

**REPUBLIC OF ALBANIA
THE ASSEMBLY**

**LAW
No. 8811 dated 17 May 2001**

**ON THE ORGANIZATION AND FUNCTIONING
OF THE HIGH COUNCIL OF JUSTICE**
(Amended by law no 9448 dated 5.12.2005)

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

**THE ASSEMBLY
OF THE REPUBLIC OF ALBANIA**

D E C I D E D:

**CHAPTER I
THE COMPOSITION AND STATUS OF THE MEMBERS
OF THE HIGH COUNCIL OF JUSTICE**

**Article 1
High Council of Justice**

The High Council of Justice is the state authority responsible for the protection, appointment, transfer, discharge, education, moral and professional evaluation, career and oversight of the activity of judges of the courts of the first level and the courts of appeal.

**Article 2
Duties of the High Council of Justice**

The High Council of Justice exercises these duties:

- a) It proposes to the President of the Republic the appointment of judges of the courts of the first level and the courts of appeal.
- b) It decides on the discharge of judges of the courts of the first level and the courts of appeal.
- c) It decides on the transfer of judges.
- ç) It decides on the taking of disciplinary measures against judges.
- d) It sees to the qualification of judges.
- dh) It decides on the criteria for the evaluation of judges, it oversees and guarantees the process of evaluation and it examines complaints of judges about their evaluation.

- e) It appoints and discharges the chairmen and vice chairmen of the courts of the first level and the courts of appeal.
- ë) It appoints and discharges the inspectors of the Inspectorate of the High Council of Justice.
- f) It performs other duties specified by law.

Article 3 **Composition of the High Council of Justice**

The High Council of Justice consists of the President of the Republic, the President of the High Court, the Minister of Justice, three members elected by the Assembly of the Republic of Albania and nine judges of all levels elected by the National Judicial Conference.

Article 4 **Conditions for being elected a Member of the High Council of Justice** (Amended by law no 9448 dated 5.12.2005, article 1)

1. Members of the High Council of Justice who are elected by the National Judicial Conference are to have been judges for no less than ten years.
2. Members of the High Council of Justice who are elected by the Assembly are to be jurists non judges with no less than 15 years experience in the profession.

Article 5 **Incompatibilities**

The function of a member of the High Council of Justice is incompatible with the function of prosecutor, member of the management and executive organs of political parties and with the activity of the private legal profession in the courts of the first level and of appeal.

Article 6 **Time of Staying in Office**

1. Elected members stay in office for a five year period, without the right of immediate re-election.
2. The term of staying in office of the elected members of the High Council of Justice begins from the day of their election.
3. The compensation of the members of the High Council of Justice in the exercise of this function is set by decision of the Council of Ministers.

Article 7 **End of the Mandate**

1. The mandate of an elected member of the High Council of Justice ends when:

- a) the five year term of office is completed;
 - b) he resigns;
 - c) he is no longer a judge, if he was elected by the National Judicial Conference;
 - ç) he does not take part in meetings of the Council for a six month period;
 - d) he is punished by a final judicial decision for the commission of a criminal offense;
 - dh) a disciplinary measure is taken against a member of the High Council of Justice who is a judge and, after the re-voting of his mandate in the National Judicial Conference, he does not win a majority of the votes;
 - e) he is declared incompetent to act by a final judicial decision;
 - ë) one of the incompatibilities specified by this law is confirmed.
2. In the cases specified in letters “a” and “b” of point 1 of this article, the members of the High Council of Justice stay in office until the appointment of a new member.
3. The end of a mandate before its term is declared by decision of the High Council of Justice.

Article 8

Filling a Vacant Position in the High Council of Justice

1. Filling a vacancy in the High Council of Justice is done by the National Judicial Conference or the Assembly, as the case may be.
2. The National Judicial Conference or the Assembly meets and elects the member of the Council within 45 days from the creation of the vacancy.
3. A member of the High Council of Justice elected to fill a vacancy in the High Council of Justice stays in his function for a full five year term.

Article 9

Commission for Verifying Mandates

At its next meeting, the High Council of Justice elects a commission consisting of three of its members to verify the electability, compatibility and exercise in conformity with law of the duty of the member of the High Council of Justice.

Article 10

Report of the Commission for Verifying Mandates

1. The report of the Commission for Verifying Mandates shall contain the evidence and legal arguments, as appropriate, for the compatibility with the law of the issues of electability, incompatibility and due exercise of the mandate of the members of the High Council of Justice. At the conclusion of the report, the Commission for Verifying Mandates presents the respective proposals to the High Council of Justice.
2. When the High Council of Justice considers the election and staying in office of a member of the High Council of Justice not to be in conformity with law, by a reasoned decision it suspends the exercise of the mandate and asks the National Judicial Conference or the Assembly, as the case may be, to conduct new elections.

CHAPTER II ORGANIZATION OF THE HIGH COUNCIL OF JUSTICE

Article 11 Chairman of the High Council of Justice

1. The President of the Republic is the Chairman of the High Council of Justice.
2. The Chairman calls and directs a meeting of the High Council of Justice and sees to the implementation of law during the holding of meetings and for the taking of decisions.

Article 12 Vice Chairman of the High Council of Justice

1. The High Council of Justice elects a Vice Chairman from its ranks on the proposal of the President.
2. The Vice Chairman organizes the day-to-day activity of the High Council of Justice.
3. If he is elected from the ranks of the members of the High Council of Justice who are judges, the Vice Chairman does not exercise the function of judge for the time he is in office.
4. In case of a resignation or the end of the mandate, the Vice Chairman begins again to exercise the function of judge in the court where he was named or, with his consent, in another court.

Article 13 Duties and Status of the Vice Chairman

1. The Vice Chairman of the High Council of Justice is a full-time employee.
2. The Vice Chairman of the High Council of Justice exercises these duties:
 - a) He sees to the normal activity of the High Council of Justice.
 - b) He organizes and directs the activity of the Inspectorate and the administration of the High Council of Justice.
 - c) He follows the actions of the Inspectorate of the High Council of Justice in verifying complaints and data about judges as well as for the implementation of the duties charged by the Council, in cases of disciplinary proceedings begun by the Minister of Justice.
 - ç) He organizes the preparatory work for the agenda and the normal conduct of the meeting of the High Council of Justice.
3. The Vice Chairman, in case of absence or an impediment and with his authorization, replaces the Chairman of the High Council of Justice in the exercise of the functions specified in point 2 of article 11 of this law.
4. The Vice Chairman of the High Council of Justice is equivalent in pay with a judge of the High Court.

Article 14

The Inspectorate of the High Council of Justice

1. The Inspectorate attached to the High Council of Justice consists of the Chief Inspector and the inspectors. The rules of organization and functioning and the number of inspectors are specified by the High Council of Justice.

2. The Chief Inspector and the inspectors are named and discharged by the High Council of Justice on the proposal of the Vice Chairman.

3. The candidacies of inspectors are selected, after a public announcement, from among the judges who meet the conditions to be named a judge in the Courts of Appeal and, in their absence, among jurists who have served as judges for no less than five years.

4. The activity of the Inspectorate is directed by the Vice Chairman of the High Council of Justice.

5. The Chief Inspector organizes and is responsible for the day-to-day activity of the work of the Inspectorate.

Article 15

Status of the Inspectors and of the Chief Inspector

1. The inspectors are appointed to this duty for a five year period, with the right to be re-appointed.

2. The period of exercise of the function of inspector is recognized as a period of seniority at work as a judge for purposes of the requirements of one's professional career. Judges who serve as inspectors in the Inspectorate of the High Council of Justice are re-appointed judges at their request without a competition.

3. The Chief Inspector earns the same pay as the Chairman of the Court of Appeals of Tirana, while inspectors earn the same pay as the judges of this court.

Article 16

Duties of the Inspectorate of the High Council of Justice

1. The duties of the Inspectorate of the High Council of Justice are:

a) It verifies or sends to the Minister of Justice for handling complaints of citizens and other subjects that are directed to the High Council of Justice about actions of judges considered to be in conflict with the proper fulfillment of duty. The Inspectorate verifies only those complaints that cannot be solved through a judicial appeal or for the exclusion of the members of the judicial body. It verifies the complaints of citizens and other subjects that are directed to the Minister of Justice and that are judged by him to be followed up by the Inspectorate of the High Council of Justice.

b) The verification is performed only after the judge has first been notified. The Inspectorate verifies whether the complaints contain facts and circumstances that might constitute a legal cause for a disciplinary proceeding or for a moral and professional evaluation of the judges.

c) If legal reasons for a disciplinary proceeding are observed, the explanatory supporting statement and the respective documentation are sent immediately to the

Minister of Justice, through the Vice Chairman of the High Council of Justice, for judgment about a disciplinary proceeding.

ç) It performs verifications about a disciplinary proceeding proposed by the Minister of Justice in cases when it is considered appropriate and requested by the High Council of Justice. The report prepared by the Inspectorate is submitted to a meeting of the Council by the Vice Chairman.

d) It collects and processes the data necessary for the professional evaluation of judges, in conformity with the criteria set by law.

dh) It prepares data about the professional ability of the judge. Before its examination by the High Council of Justice, the documentation of professional evaluation of the judge is made known to the judge, who has the right to submit his opinion in writing together with the respective arguments.

e) It verifies and makes known questions about the property declared by judges and the compatibility of their activity and conduct with the requirements specified by law.

2. In implementation of its duties, through the Vice Chairman, the Inspectorate asks and cooperates with the Minister of Justice about the verification of particular problems in implementation of his duties.

3. The Inspectorate, in implementation of the law, performs other duties set by the High Council of Justice.

Article 17

Administration of the High Council of Justice

1. The services necessary for the functioning of the High Council of Justice are performed by its administration.

2. The organization, structure and number of employees of the administration of the High Council of Justice, in conformity with law, are specified by decision of the High Council of Justice.

3. The Internal Rules of the Administration of the High Council of Justice are approved by the High Council of Justice on the proposal of the Vice Chairman.

CHAPTER III

Functioning of the High Council of Justice

Article 18

Collegiality

The High Council of Justice performs the functions charged by the Constitution and law in a collegial manner in its meetings.

Article 19

Calling Meetings of the High Council of Justice

1. The Chairman decides on the date and time of the meetings of the High Council of Justice, but no less often than once every two months. The Chairman may decide to postpone a meeting of the High Council of Justice. Every change in the date and time set for the meetings is made known to each of the members of the High Council of Justice.

2. The Chairman also calls a meeting of the High Council of Justice when this is requested in writing by no less than five of the members of the High Council of Justice, by the Vice Chairman or by the Minister of Justice.

Article 20

Announcements of the Call of Meetings of the High Council of Justice

1. The agenda and materials of the questions that will be discussed at the meeting are attached to the announcement of the call of a meeting of the Council.

2. If a meeting is called on the initiative of the other members of the High Council of Justice, the Chairman of the High Council of Justice calls the meeting within 15 days from receipt of the request.

3. Announcements of the call of meetings of the High Council of Justice are made no later than 48 hours before the date set for holding the meeting.

Article 21

Special Meetings of the High Council of Justice

1. In those cases when a judge is detained or arrested during the commission of a crime or immediately after committing it, the High Council of Justice meets within 24 hours to decide whether or not to permit a further criminal proceeding against the judge to go forward.

2. The Council also holds special meetings in other particular cases considered appropriate by the Chairman.

Article 22

Agenda

1. The agenda of a meeting of the High Council of Justice is set by the Chairman. Questions that according to law are in the competency of the High Council of Justice are included in the agenda.

2. The Vice Chairman of the High Council of Justice, the Minister of Justice and five other members of the High Council of Justice have the right to request the examination of questions in the agenda of a meeting of the High Council of Justice.

3. Agenda items requested by the Minister of Justice are examined in the nearest meeting of the High Council of Justice.

4. A request to put a question on the agenda is made in writing no later than two days before the date of the announcement.

5. The agenda is distributed to the members of the High Council of Justice together with the announcement of the call of the meeting.

6. On an exceptional basis, by 2/3 of the votes of all members, the High Council of Justice may examine and decide on questions that were not included in the agenda.

Article 23

Quorum

A meeting of the High Council of Justice is valid when no less than eight members take part in it.

Article 24

Mandatory Voting

The members of the High Council of Justice who are present at a meeting and who have no legal impediment to vote within the meaning of article 37 of Law No. 8485 dated May 12, 1999 “The Code of Administrative Procedures of the Republic of Albania” may not abstain.

Article 25

Form of the Voting

1. The High Council of Justice takes decision by open voting. In cases of voting on questions related to its members, by a majority of the votes of the members present the High Council of Justice may decide to take decisions by secret voting.

2. Members of the High Council of Justice who are in the conditions of legal impediment do not take part in the discussion and voting on the respective agenda item.

3. The Minister of Justice does not take part in the voting in cases of disciplinary proceedings initiated by him, while the President of the Republic does not take part in the voting in the case of proposals for the appointment of judges.

4. The chair of a meeting of the High Council of Justice votes last.

Article 26

Validity of Decisions

1. The High Council of Justice takes decisions by a majority of the votes of the members who are present at the meeting.

2. In cases when the votes are divided equally:

a) a proposal for a disciplinary proceeding is considered defeated;

b) a proposal for an appointment is considered accepted.

Article 27

Minutes of the Meeting

1. The Vice Chairman takes necessary measures for minutes to be kept at a meeting of the High Council of Justice.
2. The members who took part in the meeting, the issues that were examined, the discussions of the participants, the decision-making, and the form and result of the voting are noted in the minutes. After examination by the members of the High Council of Justice, the minutes are signed by the Vice Chairman.
3. Every member of the High Council of Justice has the right to check the content of the minutes and to present his objections, which are made known to the High Council of Justice at the following meeting.
4. Decisions of the High Council of Justice are deposited with the High Council of Justice together with the respective minutes.
5. Every member of the High Council of Justice may ask that the fact that he voted against a decision taken, and the reasons for his vote, be noted in the minutes.

CHAPTER IV APPOINTMENTS AND TRANSFERS OF JUDGES

Article 28 Appointment of Judges

1. The appointment of judges of the first level and judges of appeal is realized applying the criteria specified by law, according to the following procedure:
 - a) On the proposal of the Minister of Justice, the High Council of Justice publicly announces the vacant seats for judges no later than one month before the meeting. The announcement is made in at least two newspapers with national distribution and sufficient circulation, as well as by public radio and television. The announcement shall be published no less than three times, until the day of closing of receipt of applications.
 - b) The deposit of applications accompanied by the documents necessary for acceptance into the competition shall be done no later than two weeks from the last day of the public announcement of the vacant seat.
2. A vacancy resulting from the discharge of a judge from duty shall not be filled if an appeal is taken to the High Court. Further actions to fill the vacancy shall be done only if the High Court accepts or refuses the appeal.

Article 29 Examination and Testing of Competing Candidates

1. To fill vacancies, the High Council of Justice examines, discusses and decides on the candidacies presented on the basis of the public announced previously made.

2. The examination of candidacies is done by a special commission that is chaired by the Vice Chairman of the High Council of Justice.

3. On the basis of the data deposited by the candidate, the commission for examining candidacies verifies the fulfillment of the legal criteria for being named a judge.

4. After the verification of the fulfillment of the legal criteria for the competition, the commission holds a professional testing of all candidates.

5. The composition, rules of functioning of the commission for examining candidates and the procedures of verification and testing them are set by the High Council of Justice.

Article 30

Appointment of a Judge

1. At a meeting of the High Council of Justice, every member of the Council is given a list of all candidates who meet the legal requirements for the competition, their data, qualities and abilities as well as the results of the individual testing.

2. The decision to propose the appointment of a judge to the President of the Republic is taken by a majority of the votes of the members present and is announced publicly.

CHAPTER V

DISCIPLINARY PROCEEDING

Article 31

Disciplinary Proceeding

1. The Minister of Justice carries out the inspection of judges of the first level and judges of appeal for with the organization and work of the judicial services and judicial administration, and he also realizes and decides on a disciplinary proceeding of their judges.

2. The Minister of Justice carries out inspections according to special thematic or territorial programs, drawn up on his own initiative or in implementation of duties set by the High Council of Justice, as a continuation of the process of verification of the complaints of citizens and juridical subjects, as well as according to data of which he is made aware on his own initiative or through the Inspectorate of the High Council of Justice.

3. At the conclusion of the inspection and on the basis of the results of the inspection, the Minister of Justice proposes a disciplinary proceeding of judges before the High Council of Justice and deposits the respective documentation with the High Council of Justice.

4. A request for a disciplinary proceeding, in addition to the documentation with the respective data that show the violations committed by the judge, also includes a proposal for the type of disciplinary measure that it is considered should be taken with respect to the judge proceeded against.

5. The Inspectorate of the High Council of Justice, when it is charged with duties of verification, is obligated to carry out the procedures of verification within 15 days and to deposit the respective report.

6. The Minister of Justice informs the High Council of Justice of the cases and reasons for not beginning a disciplinary proceeding of a judge under the conditions of letter “a,” point 1, of article 16 of this law.

7. In every case, at the conclusion of the process of verification or inspection, the Minister of Justice, or the Inspectorate of the High Council of Justice, is to ask the person proceeded against to present his claims in writing, which must be reflected in the final documentation.

Article 32 **The Rights of a Judge who is Inspected**

1. A verification of the complaints and the inspection of a judge is done only after it has first been made known to the latter.

2. A judge proceeded against has the right to familiarize himself with the documentation of the proceeding. His receipt of knowledge is certified by the signing of the respective declaration by the judge proceeded against and by the inspector. If the judge refuses to sign, or cannot be found, the materials are made known to the chairman of the court, against the signature of the latter.

Article 33 **Examination of the Disciplinary Proceeding**

A disciplinary proceeding at the High Council of Justice is conducted as follows:

1. The judge against whom the taking of disciplinary measures will be examined must be called to the meeting of the High Council of Justice. He has the right to be defended by an attorney. The notification is made in one of the manners that the “Code of Administrative Procedure” contemplates. Non-appearance without good reason does not impede the High Council of Justice from examining and deciding on the measure.

2. Initially, the Minister of Justice or as the case may be the Vice Chairman is heard, who sets out for the High Council of Justice the reasons for the proceeding. Later, the judge proceeded against is heard, who may be questioned by members of the High Council of Justice to explain the questions that need to be clarified. The final discussion and the voting on the taking of the disciplinary measures proposed by the Minister of Justice is done without the presence of the judge proceeded against.

3. A detailed regulation for the examination of a disciplinary proceeding is set in the respective regulations of the High Council of Justice.

Article 34 **Appeal Procedures**

1. An appeal against a decision of the High Council of Justice for the discharge from duty of a judge, as well as every other measure of a disciplinary nature, is done by

the latter to the High Court within 10 days from receipt of notification of the decision of the Council.

2. The chairman or judges of the High Court, who, in their capacity as members of the High Council of Justice have taken part in the meeting of the High Council of Justice during which the disciplinary measure was taken against the appellant, do not take part in the judicial body of the Joint Colleges of the High Court.

Article 35

Procedures of Representation

1. The representation of the High Council of Justice in the High Court, in cases of appeal against a decision of the High Council of Justice, is done by a person authorized by the Council.

2. The authorization for the representation is signed by the Vice Chairman. In the text of the authorization, the name of the representative and the specific question on which he is authorized to be representative is shown in a clear manner.

CHAPTER VI

FINAL PROVISIONS

Article 36

Signature of Decisions

Decisions of the High Council of Justice are signed by the Vice Chairman of the High Council of Justice.

Article 37

The Budget of the High Council of Justice

The High Council of Justice is a juridical person and its activity is financed from the Budget of the State.

Article 38

Staying in Office

The elected members of the High Council of Justice who are exercising this function at the time of entry of this law into force stay in this position until the end of their mandate.

Article 39

Repeal

1. In law No. 8436 dated December 28, 1998 “On the Organization of the Judicial Power in the Republic of Albania,” there are repealed:

Article 1,¹
Article 18, second paragraph,
Article 20, seventh paragraph,
Article 22,
Article 24, second paragraph,
Article 28, fifth paragraph,
Article 44, sixth paragraph,
Article 45, third paragraph.

2. Law No. 8316 dated April 1, 1998 “On the Approval of the Structure of Pay and the Budget for the Inspectorate of the High Council of Justice,” as well as every other provision that conflicts with this law, are repealed.

Article 40 **Effective Date**

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

¹ This appears to be a typographical error. The version returned by the President had “17” here instead of “1.” Article 1 of the law on the organization of the judicial power says that “[t]he judicial power is exercised only by the courts, in compliance with the Constitution and the competencies charged by law” and certainly should not be repealed. Article 17 of that law deals with the inspectorate, and should be repealed. It should also be noted that Article 17 gives the Inspectorate the competency to audit the annual asset declarations of judges. The pending new law on asset declarations will move that competency to an independent newly created inspectorate that reports to Parliament. I have discussed the typographical error with Parliament’s legal adviser and she is checking about it. Errors of this sort are often handled by “errata” published in later editions of the Official Journal.