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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

FINAL OPINION

ON THE REVISED DRAFT CONSTITUTIONAL AMENDMENTS ON THE JUDICIARY

(of 15 January 2016)

OF ALBANIA

Adopted by the Venice Commission
at its 106th Plenary Session
(Venice, 11-12 March 2016)

on the basis of comments by

Mr Sergio BARTOLE (Substitute Member, Italy)
Ms Hanna SUCHOCKA (Member, Poland)
Mr James HAMILTON (Former Member, Ireland)
Mr Konstantin VARDZELASHVILI (Former Substitute Member, Georgia)

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I. INTRODUCTION

1. On 1 October 2015 Mr F. Xhafaj, the Chairman of the *Ad hoc* Committee on Justice System Reform of the Albanian Parliament requested an opinion of the Venice Commission on the Draft Amendments to the Constitution of Albania (CDL-REF(2015)037), prepared by the High Level Experts Group, which had been established by the *Ad hoc* Committee.

2. On 18 December 2015 the Venice Commission adopted an Interim Opinion on the Draft Amendments (CDL-AD(2015)045),[1] prepared on the basis of comments by Mr S. Bartole, Ms H. Suchocka, Mr J. Hamilton and Mr K. Vardzelashvili.

3. Following the recommendations formulated by the Venice Commission in the Interim Opinion, the *Ad hoc* Committee revised the Draft Amendments and on 15 January 2016 submitted to the attention of the Venice Commission the revised Draft Amendments to the Constitution. A consolidated version of the revised Draft Amendments is to be found in CDL-REF(2016)008. The Democratic Party, the Socialist Movement for Integration, and the Justice, Integration and Unity Party provided their own comments on the revised Draft Amendments (see CDL-REF(2016)012, CDL-REF(2016)013, and CDL-REF(2016)014). Those comments have been taken into account by the rapporteurs in the preparation of the present final opinion.

4. On 21-22 January 2016 a delegation of the Venice Commission visited Tirana and met with the State officials and politicians concerned, and with the representatives of the expert community. The delegation is grateful for the good organisation of the visit to the country and the very useful exchanges it had there.

5. This Opinion is based on the English translation of the revised Draft Amendments provided by the *Ad hoc* Committee. The translation may not always accurately reflect the original version on all points, therefore certain issues raised may be due to problems of translation.

6. This opinion was adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016).

II. GENERAL REMARKS

7. The general context of the Albanian constitutional reform is described in the Interim Opinion. To recall certain basic elements, the Venice Commission observes that the Draft Amendments fall into three groups: firstly, amendments which are considered necessary to enable Albania to become a member state of the European Union; secondly, amendments intended to bring about a permanent reform of the judicial system; and thirdly, temporary provisions relating to the extraordinary measures intended to vet the suitability of the existing judges and prosecutors and to cleanse the system of those who are found to be incompetent, corrupt or linked to organised crime.

8. The revised Draft Amendments have been improved as compared to the original text – not only in details, but also as regards important choices of principle. The new draft has taken account of most of the detailed criticisms previously made by the Commission; the proposals as they now stand are generally reasonable ones. A number of technical problems remain which should not prove insoluble. The present opinion will not analyse the revised text in great detail,

[1] Interim Opinion on the Draft Constitutional Amendments on the Judiciary of Albania, adopted by the Venice Commission at its 105th Plenary Session (Venice, 18-19 December 2015)

but rather address the remaining key issues which appeared to be the most controversial in the domestic political discussion during the revision of the Draft Amendments. The Venice Commission has tried to avoid repeating comments from the Interim Opinion which concern matters which have been deleted from the revised text. Where the Venice Commission had strong criticism about the revised Draft Amendments, that criticism is stated in the Final Opinion.

III. ANALYSIS

A. Overall institutional design of the bodies overseeing the judiciary

9. In the Interim Opinion, the Venice Commission observed that the original Draft Amendments provided for a very complicated system of bodies responsible for appointments and disciplining of judges and prosecutors (see §§ 65-67). The overall institutional design has been somewhat simplified in the revised draft. The investigation into disciplinary cases now belongs to a High Justice Inspector and not a collegial Inspectorate. The system of bodies involved in the vetting has become less complex as well.

10. The concern with the complexity of the system, expressed in the Interim Opinion, was due, to a large extent, to purely practical considerations: the creation of these new bodies would require recruitment from a pool of potential candidates which might not be sufficient. During the visit to Tirana the rapporteurs were assured that there were a sufficient number of persons in Albania qualified to fill these positions so as to enable the new system to work.

11. Moreover, from a more theoretical point of view, it is difficult to identify which of these new institutions is not needed. There is a strong case for all of them. In the end, it belongs to the national legislator to design checks and balances; a system attained by widespread corruption may need more external control mechanisms than a more healthy system. In sum, the Venice Commission is prepared to consider acceptable the proposed institutional structure as it is.

B. Permanent bodies ensuring judicial independence and accountability

1. Election of members of the High Judicial Council and the High Prosecutorial Council – the qualified majority issue

12. Under the revised Draft Amendments, the key element of the system of governance of the judiciary is the High Judicial Council (HJC). The HJC is composed of 5 lay members and 6 judicial members, the former elected by the Parliament while the latter elected by their peers - judges. The five lay members are to be elected by a qualified majority of 3/5th of the votes. The parliamentary opposition has criticized these proposals as permitting the Government to appoint its own people to these positions and thereby to "capture the judicial system", since at present the Government has slightly more than 60% of the seats in Parliament. The opposition proposed instead that these appointments should require a 2/3^{rds} majority in the Parliament. In support of their claims the opposition referred to § 55 of the Interim Opinion.

13. The Venice Commission observes that a 2/3^{rds} majority of Parliament is required to take some very important decisions – for example, to amend the Constitution (Article 177 p. 3) or to refer proposed amendments to ratification by referendum. A 2/3^{rds} majority to amend a Constitution is a common threshold; furthermore, "qualified majorities are normally required in

the most sensitive areas, notably in the elections of office-holders in state institutions".[2] However, there is no strict requirement in international law and practice that the same qualified majority of 2/3rds should apply to the election of all top office-holders; the appropriate threshold of votes to obtain in the latter case is essentially a political rather than a legal question.

14. The desire of the opposition for a 2/3rds majority is understandable as this may compel the incumbent ruling majority to compromise. However, the Venice Commission stresses that § 55 of its Interim Opinion did not recommend a 2/3rds majority. *Both* qualified majorities are legitimate, and the current method of election proposed by the revised Draft Amendments (by 3/5ths of votes) is, in principle, an acceptable solution. The Venice Commission stresses that it is not its task to propose a specific constitutional rule for electing lay members of the HJC. In the Interim Opinion, the Commission only emphasized the need to secure a pluralistic composition of the HJC, including through implementing legislation, in order to ensure that the HJC represents a large spectrum of opinions and tendencies existing in the society.

15. Pluralistic composition may be attained by other means, not necessarily by establishing high voting thresholds. The presence of a strong judicial component within the HJC significantly reduces the risk of political capturing.

16. As to the lay members, the process of their *nomination* is as important as the method of their election. Their detachment from politics may be ensured through a transparent and open nomination process, at the initiative of autonomous nominating bodies (universities, NGOs, bar associations, etc.) and completed by the Judicial Appointments Council,[3] which is composed of the members of the judiciary. Such nomination process should ensure that the Parliament has to make a selection amongst the most qualified candidates, and not political appointees.

17. As to the method of *election* of lay members, several other solutions are possible and the Parliament might also consider further options, namely ensuring *de facto* proportionate representation within the HJC.[4]

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[2] CDL-AD(2013)028, Opinion on the draft amendments to three constitutional provisions relating to the Constitutional Court, the Supreme State Prosecutor and the Judicial Council of Montenegro, § 7.

[3] Article 149/ç does not say anything about the binding nature of the ranking of candidates and nominated persons which are submitted to the consideration of the Justice Appointments Council. If the ranking is mandatory, the rule would imply depriving the constitutional bodies competent for the final election or appointment of the power of choice. Probably, it is not the intention of the drafters, but it should be clarified (see Article 147 p. 4).

[4] In CDL-AD(2013)028, Opinion on the draft amendments to three constitutional provisions relating to the Constitutional Court, the Supreme State Prosecutor and the Judicial Council of Montenegro, § 8, the Venice Commission noted as follows: "Other, perhaps preferable, solutions include the use of proportional methods of voting, having recourse to the involvement of different institutional actors or establishing new relations between state institutions. Each state has to devise its own formula." In the Albanian context, for example, if each MP is given the right to vote for only one out of five candidates, that would ensure that the opposition, by concentrating their votes on the election of one or two candidates, may obtain some representation within the HJC, while the majority will support the remaining three candidates. While in such scenario the opposition will not have a blocking power within the HJC, it will have certain procedural rights and its presence within the HJC will ensure the transparency of its work. Another system may involve giving every MP a limited number of votes (for instance three votes when the persons to be elected are five), while maintaining the requirement of a certain qualified majority. A different model of elections consists of creating two alternative lists of candidates – one from the ruling coalition and another from the opposition. The Justice Appointment Council will rank the candidates and forward both lists to the Assembly, which will then chose three candidates form the "majority list" and two from the "opposition list", in both cases with the 3/5ths majority. There is a range of other models which would be suitable for this purpose – such as, for example, various preferential voting systems. Each model has its own pros and cons. Some of them are very complex but in return do not require an anti-deadlock mechanism. Such models might need to be adjusted if the five members are to be elected together, as a group, but have to be nominated by different autonomous bodies. The Venice Commission stresses that it belongs to the domestic legislator to select such system that would, first, ensure pre-selection of the most qualified candidates by an appropriate expert body, and, second, leave the opposition a chance of influencing the election of the "lay" component of the HJC, through a qualified majority requirement or otherwise.

18. Article 147 does not require any special majority for the election of the judicial members of the High Council and does not require the intervention of the Justice Appointment Council in the selection of the candidates. It would be advisable to state some principles, derived from the European constitutional experience for this elections as well (fair representation of all levels of the judicial system, open call for candidates, etc.). As to the criteria for the selection of the lay members, they are satisfactory; it could be advisable to extend the requirement of high moral and professional integrity to the judicial members as well.

19. The above considerations also apply to the composition of the High Prosecutorial Council, which may be organised along the same lines.

20. The Venice Commission reiterates that the proper functioning of the HJC and the HPC may require creation of sub-bodies (see the Interim Opinion, § 56); this possibility should be at least mentioned at the constitutional level, while the composition of those sub-bodies and their competency may be described in the implementing legislation.

2. Election of the High Justice Inspector and the Prosecutor General

21. The revised Draft Amendments provide for the positions of the High Justice Inspector (HJI) and Prosecutor General (PG). These office-holders cannot be elected through a proportionate system. There is no single model for their election; at the same time, it seems desirable that such important appointments should attract a high degree of consensus, and (if this is attainable) without compromising on the qualities of the successful candidate. However, it is difficult to see a principled argument for requiring a 2/3^{rds} majority rather than a 3/5^{ths} – again, this is more a political than a legal question.

22. The Venice Commission previously recommended that "advice on the professional qualification of candidates should be taken from relevant persons such as representatives of the legal community (including prosecutors) and of civil society".[5] According to the revised Draft Amendments, the PG is elected from a list of candidates drawn by the HPC. Similarly, the HJI is selected from the list prepared by the Justice Appointments Council (JAC). Involvement of the HPC and the JAC in the appointment process represents a safeguard to exclude purely political appointments of the PG and the HJI, even in a situation where the ruling majority controls 3/5^{ths} of the votes in the Parliament. Therefore, in essence, the model proposed by the draft is acceptable. The revised Draft Amendments also provide for a deadlock breaking mechanism which is supposed to provide an incentive for Parliament to reach agreement, as otherwise the choice is made elsewhere.

23. Alternatively, in the current political situation, one may consider a transitional rule (or a transitional constitutional agreement) providing for the election of those two office-holders with a majority higher than 3/5^{ths} (that rule would apply only to the first election by the current legislature where the majority has 3/5^{ths} of votes).

24. Article 149 p. 3 contains a very precise list of personal requirements for the candidates to the position of the PG; however, nothing is said about the implementation of the principle of transparency and about a possible open call for candidates in the procedure for the election of the PG. This should be added.

[5] CDL-AD(2010)040, Report on European Standards as regards the Independence of the Judicial System: Part II - the Prosecution Service, § 35

3. Appointment of judges and prosecutors

25. Draft Article 136/a now contains a general provision that candidates for judicial office are to be selected based on a transparent and open procedure, which ensures a merit-based selection of the most qualified candidates "having moral and ethical integrity". The Article also requires candidates to pass an evaluation of their "assets and their background" as well as to have graduated from the School of Magistrates. A similar provision appears in Article 148 in relation to prosecutors. These regulations are in accordance with the Venice Commission recommendations in the Interim Opinion.

26. The possible reasons for which the President of the Republic may turn down a candidate approved by the High Judicial Council should be clarified (see Article 136 p. 2). The revised Draft does not explain whether the President may do so for the violation of procedural rules of nomination, for the reasons of the candidate's insufficient qualifications, ineligibility or for other reasons (related to his/her personality, views, etc.).

27. The text of the revised Draft Amendments should specify more clearly whether the specialised courts and their judges fall under the competence of the HJC and are governed by the ordinary rules concerning the selection and the career of the judges. If there are any particular features related to the status of those courts, it should be mentioned.

4. Disciplinary proceedings against judges and prosecutors; the respective roles of the Minister of Justice and of the High Justice Inspector

28. The Venice Commission welcomes the constitutionalisation of the conditions for disciplinary liability of judges (see Article 137/a; see also Article 140 concerning judges of High Court and High Administrative Court).

29. Following the revision of the Draft Amendments, the High Justice Inspectorate is not anymore a collective body; instead, the functions of inspection are performed by the High Justice Inspector (Inspector or HJI). The main function of the Inspector is to investigate into the complaints concerning disciplinary misconduct of judges and prosecutors; however, the revised Draft does not explicitly say whether the Inspector is allowed to open an investigation even in the absence of a complaint. This should be made clear in the Constitution.

30. The revised Draft should also specify whether the "inspection" of courts and prosecution offices (as defined by p, 1 of Article 147/d) should be made on the basis of a complaint or upon the initiative of the Inspector. It is also unclear what does such inspection imply.

31. The role of the Minister for Justice in disciplinary matters has been revised to take account of the criticisms in the Interim Opinion and to avoid possible conflicts of interest. Under the revised Draft, the Minister no longer sits on the Disciplinary Tribunal. As the same time, the Minister of the Justice retains the power of a privileged petitioner in the matter of investigation into a presumed disciplinary breach by a judge or a prosecutor. Thus, the Minister may initiate a complaint before the Inspector who must consider the Minister's complaint unless it is obviously unfounded (Article 147/d). This provision suggests that the Inspector enjoys a certain discretion to decide whether or not to initiate investigation, but this discretion is limited when the complaint is brought by the Minister. Does it imply that the Inspector has a *larger discretion* in respect of other complaints (i.e. coming from ordinary complainants)? If so, does it mean that the Inspector may dismiss such complaints even when they are *not* manifestly-ill-founded? This wouldn't be an appropriate solution: the Inspector should not assume the functions of the relevant Council

(HJC or HPC). Indeed, the Inspector may be entrusted with a preliminary verification of the disciplinary complaints and serve as a filtering mechanism; however, this should refer to the admissibility of the complaints and not to the final decision on the merits, which is a matter for the relevant Council. Therefore, either the Minister's complaints should be examined on the equal footing with others (i.e. the Inspector will verify the *prima facie* admissibility of all the complaints), or the Minister should be given an independent right to bring complaints before the relevant Council directly, without passing through the Inspector (if the privileged position of the Minister is to be maintained).

32. It may be necessary to add a general provision regulating the functions of the Minister of Justice. His/her position in the meetings of the High Judicial Council which deal with issues of strategic planning and budget of the judiciary (Article 147/a p. 3) is also not clear: is he/she allowed to vote? It is also unclear whether the Minister is deprived of the functions which are at present entrusted to him/her (for example, the functions related to the inspections vis-à-vis the courts), nor whether this power now belongs to the Inspector only (see Article 147/d p. 1 which stipulates that the Inspector "shall also be responsible for inspecting the courts and prosecution offices"). The Venice Commission considers that, in order to reduce the influence of the executive on the judiciary, the power to conduct inspections vis-à-vis courts and judges should be concentrated in the hands of the Inspector. Another question is whether the Minister of Justice retains any powers in respect of the prosecutors – this should be clarified.

33. Article 147/e gives to the Minister of Justice the competency to inspect the activities of the High Justice Inspector. There is a risk that this provision may be interpreted as giving the Minister the power to interfere with the autonomy of the Inspector and, through it, with the activity of the courts. The Venice Commission notes that the Inspector, in the light of the revised Draft Amendments, shall have the status of a High Court judge (Article147/d p. 3), but in the same time s/he is to a certain extent under the control of the Minister of Justice. It is desirable to leave the executive at a certain distance from deciding on the disciplinary liability of judges. As an alternative, the Constitution could simply provide for an impeachment procedure for the Inspector for gross misbehaviour, with the Disciplinary Tribunal having the final word on the issue.

34. In this connection the Venice Commission reiterates that disciplinary proceedings against judges based on the rule of law should correspond to certain basic principles, which include the following: the liability should follow a violation of a duty expressly defined by law; there should be fair trial with full hearing of the parties and representation of the judge; the law should define the scale of sanctions; the imposition of the sanction should be subject to the principle of proportionality; there should be a right to appeal to a higher judicial authority.[6]

35. According to draft Article 147/a, the HJC is to decide on disciplinary measures concerning judges of all levels except judges of the Constitutional Court. Draft Article 148/b contains a similar provision in relation to prosecutors. The procedure for examination of disciplinary misconduct is to be regulated by law according to draft Articles 147/c and 148/c. The Venice Commission recommends that at least some basic rights of judges/prosecutors facing disciplinary proceedings should be provided in the Constitution,[7] or, as a minimum, a reference to the guarantees of fair trial should be made.

[6] CDL-AD(2007)009, Opinion on the Law on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts of Georgia, § 9

[7] Such as the right to know the charges, to call and give evidence and confront the complainant and examine witnesses, to be legally represented, to make submissions and to appeal any decision.

C. Constitutional Court

36. The Constitutional Court (CC) is to be composed of 9 members: 3 judges are to be appointed by the President, 3 by the Parliament and 3 by the joint meeting of the High Court and the High Administrative Court. This is an acceptable model: "appointment of the constitutional judges by different state institutions has the advantage of shielding the appointment of a part of the members from political actors".[8] Participation of the JAC in the pre-selection of candidates to be appointed by the President and Parliament further reduces the risk of politically-driven appointments (Article 125).

37. That being said, the election of three constitutional judges by the Parliament with the ordinary majority (compare Article 125 with Article 78 p. 1 of the Constitution) deserves attention. In the European constitutional experience, the election by parliament of constitutional judges is often supported by the requirement of a qualified majority in view of ensuring a choice shared by a pluralistic support of political parties, and not by the majority only. This is particularly important when the President and the Parliament are of the same political color and may appoint 2/3^{rds} of judges synchronically. In normal circumstances this risk is not very high, given the transitional provisions on the gradual replacement of the sitting CC judges (see Article 179 p. 1). However, having in mind the fact that additional vacancies in the CC may be opened, the Venice Commission recommends introducing a rule requiring a qualified majority for those three members of the Constitutional Court who are elected by the Parliament.

38. It is also unclear why the opinion of the Justice Appointments Council is not sought in respect of the 3 members of the CC elected by the High Court and the High Administrative Court (see Article 125 p. 1).

39. The revised Draft Amendments propose to change the duration of the mandate of the CC judges from 12 to 9 years, with the reappointment of 1/3 of the judges every 3 years (instead of 4 years in the original draft). In principle, either solution is acceptable although the replacement of 1/3 of judges every 4 years would have helped to reduce the risk of domination of the CC by any one faction within its members at any particular time, since two 3 years' terms may fall within one electoral circle, whereas this is impossible if the term is 4 years.

40. In its Interim Opinion the Commission recommended a clarification on who should decide on disciplinary measures against the CC judges. The revised Draft makes it clear that this is to be a function of the CC itself and this clarification is to be welcomed (Article 128); evidently, the constitutional court judge concerned by the procedure should not sit on the bench which takes such a decision.

41. The revised Draft followed the suggestion of the Venice Commission to allow the review by the CC when the *procedure* for the approval of a constitutional amendment is infringed (Article 131 p. 2). This is in line with the recommendations of the Interim Opinion. As to the *substance* of the constitutional amendments, under the revised draft the CC will not have the power to assess their constitutionality. As noted in the Interim Opinion (§ 20), "there is no generally accepted standard in comparative constitutional law regarding the participation of constitutional courts in the constitutional amendment process". In some countries the idea of *a posteriori* constitutional control of the constitutional amendments "has been rejected on the basis that the courts as state organs cannot place themselves above the constitutional legislator acting as constitutional power". In any event, the CC, when applying the amendments, once

[8] CDL-AD(2013)028 Opinion on the draft amendments to three constitutional provisions relating to the Constitutional Court, the Supreme State Prosecutor and the Judicial Council of Montenegro, § 21

adopted, will have to consider the constitutional text as a whole, and interpret the amendments in the light of general constitutional principles enshrined in the fundamental law of Albania.

42. The choice of excluding from the immunity of the constitutional judges the "cases of a deliberate adoption of an unlawful decision as a result of criminal conduct, personal malice" (Article 126) is reasonable. The text of this provision should be coordinated with Article 128, which correctly entrusts to the CC the disciplinary jurisdiction against its judges.

43. The previous text of Article 131 g) has been modified: the CC is no longer competent for settling jurisdictional conflicts between the High Court and the High Administrative Court. The revised Draft appears to go further than the recommendation of the Interim Opinion; the main concern of the Venice Commission was to avoid turning the CC into a cassation court. The new solution is to solve jurisdictional disputes at "joint meetings of the two high courts". That solution may not be sufficient as it is similar to an *Ad hoc* mechanism, which may not function well in practice. The solution proposed by the revised Draft should not imply a mere negotiation between the two courts with a view of delimiting their zones of influence: what is at stake is a question of interpretation of the relevant legislation. It is thus recommended to describe this mechanism as a joint judicial body/chamber that will offer an authoritative interpretation of the law in the matters of jurisdiction, and specify in the Constitution that the composition of this body/chamber and its *modus operandi* will be defined by the law.

44. The procedural rules concerning the admissibility of constitutional complaints (Article 133 p. 1), including the rules on judicial formations deciding on admissibility, may be left to the internal regulation of the CC. However, the Constitution should mention this; otherwise it may be read as implying that each and every decision should always be taken by the plenary court in full-blown proceedings.

D. The Special Prosecutor for Corruption and Organised Crime

45. Article 148 p. 3 provides for the establishment of a special prosecution office and independent investigation unit for combatting "corruption, organised crime and crimes by high-level officials".[9]

46. The international instruments which define the duties of prosecutors lay a particular emphasis on the duty of prosecutors to deal with crimes committed by public officials.[10] Specialised offices to investigate such cases have become quite common in the recent years.[11] The Venice Commission in its opinions has been supportive of the establishment of specialised anti-corruption investigation/prosecution units enjoying a certain autonomy from the general prosecution system.[12]

[9] The Special Prosecutor should be empowered to prosecute MPs without having to seek consent of the Prosecutor General – this may require amendments to Article 73 p. 3 of the current Constitution.

[10] For example, paragraph 15 of the United Nations Havana Guidelines says that "prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognised by international law […]". Paragraph 16 of Recommendation REC(2000)19 of the Committee of Ministers of the Council of Europe on the role of public prosecution in the criminal justice system refers to the need for prosecutors to be in a position to prosecute such cases without obstruction.

[11] In recent years countries establishing such offices have included Romania, Croatia, Montenegro, Ukraine and "the former Yugolsav Republic of Macedonia". Some offices have existed for many years: for example, in the United Kingdom serious fraud and corruption is prosecuted and investigated by the Serious Fraud Office which was established as far back as 1987.

[12] See, for example, CDL-AD(2014)041, Interim Opinion on the Draft Law on Special State Prosecutor's Office of Montenegro, § 23

47. The model for such offices varies. In some cases the special prosecutor's office remains formally part of the general prosecution structure but as an autonomous unit, so that it cannot be instructed by other, more senior, prosecutors or by the government. In other cases a completely independent office has been established. The clarification of the independence of the special prosecutors from the Prosecutor General contained in the revised Draft Amendments (see Article 148 p. 3) is a welcome provision implementing the recommendation in the Interim Opinion.[13]

48. Article 148 provides for the election of the Chief Special Prosecutor from among the "members of the office" but does not provide by whom the election is to be made. It will be necessary to provide a method of election which as far as possible excludes political interference. The method of election should also take account of the reality that this officer is likely to have to consider prosecutions against other prosecutors as well as judges. It is also unclear to whom the Chief Special Prosecutor is answerable, if s/he is independent from the Prosecutor General.[14] Independence of the Chief Special Prosecutor does not mean that s/he is accountable to no one: the HPC should be able, in cases of serious misbehavior, remove him/her from office, without, however, depriving him/her of the operational autonomy needed in relation to specific cases. It would also be useful to explain to what extent other special prosecutors are under the jurisdiction of the HPC.

E. Specialised courts

49. Article 135 p. 3 provides that the law may create a specialised first instance court and court of appeal to adjudicate corruption and organised crime, and criminal charges against high-level officials. Judges and judicial personnel of these courts as well as their close family members must successfully pass a review of their assets and their background, as well as periodic reviews of their financial accounts and telecommunications in accordance with the law.

50. As an extraordinary matter, specialised courts may be established to deal with corruption and organised crime. However, it is necessary to define more clearly the notion of "high-level officials" whose cases are to be adjudicated by such courts (see also Article 148 p. 3). The President of the Republic does not enter in this group, as it results from Article 90 pp. 2 and 3. What about members of the Council of Ministers, or judges, ordinary prosecutors, etc. – are they within the competency of those specialised courts and prosecutors? This should be clarified, and needs to be further developed at the legislative level. It is necessary, as in the case with the specialised prosecutor's office, to give a clear definition of "high-level officials".

51. The wording used in the second part of the second sentence in Article 135 p. 3, which refers to the obligation of the specialised judges and their family members to undergo "periodic reviews of their financial accounts and telecommunications", seems to be overbroad. While the review of the financial accounts is a specific and effective tool for the monitoring of the assets and revenues that must be declared by a judge, conducting a "review of the telecommunications" of a judge and especially of his/her family members would, in the absence of appropriate guarantees, lead to an undue restriction of their right to privacy. The Venice Commission understands that the magnitude of the problem of corruption in Albania requires special measures of surveillance in respect of financial operations of holders of judicial and

[13] The Venice Commission also recalls its recommendation in § 90 of the Interim Opinion that the autonomy, the role and the competencies of the special investigative bodies should be mentioned, at least briefly, in the Constitution.

[14] While speaking of the position of the prosecution, the Venice Commission prefers not to use the term "independence" but rather "autonomy". "Independence" is a quality more typically associated with the position of a judge; as to the prosecutors, they are not necessarily supposed to enjoy the same status as judges, but should be able to act in an autonomous manner, and also be shielded from improper outside influences.

prosecutorial offices, and that the latter should be prepared to expose themselves to more transparency and to additional checks. However, the Constitution should not give a *carte blanche* to the security services to intercept all communications of a specialised judge/prosecutor and, in particular, of their family members. Any such "review of telecommunications" should be accompanied by adequate and effective procedural guarantees, protecting those persons from abuses, and clearly described in the law; in particular, there should be a judicial authorization based on a reasonable suspicion that the person concerned is involved in some unlawful activities. Interception of communications of the family members without their prior consent or in absence of a judicial approval based on some specific facts and giving rise to a reasonable suspicion of a criminal activity clearly constitutes a serious interference in their privacy. While specialised judges and prosecutors may waive some of their own privacy rights, this waiver may not cover all their relatives, and the law must provide for a special mechanism to protect privacy interest of those who may accidentally be affected by the surveillance measures.

F. The vetting process – a general overview

52. With regard to the extraordinary measures to vet judges and prosecutors, the Venice Commission remains of the opinion that such measures are not only justified but are necessary for Albania to protect itself from the scourge of corruption which, if not addressed, could completely destroy its judicial system.

53. The revised Draft Amendments have taken on board most of the criticisms the Commission made in its Interim Opinion. The new version of the Annex is written in a more precise way, and most of the suggestions of the Venice Commission were taken into account. The whole scheme is clearer and provides for better guarantees for individuals who may be affected by the vetting.

54. One general critical remark, however, remains: under the revised Draft Amendments the mandate of the members of the Independent Qualification Commissions (IQC) and judges of the Specialised Qualification Chamber (SQC) responsible for the vetting process will be 9 years without the right of re-appointment (Article 179/b p.3), while the whole vetting process is supposed to last 11 years or less if Albania joins the EU on an earlier date (Article 179/b p. 4). This duration is too long. In the Interim Opinion, the Venice Commission recognized the need for the vetting under condition that "it is an extraordinary and a strictly temporary measure" (§ 100). The vetting structures should not replace ordinary constitutional bodies, such as the HJC or HPC; they may co-exist with them for some time, but should not turn into parallel quasi-permanent mechanisms.

55. The Venice Commission is not in a position to indicate exactly how much time will be necessary to vet all sitting judges and prosecutors. It is conceivable that in the most complex case vetting procedures may take more than three years or even longer. It is up to the legislator to ensure that the persons subject to the vetting cannot artificially delay the vetting procedures, and that the commissioners, members of the IQC and judges of the SQC have the necessary resources and powers to complete the procedures within reasonable time. In sum, the Venice Commission recommends to reconsider Articles 179/b pp. 3 and 4 and Article C p. 1 and reduce significantly the duration of the vetting process.

56. It would be desirable to put a fixed time-limit of about 3-5 years on the length for which the IQC and the SQC would exist. There should be a possibility, provided for by the Constitution, for the extension of that period under conditions to be established by law. Following the winding-up of the vetting bodies, ordinary institutions and courts might assume any residual function of deciding on the vetting procedures which had not been concluded.

57. Furthermore, in order to assess and re-evaluate judges and prosecutors, Article A p. 1 of the Annex stipulates that the application of some articles of this Constitution, in particular the provisions regarding privacy, is limited in accordance with Article 17 of this Constitution. These measures may be justified by the present situation of the Albanian judiciary, which requires special legislative interventions. It should be noted, however, that according to the Article 17 p. 2 of the Constitution, the limitations of rights and freedoms may not "exceed the limitations provided for in the European Convention on Human Rights". Therefore, the overbroad wording of the Article A p. 1 would conflict with Albania's obligations under the ECHR and consequently with Article 17 p. 2. The relevant provisions of the ECHR should therefore be mentioned in this context, especially given that complaints before international judicial bodies in the matter are allowed (see Article Ç). In addition, Article A should also provide that any limitations on the fundamental rights of judges and prosecutors within the vetting procedures should be proportional to the legitimate aims pursued by the vetting.

G. Composition of the IQC

58. Following the Interim Opinion the provisions regarding the vetting process have been tidied up and some unnecessary detail has been removed. Thus, the revised Draft Amendments provide for two first-instance Independent Qualification Commissions with its two Public Commissioners playing a prosecutorial role, and a separate appellate body – the Specialised Qualification Chamber, composed of two chambers. The creation of a separate appellate body is in line with the recommendations of the Interim Opinion: the new arrangements serve to emphasise that the appellate chamber is independent from the Commissions.

59. The process of appointment of members of the IQC is two-phased: first, pre-selection following an open call for candidates (Article C p. 6) and then their election by the 3/5^{ths} majority of the Parliament.

60. As to the pre-selection of candidates, it is acceptable that the Ombudsman of Albania should conduct the open and transparent application process for members of the IQC, judges of the SQC, and for the Public Commissioners. The Commission observes with regret that § 127 of the Interim Opinion has been interpreted as endorsement of the views expressed by some members of the opposition regarding alleged affiliation of the Ombudsman with the current government. The Venice Commission stresses that it has no reasons to call into question the integrity or the independence of the current Ombudsman. It is reasonable that the openness and transparency of the process be guaranteed by an independent and credible institution such as, for example, the Ombudsman's office. During the visit of the rapporteurs to Albania, the Ombudsman confirmed that he was willing to undertake this role and considered it appropriate that he should do so.[15]

61. The second phase is the election of candidates by the 3/5^{ths} majority of votes in the Parliament. The opposition, as in the case with the HJC and HPC, insists that members of the IQC should be elected by a 2/3^{rds} majority. The Venice Commission reiterates that both solutions would be legitimate; however, in order to avoid political stalemate, which is highly probable in the case of too high of a threshold, the legislator might consider other alternative

[15] The involvement of the Ombudsman in the process of appointment is not the only possible option: the legislator may consider designating other institutions to undertake this technical function of pre-selection of candidates - it could be a temporary parliamentary commission with proportional or equal representation of all parties in the Parliament, or possibly a temporary commission established by the Prime Minister with the participation of the representatives of civil society.

models of election of the members of the IQC and judges of the SQC.[16] That being said, the Venice Commission reiterates that it ultimately belongs to the Albanian legislator to choose an appropriate system for electing members of the IQC and judges of the SQC.

H. Right of judges and prosecutors subjected to the vetting to appeal: position of the SQC and protection of the constitutional rights

62. The Venice Commission recalls that United Nations' Basic Principles on the Independence of the Judiciary emphasize the right of a judge to a fair hearing, and stress that decisions in disciplinary proceedings should be subject to an independent review (principle 20). The Venice Commission has also consistently argued in favor of the possibility of an appeal to a court against decisions of disciplinary bodies.[17] The recommendation CM/Rec(2010)12 of the Committee of Ministers (§ 48) states that the "candidate should have the right to challenge the decision, or at least the procedure under which the decision was made".

63. Article C gives an acceptable solution to the problem of the judicial guarantee to the persons affected by the vetting procedure: it creates within the High Court a Specialised Qualification Chamber (the SQC). This body is evidently a sort of a specialised court which is not an *Ad hoc* extraordinary judge – because it is not created in view of a single specific case – and it is supposed to stay in activity during the whole duration of the vetting procedure.

64. That being said, the position of the SQC within the vetting process still requires further revision. The Venice Commission recalls its earlier recommendation that, assuming that Article 6 of the European Convention is applicable to the vetting process (a hypothesis which is not certain but very likely),[18] the judges and prosecutors subjected to the vetting must be given access to a court of law, at least at the appellate level.[19] The SQC resembles a court in many regards; its members are called "judges", they function "within the High Court" (Article A p. 2) and enjoy guarantees similar to those of the judges of the High Court (Article C p. 3). Furthermore, under the revised Draft Amendment, the SQC became a body clearly distinct from the IQC. However, the Venice Commission recalls its recommendation above that the mandate of the SCQ should be relatively short (see §§ 55,56 above). That being said, the shortness of their mandate may be seen as making them more vulnerable to external influences and undermining their independence, and, ultimately, casting doubt into the "judicial" character of the proceedings before the SQC.[20] To remedy it, the Venice Commission recommends that the judges of the SQC should, at the end of their mandate within the SQC, continue working as ordinary judges of the High Court.

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[16] The Venice Commission has not discussed other possible models involving participation of the international community in the process of election of the members of the IQC and judges of the SQC, because such models do not form part of the original text of the revised Draft Amendments. However, it would be open to the Albanian authorities to consider such ideas as, for example, involvement of the International Monitoring Operation in the assessment of the qualifications of candidates to the positions within the IQC and the SQC.

[17] CDL-AD(2010)004

[18] See the reasoning of the Venice Commission in §§109-116 of the Interim Opinion.

[19] The Venice Commission is favourable to the introduction of an appeal to a court of law against disciplinary decisions rendered in respect of the judges – see CDL-AD(2007)028, Report on Judicial Appointments by the Venice Commission, §25; see also CDL-AD(2014)008, Opinion on the draft Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, §92 and §110.

[20] See CDL(2005)066, Opinion on Draft Constitutional Amendments concerning the Reform of the Judicial System in "the former Yugoslav Republic of Macedonia", § 23: "[…] The case does not perhaps go so far as to suggest that a temporary or removable judge could in no circumstances be an independent tribunal within the meaning of the Convention but it certainly points to the desirability, to say the least, of ensuring that a temporary judge is guaranteed permanent appointment except in circumstances which would have justified removal from office in the case of a permanent judge. Otherwise he or she cannot be regarded as truly independent."

65. Under the revised Draft, the SQC appears to be the final instance in the vetting process. The revised Draft Amendments explicitly exclude the possibility of a complaint to the Constitutional Court by a judge or a prosecutor who has been dismissed as a result of the vetting process (see Article Ç p. 2).

66. The Venice Commission observes that this is a serious limitation which prevents judges and prosecutors from lodging constitutional complaints against a decision which may terminate their employment; they are thus deprived of a remedy which would otherwise be accessible to them as to anyone else by virtue of Article 131 p. 1 f). In the opinion of the Venice Commission, this should be reconsidered. First of all, it is necessary to specify that the SQC should do everything which is necessary to protect the fundamental rights of the assessees. Second, it is recommended to keep the right of the dismissed judges and prosecutors to complain to the Constitutional Court about violations of their fundamental rights. Indeed, in such cases the Constitutional Court should not perform a full review of the facts established by the IQC and the SQC and should not call into question the constitutionality of the principles on which the vetting process as such is based and the criteria used in there (see in this respect Article 131 p. 2 of the revised Draft Amendments). The role of the Constitutional Court should be limited to ensuring that the judges' fundamental rights were respected, within the limits set by Article A p. 1 of the Annex. Furthermore, a special rule may be applicable to the vetting of the judges of the Constitutional Court themselves. In addition, it could be specified in the Constitution that the proceedings before the Constitutional Court would not have suspensive effect in relation to the vetting process. However, the Annex should not exclude all decisions of the vetting bodies from any control by the Constitutional Court. Article Ç p. 2 should therefore be revised: vetted judges and prosecutors should enjoy access to the Constitutional Court to defend their fundamental rights and freedoms, and those provisions should be harmonized with the exclusion of the substantial constitutional review of the constitutional amendments under Article 131 p. 2 of the revised Draft Amendments.

67. Another question concerns the jurisdiction of the SQC. The matter is dealt with in draft Article G. An appeal to the SQC may arise only when the IQC has completed its task. There is no provision for interim appeals. Presumably the authors of the scheme considered such a procedure would be overcomplicated. However, one might have envisaged the possibility for the SQC to review not only final decisions of the IQC on the merits, but also interim procedural decisions (especially those related to the taking of evidence). The International Observers should be given the power to appeal against such procedural decisions before the SQC.[21]

68. The SQC can remedy procedural errors of the IQC but has no power to refer a case back to correct a decision. It is given express power to uphold or modify a decision. Curiously, draft Article G p. 3 does not expressly give power to overrule a decision although such a power must be intended.

I. Status and powers of international observers

69. International Observers are appointed by the Prime Minister "in accordance with the international legal framework or diplomatic relationships" (Article B p. 3). A certain vagueness of this formula can be explained by the fact the exact shape of this future "legal framework" is unclear (this framework does not need necessarily to take the form of a full-blown international

[21] As a matter of principle, interim appeals or measures should be available only as an exceptional measure. They should be applied only where procedural errors allegedly committed by the IQC could not be remedied at a later stage without the referral of the case for re-consideration on the merits from the SQC back to the IQC. The legislator should design rules in such a manner as to avoid the use of interim appeals as a tool for artificially delaying the proceedings before the IQC.

agreement). The purpose of this provision appears to be to confer ceremonial approval of the arrangement by the Albanian authorities. Other procedures having a similar purpose could also be considered. However, the text of the Annex should make it clear that the Prime Minister has both an obligation and a mandate to consult with the international partners when appointing/removing international observers.

70. The International Observers are to be experienced foreign lawyers qualified to be judges in their own country. In relation to some countries, where there is a rigid separation between judges and prosecutors or where judges are appointed only from the ranks of senior practitioners, this provision could have the effect of excluding the possibility of prosecutors, barristers or academic lawyers being Observers. If this is unintentional, it would not be difficult to amend the draft to resolve the problem, in order to open up the system to other adequately qualified candidates.

71. The powers of the international observers continue to raise certain questions. Their basic power is to overrule certain decisions of a panel of either the IQC or the SQC and to reassign the matter to the other panel or chamber (Article B p. 4 ç)). The test for the operation of this power is not very clear. The International Observer is required to have a sufficiently convincing indication that a decision is grossly inadequate, ignores facts or important evidence, is not based in law, or results from improper influence. What is meant by having a sufficiently convincing indication? Who has to be convinced? What is meant by grossly inadequate? Should the International Observer not first have to notify the IQC or the SQC of his opinion and give it an opportunity to correct matters? Should there not be a hearing of the issue in which the arguments are put forward? Finally, is it appropriate that the International Observer should both initiate and decide this procedure? Is s/he to be a sort of one-person appellate court? What happens if s/he refers a case to the other panel which then repeats the “error” of the first panel?

72. More generally, the whole mechanism of transferring pending cases from one panel to another is problematic, especially with respect to the SQC, where it contradicts the requirement of a lawful judge. As transpires from the text, this mechanism is to be used *before* a panel of the IQC or a chamber of the SQC pronounces on the merits of the case. However, it would be very difficult for an international observer to justify the transferal of a case before seeing the impugned decision which may be criticized as “grossly inadequate”. It is also very unusual that a body of the same hierarchical level revises decisions rendered by a similar body of the same level.

73. In the opinion of the Venice Commission, it would be advisable to fundamentally rethink this provision. Probably, the Independent Observers may play a role similar to that of an *avocat général* in France – an independent magistrate representing public interest and advising the court on how the case should be decided, without voting on the case. The Independent Observers could have important procedural rights – have access to the documents and information in the possession of the Commissioners and the IQC, be able to seek disclosure of certain evidence by State agencies and public officials (directly or through the Commissioners and the IQC), file recommendations to the IQC on procedural actions to take and on the merits of the cases, file appeals before the SQC (including the appeals on procedural matters), participate in the deliberations, file separate opinions etc. These powers will confirm the position of the Independent observers as watch-dogs ensuring in particular transparency of the process, while leaving the decision-making power in the hands of the domestic body. Instead of a power to transmit the case to an alternative panel/chamber, the international observer might have a right to lodge an appeal “in the public interest”, and the right to select one or another panel/chamber.

J. Other issues

74. Article 6/1 is obviously connected with the provisions concerning the fight against corruption in Albania. The constitutional amendments should suggest some flexibility in their legislative implementation as far as the duration of the personal measures to be adopted is concerned. There is a tendency to refrain from limitation of political rights for life.[22]

75. As regards Article 12, the Interim Opinion was critical with respect to the proposal that foreign troops could be stationed in Albania and Albanian troops deployed abroad based on a decision of the Council of Ministers. The amendment now establishes a requirement that the procedure for such decisions has to be provided in a law approved with the majority of all members of the Assembly. It should be noted that the new version does not require the consent of the Assembly in each individual case.

76. The formula used in Article 43 concerning the possibility of excluding the appeal against judicial decisions in cases to be determined by the law is too broad, since the law risks to go beyond the limits set to the right to appeal in Article 2 of Protocol No. 7 to the ECHR and the ECtHR case-law under this provision. That should be avoided; it is thus recommended to align this provision with the text of the relevant articles of the European Convention and of the ICCPR.[23]

77. Article 125 p. 6 provides that the Constitutional Court judge shall continue to stay in office until the appointment of his/her successor, except in the cases under Article 127 p. 1, subparagraphs ç) and d). According to these subparagraphs, CC judges may be dismissed in accordance with the provisions of Article 128 (disciplinary proceedings or conviction for a criminal offence) and as a result of the procedures provided in Article 179/b (vetting process). It is not clear why only two sub-paragraphs are mentioned if according to Article 127 there are other grounds for termination of the office, such as establishing the conditions of ineligibility and incompatibility, establishing incapacity to exercise the duties, resignation, etc.

78. Article 130 provides that the Constitutional Court judge, as an exception, is allowed to engage in teaching and academic activities "which furthers the development of legal doctrine". This provision is too vague - who is to decide whether the writings of a judge or his lectures serve to "develop legal doctrine"? Apart from being vague, this wording unnecessarily limits the scope of academic work of a judge only to the area of law, and does not include at all scientific and artistic activities. Thus, it is recommended amending the provision to skip undue limitations on the involvement of judges in academic, scientific and artistic activities.

79. Article 138 provides that the salary and other benefits of judges cannot be reduced, except when, among other reasons, a judge is "evaluated professionally as 'insufficient' according to the law" (sub-point ç). It is not clear what is implied under term "insufficient" as there is no definition of the term elsewhere. Apart from the use of a vague term "insufficient", the text is not clear on whether and how the reduction in salary is different from disciplinary measures. This should be reconsidered.

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[22] See, for example, the position of the Constitutional Tribunal of Poland which has stated in its Judgment 11 of May 2007 (K 2/07)that a lustration act based on the principles of a state ruled by law "shall specify the time-period of the prohibition on discharging functions on a rational basis, since one should not underestimate the possibility of positive changes in the attitude and conduct of a person. Lustration measures should cease to take effect as soon as the system of a democratic state has been consolidated".

[23] Article 14 p. 5

80. Article 149/a does not mention the function of the Prosecutor General concerning the adoption of strategic plans for his office. The reasons for that are not clear; this power, however, should not interfere with the autonomy of the lower prosecutor in their handling of their files.

81. Article 179, p. 1 a) provides that "the new members [of the CC] who are due to replace the members whose mandate expires in 2016 shall be appointed, respectively, by the President of the Republic and by the Assembly, and they shall stay in office until 2025". As the mandate of the judges is 9 years (Article 125), the reason for indicating the year when the mandate of the judges should end is not clear and may also create some confusion. Thus, the term of office may vary depending on the exact date of appointment in 2016, and may end earlier than 9 years. It may happen that the Assembly or the President will appoint judges with some delay but the term of their office will end in 2025 regardless of the actual number of years spent in office. Apart from that, there may be a controversy between this provision and the one stipulating that judges remain in office until the new appointment, as provided under Article 125 p. 6 ("the Constitutional Court judge shall continue to stay in office until the appointment of his successor, except under cases under Article 127, paragraph 1, subparagraph ç) and d)"). Furthermore, Article 179 p. 7 provides for the replacement of the current Prosecutor General following the establishment of the HPC. The Venice Commission understands that the term of office of the current PG is due to end in the second half of 2017; furthermore, he would be subjected to the vetting under Article 179/b p. 1; if the PG is vetted and is cleared by that process, the question is what is the justification to remove him from office early, alone amongst all the office-holders to whom the vetting process will apply. In such conditions the Venice Commission does not see any reason for the early termination of his office.

82. According to Article 179 p. 8 the Ombudsman may participate as an observer in the meetings of the Justice Appointment Council until the Council is fully composed. What is the reason for allowing the Ombudsman to observe the work of the Council only until the Council is fully composed? The legislator might consider including the Ombudsman to the composition of the JAC on a permanent basis as an observer.

83. Article 179 p. 9 provides that the specialised courts and specialised prosecutor's offices (those established under Article 135 p. 3 and Article 148 p. 3 correspondingly) shall be established within two months of the establishment of the relevant Councils (the HJC and the HPC). The judges actually holding positions in the currently existing anti-corruption courts will be reappointed to the newly created structures only if they pass successfully the vetting procedures and if they "agree to the periodic reviews of their financial accounts and telecommunications as well as of their close family members". The vetting procedures seem to be very complex and lengthy; therefore, the timing as defined under this provision may be unrealistic. Next, the legitimacy of the requirement that judges,[24] in order to be re-appointed, must sign, on behalf of their relatives, a waiver opening way to "periodic reviews of [their relatives'] financial accounts and telecommunications" is dubious (see § 51 above).

84. The IQC will have to assess property (Article D) and links to the criminal world (Article DH) of the judges and prosecutors; this assessment is to be made primarily on the basis of their own declarations. This method of obtaining information may appear insufficient; it could be advisable supporting the activity of the IQC with investigative powers (including coercive powers vis-à-vis not only State institutions but also private individuals and companies) which may be mentioned in the Draft Amendments as well (see Article Ç pp. 4 and 5 of the revised Draft).

[24] It is also quite strange that such waiver is required only from the judges of the Serious Crimes Court and Serious Crimes Appeals Court; as regards the prosecutors currently serving at the Serious Crimes Prosecution Office, the revised Draft does not provide for their reappointment. Article 179 p. 9 mentions only that the transfer of cases, thus creating an impression that the re-appointment is not envisaged.

85. Furthermore, according to Article DH p. 3 if "the assesse has regular and inappropriate contact with members of organised crime, a presumption in favor of the disciplinary measure of dismissal shall be established […]". It appears that this provision provides for "regular" and "inappropriate" contacts as cumulative conditions for dismissal, while either of the conditions or even temporary contacts/relationships may be sufficient to disqualify assesse.

IV. CONCLUSIONS

86. The Venice Commission congratulates the Albanian authorities, and in particular the experts of the *Ad hoc* Parliamentary Committee, for the work they have invested in the preparation of the constitutional reform of the judiciary. Their genuine readiness to take into account the recommendations of the Interim Opinion deserves particular praise. The Venice Commission is also grateful to the Democratic Party and to the Socialist Movement for Integration for their active contribution to the discussion over the draft constitutional amendments.

87. The revised Draft Amendments contain sound proposals for the future institutional design of the Albanian judiciary; the text is by and large coherent and compatible with the European standards. The Venice Commission believes that the Draft Amendments may be finalised without further delay and submitted to the Parliament for voting.

88. In view of the preparation of the final text, the Venice Commission recommends the Albanian authorities to pay attention to the following key issues:

- If the parties to the political process do not agree on the qualified majority required to elect lay members of the HJC, HPC, IQC and SQC, they may opt for a proportionate system guaranteeing the opposition a representation within those collective bodies, or any other appropriate model which would secure the opposition a certain influence in the election process;
- The Draft Amendments should specify the method of appointment of the Chief Special Prosecutor and accountability mechanisms in his/her regard;
- The mandate of the vetting bodies (the IQC and the SQC) should be significantly reduced in length; judges of the SQC, at the end of their mandate, should be able to integrate automatically the judiciary;
- The judges and prosecutors undergoing vetting should enjoy the right to complain to the CC about violation of their fundamental rights, with some reasonable exceptions dictated by the necessities of the vetting process;
- The powers of the international observers should be clarified; they should have procedural rights but no decision-making powers. The mechanism of transferring the jurisdiction over the case from one panel/chamber to another should be revised.

89. The Venice Commission reiterates that the reform of the judiciary cannot stop at the constitutional level; a whole package of implementing laws will be required in order to regulate in more details the operation of the HJC, the HPC, the vetting bodies, etc. The Venice Commission reiterates its readiness to contribute to this legislative work and hopes that the reform will be pursued in the spirit of constructive dialogue and adherence to the European values and best practices.