all.
2. Copyright is protected by law.

CHAPTER V SOCIAL OBJECTIVES

Article 59

1. The state, within its constitutional powers and the means at its disposal, aims to supplement private initiative and responsibility with:
 - a) employment under suitable conditions for all persons who are able to work;
 - b) fulfilment of the housing needs of its citizens;
 - c) the highest health, physical and mental standards possible;
 - ç) education and qualification according to ability of children and the young, as well as unemployed persons;
 - d) a healthy and ecologically adequate environment for the present and future generations;
 - dh) rational exploitation of forests, waters, pastures and other natural resources on the basis of the principle of sustainable development;
 - e) care and help for the aged, orphans and persons with disabilities;
 - ë) development of sports and recreation activities;
 - f) health rehabilitation, specialized education and integration in society of disabled people, as well as continual improvement of their living conditions;
 - g) protection of national cultural heritage and particular care for the Albanian language.
2. Fulfilment of social objectives may not be claimed directly in court. The law defines the conditions and extent to which the realization of these objectives can be claimed.

CHAPTER VI PEOPLE'S ADVOCATE

Article 60

1. The People's Advocate defends the rights, freedoms and lawful interests of individuals from unlawful acts or omissions of public administration bodies.
2. The People's Advocate is independent in the exercise of his duties.
3. The People's Advocate has his own budget, which he administers by himself. He proposes the budget pursuant to law.

Article 61

1. The People's Advocate is elected by three-fifths of all members of the Assembly for a five-year period, with the right for re-election.
2. Any Albanian citizen with higher education, and with recognized knowledge and recognized activity in the field of human rights and law may be the People's Advocate.
3. The People's Advocate enjoys the immunity of a judge of the High Court.

4. The People's Advocate may not take part in any political party, carry on any other political, state or professional activity, nor take part in the management organs of social, economic and commercial organizations.

Article 62

1. The People's Advocate may be discharged only on grounded complaint of not less than one-third of the deputies.
2. In this case, the Assembly makes a decision with three-fifths of all its members.

Article 63

1. The People's Advocate presents an annual report before the Assembly.
2. The People's Advocate reports before the Assembly when it is requested from the Assembly, and he may request the Assembly to hear him on matters he deems important.
3. The People's Advocate has the right to make recommendations and to propose measures when he observes violations of human rights and freedoms by the public administration.
4. Public bodies and officials are obligated to present to the People's Advocate all documents and information requested by him.

PART THREE THE ASSEMBLY

CHAPTER I ELECTION AND TERM

Article 64

1. Assembly is composed of 140 deputies, elected on proportional system with multi-names electoral zones.
2. The multi-name electoral zone corresponds to the administrative division of one of the levels of the administrative-territorial organization.
3. Criteria and rules on the implementation of the proportional electoral system, on the determination of electoral zones and on the number of seats to be obtained in each electoral zone shall be defined by the law on elections.
4. Upon accession of the Republic of Albania to the European Union, Albanian citizens shall elect their representatives to the European Assembly by direct voting in a manner regulated by law.

Article 65

1. The Assembly is elected every four years. The mandate of the Assembly starts with its first meeting after the elections and ends on the same date, of the same month of the fourth

year from the date of the first meeting. In any case, the Assembly remains on duty until the first meeting of the newly elected Assembly.

2. Elections for the new Assembly are held in the nearest electoral period that precedes the date of the ending of the mandate of the Assembly. Electoral periods and the rules for holding the elections for the Assembly are determined by the law on elections.

3. If the Assembly is dissolved prior to the ending of its full mandate, elections are held no later than 45 days after its dissolution.

4. The Assembly may not approve laws during the period 60 days prior to the termination of its mandate until the first meeting of the new Assembly, except in cases when extraordinary measures have been imposed.”

Article 66

The mandate of the Assembly is extended only in the case of war and for so long as it continues. When the Assembly is dissolved, it recalls itself.

Article 67

1. The President of the Republic convenes the newly elected Assembly not earlier than the date of the termination of the mandate of the preceding Assembly, but no later than 10 days after such mandate has expired. If the preceding Assembly has been dissolved before the ending of its mandate, the President of the Republic convenes the new Assembly not later than 10 days since the announcement of the election results.

2. If the President of the Republic does not exercise such a competence, the Assembly convenes itself on the tenth day of the period of time provided in point 1 of this Article.

CHAPTER II THE DEPUTIES

Article 68

1. Candidates for deputies shall be presented at the level of the electoral zone by political parties, electoral coalitions of political parties as well as by voters. A candidate may be presented by only one of the proposing subjects according to this section. The ranking of the candidates in the multi-name lists may not be changed after the submission of the list to the respective electoral commission. The rules for the registration of the candidates for deputies are determined by the law on elections.

2. The law on elections shall also determine other necessary criteria and rules on the organization and conduct of elections, including those on registration of voters, conduct of electoral campaign, administration and validity of elections and declaration of their results.

Article 69

1. Without resigning from duty, the following may not run as candidates nor be elected deputies:

- a) judges, prosecutors;
- b) military servicemen on active duty;
- c) police and National Security employees;
- ç) diplomatic representatives;
- d)-mayors and heads of communes as well as prefects in the places where they carry out their duties;
- dh) chairperson and members of the electoral commissions;
- e) the President of the Republic and the high officials of the State Administration AS as provided by law.

2. A mandate gained in violation of paragraph 1 of this article is invalid.

Article 70

- 1. Deputies represent the people and are not bound by any obligatory mandate.
- 2. Deputies may not simultaneously exercise any other public duty with the exception of that of a member of the Council of Ministers. Other cases of incompatibility are specified by law.
- 3. Deputies may not carry out any profit-making activity that stems from the property of the state or of local government, nor may they profit from this property.
- 4. For every violation of paragraph 3 of this article, on the motion of the chairman of the Assembly or one-tenth of its members, the Assembly decides on sending the issue to the Constitutional Court, which determines the incompatibility.

Article 71

- 1. The mandate of the deputy begins on the day when he is declared elected by the respective electoral commission.
- 2. The mandate of the deputy ends or is invalid, as the case may be:
 - a) when he does not take the oath;
 - b) when he resigns from the mandate;
 - c) when one of the conditions of ineluctability provided for in articles 69, and 70, paragraphs 2 and 3 is ascertained;
 - ç) when the mandate of the Assembly ends;
 - d) when he is absent for more than six consecutive months in the Assembly without reason.
 - dh) when he is convicted by a final court decision for commitment of a crime.

Article 72

Before beginning the exercise of the mandate, the deputies take the oath in the Assembly.

Article 73

1. The deputy is not held responsible for opinions expressed in the Assembly and votes cast by him in the exercise of the function. This provision is not applicable in the case of defamation.
2. A deputy cannot be arrested or deprive him of liberty in any form nor may a personal search or a search of the residence be exercised against him without the authorisation of the Assembly.
3. A deputy can be arrested or detained without authorisation when he is captured during or immediately after the commission of a crime. In those cases, the **Chief Special Prosecutor³** or General Prosecutor immediately notifies the Assembly, which, when it finds that there is no room for proceedings, orders the lifting of the measure.
4. For the cases provided in paragraphs 2 and 3 of this article, the Assembly may hold discussions in closed sessions for reasons of data protection. The decision is taken by open voting.”

CHAPTER III ORGANIZATION AND FUNCTIONING

Article 74

1. The Assembly conducts its annual work in two sessions. The first session begins on the third Monday of January and the second session on the first Monday of September.
2. The Assembly meets in extraordinary session when it is requested by the President of the Republic, the Prime Minister or by one-fifth of all the deputies.
3. Extraordinary sessions are called by the Speaker of the Assembly on the basis of a determined agenda.

Article 75

1. The Assembly elects and discharges its chairman.
2. The Assembly is organized and functions according to regulations approved by the majority of all the members.

Article 76

1. The Chairman chairs debates, directs the work, assures respect for the rights of the Assembly and its members, as well as represents the Assembly in relations with others.
2. The highest civil employee of the Assembly is the General Secretary.
3. Other services necessary for the functioning of the Assembly are carried out by other employees, as specified in the internal regulation.

³ Venice Commission Final Opinion 824/2015 footnote 9; Technical change related to amendment of article 148 paragraph 3

Article 77

1. The Assembly elects standing committees from its ranks and may also establish special committees.
2. The Assembly has the right and, upon the request of one-fourth of its members is obliged, to designate investigation committees to review a particular issue. Its conclusions are not binding on the courts, but they may be made known to the office of the prosecutor, which evaluates them according to legal procedures.
3. Investigation committees operate according to the procedures set by law.

Article 78

1. The Assembly decides with a majority of votes, in the presence of more than half of its members, except for the cases where the Constitution provides for a qualified majority.
2. Meetings of the deputies, which are convened without being called in accordance to the regulations, do not have any effect.

Article 79

1. Meetings of the Assembly are open.
2. At the request of the President of the Republic, the Prime Minister or one-fifth of the deputies, meetings of the Assembly may be closed, when a majority of all its members have voted in favour of it.

Article 80

1. The Prime Minister and any other member of the Council of Ministers is obligated to answer to interpellations and questions of the deputies within three weeks.
2. A member of the Council of Ministers has the right to take part in meetings of the Assembly or of its committees; he is given the floor whenever he requests it.
3. The heads of state institutions, on request of the parliamentary committees, give explanations and inform on specific issues of their activity to the extent that law permits.

Article 80/a

The Council of Ministers shall report to the Assembly on the acts being prepared in the context of participating of Albania at the institutions of the European Union. The Assembly may issue a resolution which shall serve as basis for the actions of the Council of Minister in the European Union institutions.

CHAPTER IV THE LEGISLATIVE PROCESS

Article 81

1. The Council of Ministers, every deputy, and 20,000 electors each have the right to propose laws.
2. The following are approved by three-fifths of all members of the Assembly:
 - a) the laws for the organization and operation of the institutions provided for in the Constitution;
 - b) the law on citizenship;
 - c) the law on general and local elections;
 - ç) the law on referendum;
 - d) the codes;
 - dh) the law for the state of emergency;
 - e) the law on the status of public functionaries;
 - ë) the law on amnesty;
 - f) the law on administrative divisions of the Republic

Article 82

1. The proposal of laws, when this is the case, must always be accompanied by a report that justifies the financial expenses for its implementation.
2. No non-governmental draft law that brings about an increase in the expenses of the state budget or diminishes income can be approved without taking the opinion of the Council of Ministers, which must be given within 30 days from the date of receiving the draft law.
3. If the Council of Ministers does not give an answer within the above term, the draft law passes for review according to the normal procedure.

Article 83

1. A draft law is voted on three times: in principle, article by article, and in its entirety.
2. The Assembly may, at the request of the Council of Ministers or one-fifth of all the deputies, review and approve a draft law with an expedited procedure, but not sooner than one week from the beginning of the procedure of review.
3. The expedited procedure is not permitted for the review of the draft laws provided for in Article 81, paragraph 2, with the exception of subparagraph a.

Article 84

1. President of the Republic promulgates the approved law within 20 days from its presentation.
2. The law shall be considered as promulgated, if the President does not assume the entitlements provided for in paragraph 1 of this Article and in paragraph 1 of Article 85.

3. The law shall enter into effect not earlier than 15 days since its publication in the Official Journal.

4. In the event of the extraordinary measures, as well as in case of need and emergency, the law shall enter into effect immediately, after being announced publicly. The law shall be published in the upcoming edition of the Official Journal.

Article 85

1. The President of the Republic has the right to return a law for review only once.
2. The decree of the President for the review of a law loses its effect when a majority of all the members of the Assembly vote against it.

PART FOUR THE PRESIDENT OF THE REPUBLIC

Article 86

1. The President of the Republic is the Head of State and represents the unity of the people.
2. Only an Albanian citizen by birth who has been a resident in Albania for not less than the past 10 years and who has reached the age of 40 may be elected President.

Article 87

1. The candidate for President is proposed to the Assembly by a group of not less than 20 MPs. One MP is not allowed to propose more than one candidate at the same time.
 2. The President of the Republic is elected by secret vote and without debate by the Assembly. The Assembly conducts up to five voting rounds for the election of the President. The first voting takes place not later than seven days from the beginning of the procedure for the election of the President. Each of the other voting takes place not later than seven days from the unsuccessful completion of the preceding voting. A voting is deemed as completed even when no candidates are running in the competition. New candidates may run in the second, third and fourth voting, in accordance with the conditions of point 1 of this article.
 3. The President is elected in the first, second or third voting when one candidate receives not less than three fifths of the votes of all the members of the Assembly. In the fourth and fifth voting, the candidate that receives more than half of the votes of all the members of the Assembly is elected President.
 4. The fifth voting takes place when none of the candidates receive the required majority of votes in the fourth voting. The fifth voting takes place only between the two candidates who have received the highest number of votes in the fourth voting. If there are more than two candidates with the same number of votes, the candidate who will run in the voting shall be determined by lot.
- If, after the fourth voting, there are no candidates left to compete, new candidates may run in this voting in accordance with the conditions of point 1 of this article. If more than two

candidates are proposed to run, the voting takes place between the two candidates that have ensured the highest number of the proposing MPs.

5. If, even after the fifth voting none of the candidates has received the required majority of votes, or if after the unsuccessful completion of the fourth voting no new candidates are proposed, the Assembly is dissolved. The new elections take place within 45 days from its dissolution.

6. The subsequent Assembly elects the President of the Republic by a majority of all its members."

Article 88

1. The President of the Republic is in every case elected for 5 years, with the right of re-election only once.

2. The mandate expires on the same date of the same month of the fifth year from the date the President of the Republic takes his oath. The mandate of the President is extended only in case of war, and for as long as the war continues.

2/1. The procedure for the election of the President begins not later than 60 days before the termination of the preceding presidential mandate. When the presidential mandate ends during the six months preceding the end of the mandate of the existing Assembly, the procedure for the election of the President starts no later than 60 days prior to the ending of the mandate of the Assembly.

3. The President begins his duties after he takes the oath before the Assembly, but not before the mandate of the President who is leaving has been completed. The President swears as follows:

"I swear that I will obey to the Constitution and laws of the country, that I will respect the rights and freedoms of citizens, protect the independence of the Republic, and I will serve the general interest and the progress of the Albanian People." The President may add: "So help me God!"

4. A President who resigns before the end of his mandate cannot be a candidate in the presidential election that takes place after his resignation.

Article 89

The President of the Republic cannot hold any other public post, cannot be a member of a party or carry out other private activity.

Article 90

1. The President of the Republic is not held responsible for acts carried out in the exercise of his duty.

2. The President of the Republic may be discharged for serious violations of the Constitution and for the commission of a serious crime. In these cases, a proposal to discharge the President may be made by not less than one-fourth of the members of the Assembly and must be supported by not less than two-thirds of all its members.

3. The decision of the Assembly is sent to the Constitutional Court, which, when it proves the culpability of the President of the Republic, declares his discharge from duty.

Article 91

1. When the President of the Republic is temporarily unable to exercise his functions or his post remains vacant, the Chairman of the Assembly takes his post and exercises his powers.

2. In case the President cannot exercise his duty for more than 60 days, the Assembly by two-thirds of all its members decides on sending the issue to the Constitutional Court, which conclusively proves the fact of his incapacity. When the incapacity is proved, the post of the President remains vacant and the election of the new President begins within 10 days from the date the incapacity is proved.

Article 92

The President also exercises these powers:

- a) address messages to the Assembly;
- b) exercise the right of pardon according to the law;
- c) grant Albanian citizenship and permits it to be given up according to the law;
- ç) gives decorations and titles of honour according to the law;
- d) accord the highest military ranks according to the law;
- dh) appoint and release plenipotentiary representatives of the Republic of Albania to other states and international organizations on the proposal of the Prime Minister;
- e) accept letters of credentials and the withdrawal of diplomatic representatives of other states and international organizations accredited to the Republic of Albania;
- ë) sign international agreements according to the law;
- f), appoint the director of the State Intelligence Service upon proposal of the Prime Minister;
- g) nominate the Chairman of the Academy of Sciences and the rectors of universities pursuant to law;
- gj) set the date of the elections for the Assembly, local government bodies and the conduct of referendums;
- h) request opinions and information in writing from the directors of State institutions for issues that have to do with their duties.

Article 93

The President of the Republic, in the exercise of his powers, issues decrees.

Article 94

The President of the Republic cannot exercise other powers besides those recognized expressly in the Constitution and granted by laws issued in compliance with it.

PART FIVE

THE COUNCIL OF MINISTERS

Article 95

1. The Council of Ministers consists of the Prime Minister, deputy prime minister, and ministers.
2. The Council of Ministers exercises every state function that is not given to other bodies of State power or local government.

Article 96

1. The President of the Republic, at the beginning of the legislature, as well as when the post of the Prime Minister remains vacant, appoints the Prime Minister on the proposal of the party or coalition of parties that have the majority of seats in the Assembly.
2. When the appointed Prime Minister is not approved by the Assembly, the President appoints a new Prime Minister within 10 days.
3. When even the newly appointed Prime Minister is not approved by the Assembly, the Assembly elects another Prime Minister within 10 days. In this case, the President appoints the new Prime Minister.
4. If the Assembly fails to elect a new Prime Minister, the President of the Republic dissolves the Assembly.

Article 97

The Prime Minister appointed according to Article 96, Article 104 or Article 105 presents to the Assembly for approval, within 10 days, the policy program of the Council of Ministers together with its composition.

Article 98

1. A minister is appointed and dismissed by the President of the Republic, on the proposal of the Prime Minister, within 7 days.
2. The decree is reviewed by the Assembly within 10 days.

Article 99

Before the Prime Minister, deputy prime minister, and ministers take the office, they swear before the President of the Republic.

Article 100

1. The Council of Ministers determines the principal directions of the general state policy.
2. The Council of Ministers takes decisions upon the proposal of the Prime Minister or the respective minister.
3. Meetings of the Council of Ministers are closed.

4. Acts of the Council of Ministers are valid when signed by the Prime Minister and the proposing minister.
5. The Council of Ministers issues decisions and instructions.

Article 101

The Council of Ministers, in cases of necessity and emergency, may issue, under its responsibility, normative acts having the force of law for taking temporary measures. These normative acts are immediately submitted to the Assembly, which is convened within 5 days if it is not in session. These acts lose force retroactively if they are not approved by the Assembly within 45 days.

Article 102

1. The Prime Minister:
 - a) represents the Council of Ministers and chairs its meetings;
 - b) outlines and presents the principal directions of general state policy and is responsible for them;
 - c) assures the implementation of legislation and policies approved by the Council of Ministers;
 - ç) coordinates and supervises the work of the members of the Council of Minister and other institutions of the central state administration;
 - d) performs other duties prescribed in the Constitution and the laws.
2. The Prime Minister resolves disagreements between ministers.
3. The Prime Minister, in the exercise of his powers, issues orders.
4. The minister, within the principal directions of general state policy, directs, under his responsibility, actions for which he has powers. The minister, in the exercise of his powers, issues orders and instructions.

Article 103

1. Anyone who has the capacity to be a deputy may be appointed a minister.
2. A minister may not exercise any other state function nor be a director or member of the bodies of profit-making companies.
3. Members of the Council of Ministers enjoy the immunity of a deputy.

Article 104

1. The Prime Minister is entitled to present to the Assembly a motion of confidence for the Council of Ministers. If the motion of confidence is voted by less than half of all the members of the Assembly, the Prime Minister, within 48 hours from the voting of the motion, requests the President of the Republic to dissolve the Assembly.
2. The President dissolves the Assembly within 10 days from the receipt of the request. A request for a motion of confidence may not be presented while a motion of no confidence is being examined according to article 105.

3. The voting of the motion may not take place unless three days have passed since its submission.

Article 105

1. One-fifths of the Members of Assembly is entitled to present for voting to the Assembly a motion of no confidence towards the incumbent Prime Minister, by proposing a new Prime Minister.

2. The Assembly may vote a motion of no confidence towards the Prime Minister only by electing a new Prime Minister with the votes of more than half of all the members of the Assembly.

3. The President of the Republic decrees the dismissal of the incumbent Prime Minister and the appointment of the elected Prime Minister not later than 10 days from the voting of the motion at the Assembly.

Article 106

The Prime Minister and the ministers are obligated to stay in office until the appointment of the new Council of Ministers.

Article 107

1. Public employees apply the law and are in the service of the people.

2. Employees in the public administration are selected through competition, except when the law provides otherwise.

3. Guarantees of tenure and legal treatment of public employees are regulated by law.

PART SIX LOCAL GOVERNMENT

Article 108

1. The units of local government are communes or municipalities and regions. Other units of local government are regulated by law.

2. The territorial-administrative division of the units of local government are established by law on the basis of mutual economic needs and interests and historical tradition. Their borders may not be changed without first taking the opinion of the inhabitants.

3. Communes and municipalities are the basic units of local government. They perform all the duties of self-government, with the exception of those that the law gives to other units of local government.

4. Self-government in the local units is exercised through their representative organs and local referenda. The principles and procedures for the organization of local referenda are provided by law in accordance with article 151, paragraph 2.

Article 109

1. The representative authorities of the basic local governance shall be the councils, which are elected in every four years, through general, direct and secret voting.
2. The executive organ of a municipality or commune is the Chairman, who is elected directly by the people in the manner provided for in paragraph 1 of this article.
3. Only citizens who have a permanent residence in the territory of the respective local entity have the right to be elected to the local councils and as chairman of the municipality or commune.
4. Upon accession into the European Union, the right to vote and the right to be elected shall be mutually recognized to the European Union citizens who live inside the borders of Albania, under the legislation of the European Union and the rules set out in the Electoral Code.
5. The organs of local government units have the right to form unions and joint institutions with one another for the representation of their interests, to cooperate with local units of other countries, and also to be represented in international organizations of local powers.

Article 110

1. A region consists of several basic units of local government with traditional, economic and social ties and joint interests.
2. The region is the unit in which regional policies are constructed and implemented and where they are harmonized with state policy.
3. The representative organ of the region is the Regional Council. Municipalities and communes delegate members to the Regional Council in proportion to their population, but always at least one member. The chairperson of communes and municipalities are always members of the Regional Council. Other members are elected through proportional lists from among the municipal or communal councillors by their respective councils.
4. The Regional Council has the right to issue orders and decisions with general obligatory force for the region.

Article 111

1. The units of local government are legal entities.
2. The units of local government have an independent budget, which is created in the manner provided by law.

Article 112

1. Powers of state administration by law may be delegated to units of local government. Expenses that are incurred in the exercise of the delegation are covered by the state.
2. Bodies of local government are assigned duties only in compliance with law or according to agreements achieved by them. The expenses that are connected with the duties assigned by law to the bodies of local government are covered by the budget of the state.

Article 113

1. The councils of the communes, municipalities and regions:
 - a) regulate and administer in an independent manner local issues within their jurisdiction;
 - b) exercise the rights of ownership, administer in an independent manner the income created, and also have the right to exercise economic activity;
 - c) have the right to collect and spend the income that is necessary for the exercise of their functions;
 - ç) have the right, in compliance with law, to establish local taxes as well as their level;
 - d) establish rules for their organization and functioning in compliance with law;
 - dh) create symbols of local government as well as local titles of honour;
 - e) undertake initiatives for local issues before the bodies defined by law.
2. The bodies of local government issue directives, decisions and orders.
3. The rights of self-government of the units of local government are protected in court.

Article 114

The Council of Ministers appoints a prefect in every region as its representative. The powers of the prefect are defined by law.

Article 115

1. A directly elected body of a local government unit may be dissolved or discharged by the Council of Ministers for serious violations of the Constitution or the laws.
2. The dissolved or discharged body has the right to complain, within 15 days, to the Constitutional Court, and in this case, the decision of the Council of Ministers is suspended.
3. If the right to complain is not exercised within 15 days, or when the Constitutional Court upholds the decision of the Council of Ministers, the President of the Republic sets a date for holding of elections of the respective unit of local government.

PART SEVEN

NORMATIVE ACTS AND INTERNATIONAL AGREEMENTS

CHAPTER I NORMATIVE ACTS

Article 116

1. Normative acts that are effective in the entire territory of the Republic of Albania are:
 - a) the Constitution;
 - b) ratified international agreements;
 - c) the laws;
 - ç) normative acts of the Council of Ministers.

2. Acts that are issued by the bodies of local government are effective only within the territorial jurisdiction exercised by these bodies.
3. Normative acts of ministers and steering bodies of other central institutions of the state are effective in the entire territory of the Republic of Albania within the sphere of their jurisdiction.

Article 117

1. The laws, normative acts of the Council of Ministers, ministers, other central state institutions, acquire juridical force only after they are published in the Official Journal.
2. The promulgation and publication of other normative acts is done according to the manner provided by law.
3. International agreements that are ratified by law are promulgated and published according to the procedures that are provided for laws. The promulgation and publication of other international agreements is done according to law.

Article 118

1. Sub-legal acts are issued on the basis of and for implementation of the laws by the bodies provided for in the Constitution.
2. A law must authorize the issuance of sub-legal acts, designate the competent body, the issues that are to be regulated, as well as the principles on the basis of which these sub-legal acts are issued.
3. The body authorized by law to issue sub-legal acts as specified in paragraph 2 of this article may not delegate its power to another body.

Article 119

1. The rules of the Council of Ministers, of the ministries and other central state institutions, as well as orders of the Prime Minister, of the ministers and heads of other central institutions, have an internal character and are binding only on the administrative entities that are subordinated to these bodies.
2. These acts are issued on the basis of law and may not serve as a basis for taking decisions connected with individuals and other subjects.
3. The rules and orders are issued on the basis of, and for implementation of, acts that have general juridical force.

Article 120

The principles and procedures for the issuance of local juridical acts are provided by law.

CHAPTER II

INTERNATIONAL AGREEMENTS

Article 121

1. The ratification and denunciation of international agreements by the Republic of Albania is done by law if they have to do with:
 - a) territory, peace, alliances, political and military issues;
 - b) freedoms, human rights and obligations of citizens as are provided in the Constitution;
 - c) membership of the Republic of Albania in international organizations;
 - ç) the undertaking of financial obligations by the Republic of Albania;
 - d) the approval, amendment, supplementing or repeal of laws.
2. The Assembly may, with a majority of all its members, ratify other international agreements that are not provided for in paragraph 1 of this article.
3. The Prime Minister notifies the Assembly whenever the Council of Ministers signs an international agreement that is not ratified by law.
4. The principles and procedures for ratification and denunciation of international agreements are provided by law.

Article 122

1. Any international agreement that has been ratified constitutes part of the internal juridical system after it is published in the Official Journal of the Republic of Albania. It is implemented directly, except for cases when it is not self-executing and its implementation requires issuance of a law. The amendment, supplementation and repeal of laws approved by the majority of all members of the Assembly, for the effect of ratifying an international agreement, is done with the same majority.
2. An international agreement that has been ratified by law has superiority over laws of the country that are not compatible with it.
3. European Union law which is directly applicable shall prevail over the domestic law of the Republic of Albania.
4. The norms issued by other international organizations have superiority, in case of conflict, on the laws of the country, when the agreement ratified by the Republic of Albania for its participation in this organization, expressly provide for the direct applicability of the norms issued by this organisation.

Article 123

1. The Republic of Albania, on the basis of international agreements, delegates to international organizations state powers for specific issues.
2. The law that ratifies an international agreement as provided for in paragraph 1 of this article is approved by a majority of all members of the Assembly.
3. The Assembly may decide that the ratification of such an agreement can be done through a referendum.

PART EIGHT CONSTITUTIONAL COURT

Article 124

1. The Constitutional Court is the highest authority which settles Constitutional disputes and makes the final interpretation of the Constitution.
2. The Constitutional Court is subject only to the Constitution.
3. The Constitutional Court shall have a separate budget, which it administers independently.

Article 125

1. The Constitutional Court shall consist of 9 (nine) members, of which three shall be appointed by the President of the Republic, three members shall be appointed by the Assembly of Albania and three members shall be appointed by the joint meeting of the High Court and the High Administrative Court⁴. The members being appointed by the President of the Republic and the Assembly shall be selected from the list of candidates compiled and ranked by the Justice Appointments Council. The appointment and selection procedure of the members of the Constitutional Court guarantees the standards of an open call, honest competition, transparency and selection of the most qualified candidates.
2. The Assembly shall appoint the Constitutional Court judges by three-fifth majority of its members. If the Assembly fails to reach the three fifth majority on the first voting within 30 days of the submission of the list of candidates, the highest ranking candidate shall be deemed appointed⁵.
3. The judges of the Constitutional Court shall be appointed for a 9 year mandate⁶ without the right to re-appointment and shall be selected out of the ranks of the jurist of at least 15 years' experience as judges, prosecutors, advocates, law professors or lectors, senior employees in the public administration, with a renowned activity in the constitutional, human rights and other areas of law.
4. The candidates shall not have been sentenced before in connection with the commission of a criminal offence. During the past 10 years they shall not have held a political post in the public administration or a leadership position in a political party before becoming candidate. The detailed criteria and the procedure for the appointment of the members of the Constitutional Court shall be provided for by law.
5. The process of selection of the members of the Constitutional Court shall be guided by the principle of renewing one-third of its composition every 3 years under the procedure set out by law.

⁴ One political option, according to Venice Commission Final Opinion 824/2015 paragraph 38, could be the involvement of the Justice Appointment Council also in the selection of the three members coming from the judiciary to be appointed members of the CC. The decision to involve/foresee the Justice Appointment Council in this appointment procedure shall take its composition into consideration.

⁵ Venice Commission Final Opinion 824/2015 paragraph 37.

⁶ Political option according to Venice Commission Final Opinion 824/2015 paragraph 39: '12 years', however quicker rotation is a corruption fighting tool.

6. The Chairperson of the Constitutional Court shall be elected by secret voting, by the majority of the members of the Constitutional Court, for a period of 3 years, without the right to re-election. If none of the candidates receives the required majority in the first voting, a second voting is immediately held between the two candidates that received the largest number of votes. If even in the second voting no candidate receives the required majority of votes, then the candidate with the most votes is deemed elected. In case of parity of votes the Chairperson shall be elected by lottery. Detailed criteria and procedures for the⁷ election of the Constitutional Court Chairperson shall be provided for by law.

7. The Constitutional Court judge shall continue to stay in office until the appointment of his successor, except under cases of Article 127, paragraph 1, subparagraph c, ç), d), dh) and e)⁸.

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, except in cases of a deliberate adoption of an unlawful decision as a result of criminal conduct, personal interests or malice.

Article 127

1. The mandate of Constitutional Court judges shall end, upon:

- a) reaching the age of 70 years;
- b) the expiry of the 9 year mandate;
- c) his or her resignation;
- ç) dismissed in accordance with the provisions of article 128;
- d) as a result of the procedures provided in article 179/b;
- dh) establishing the conditions of inelectibility and incompatibility;
- e) establishing incapacity to exercise the duties;

2. The end of the mandate of the Constitutional Court judge shall be declared upon the decision of the Constitutional Court.

3. Where the position of a judge remains vacant, the appropriate appointing body under Article 179 paragraph 1⁹ shall appoint a new judge, the latter staying in office until the expiry of the mandate of the outgoing judge.

4. The Chairperson of the Constitutional Court, not later than 3 months prior to the termination of the mandate of the Constitutional Court judge, according to paragraph 1, subparagraph a) and b), and immediately in the cases of termination of the mandate prior to the legal term, notifies the appointing body for this vacancy. The procedure for the appointment

⁷ Deadlock breaking mechanism, considering Venice Commission Final Opinion 824/2015 paragraph 22.

⁸ Venice Commission Final Opinion 824/2015 Paragraph 77; same change was done in articles 136 paragraph 7 in order to harmonize the articles.

⁹ Technical correction related to reformulation of article 179 paragraph 1

of the new judge ends not later than 60 days from the decision of the Constitutional Court declaring the end of the mandate.

Article 128

1. The Constitutional Court judge shall be disciplinarily liable according to a procedure set out by the law. The disciplinary procedure against a judge is adjudicated by the Constitutional Court, but without the participation of the judge facing discipline,¹⁰ which decides on dismissal if he/she:

- a) Commits serious professional or¹¹ ethical misconduct which discredit the figure and the position of the judge during the exercise of his/her mandate; or
- b) Is convicted with final court decision for commission of a crime.

2. The judge of the Constitutional Court is suspended from its duty upon decision of the Constitutional Court when:

- a) against him/her the personal security measure of pre detention or home arrest is given for commission of a criminal offence; or
- b) he/she is accused for a serious crime committed with intention.

Article 129

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

Article 130

Being a Constitutional Court judge shall not be compatible with duty in other state organs, and any other compensated professional activity, except for teaching, academic, scientific and artistic¹² activities. The term of the allowed professional activity as well as the amount of remuneration, against which this activity is exercised, shall be provided in the law. The exercise of the function of the judge shall not be compatible with being member of a political party or taking part in any public event organized by a political party, as well as with other activities which are incompatible with the duties of a judge at the Constitutional Court.

Article 131

1. The Constitutional Court decides on:

- a) compatibility of the law with the Constitution or with international agreements as provided for in Article 122;
- b) compatibility of international agreements with the Constitution, prior to their ratification;

¹⁰ Venice Commission Final Opinion 824/2015 Paragraph 40

¹¹ Suggested technical correction. Clearly, a judge should be dismissed if he or she commits either serious professional misconduct or serious ethical misconduct. The old wording suggested that the judge would have to commit both. This suggestion also applies to Article 140, 147/c, 147/e and 148/ç.

¹² Venice Commission Final Opinion 824/2015 Paragraph 78; same changes were done in articles 143, 147/ç, 147/ë, 148/d aiming at harmonizing the provisions of the constitution.

- c) compatibility of normative acts of the central and local bodies with the Constitution and international agreements;
 - ç) conflicts of competencies between powers, as well as between central government and local government;
 - d) constitutionality of the parties and other political organizations, as well as their activity, according to Article 9 of this Constitution;
 - dh) dismissal from duty of the President of the Republic and verification of his inability to exercise his functions;
 - e) issues related to the electability and incompatibility in exercising the functions of the President of the Republic, members of the parliament, officials of the other organs mentioned in the Constitution, as well as to the verification of their election.
 - ë) constitutionality of the referendum and verification of its results;
 - f) final examination of the complaints of individuals after all **effective** legal means for the protection of those rights have been exhausted **against judicial acts and the acts of the public power, impairing the fundamental rights and freedoms guaranteed by the Constitution, unless provided elsewhere by the constitution.**
- 2. The Constitutional Court cannot declare unconstitutional a law approved by Assembly to the effect of revising the Constitution except in the case when the procedure for the approval of this law was infringed.**

Article 132

1. The decisions of the Constitutional Court have **general force, shall be final and binding for enforcement.**
2. The decisions of the Constitutional Court shall, enter in force on the day of their publication in the Official Journal. The Constitutional Court may decide that **its decision, which has examined the act, gives effect on another date. In this case, the Constitutional Court may also order the suspension of the application of the repealed act toward the complainant with regard to the litigant case, until the decision gives its effects.**
3. The minority's opinion shall be published along with the **final** decision.

Article 133

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

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 Assembly;

- c) Ombudsman;
 - d) Head of High State Audit;
 - dh) Any court, in the event of Article 145, point 2, of this Constitution;
 - e) Any commissioner established by law for the protection of the fundamental rights and freedoms guaranteed by the Constitution;
 - ë) High Judicial Council and High Prosecutorial Council;
 - f) Local governance units;
 - g) Religious communities forums;
 - gj) Political parties;
 - h) organizations;
 - i) Individuals.
2. The entities provided for in sub-paragraphs d, dh, 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 THE COURTS

Article 135

1. The judicial power shall be assumed by the High Court, High Administrative Court, as well as by the appeal courts, first instance courts, which shall be established by law.
2. The Assembly may establish by law specialized courts; however, under no circumstances shall it establish extraordinary courts.
3. By law, a specialized first instance court and court of appeal shall be competent to adjudicate corruption and organized crime, as well as criminal charges against high-level officials. High level officials shall include the current and former Presidents of the Republic, current and former Chairpersons of the Assembly, current and former Prime ministers, current member of the Council of Ministers, members of the Council of Ministers for the preceding 3 years, and the Prosecutor General, High Justice Inspector, Mayors; and Deputies of the Assembly, Deputy Ministers, members of the High Judicial Council and High Prosecutorial Council, members of the Constitutional Court, High Court and High Administrative Court, and heads of central or independent state institutions as defined by the Constitution or by law.¹³
4. Judges of the specialized corruption and organized crime courts are appointed by the High Judicial Council in accordance with this article and the law. The Chairperson and judges of the specialized corruption and organized crime courts may only be removed from

¹³ Venice Commission Final Opinion Paragraph 50. The Venice Commission noted that according to Article 90, Paragraph 2, the President is subject to impeachment for serious violations of the Constitution and for the commission of a serious crime. However, the President is not provided any constitutional immunity from prosecution. Impeachment only involves being discharged from office, not the investigation or criminal adjudication. This is not a functional grant of immunity. Logically, the President must be subject to some prosecution and adjudication before a court as a separate matter from being impeached.

the office in cases of serious misconduct with a 2/3 vote of the High Judicial Council.¹⁴ The judges and judicial personnel must successfully pass a review of their assets and their background. The High Judicial Council may not appoint any judge without the consent of the judge and their close family members to periodic reviews of their financial accounts and telecommunications in accordance with the law. The telecommunications of those close family members¹⁵ who have not consented shall be monitored only pursuant to a court order.

Article 136

1. The members of the High Court and High Administrative Court shall be appointed by the President of the Republic upon proposal of the High Judicial Council, with a 9 year mandate, without the right to re-appointment. The President of the Republic within 7 days-following the proposal of the High Judicial Council shall appoint the member of the High Court and High Administrative Court.
2. The President of the Republic has the right to return a proposal only once in a reasoned decree on grounds of his or her insufficient qualifications or ineligibility as provided by the Constitution or the law¹⁶. The decree of the President of the Republic to return a proposal to the High Judicial Council loses its effect when the majority of the members of High Judicial Council vote against the decree of the President of the Republic. In this case, as well in case the President does not express himself, the proposed judge by the High Judicial Council shall be deemed appointed and shall take office within 7 days of the date of the Council's decision.
3. The members of the High Court and High Administrative Court shall be selected from the ranks of the judges with at least 13 years' experience. One-fifth of members may be selected from among those renowned jurists with not less than 15 years' experience having worked as advocates, law professors or lecturers, senior employees in the public administration or other practice of law. Members who are not from the ranks of judges must have a university degree and have an academic grade in law.
4. The lay member must not have been punished before for a criminal offence. During the past 10 years the lay members shall not have held a political post in the public administration and leadership position in a political party before their nomination.
5. 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.
6. The Chairperson of the High Court and that of the High Administrative Court shall be elected for a 3 year period without the right to re-election, by secret voting and by the absolute majority of the members of each court. If none of the candidates receives the required majority in the first voting, a second voting is immediately held between the two

¹⁴ Venice Commission Final Opinion 824/2015 Paragraphs 48. Also reflects political agreement on March 23, 2016.

¹⁵ Venice Commission Final Opinion 824/2015 Paragraph 51.

¹⁶ Venice Commission Final Opinion 824/2015 Paragraph 26.

candidates that received the largest number of votes. If even in the second voting no candidate receives the required majority of votes, then the candidate with the most votes is deemed elected. In case of parity of votes the Chairperson shall be elected by lottery. Detailed criteria and procedures for the election procedure of the Chairperson shall be provided for by law.¹⁷

7. The High Court or High Administrative Court judge shall continue to stay in office until the appointment of his or her successor, except under cases under Article 139, paragraph 1, subparagraph c, ç), d), dh) and e).

Article 136/a

Judges are Albanian citizens appointed by the High Judicial Council after finishing the School of Magistrates and after a passing a preliminary evaluation of their assets and their background, as provided by the law. Candidates are selected based on a transparent and opened procedure, which ensures a merit based selection of the most qualified candidates having moral and ethical integrity. Additional criteria for the selection of the judged are regulated by law.

Article 137

Judges shall enjoy immunity in connection with the opinions expressed and decisions made in the course of assuming their functions, **except in cases of a deliberate adoption of an unlawful decision as a result of criminal conduct, personal interests or malice.**

Article 137/a

1. Judges shall be disciplinarily liable according to procedures set out in the law. A judge cannot be removed from duty except as a result of:

- a) reaching the retirement age;
- b) resignation;
- c) **establishing the conditions of inelectibility and incompatibility;**¹⁸
- ç) dismissal by a disciplinary decision after a finding of a serious professional or ethical misconduct or conviction with a final court decision for committing a crime
- d); **establishing incapacity to exercise the duties;**
- dh) the application of the procedures provided in article 179/b.

Article 138

The salary and other benefits of judges cannot be reduced, **except when:**

¹⁷ The Venice Commission stressed the need for deadlock breaking mechanisms. Venice Commission Final Opinion paragraph 22 and footnote 4. This reasoning applies to the selection of the Chairperson of the High Court or High Administrative Court.

¹⁸ Suggested technical change to paragraphs c and d, in order to harmonize with wording of Article 127, paragraph 1, point (dh & e) and Article 139. Otherwise, this may lead to different interpretations of reasons to remove officials from office. This suggestion also made at Article 147/b, 147/dh, 148, 148/c and 149/b.

- a) General economic, financial measures need to be undertaken in order to avoid difficult economic situation of the country or other national emergencies;
- b) the judge return to the previous position which he or she held prior to this position;
- c) as a result of a disciplinary measure;
- ç) is evaluated professionally as below average ethical or professional performance¹⁹ as determined by law;

Article 139

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

- a) reaching the age of 70 years;
- b) the expiry of the 9 year mandate;
- c) his/her resignation;
- ç) dismissed as provided in Article 140;
- d) as a result of the procedures provided in article 179/b;
- dh) establishing the conditions of inelectibility and incompatibility;
- e) establishing incapacity to exercise the duties;

2. The end of the mandate of the High Court or High Administrative Court member shall be declared respectively upon the decision of the High Court or High Administrative Court respectively. The procedure for the reinstatement of the judge as a judge in a different court upon expiry of mandate is regulated by law.

3. The Chairperson of the High Court or High Administrative Court, not latter then 3 months prior to the termination of the mandate of the judge of the High Court or High Administrative Court, according to paragraph 1, sub paragraph a) and b), and immediately in the cases of termination of the mandate prior to the legal term, notifies the High Judicial Council for this vacancy. The procedure for the appointment of the new judge ends not latter then 60 days from the decision declaring the end of the mandate.

Article 140

1. The judges of the High Court and High Administrative Court shall be disciplinarily liable according to a procedure set out by the law. A judge shall be dismissed upon decision of the High Judicial Council when he/she:

- a) Commits serious professional or ethical misconduct which discredit the figure and the position of the judge during the exercise of his/her mandate; or
- b) Is convicted with final court decision for commission of a crime.

2. The judge of the High Court and High Administrative Court is suspended from its duty upon decision of the High Judicial Council when:

- a) against him/her the personal security measure of pre detention or home arrest is given for commission of a criminal offence; or
- b) he/she is accused for a serious crime committed with intention.

¹⁹ Venice Commission Final Opinion 824/2015 Paragraph 79.

Article 141

1. The High Court and the High Administrative Court shall decide cases relating to the meaning and application of the law and shall ensure the unification or evolution in the judicial practice.²⁰
2. The High Court and the High Administrative Court may resolve jurisdictional disputes in a joint judicial chamber of both courts that shall decide on an authoritative interpretation of the law²¹.
3. Details shall be regulated by law.²²

Article 142

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 143

Being a High Court and the High Administrative Court judge shall not be compatible with duty in other state organs, or any other compensated professional activity, except for teaching academic, scientific and artistic activities. The term of the allowed professional activity as well as the amount of remuneration, against which this activity is exercised, shall be provided in the law. The exercise of the function of the judge shall not be compatible with being member of a political party or taking part in any public event organized by a political party, as well as other activities which are incompatible with the duties of a judge.

Article 144

Removed and incorporated into 147

Article 145

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 suspend the proceedings and send the case to the Constitutional Court. Decisions of the Constitutional Court are binding for all courts.

²⁰ Suggested technical correction: The wording of Article 141 paragraph 1 suggests that the High Court or High Administrative Court would decide on issues of law, the application of law, or the unification of judicial practice. The draft strategy implies, however, that the High Court's workload be reduced and that it focus on issues of law that would unify the practice in Albania. This is also supported by the Venice Commission opinion CDL-AD(2014)016, ¶37. We would suggest that the wording be changed to "The High Court and the High Administrative Court shall decide cases relating to the meaning and application of the law in order to ensure the unification or evolution in the judicial practice".

²¹ Venice Commission Final Opinion 824/2015 Paragraph 43

²² Change added to accommodate Venice Commission change in Paragraph 2. Regulation by law should not simply apply to paragraph 2, but to both paragraphs.

3. Interference in the activity of the courts or the judges entails liability according to law.

Article 146

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

Article 147

1. The High Judicial Council shall ensure the independence, accountability and appropriate functionality of the judicial power in the Republic of Albania.
2. The High Judicial Council shall be composed of 11 members, six of which are elected by the judges of all levels of the judicial power and five members are elected by the Assembly among jurists who are non-judges.
3. The judge members shall be selected among judges of high moral integrity and professional proficiency in accordance with an open and transparent procedure that ensures a fair representation of all levels of the judiciary. Detailed rules on the criteria and the procedure for selecting and ranking the candidates coming from the judiciary are provided by law²³. The lay members shall be selected among highly qualified jurist, with no less than 15 years of professional experience, of high moral and professional integrity. Candidates must not have been punished before for a criminal offence. During the past 10 years the lay members shall not have held a political post in the public administration and leadership position in a political party before their nomination.
4. The lay-members shall be elected from the proposals from the proposing bodies by the Assembly with three-fifth of all its members. One shall be from advocates, one shall be from notaries, one shall be a law professor, one shall be from the lay professors of the School of Magistrates and one shall be from civil society. For each vacancy, the proposing bodies present to the Justice Appointment Council three candidates elected based on an open call and transparent process. The Justice Appointment Council ranks the candidates and forwards to the Assembly.
5. 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 Justice Appointments Council shall provide an examination and ranking of the candidates 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 examination and ranking. If this majority is not reached even in the second voting, the candidate ranked highest out of both rounds shall be deemed appointed.
6. The Chairperson of the High Judicial Council is elected with the majority of all members in the first meeting of the Council from the ranks of the lay members. If a chairperson cannot be selected within the first meeting, the oldest in age judicial member shall select the

²³ Rewording in the light of Venice Commission Final Opinion 824/2015 paragraph 18. Deleted wording: "The criteria and transparent and open procedure for the selection and ranking of the candidates coming from the judiciary is provided in the law."

chairperson by lot in the next meeting, which is opened. The mandate of the Chairperson shall end when his/her underlying mandate ends.

7. 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 positions²⁴. 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.

Article 147/a

1. The High Judicial Council shall exercise the following powers:
 - a) Appoints, evaluates, promotes and transfers judges of all levels including judges at specialized courts unless regulated differently under Article 179/b²⁵. This power does not include judges of the Constitutional Court;
 - b) decides on disciplinary measures on judges of all levels including judges at specialized courts unless regulated under Article 179/b, while respecting the principles of fair trial²⁶. This power does not include 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.
 - ç) Approves the rules of judicial ethics and monitors their observation.
 - d) Directs and manages the administration of the courts²⁷.
 - dh) Proposes and administers its own budget²⁸ and the budget of the courts;
 - e) informs the public and the Assembly on the state of the judicial system;
 - f) exercises other powers defined by law.
2. It may create and decide in sub-bodies²⁹.
3. The Minister of Justice may participate, without the right to vote³⁰, in the meetings of the High Judicial Council when issues of strategic planning and budget of the judiciary are discussed.

²⁴ Suggested technical change: The members of the High Judicial Council who are High Court or High Administrative Court judges should not have their mandate ended because they are chosen to be on the Council. In order to prevent this possible interpretation, we suggest adding the sentence: "Judges of the High Court or High Administrative Court who serve on the High Judicial Council shall return to complete their term and mandate."

²⁵ Venice Commission Final Opinion 824/2015 Paragraph 27

²⁶ Venice Commission Final Opinion 824/2015 Paragraph 35

²⁷ Venice Commission Final Decision 824/2015 Paragraph 32; suggests regulating the roles of the Minister of Justice. This is a political decision. One suggestion is to add the following to the end of this paragraph: "with the exception of the management of the information technology structure of the courts, which is directed by the Minister of Justice." A similar change could be made under Article 149/a, giving the Minister of Justice a role in managing a common IT system. This is a common practice in many EU countries.

²⁸ Technical suggestion. This would be necessary for both councils due to fiscal necessity and to allow the law to list other necessary powers. They need the authority to control their own budgets. This suggested change has also been applied to Article 148/b paragraphs e and f. Former paragraph 2 was split and is letter e) and f) of paragraph 1.

²⁹ Venice Commission Final Decision 824/2015 Paragraph 20.

³⁰ Venice Commission Final Decision 824/2015 Paragraph 32.

Article 147/b

1. The mandate of the member of the High Judicial Council shall end upon:
 - a) Reaching the retirement age;
 - b) Expiry of the 5 year mandate;
 - c) His or her resignation;
 - ç) dismissal in accordance with the provisions of 147/c;
 - d) as a result of the procedures provided in article 179/b;
 - dh) establishing the conditions of inelectibility and incompatibility;
 - e)-establishing of incapacity to exercise the duties;
2. The expiry of the mandate of the member 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. The Chairperson of the High Judicial Council, not later than 3 months prior to the termination of the mandate of the member, according to paragraph 1 subparagraph a) and b), as well as immediately in cases of termination of the mandate prior to the legal term, notifies the appointing body on the vacancy. The procedure for the appointment of the new member terminates not later than 60 days from the decision declaring the termination of the mandate.

Article 147/c

1. The member of the High Judicial Council shall be disciplinarily liable and shall be dismissed upon decision of the Justice Disciplinary Tribunal when he/she:
 - a) Commits serious professional or ethical misconduct;
 - b) Is convicted with final court decision for commission of a crime;
2. The procedure for examination of disciplinary misconduct is regulated by law.

Article 147/ç

Being a member of the High Judicial Council shall not be compatible with duty in other state organs, or any other compensated professional activity, except for teaching, academic, scientific and artistic activities. The term of the allowed professional activity as well as the amount of remuneration, against which this activity is exercised, shall be provided in the law. The exercise of this function shall not be compatible with being member of a political party or taking part in any public event organized by a political party, as well as with other activities which are incompatible with the duties of a member of the High Judicial Council.

Article 147/d

1. The High Justice Inspector shall be responsible for the verification of complaints against judges and prosecutors of all levels, members of the High Judicial Council, High Prosecutorial Council and Prosecutor General, as well as for the investigation, **on its own initiative,**³¹ of the disciplinary misconduct and initiation of disciplinary procedure against them. The High Justice Inspector shall also be responsible for inspecting the courts and prosecution offices as institutions³².

2. The High Justice Inspector is appointed upon three fifth majority of all members of the Assembly, for nine years, without the right to re-election, among the ranks of distinguished jurists with at least 15 years' professional experience, with moral and professional integrity. Candidates must not have been punished before for a criminal offence. During the past 10 years he or she shall not have held a political post in the public administration and a leadership position in a political party before his or her nomination. The High Justice Inspector is selected from the list of candidates ranked by the Justice Appointment Council based on a transparent and open procedure of the most qualified and reputable candidates. If the Assembly does not reach the majority of three-fifths for any of the candidates, within 30 days of receiving the proposals, the highest ranking candidate is automatically appointed.

3. The High Justice Inspector shall have the status of the High Court judge. Upon the expiry of the mandate, the High Justice Inspector, if prior to his or her appointed in this position worked full time in public sector, shall return to his or her previous working position, or if not possible in another equivalent position.

4. The procedures for the decision-making by the High Justice Inspector are regulated by law. Against the decision of the High Justice Inspector on achieving or closing of the investigation, appeal can be filed at the High Judicial Council or High Prosecutorial Council, respectively. The revision of the appeals is decided by a number of members from these organs, in accordance with the law.³³

Article 147/dh

1. The mandate of the High Justice Inspector ends when:

- a) Reaching the pension age;
- b) Ends the mandate of 9 years;
- c) his or her resignation;
- ç) dismissal in accordance with article 147/e;
- d) as a result of the procedures provided in article 179/b;
- dh) **establishing the conditions of inelectibility and incompatibility;**
- e) establishing the incapacity to exercise the duties;

³¹ Venice Commission Final Opinion 824/2015 Paragraph 29-30

³² Venice Commission Final Opinion 824/2015 Paragraph 30

³³ Removed former prg.6: "The High Justice Inspector shall not decide on non-initiation or dismissal of an investigation when it is requested by the Minister of Justice, unless obviously unfounded."; Venice Commission Final Opinion 824/2015 Paragraph 31-32.

2. The end of the mandate of the High Justice Inspector is declared by decision of the joint meeting of the High Judicial Council and High Prosecutorial Council. The High Justice Inspector remains in duty until the appointment of the new Inspector, **except under cases under paragraph 1, subparagraph c, ç), d), dh) and e).**

3. The High Justice Inspector, not later than 3 months prior to the termination of the mandate, according to paragraph 1 subparagraph a) and b), as well as immediately in cases of termination of the mandate prior to the legal term, notifies the appointing body on the vacancy. The procedure for the appointment of the new High Justice Inspector terminates not later than 60 days from the decision declaring the termination of the mandate.

Article 147/e (Viable Option)

1. The High Justice Inspector shall be disciplinarily liable and shall be dismissed upon decision of the Justice Disciplinary Tribunal when:

- a) Commits serious professional **or** ethical misconduct;
- b) Is convicted with final court decision for commission of a crime;

2. The procedure for examination of disciplinary misconduct is regulated by law.³⁴

3.³⁵ A parliamentary investigator shall investigate allegations of misconduct by the High Justice Inspector, respecting his rights to a fair trial, and provide the findings to the Disciplinary Tribunal, in accordance with rules provided in the law. The parliamentary investigator shall be a deputy having a degree in law chosen by lot by the Chairperson of the Parliament from the Committee established for laws and human rights.³⁶

Article 147/ë

Being the High Justice Inspector shall not be compatible with duty in other state organs, and any other compensated professional activity, except for teaching academic, **scientific and artistic** activities. The term of the allowed professional activity as well as the amount of remuneration, against which this activity is exercised, shall be provided in the law. The exercise of the function of the High Justice Inspector shall not be compatible with being member of a political party or taking part in any public event organized by a political party, as

³⁴ Venice Commission Final Opinion 824/2015 Paragraph 33, removing the competence of the Minister of Justice to inspect the High Judicial Inspector.

³⁵ The ad hoc committee discussed a parliamentary investigatory commission or even impeachment of the High Judicial Inspector. This was raised mainly by the opposition. We are thus providing a possible option. The High Judicial Inspector can be subject to investigation from outside of the judiciary, but fair trial rights and judicial practice require the discipline or dismissal to be issued from a judicial body, such as the Disciplinary Tribunal of Justice. Others on the ad hoc committee were against a Parliamentary Investigative Commission, as it introduced a risk of politically-motivated investigations. The opposition experts raised the same concern about politicizing the High Inspector through an inquiry committee on Page 19 of their April 25 letter. Thus, having a single investigator who must respect fair trial rights and rules set forth in law, this may limit that risk somewhat. Further, the results of the investigation go to the Tribunal, which adjudicates.

³⁶ Venice Commission Final Opinion 824/2015 Paragraph 33. This also incorporates concerns expressed during the ad hoc committees about corporatism, but also minimizes the risks that a parliamentary committee is simply used to denigrate the Justice Inspector. By having a deputy with a law degree picked by lot, this also removes the risk of a majority or opposition knowing who will conduct the investigation.

well as with other activities which are incompatible with the duties of the High Justice Inspector.

Article 147/f (Viable Option)³⁷

1. The Disciplinary Tribunal of Justice adjudicates disciplinary measures against members of the High Judicial Council, the High Prosecutorial Council and the Prosecutor General, and the office of the High Justice Inspector.
2. The Disciplinary Tribunal of Justice consists of the Chairperson of the High Court, another judge from the High Court determined by lot, a judge of the High Administrative Court determined by lot, two judges and two prosecutors from courts of appeals determined by lot, and one judge and one prosecutor from the first instance determined by lot. The procedures and method of the determination by lot shall be provided by law.
3. The appeal of the decisions of the Disciplinary Tribunal of Justice as well as the appeals of the High Judicial Council and High Prosecutorial Council shall be adjudicated by the Constitutional Court.
4. The Chairperson of the High Court is Chairperson of the Disciplinary Tribunal of Justice, who creates working conditions for the operation of the Disciplinary Tribunal of Justice.

PART TEN PROSECUTOR'S OFFICE

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. The Prosecutor's Office is an independent body, which shall ensure the coordination and control of its actions as well as respects the internal independence of prosecutors to investigate and prosecute. By law a special prosecution office and independent investigation unit shall be established competent to investigate and prosecute corruption, organized crime and crimes by high-level officials, which is independent from the general prosecutor. The independent investigation unit shall report solely to the special prosecution

³⁷ The text sent to the Venice Commission did represent a valid scientific option. During the *ad hoc committee*, the opposition has accepted the validity of the Tribunal, but expressed concern about corporatism and conflicts of interest in its composition. This option would reduce corporatism within the Tribunal, and would provide a lack of predictability of its members. Because the Venice Commission and Article 6 ECHR require the Tribunal to have the qualities of a court, it cannot consist of members who are not magistrates, unless a system of lay judges or a jury were adopted. On pages 17-18 of its comments, however, the opposition has favored giving the High Court the role of disciplinary tribunal, with appeals to the Constitutional Court. It is true that in developed and stable legal systems, the High Court can serve this role. It is not an appropriate model for Albania. In fact, we fail to see how this reduces corporatism, as this places great power within one institution: the High Court, to discipline members of the High Prosecutorial and High Judicial Councils, the Prosecutor General, and the High Justice Inspector. Rather than decrease corporatism, this would predictably increase it without accountability.

office.

a. The Special Prosecution Office shall be attached to both of the specialized corruption and organized crime courts.

b. The High Prosecutorial Council shall assign at least 10 prosecutors to the Special Prosecution Office for a 9-year mandate. It may increase the number if needed. The criteria and transparent and open procedure for the selection of the prosecutors is provided in the law. The Chief Special Prosecutor shall be elected by a majority of the High Prosecutorial Council from the ranks of Special Prosecutors for a three-year non-renewable term, in accordance with the law. The Chief Special Prosecutor and Special Prosecutors may only be removed from the office before their mandate ends in cases of serious misconduct with a 2/3 vote of the High Prosecutorial Council.³⁸

c. The Chief Special Prosecutor and Special Prosecutors, staff and employees of its investigation body must successfully pass a review of their assets and their background. The High Prosecutorial Council may not appoint a Special Prosecutor or Chief Special Prosecutor without the consent of the prosecutor and their close family members to periodic reviews of their financial accounts and telecommunications in accordance with the law. The staff and employees of the investigation body must also consent to periodic reviews of their financial accounts and telecommunications in accordance with the law. The telecommunications of those who have not consented shall be monitored only pursuant to a court order.³⁹

3. Prosecutors are Albanian citizens appointed by the High Prosecutorial Council after finishing the School of Magistrates and after a passing an evaluation of their assets and their background in accordance with the law. Candidates are selected based on a transparent and open procedure, which ensures a merit based selection of the most qualified and reputable candidates. Additional criteria for their appointment can be regulated by law.

4. In exercising their competences, prosecutors are subject to the Constitution and the law.

5. All prosecutors have disciplinary liability in accordance with the law. A prosecutor cannot be removed from duty except as a result of:

a) reaching the retirement age;

b) resignation;

c) establishing the conditions of in-electability and incompatibility;

ç) dismissal by a disciplinary decision after a finding of a serious professional or ethical misconduct or conviction with a final court decision for committing a crime

d); establishing incapacity to exercise the duties;

dh) the application of the procedures provided in article 179/b.⁴⁰

³⁸ Venice Commission Final Opinion 824/2015 Paragraphs 48. Also reflects political discussion on March 23, 2016.

³⁹ Venice Commission Final Opinion Paragraphs 51 and 83.

⁴⁰ Venice Commission Final Opinion 824/2015 Paragraph 48.

Article 148/a

1. The High Prosecutorial Council shall guarantee the independence, accountability, discipline, status and career of Prosecutors in the Republic of Albania.
2. The High Prosecutorial Council shall be composed of 11 members, six of which are prosecutors being elected by the prosecutors of all levels of the Prosecutors' office and five members elected by the Assembly from jurists who are not prosecutors.
3. The prosecutor members shall be selected among prosecutors of high moral integrity and professional proficiency in accordance with an open and transparent procedure that ensures a fair representation of all levels of the prosecution system. Detailed rules on the criteria and the procedure for selecting and ranking the candidates coming from the prosecutorial system are provided by law⁴¹. The lay members shall be selected among highly qualified jurists, with no less than 15 years of professional experience, of high moral and professional integrity. Candidates must not have been punished before for a criminal offence. During the past 10 years the lay members shall not have held a political post in the public administration and a leadership position in a political party before their nomination.
4. The lay members shall be appointed from the proposal from the proposing bodies by the Assembly with three-fifth of all members. One shall be from advocates, one shall be from the notaries, one shall be a law professor, one shall be from the lay professors of the School of Magistrates and one shall be from civil society. The proposing bodies for lay members, for each vacancy, present to the Justice Appointment Council three candidates elected based on an open call and transparent process. The Justice Appointment Council ranks the candidates and forwards to the Assembly.
5. 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 Justice Appointments Council shall provide an examination and ranking 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. If this majority is not reached even in the second voting, the candidates ranked highest by the Appointments Council out of both rounds shall be deemed appointed.
6. The Chairperson of the High Prosecutorial Council is elected with the majority of all members at the first meeting of the Council from among the lay members. If a chairperson cannot be selected within the first meeting, the oldest prosecutor member shall select the chairperson by lot in the next meeting, which is opened. The mandate of the Chairperson shall end when his/her underlying mandate ends.
7. 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

⁴¹ Rewording in the light of Venice Commission Final Opinion 824/2015 paragraph 19; Deleted wording: 'The criteria and transparent and open procedure for the selection and ranking of the candidates coming from the prosecution is provided in the law'.

worked full time in the public sector, return to their previous work or if that is not possible, in positions equivalent to them.

Article 148/b

1. The High Prosecutorial Council exercises these responsibilities:

- a) Appoints, evaluates, promotes and transfers all prosecutors of all levels including prosecutors at the specialized prosecution office unless regulated differently under Article 179/b;
- b) Decides on disciplinary measures against all prosecutors of all levels including prosecutors at the specialized prosecution office unless regulated differently under Article 179/b while respecting the principles of fair trial⁴²;
- 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.
- d) proposes and administers its own budget;

2. The High Prosecutorial Council, prepares reports, informs the public and the Assembly on the state of the Prosecutor's Office and exercises other responsibilities as defined by law. It may create and decide in sub-bodies⁴³.

Article 148/c

1. The mandate of the member of the High Prosecutorial Council shall end upon:

- a) Reaching the pension age;
- b) Expiry of the 5 year mandate;
- c) His or her resignation;
- ç) dismissal according to the provisions of article 148/ç;
- d) as a result of the procedures provided in article 179/b;
- dh) establishing the conditions of inelectibility and incompatibility;
- e) establishing the incapacity to exercise the duties;

2. The expiry of the mandate of the member shall be declared upon a decision of the High Prosecutorial Council.

3. Where the position of the member remains vacant, the body having appointed the preceding member, shall, under Article 148/a, appoint the new member, the latter staying in office until the expiry of the member of the outgoing member.

4. The Chairperson of the High Prosecutorial Council, not later than 3 months prior to the termination of the mandate of the member, according to paragraph 1 subparagraph a) and b) as well as immediately in cases of termination of the mandate prior to the legal term, notifies the appointing body on the vacancy. The procedure for the appointment of the new member terminates not later than 60 days from the decision declaring the end of the mandate.

⁴² Venice Commission Final Opinion 824/2015 Paragraph 35

⁴³ Venice Commission Final Decision 824/2015 Paragraph 20

Article 148/ç

1.The member of the High Prosecutorial Council shall be disciplinarily liable and shall be dismissed upon decision of the Disciplinary Tribunal of Justice when:

- a) Commits serious professional or ethical misconduct;
- b) Is convicted with final court decision for commission of a crime;

2.The procedure for examination of disciplinary misconduct is regulated by law.

Article 148/d

Being a member of the High Prosecutorial Council shall not be compatible with duty in other state organs, as well as any other compensated professional activity, except for teaching, academic, scientific and artistic activities. The term of the allowed professional activity as well as the amount of remuneration, against which this activity is exercised, shall be provided in the law. The exercise of this function shall not be compatible with being member of a political party or taking part in any public event organized by a political party, as well as with other activities which are incompatible with the duties of the member of the High Prosecutorial Council.

Article 149

1. The Prosecutor General is appointed by three-fifths of the members of Assembly among three candidates proposed by the High Prosecutorial Council. The High Prosecutorial Council shall select based on an open call for candidates, a transparent and open procedure and shall rank the three most qualified and reputable candidates and forwards them to the Assembly⁴⁴. If Assembly cannot appoint the Prosecutor General within 30 days of receiving the proposals from the High Prosecutorial Council, the highest ranking candidate is automatically appointed. The procedure for selection and appointment of the Prosecutor General is determined by law.

2. The Prosecutor General shall serve for a seven-year, non-renewable mandate.

3.The Prosecutor General shall be selected among highly qualified jurists, with no less than 15 years of professional experience as jurists, of high moral and professional integrity, that have graduated from the School of Magistrates or academic degree in law. The Prosecutor General must not have been punished before for a criminal offence. He or she shall not to have held a political post and a post in a political party during the last 10 years before running for this position.

Article 149/a

The Prosecutor General exercises these powers:

- 1.Represents accusation in the High Court and the Constitutional Court, unless represented by prosecutors of the specialized prosecution office under article 148 paragraph 3 of the Constitution;
- 2. Issues only written general guidance to prosecutors of the Prosecutor's Office, with the

⁴⁴ Venice Commission Final Opinion 824/2015 paragraph 24.

exception of prosecutors of the specialized prosecution office under article 148 paragraph 3 of the Constitution;

3. Manages the Prosecutor's Office administration, with the exception of the administration of the specialized prosecution office under article 148 paragraph 3 of the Constitution;

4. proposes and administers the budget of the Prosecutor's Office with the exception of the budget for the specialized prosecution office under article 148 paragraph 3 of the Constitution;

5. reports to the Assembly on the situation of criminality;

6. exercises other powers defined by law.

Article 149/b

1. The mandate of the Prosecutor General ends when:

a) Reaches the age of 70;

b) Expiry of the 7 year mandate;

c) his or her resignation;

ç) dismissal according to a procedure provided in article 149/c;

d) as a result of the procedures provided in article 179/b;

dh) establishing the conditions of inelectibility and incompatibility;

e) establishing the incapacity to exercise the duties;

2. The termination of the mandate of the Prosecutor General is declared by decision of the High Prosecutorial Council.

3. After the end of a 7-year mandate and upon his or her request, the Prosecutor General shall be appointed in the position he or she held before the appointment or as judge in the Court of Appeal.

Article 149/c

1. The Prosecutor General shall be disciplinarily liable and shall be dismissed upon decision of the Disciplinary Tribunal of Justice when he or she:

a) Commits serious professional or ethical misconduct;

b) Is convicted with final court decision for commission of a crime;

2. The procedure for examination of disciplinary misconduct is regulated by law.

PART TEN/1

Article 149/ç (Viable Option)⁴⁵

1. The Justice Appointments Council is responsible for verifying the fulfillment of legal requirements and professional and moral criteria of the candidates for the lay members of the High Judicial Council, for the lay members of the High Prosecutorial Council, for the High Justice Inspector, as well as for the members of the Constitutional Court appointed by the President of the Republic and the Assembly. The Justice Appointments Council examines and ranks the candidates. The ranking is not binding except when the Assembly fails to make an appointment.⁴⁶
2. The Justice Appointments Council meets whenever it is necessary.
3. The Justice Appointments Council shall consist of nine members selected by lot from judges and prosecutors who are not under disciplinary measures, who shall serve a one-year term beginning on January 1 each year. Between December 1 and December 5 of each year, the President shall select by lot two members of the Constitutional Court, one member of the High Court, one prosecutor from the Office of the Prosecutor General, two judges and two prosecutors from the Courts of Appeal and one judge from the Administrative Courts. If the President does not make this selection by December 5, the Chairman of the Parliament shall make the selection by lot before December 10 of the year. The Ombudsperson shall serve as an observer of the selection by lot of the Justice Appointment Council, as well as its meetings and operations.⁴⁷
4. The member from the High Court is Chairperson of the Justice Appointments Council. The High Court creates working conditions for the operation of the Justice Appointments Council.
5. The organization and the functioning of the Justice Appointments Council is regulated by law.

⁴⁵ The text sent to the Venice Commission did represent a valid scientific option. This option reflects changes that address the concern of the Justice Appointment Council having specified positions (and thus the members of the Council can be predicted during the transitional phase). This was a concern of the opposition expressed during the *ad hoc committee*, consultations and in the April 27 comments. On Page 24-25 of those comments, the Opposition criticized having a small group of elites possessing the power to rank candidates. In this Option, there is a random group with some members from higher levels and some members from lower levels of the judiciary. We considered extending the lot to judges and prosecutors at lower courts. While many judges and prosecutors at first instance are well experienced, the random lot could mean having a judge or prosecutor with only a few years' experience on the Council, which seemed inappropriate.

⁴⁶ Venice Commission Final Opinion 824/2015 footnote 3.

⁴⁷ Venice Commission Final Opinion 824/2015 Paragraph 82

PART ELEVEN REFERENDUM

Article 150

1. The people, through 50 thousand citizens, who enjoy the right to vote, have the right to a referendum for the abrogation of a law, as well as to request the President of the Republic to hold a referendum about issues of special importance.
2. The Assembly, upon the proposal of not less than one-fifth of the deputies or the Council of Ministers, can decide that an issue or a draft law of special importance be presented for referendum.
3. Principles and procedures for holding a referendum, as well as its validity, are provided by law.

Article 151

1. A law approved by referendum is promulgated by the President of the Republic.
2. Issues related to the territorial integrity of the Republic of Albania, limitations of fundamental human rights and freedoms, budget, taxes, financial obligations of the state, declaration and abrogation of the state of emergency, declaration of war and peace, as well as amnesty, cannot be voted upon in a referendum.
3. A referendum upon the same issue cannot be repeated before 3 years have passed since it was held.

Article 152

1. The Constitutional Court reviews preliminarily the constitutionality of the issues presented for a referendum according to Article 150, paragraphs 1 and 2, Article 151, paragraphs 2 and 3, as well as Article 177, paragraphs 4 and 5, within 60 days.
2. The importance of special issues, as provided in paragraphs 1 and 2 of article 150, is not subject to adjudication in the Constitutional Court.
3. The date of the referendum is set by the President of the Republic within 45 days after the promulgation of the positive decision of the Constitutional Court or after the term within which the Constitutional Court had to have expressed itself has expired.

Article 153 (repealed)

Article 154

1. The Commission shall consist of 9 members, being elected for a 7-year mandate, 4 members being elected by the Assembly, 2 by the President of the Republic and 3 other members by the High Council of Justice

PART THIRTEEN PUBLIC FINANCES

Article 155

Taxes, fees, and other financial obligations, national and local, reductions or exemptions of certain categories of taxpayers as well as the method of their collection are specified by law. In such cases, the law may not be given retroactive effect.

Article 156

The State can take and guarantee loans and financial credits when so authorized by law.

Article 157

1. The budgetary system is composed of the state budget and local budgets.
2. The state budget is created by revenues collected from taxes, fees and other financial obligations as well as from other legitimate revenues. It includes all state expenses.
3. Local bodies define and collect taxes and other obligations as provided by law.
4. State and local bodies are obliged to make public their revenues and expenses.

Article 158

1. The Prime Minister, on behalf of the Council of Ministers, presents to the Assembly the draft law on the budget during the autumn session, which cannot be closed without approving it.
2. If the draft law is not approved until the beginning of the next financial year, the Council of Ministers implements every month one-twelfth of the budget of the previous year, until the new budget is approved.
3. The Assembly approves the new budget within three months from the last day of the previous financial year, except when extraordinary measures have been decided.
4. The Council of Ministers is obligated to present to the Assembly a report about the implementation of the budget and about the state debt from the previous year.
5. The Assembly takes a final decision after having also listened to the High State Audit report.

Article 159

Principles and procedures for drafting the draft-budget, as well as for implementing it are defined by law.

Article 160

1. During the financial year, the Assembly may make changes in the budget.
2. The changes in the budget are made based on defined procedures for drafting and approving it.
3. Expenses foreseen in other laws cannot be reduced as long as these laws are in force.

Article 161

1. The Central State Bank is the Bank of Albania. It has the exclusive right to issue and circulate the Albanian currency, to independently implement monetary policy, and maintain and administer the exchange reserves of the Republic of Albania.
2. The Bank of Albania is directed by a council, which is chaired by the Governor. The Governor is elected by the Assembly for 7 years, upon proposal of the President of the Republic, with the right of re-election.
3. If Albania enters into an agreement with the European Union to introduce the European Currency, the Bank of Albania shall transfer powers in accordance with the provisions of this agreement.

PART FOURTEEN THE HIGH STATE AUDIT

Article 162

1. The High State Audit is the highest institution of economic and financial control. It is subject only to the Constitution and laws.
2. The Head of the High State Audit is appointed and dismissed by the Assembly upon proposal of the President of the Republic. He stays in office for 7 years, with the right of re-election.

Article 163

The High State Audit supervises:

- a) the economic activity of state institutions and other state legal entities;
- b) the use and preservation of state funds by the bodies of central and local government;
- c) the economic activity of legal entities, in which the state owns more than half of the quotas or shares, or when their debts, credits and obligations are guaranteed by the state.

Article 164

1. The High State Audit presents to the Assembly:
 - a) a report on the implementation of the state budget;
 - b) its opinion on the Council of Ministers' report about the expenses of the previous financial year before it is approved by the Assembly;
 - c) information about the results of audits any time it is asked by the Assembly.
2. The High State Audit presents to the Assembly a yearly report on its activities.

Article 165

1. The Head of the High State Audit may be invited to participate and speak in the meetings of the Council of Ministers when questions related to its functions are reviewed.

2. The Head of the High State Audit has the immunity of a member of the High Court.

PART FIFTEEN ARMED FORCES

Article 166

1. The Albanian citizens have the duty to participate in the defence of the Republic of Albania, as provided by law.
2. The citizen, who for reasons of conscience refuses to serve with weapons in the armed forces, is obliged to perform an alternative service, as provided by law.

Article 167

1. Military servicemen on active duty cannot be chosen or nominated for other state duties nor participate in a party or political activity.
2. Members of the armed forces or persons who perform an alternative service enjoy all the constitutional rights and freedoms, apart from cases when the law provides otherwise.

Article 168

1. The Armed Forces of the Republic of Albania are composed of the army, navy, and air force.
2. The President of the Republic is the General Commander of the Armed Forces.
3. The National Security Council is an advisory body of the President of the Republic.

Article 169

1. The President of the Republic in peacetime exercises the command of the Armed Forces through the Prime Minister and Minister of Defence.
2. The President of the Republic in wartime appoints and dismisses the Commander of the Armed Forces upon proposal of the Prime Minister.
3. The President of the Republic, upon proposal of the Prime Minister, appoints and dismisses the Chief of the General Staff, and upon the proposal of the Minister of Defence appoints and dismisses the commanders of the army, navy, and air force.
4. The powers of the President of the Republic, as General Commander of the Armed Forces, and those of the Commander of the Armed Forces, their subordination to constitutional organs, are defined by law.

PART SIXTEEN

EXTRAORDINARY MEASURES

Article 170

1. Extraordinary measures can be taken due to a state of war, state of emergency, or natural disaster and last for as long as these states continue.
2. The principles of the activity of public bodies, as well as the extent of limitations on human rights and freedoms during the period of the existence of situations that require extraordinary measures, are defined by law.
3. The law must define the principles, the areas, and the manner of compensation for losses caused as a result of the limitation of human rights and freedoms during the period in which extraordinary measures are taken.
4. Acts taken as a result of extraordinary measures must be in proportion with the level of risk and must aim to re-establish the conditions for the normal functioning of the state, as soon as possible.
5. During the situations that require extraordinary measures to be taken, none of these acts may be changed: the Constitution, the laws on the election of the Assembly and local government organs, as well as the laws on extraordinary measures.
6. During the implementation period of extraordinary measures, there may not be held elections for local government bodies, there may not be a referendum, and a new President of the Republic may not be elected. The elections for the local government bodies can be held only in those places where the extraordinary measures are not implemented.

Article 171

1. In case of armed aggression against the Republic of Albania, the President of the Republic upon request of the Council of Ministers declares the state of war.
2. In case of external threat, or when a common defence obligation derives from an international agreement, the Assembly, upon proposal of the President of the Republic, declares the state of war and decides on the state of general or partial mobilization or demobilization.

Article 172

1. In the case of paragraph 1 of Article 171, the President of the Republic presents to the Assembly the decree for establishing the state of war within 48 hours from its signing, specifying the rights to be limited.
2. The Assembly immediately reviews and decides with the majority of all its members, upon the decree of the President.

Article 173

1. In case of danger to the constitutional order and to public security, the Assembly, with request of the Council of Ministers, may decide for a state of emergency in one part or the

whole territory of the state, which lasts for as long as this danger continues, but not longer than 60 days.

2. Upon establishment of the state of emergency, the intervention of armed forces is done with a decision of the Assembly and only when police forces are not able to restore order.

3. The extension of the term of the state of emergency may be done only with the consent of the Assembly, for each 30 days, for a period of time not longer than 90 days.

Article 174

1. For the prevention or the avoidance of the consequences of natural disasters or technological accidents, the Council of Ministers may decide on the state of natural disaster for a period not longer than 30 days, in one part or in the whole territory of the state.

2. The extension of the state of natural disaster can be done only with the consent of the Assembly.

Article 175

1. During the state of war or state of emergency the rights and freedoms provided for in Articles: 15; 18; 19; 20; 21; 24; 25; 29; 30; 31; 32; 34; 39, paragraph 1; 41, paragraphs 1, 2, 3, and 5; 42; 43; 48; 54; 55 may not be limited.

2. During the state of natural disaster the rights and freedoms provided for in Articles: 37; 38; 41, paragraph 4; 49; 51 may be limited.

3. The acts for declaring the state of war, emergency or natural disaster must specify the rights and freedoms which are limited according to paragraphs 1 and 2 of this Article.

Article 176

When the Assembly cannot be convened during the state of war, the President of the Republic, with the proposal of the Council of Ministers, has the right to issue acts that have the force of the law, which have to be approved by the Assembly in its first meeting.

PART SEVENTEEN REVISION OF THE CONSTITUTION

Article 177

1. Initiative for revision of the Constitution may be undertaken by not less than one-fifth of the members of the Assembly.

2. No revision of the Constitution may be undertaken during the time when the extraordinary measures are taken.

3. The draft law is approved by not less than two-thirds of all members of the Assembly.

4. The Assembly may decide, with two-thirds of all its members that the draft constitutional amendments be voted in a referendum. The draft law for the revision of the Constitution

enters into force after ratification by referendum, which takes place not later than 60 days after its approval in the Assembly.

5. The approved constitutional amendment is put to a referendum when this is required by one-fifth of the members of the Assembly.

6. The President of the Republic does not have the right to return for review the law approved by the Assembly for revision of the Constitution.

7. The law approved by referendum is declared by the President of the Republic and enters into force on the date provided for in this law.

8. Revision of the Constitution for the same issue cannot be done before a year from the day of the rejection of the draft law by the Assembly and 3 years from the day of its rejection by the referendum.

PART EIGHTEEN TRANSITORY AND LAST PROVISIONS

Article 178

1. Laws and other normative acts approved before the date this Constitution enters into force will be applied as long as they have not been abrogated.

2. The Council of Ministers presents to the Assembly draft laws necessary for implementing this Constitution.

Article 179 (Amended Text if Options not taken)⁴⁸

1. Members of the Constitutional Court shall continue their activity as members of the Constitutional Court, in accordance with the previous mandate.

2. The first opening for new members for the Constitutional Court shall be appointed by the President of the Republic, the second by the Assembly and the third by the joint meeting of the High Court and High Administrative Court. This shall be the order for all future appointments. New members of the Constitutional Court are appointed for the full duration of the mandate provided by this law⁴⁹.

3. Members of the High Court shall continue their activities 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 High Administrative Court shall be established on 01.01.2020. The appointments to the High Administrative Courts shall guarantee the partial renewal of this court. Detailed rules related to the organization and functioning shall be set by law.

5. Until 31.12.2019, instead of the three High Administrative Court representatives to the Justice Disciplinary Tribunal, shall serve the Chairperson of the Administrative Panel of the

⁴⁸ Option based on version sent to Venice Commission, with adjustments to Venice Commission-required changes. This does not include transitional provisions required by the suggested Options. If changes are made to other sections of this draft, it may be necessary to alter this Article as well.

⁴⁹ Venice Commission Final Opinion 824/2015 Paragraph 81.

High Court, as well as one judge from the Administrative Panel of the High Court and one judge from the administrative courts at first instance or appeal administrative court each selected by lot, under the lead of the Chairperson of the Justice Disciplinary Tribunal.

6. The High Judicial Council shall be established at least within 8 months from 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. The members of the High Council of Justice shall end their mandate after the establishment of the High Judicial Council, but not later than after all members of the High Judicial Council are selected as determined by law.

7. During their 9 years mandate the judges of the Appeal Chamber established in Article 179/b shall have disciplinary jurisdiction over all Constitutional Court judges according to Article 128 of this law.⁵⁰

8. The High Prosecutorial Council shall be established within at least 8 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.

9. The Serious Crimes Court and Serious Crimes Appeals Court shall assume the name, function and competence of the first instance court and appeals court under Article 135 paragraph 3 within 2 months of the establishment of the High Judicial Council, in accordance with the law.⁵¹ The transfer of cases shall be done in accordance with the law. The existing judges of these courts shall be transferred to other courts, if they fail to pass their background check or asset review, or refuse to agree to the periodic reviews of their financial accounts and telecommunications as well as of their close family members. The specialized prosecution office under Article 148 paragraph 3 shall be established and prosecutors appointed within 2 months of the establishment of the High Prosecutorial Council, in accordance with the law. Upon the establishment of this office, the Serious Crimes Prosecution Office shall cease to exist. The transfer of investigations and cases shall be done in accordance with the law.

10. The amendments to articles 39 paragraph 2, 64 paragraph 4, 80/a, 122 paragraph 3, 161 paragraph 3, shall enter into force upon entry into force of the law adopted by the Albanian Assembly ratifying the accession treaty between the Republic of Albanian and the European Union’.

11. The High Justice Inspector shall be appointed within 3 months after entry into force of this law. The transition period and manner of functioning of the existing inspectorates shall be regulated by law.

12. Judges and prosecutors who have not finished the School of Magistrate shall continue on duty and are subject to the transitional qualification assessment according to article 179/b.

⁵⁰ Former formulation of paragraph 7 removed based on Venice Commission Final Opinion 824/2015 Paragraph 81; new formulation related to article 179/b.

⁵¹ Venice Commission Final Opinion 824/2015 Paragraph 83

13. Within 5 days of the entry into force of this law, the President shall select by lot one member of the High Court, two judges and two prosecutors from the Courts of Appeal, two judges and two prosecutors from the First Instance Courts, and two judges from the Administrative Courts. If the President does not select within 5 days of entry into force of this law, the Speaker of the Assembly shall select by lot within 10 days of the entry into force. Those selected shall serve as the Justice Appointments Council until December 31 of the year that this law entered into force. The Ombudsperson shall serve as an observer of the selection by lot of the Justice Appointment Council, as well as its meetings and operations. The members of the Justice Appointment Council shall be subject to the Transitional Qualification Assessment of Judges and Prosecutors under Article 179/b as soon as possible.

Article 179 (Viable Option)⁵²

1. Members of the Constitutional Court shall continue their activity as members of the Constitutional Court, in accordance with the previous mandate.
2. The first opening for new members for the Constitutional Court shall be appointed by the President of the Republic, the second by the Assembly and the third by the joint meeting of the High Court and High Administrative Court. This shall be the order for all future appointments. New members of the Constitutional Court are appointed for the full duration of the mandate provided by this law⁵³.
3. Members of the High Court shall continue their activities 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 High Administrative Court shall be established on 01.01.2020. The appointments to the High Administrative Courts shall guarantee the partial renewal of this court. Detailed rules related to the organization and functioning shall be set by law.
5. Until 31.12.2019, instead of the three High Administrative Court representatives to the Justice Disciplinary Tribunal, shall serve the Chairperson of the Administrative Panel of the High Court, as well as one judge from the Administrative Panel of the High Court and one judge from the administrative courts at first instance or appeal administrative court each selected by lot, under the lead of the Chairperson of the Justice Disciplinary Tribunal.
6. The High Judicial Council shall be established at least within 8 months from 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. The members of the High Council of Justice shall end their mandate after the establishment of the High Judicial Council, but not later than after all members of the High Judicial Council are selected as determined by law.
7. During their 9 years mandate the judges of the Appeal Chamber established in Article

⁵² Changes made to the Transitory Provisions in this draft are premised on the proposed solutions offered in this draft. This Option assumes that the other Options in this document have been adopted. If changes are made to other sections of this draft, it may be necessary to alter this Article as well.

⁵³ Venice Commission Final Opinion 824/2015 Paragraph 40 and 81

179/b shall have disciplinary jurisdiction over all Constitutional Court judges according to Article 128 of this law.⁵⁴

8. The High Prosecutorial Council shall be established within at least 8 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.

9. The Serious Crimes Court and Serious Crimes Appeals Court shall assume the name, function and competence of the first instance court and appeals court under Article 135 paragraph 3 within 2 months of the establishment of the High Judicial Council, in accordance with the law.⁵⁵ The transfer of cases shall be done in accordance with the law. The existing judges of these courts shall be transferred to other courts, if they fail to pass their background check or asset review, or refuse to agree to the periodic reviews of their financial accounts and telecommunications as well as of their close family members. The specialized prosecution office under Article 148 paragraph 3 shall be established and prosecutors appointed within 2 months of the establishment of the High Prosecutorial Council, in accordance with the law. Upon the establishment of this office, the Serious Crimes Prosecution Office shall cease to exist. The transfer of investigations and cases shall be done in accordance with the law.

10. The amendments to articles 39 paragraph 2, 64 paragraph 4, 80/a, 122 paragraph 3, 161 paragraph 3, shall enter into force upon entry into force of the law adopted by the Albanian Assembly ratifying the accession treaty between the Republic of Albanian and the European Union’.

11. The High Justice Inspector shall be appointed within 3 months after entry into force of this law. The transition period and manner of functioning of the existing inspectorates shall be regulated by law.

12. Judges and prosecutors who have not finished the School of Magistrate shall continue on duty and are subject to the transitional qualification assessment according to article 179/b.

13. Within 5 days of the entry into force of this law, the President shall select by lot two members of the Constitutional Court, one member of the High Court, one prosecutor from the Office of the Prosecutor General, two judges and two prosecutors from the Courts of Appeal and one judge from the Administrative Courts. If the President does not select within 5 days of entry into force of this law, the Speaker of the Parliament shall select by lot within 10 days of the entry into force. Those selected shall serve as the Justice Appointments Council until December 31 of the year that this law enters into force. The Ombudsperson shall serve as an observer of the selection by lot of the Justice Appointment Council, as well as its meetings and operations. The members of the Justice Appointment Council shall be

⁵⁴ Former formulation of paragraph 7 removed based on Venice Commission Final Opinion 824/2015 Paragraph 81; new formulation related to article 179/b

⁵⁵ Venice Commission Final Opinion 824/2015 Paragraph 83

subject to the Transitional Qualification Assessment of Judges and Prosecutors under Article 179/b as soon as possible.

Article 179/a

1. The mandate of officials elected or appointed in the constitutional organs and the organs established by law, which was obtained prior to the entry into force of this law, shall terminate or become invalid, if it is ascertained that the elected or appointed person falls in the ranks of the subjects which are exempted from the right to be elected, under Articles 6/1 and 45, point 3, of the Constitution.

2. Within 30 days from entry into force of this law, the Assembly shall approve the law providing for the conditions and rules for guaranteeing the integrity of the organs elected, appointed or exercising public functions, in accordance with the procedure of Article 81, point 2 of the Constitution.

Article 179/b

1. In accordance with the provisions of the Annex 'Transitional Qualification Assessment of Judges and Prosecutors', all judges, including members of the Constitutional Court and High Court, all prosecutors, including the Prosecutor General, the Chief Inspector and the other inspectors of the High Council of Justice and all legal advisors of the Constitutional Court and High Court, legal assistants of the administrative courts, legal assistants of the General Prosecution Office⁵⁶ shall *ex officio* be re-evaluated in order to re-establish the proper function of rule of law and true independence of the judicial system, as well as the public's trust and confidence in these institutions. The re-evaluation shall be conducted by respecting the rights of the assessee and the principles of fair trial⁵⁷. Former judges or prosecutors, and former legal advisors of the Constitutional Court and High Court with at least 3 (three) years of work experience in this function⁵⁸ may undergo upon their request the re-evaluation process, if they fulfil the criteria set out by law.

2. Persons listed in paragraph 1 (one), sentence 1 (one) of this article, who successfully pass the re-evaluation procedure, shall remain as appointed judges and prosecutors. Legal

⁵⁶ Recommendation of EU Commission

⁵⁷ Venice Commission Final Opinion 824/2015 no.52, 62

⁵⁸ Article 170 of Draft law on status of judges and prosecutors provides that: 1. Persons, who have graduated at the School of Magistrates and have acted at least three years as magistrates; or have acted at least 10 years as magistrate within the last 20 years; and who

a) have not been dismissed on grounds of disciplinary misconduct or criminal offences; and

b) have not been member of a political party or of the Assembly, not held a political office in public administration or a political party or a leadership function in a political party during the last 10 years before the entry into force of this law ; and

c) not have been a member, collaborator or favoured by the State Security before 1990; and

d) not be a collaborator, informant, or agent of any secret service;

shall be entitled to participate in the re-evaluation procedure and after successful completion of such procedure they shall have be considered as re-appointed as magistrates with the right to participate in lateral transfer and promotion procedures for positions for magistrates or apply to any position reserved to magistrates within five years after entry into force of this law.

assistants at the administrative courts and the persons listed in paragraph 1 (one), sentence 3 (three) of this article who pass the re-evaluation shall undergo the entry exam and pass successfully a training at the School of Magistrates under the conditions set out in the law. After successful completion of the training program they shall be appointed as judges or prosecutors.

3. The re-evaluation shall be conducted by a transitional Independent Qualification Commission (Commission) and appeals shall be considered by a transitional Specialized Qualification Chamber (Appeal Chamber) which shall function within the Constitutional Court⁵⁹.

4. The re-evaluation procedure shall be conducted as quickly and efficiently as possible, by guaranteeing at the same time the respect of fundamental rights and freedoms as far as applicable within this re-evaluation, a fair process, the principle of proportionality and the right of appeal⁶⁰. Judges at the Constitutional Court and the High Court and the General Prosecutor shall be re-evaluated with priority.

5. The Commission and the Public Commissioner shall cease to exist after five years of operation. The Appeal Chamber shall cease to exist after nine years of operation. After the dissolution of the Commission pending cases shall be conducted by the High Judicial Council in the composition deciding disciplinary matters. Pending cases of the prosecutors shall be conducted by the High Prosecutorial Council in the composition deciding disciplinary matters. Any appeals shall be adjudicated by the Constitutional Court⁶¹. After the dissolution of the Public Commissioner their competences shall be exercised by the Chief Special Prosecutor of the special prosecution office dealing with corruption and organized crime⁶². The judges at the Appeal Chamber shall serve until the end of their 9 year mandate⁶³.

6. The Assembly shall vote to repeal the Annex after the last re-evaluation decision became final following a report of the Chairperson of the Appeal Chamber sent to the Assembly about the pending cases⁶⁴ or at the end of the mandate of the Appeal Chamber⁶⁵.

7. Details shall be regulated by law.

Article 180

1. International agreements ratified by the Republic of Albania before this Constitution enters into force are considered ratified according to this Constitution.

2. The Council of Ministers presents to the Constitutional Court the international agreements which contain provisions that come in conflict with the Constitution.

Article 181

1. The Assembly, within two to three years from the date this Constitution enters into force, issues laws for the fair resolution of different issues related to expropriations and

⁵⁹ Venice Commission Final Opinion Paragraph 66; Venice Commission Interim Opinion, Paragraph 117.

⁶⁰ Venice Commission Final Opinion 824/2015 Paragraph 57 and 66

⁶¹ Venice Commission Final Opinion 824/2015 Paragraph 56.

⁶² Venice Commission Final Opinion 824/2015 Paragraph 54-56.

⁶³ Venice Commission Final Opinion 824/2015 Paragraph 64

⁶⁴ Recommendation EU Commission

⁶⁵ Venice Commission Interim Opinion no.102

confiscations done before the approval of this Constitution, guided by the criteria of Article 41.

2. Laws and other normative acts, adopted before the date this Constitution enters into force, that relate to the expropriations and confiscations shall be applied when they do not come in conflict with it

Article 182

Law No. 7491, dated 29.4. 1991, "On the Main Constitutional Provisions" as well as the other constitutional laws are abrogated the day this Constitution enters into force.

Article 183

This Constitution enters into force with its promulgation by the President of the Republic.

Approved by referendum on 22.11.1998

Promulgated by Decree no 2260, dated 28/11/1998, of the President of the Republic of Albania, Rexhep Meidani.

Annex
Transitional Qualification Assessment of Judges and Prosecutors⁶⁶

Article A
Measures to Establish Public Trust

1. In order to safeguard the rights of the citizens of the Republic 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 the existing corruption in the system, criminal influence and the poor proficiency of a part of the judiciary or the prosecution, the application range of some articles of this Constitution, in particular provisions regarding privacy, to include Articles 36 and 37, provisions related to the burden of proof, and other provisions including Articles 128, 131, paragraph f, 135, 138, 140, 145 paragraph 1, 147/a paragraph 1, letter b), 148/b paragraph 1, letter b), are limited partly in accordance with Article 17 of this Constitution. The limitations are done only to the necessary extent. All officials mentioned in Article 179/b paragraph 1 of the Constitution shall be re-evaluated, regardless of whether they are on secondment or leave from exercising their duties⁶⁷.
2. The Commission and the Appeal Chamber shall both operate and decide independently and impartially according to the provisions of this Annex and of the implementing law. The organization and functioning of the Commission and Appeal Chamber and the procedures of the re-evaluation shall be regulated by law.
3. Once the officials mentioned in Article 179/b paragraph 1 of the Constitution have passed the re-evaluation as provided in this Annex, they are subject to the permanent accountability system regulated by the ordinary rules contained in the Constitution and the relevant Laws.⁶⁸

Article B
International Monitoring Operation⁶⁹

1. An International Monitoring Operation led by the European Commission shall be established with the purpose to support the re-evaluation process, together with partners, within the framework of the European integration process and Euro-Atlantic cooperation. The International Monitoring Operation shall be competent to monitor and oversee the entire process of the re-evaluation. In particular, the International Monitoring Operation will appoint International Observers following a notification to the Council of Ministers.⁷⁰
2. The organization and functioning of the International Monitoring Operation shall be established in the framework of international arrangements. Its powers shall be established in this annex and by law.⁷¹
3. International Observers shall be members with at least 15 years' experience as

⁶⁶ At the suggestion of the Venice Commission (e.g. Venice Commission Interim Opinion, Paragraph 101), many details have been moved from the Constitutional Annex to the implementing law.

⁶⁷ Venice Commission Interim Opinion, Paragraphs 104-106.

⁶⁸ Venice Commission Interim Opinion, Paragraph 102.

⁶⁹ Redrafted Venice Commission Final Opinion paragraph 71-72 and request of EU Commission.

⁷⁰ Venice Commission Final Opinion paragraph 69 has been slightly changed according to the request of the EU Commission.

⁷¹ Venice Commission Interim Opinion, Paragraph 130.

judges or prosecutors in the judiciary⁷² in their own countries.⁷³ The mandate of an international observer shall only be revoked for gross misconduct, by the International Monitoring Operation.

4. International Observers shall have the following duties and authority:⁷⁴

a. International Observers shall have immediate access to all information, people and documents necessary to monitor the re-evaluation at all levels and in all stages.

b. It will issue recommendations to the Ombudsperson concerning the qualification and selection of the candidates for the position of members of the Commission (Commissioner), the Appeal Chamber (Judge) and Public Commissioners⁷⁵;

c. International Observers shall be entitled to file findings and opinions with the Commission and the Appeal Chamber and in particular may contribute to the background assessment regulated in Article DH. In those findings, the International Observers may request that the Commission or the Appeal Chamber take evidence or may present evidence obtained from state bodies, foreign entities or private persons, in accordance with the law.⁷⁶

d. International Observers shall be entitled to submit a written recommendation to the Public Commissioners to file an appeal. If the latter decides not to follow this recommendation, the Public Commissioner is required to issue a written justification.

Article C

General provisions for the Commission and Appeal Chamber

1. The Commission shall consist of four permanent first instance panels having three members each appointed in accordance with this Annex.

2. Two Public Commissioners shall represent the public interest and may appeal the decision of the Commission⁷⁷.

3. The Commission and Appeal Chamber shall both operate with accountability, integrity and transparency and with the objective of promoting an independent and competent system of justice free from corruption. During their mandate, the members of the Commission and Public Commissioner shall have the status of a judge at the High Court⁷⁸ unless provided differently by law.⁷⁹ The judges appointed to the Appeal Chamber shall not be subject to age limit and have the status of judges of the Constitutional Court, unless provided differently by law.

4. All members of the Commission and judges of the Appeal Chamber, the Public Commissioners and the staff of these organs as set by law, must consent to the yearly disclosure of their assets, constant monitoring of their financial accounts and waiver of the

⁷² Venice Commission Final Opinion Paragraph 70

⁷³ Venice Commission Interim Opinion, Paragraph 133.

⁷⁴ Venice Commission Interim Opinion, Paragraph 134.

⁷⁵ Venice Commission Final Opinion Paragraph 61, footnote 16

⁷⁶ Venice Commission Interim Opinion, Paragraphs 133-134.

⁷⁷ Venice Commission recommendation in paragraph 73 has been slightly changed according to the request of the EU Commission.

⁷⁸ Venice Commission Interim Opinion, Paragraphs 117-118.

⁷⁹ Some details will be different such as salaries or protection.

privacy of their communication related to their work. All asset declarations shall become public.

5. All members of the Commission and the judges of the Appeal Chamber shall have a university degree in law, and no less than fifteen years' experience as a judge, prosecutor, law professor, advocate, notary, senior employees in public administration, or other legal profession related to the justice sector. Candidates for member of the Commission and judges at the Appeal Chamber may not have been judges, prosecutors or legal advisors in the two years prior to their nomination. Candidates for member of the Commission and judges at the Appeal Chamber shall not have been sentenced before in connection with the commission of a criminal offence. They shall not have held a political post in the public administration⁸⁰ or a leadership position in a political party for the past 10 years before becoming a nominee.

(Option 1)

6. Within one month of the entry into force of this Annex, the Ombudsperson shall conduct an open and transparent application process⁸¹ for the positions of the members in the Commission, judges of the Appeal Chamber and Public Commissioners. All candidates shall send applications and asset declarations in accordance with the law to the Ombudsperson. Within four⁸² months of the entry into force of this Annex, the Ombudsperson shall compile a list of all applicants with the annotation whether the formal selection criteria are met or not and send that list to the Assembly.

7. Within 30 days of receiving the list, Assembly shall appoint with a 3/5 majority the members of the Commission and judges of the Appeal Chamber and the two Public Commissioners from the list of candidates provided by the Ombudsperson taking into account recommendations from the International Monitoring Operation⁸³. If the Assembly fails to appoint all members, judges and public commissioners within 30 days, by the thirty-fifth day the President of the Republic shall select by public lot the members of the Commission judges of the Appeal Chamber or Public Commissioners from the list of candidates recommended by the International Monitoring Operation. Those selected shall be automatically appointed. The details of this procedure are regulated by law.

(Option 2)

6. Within one month of the entry into force of this Annex, the Ombudsperson shall conduct an open and transparent application process⁸⁴ for the positions of the members in the Commission, judges of the Appeal Chamber and Public Commissioners. All candidates shall send applications and asset declarations in accordance with the law to the Ombudsperson. Within one month of the entry into force of this Annex a selection council shall be set up. It has its seat at the office of the Ombudsperson. It consists out of a representative nominated by the Prime Minister, a representative nominated by the State President and three

⁸⁰ Definition of political post in the public administration is provided in Law no.8095, dated 21.03.1996 'On civil service in the Republic of Albania', art 15 (annex 1) and Law no. 152/2013, article 2

⁸¹ Venice Commission Final Opinion 824/2015 Paragraph 60

⁸² Time needed for HIDAACI to check the asset declarations of the applicants.

⁸³ Venice Commission Final Opinion 824/2015 Paragraph 61, footnote 16

⁸⁴ Venice Commission Final Opinion 824/2015 Paragraph 60

members of the International Monitoring Operation. In the case the Prime Minister or the State President do not nominate representatives the selection council shall work with the available members. Within two⁸⁵ months of the entry into force of this Annex, the Ombudsperson shall compile a list of all applicants with the annotation whether the formal selection criteria are met or not and send that list to the selection council. Within three month of the entry into force of this Annex from the list compiled by the ombudsman the selection council shall select by simple majority of their members the most appropriate candidates, who fulfil the selection criteria best and are most reliable and suitable to implement the vetting. If possible this proposal shall contain double the candidates than positions are available. Within three month of the entry into force of this Annex the selection council sends the proposal to the Assembly, the Prime Minister and the State President. In the case the proposal contains more candidates than positions are available, the Prime Minister and the State President shall each have the right to delete one candidate. They shall send the final list within seven days to the Assembly. In the case both do not send the list to the Assembly, on the eighth day the proposal of the selection council shall be the final list.

7. Within 7 days of receiving the list, the Assembly shall appoint with a 3/5 majority the members of the Commission and judges of the Appeal Chamber and the two Public Commissioners from the final proposal of candidates⁸⁶. If the Assembly fails to appoint members, judges and public commissioners within this deadline, the Speaker of the Assembly shall select by public lot the members of the Commission, judges of the Appeal Chamber and Public Commissioners from the final proposal within 7 days. In the case the Speaker of Parliament fails to draw the lot, it is drawn by the head of the International Monitoring Operation. The selected candidates shall be automatically appointed. The details of this procedure are regulated by law.

8. Members in the Commission, judges of the Appeal Chamber and Public Commissioners shall work full time and may not hold any other position or employment during their mandate.

9. The Commission and Appeal Chamber and the Public Commissioners shall have a budget, staff and facilities established by law sufficient to support their duties and the duties of the international observers.

10. The official languages of the Commission, Appeal Chamber and Public Commissioners shall be Albanian and English, and they shall have translators and interpreters accordingly.

11. Members of the Commission, judges of the Appeal Chamber and Public Commissioners are subject to disciplinary liability. The disciplinary cases shall be reviewed by the Appeal Chamber, excluding any judges accused, in accordance with the law. Dismissal is only warranted for serious misconduct.⁸⁷

12. The members of the Commission, judges of the Appeal Chamber and Public Commissioners shall enjoy immunity in connection with the opinions expressed and the

⁸⁵ Time needed for HIDAACI to check the asset declarations of the applicants.

⁸⁶ Venice Commission Final Opinion 824/2015 Paragraph 61, footnote 16

⁸⁷ Venice Commission Interim Opinion, Paragraph 128. The vetting implementing law will elaborate the process how the disciplinary procedure shall be conducted;

decisions made in the course of assuming their functions.⁸⁸

13. The members, judges, public commissioner, international observers, staff, and their families shall be protected at highest level in accordance with the law.⁸⁹

Article Ç **Re-evaluation**

1. All officials mentioned in under Article 179/b paragraph 1 of the Constitution shall be subject to re-evaluation at the first instance by the Commission and at the appeal instance by the Appeal Chamber. They shall undergo an Asset Assessment under Article D, a Background Assessment under Article DH and a Proficiency Assessment under Article E.

2. The Commission and Appeal Chamber shall publish their decisions and may publish information and take into account comments obtained from the public. They shall respect the balance between privacy and investigation needs, and shall guarantee the right to a fair trial.⁹⁰

3. Official bodies of the Republic of Albania shall cooperate with and disclose requested information to the Commission and Appeal Chamber shall grant direct access to their databases and may provide opinions and proposals in accordance with the law.

4. The Commission, or the Appeal Chamber through their staff, the Public Commissioners, its members and assisted by the international observers, shall review the assessee's completed background declarations, may interview people named in the declaration or others, and shall cooperate with other state or foreign institutions to confirm the veracity and accuracy of the disclosure. The Commission, the Appeal Chamber and the international observers shall have direct access to all relevant government databases and files, if not classified as state secret, including the assessee's 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. The Commission or the Appeal Chamber may order private individuals and companies to provide testimony or evidence in accordance with the law⁹¹.

5. In accordance with the law, the staff of the Commission and Appeal Chamber shall compile a dossier of the reports, recommendations and files on the assets, background and proficiency assessments. The Commission and Appeal Chamber shall review each assessment dossiers and submissions from the assessee in accordance with procedures established by law. The Commission or Appeal Chamber shall decide either based on one component of the re-evaluation provided in paragraph 1 of this article or based on an overall evaluation of all three components and the information obtained. In its work the Commission and Appeal Chamber shall respect the principles mentioned in art. 179/b of the

⁸⁸ Added to ensure that judges in the Commission and Appeals Chamber are not subject to threats of prosecution for the written decisions or oral statements made while on duty. As judges of the Constitutional Court, the members of the Appeals Chamber are already covered under the normal constitution.

⁸⁹ Venice Commission Interim Opinion, Paragraphs 128.

⁹⁰ Venice Commission Interim Opinion Paragraph 103-105, Footnotes 38-39.

⁹¹ Venice Commission Final Opinion 824/2015 Paragraph 84.

Constitution⁹².

Article D

Asset Assessment

1. Assesses shall be subject to declaration and audit of their assets with the purpose of identifying assesses, who possess or have the use of assets greater than can be legitimately explained, or those assesseees who have failed to accurately and fully disclose their assets and those of their related persons.
2. Assesseees shall submit a new and fully detailed asset declaration in accordance with the law. The High Inspectorate for the Declaration and Audit of Assets and Conflict of Interests shall audit the asset declaration and submit to 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, in accordance with the law.
3. The assessee has to credibly explain the lawful origin of assets, property and income⁹³. Income shall only be considered legitimate if it has been declared and taxes have been paid. Legitimate income shall be defined in detail by law.
4. If the assessee has assets greater than twice the amount justified by legitimate income, a presumption for the disciplinary measure of dismissal shall be established which the assessee shall have the burden to dispel. The shift of the burden of proof to the assessee applies only for this assessment and not for other, in particular, criminal proceedings.⁹⁴
5. 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 for the disciplinary measure of dismissal shall be established which the assessee shall have the burden to dispel. The shift of the burden of proof to the assessee applies only for this assessment and not for other, in particular, criminal proceedings.

Article DH

Background Assessment

1. Assesses shall be required to submit a background declaration and be subject to a background assessment with the purpose of identifying assesseees with inappropriate⁹⁵ contacts with persons involved in the organized crime. The background assessment on persons involved with organized crime will be based on the background declaration and other evidence as appropriate, including Albanian or foreign court decisions.⁹⁶
2. Assesseees shall submit a duly filled-in detailed background declaration to the Commission for the period January 1, 2012 to the day of the declaration, as regulated by law. The completed background declaration can only be used as evidence in this procedure and by no means may be used in a criminal case.⁹⁷
3. If the assessee has inappropriate contacts with persons involved in organized crime, a

⁹² Recommendation of EU Commission to repeat the applicability of these principles

⁹³ Model of United Nations Convention against transnational organized crime (Palermo convention), art. 12 No. 7

⁹⁴ Venice Commission Interim Opinion, Paragraph 121.

⁹⁵ Venice Commission Final Opinion 824/2015 Paragraph 85

⁹⁶ Venice Commission Interim Opinion, Paragraph 122.

⁹⁷ Venice Commission verbal opinion, Venice Commission Plenary Session, December 18, 2015.

presumption for the disciplinary measure of dismissal shall be established, which the assessee shall have the burden to dispel. The shift of the burden of proof to the assessee applies only for this assessment and not for other, in particular, criminal proceedings.

4. If the assessee does not submit the duly completed background declaration within the deadline or takes steps to inaccurately disclose or hide contacts with persons involved in the organized crime, a presumption in for the disciplinary measure of dismissal shall be established, which the assessee shall have the burden to dispel. The shift of the burden of proof to the assessee applies only for this assessment and not for other, in particular, criminal proceedings.

Article E

Proficiency Assessment

1. Assesses shall be subject to a proficiency assessment, with the purpose of identifying those 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 the officials in charge of the ethical and professional evaluation of judges and prosecutors at the time of the Assessment. The Proficiency Assessment for judges, legal advisors or legal assistants shall assess judicial capacity, organizational skills, 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, organizational skills, ethics and commitment to prosecutorial values, personal quality and professional commitment based on standards provided by law. The Proficiency Assessment for legal advisors or legal assistance may additionally require a test at the School of Magistrate. The Proficiency Assessment shall not consider pending cases.⁹⁸

3. If the assessee has demonstrated questionable knowledge, skill, judgment, or aptitude, or there is a consistent or substantial pattern of work possibly non-compliable with the position, the deficiency shall be identified and a presumption for the disciplinary measure of suspension with education to remedy that deficiency shall be established which the assessee shall have the burden to dispel. The shift of the burden of proof to the assessee applies only for this assessment and not for other, in particular, criminal proceedings.

4. If the assessee has demonstrated inadequate knowledge, skill, judgment, or aptitude, or there is a consistent and substantial pattern of work of a quality which is inadequate with the position, and the deficiency is unlikely to be remedied with one year of education program, a presumption for the disciplinary measure of dismissal shall be established which the assessee shall have the burden to dispel. The shift of the burden of proof to the assessee applies only for this assessment and not for other, in particular, criminal proceedings.

5. 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 or substantial pattern of work which can threaten or diminish the rights of citizens, the assessee shall be considered inadequate and a presumption for the disciplinary measure of dismissal shall be established which the assessee shall have the burden to dispel. The shift of the burden of

⁹⁸ Venice Commission Interim Opinion Paragraph 107.

proof to the assessee applies only for this assessment and not for other, in particular, criminal proceedings.

Article E

First Instance Assessment

1. One member of the assigned panel of the Commission shall be a Rapporteur.
2. The Rapporteur can seek additional information, and shall propose a decision and reasoning. 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. The Rapporteur has the right to request assistance from foreign authorities and may use the assistance of the Albanian institutions⁹⁹.
3. The Panel shall invite the assessee to a hearing in accordance with the law.

Article F

Disciplinary Measures

1. If either the Commission or the Appeal Chamber determines that an assessee requires disciplinary measures, it 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 75 % 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 International Monitoring Operation. Assessee's failing the test are dismissed by the first instance commission.
3. The dismissal of a judge or prosecutor does not constitute a ground for the re-opening of cases decided or prosecuted by the assessee, except in the cases based on which a review can be requested according to the procedural codes.¹⁰⁰

Article G

Appeal Instance

1. The Appeal Chamber shall consist of seven judges. Only judges appointed to the Appeal Chamber may decide appeals against the re-evaluation under this Annex. They decide in panels of composed of five members each¹⁰¹. The assessee shall have the right to appeal to the Appeal Chamber within the period provided by the law. The Public Commissioners shall each also have the right to appeal in accordance, except for decisions under article F, paragraph 2, sentence 4 of this law. The Appeal Chamber enjoys the power to take specific fact finding steps and shall remedy any procedural errors of the Commission. The Appeal

⁹⁹ To be adopted for international cooperation purposes, if needed.

¹⁰⁰ Venice Commission Interim Opinion, Paragraph 123.

¹⁰¹ EU Commission recommendation.

Chamber shall decide the case and may not transfer the case back to the Commission.¹⁰² The Appeal Chamber shall ensure the respect of the assessee's fundamental rights within the limits set by Article A of this law. This constitutional jurisdiction does not allow to call into question the constitutionality of the principles on which the re-evaluation process as such is based and the criteria used in there¹⁰³.

2. The international observer takes part with the same rights like those in first instance.¹⁰⁴

3. A reasoned decision ordering dismissal has immediate effect, unless an appeal is filed. In the case of appeal the salary is 75 % of the salary of a judge in first instance. In the case of a successful appeal at the Appeal Chamber the remaining 25 % shall be paid. 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 Chamber.

5. The Appeal Chamber shall uphold, modify or overrule¹⁰⁵ the decision of the Commission in a reasoned, written decision. In cases of appeal by the Public Commissioner, it may not impose a more strict disciplinary measure without providing the assessee with sufficient notice to prepare and respond in a hearing.¹⁰⁶

6. Assessee's shall have access to the European Court of Human Rights¹⁰⁷.

Article H¹⁰⁸ Resignation

1. The assessee may resign from the office and is not assessed any further.

2. If an assessee resigns, the assessee shall have the right to receive the pension in accordance with the law¹⁰⁹.

3. Assessee's who resign under this provision may no longer serve as a judge at any level, prosecutor, member of the High Judicial Council or High Judicial Inspector or High Prosecutorial Council, or Prosecutor General for the duration of ten years.

¹⁰² Venice Commission Interim Opinion Paragraph 117.

¹⁰³ Venice Commission Final Opinion 824/2015 Paragraph 66, includes access for sitting members of the Constitutional Court

¹⁰⁴ Venice Commission Interim Opinion Paragraph 135.

¹⁰⁵ Venice Commission Final Opinion 824/2015 Paragraph 68.

¹⁰⁶ Venice Commission Interim Opinion Paragraph 106.

¹⁰⁷ Venice Commission Final Opinion 824/2015 Paragraph 57.

¹⁰⁸ New article, for technical reasons, based on recommendation of EU Commission.

¹⁰⁹ At the suggestion of the Venice Commission (e.g. Venice Commission Interim Opinion, Paragraph 101), many details have been moved from the Constitutional Annex to the implementing law.