



Strasbourg, 2 December 2016

CDL-REF(2016)069

Opinion No. 868 / 2016

Engl.Only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

ALBANIA

**LAW ON THE TRANSITIONAL RE-EVALUATION
OF JUDGES AND PROSECUTORS**

Revised translation

**provided by the Constitutional Court
on 30 November 2016**



REPubLIKA E SHQIPËRISË

LAW no.84/2016**ON****THE TRANSITIONAL RE-EVALUATION OF JUDGES AND PROSECUTORS IN THE
REPUBLIC OF ALBANIA**

Based on Articles 81, 83, paragraph 1, and 179/b, paragraph 10, of the Constitution, upon the proposal of a group of the Members of the Assembly,

**ASSEMBLY
OF THE REPUBLIC OF ALBANIA****D E C I D E D:****CHAPTER I
GENERAL PROVISIONS****Article 1
Purpose**

The purpose of this law is to determine specific rules for the transitional re-evaluation of all assessees, in order to ensure the proper function of rule of law, the independence of the justice system, as well as the restoration of the public confidence in these institutions, according to the provisions of Article 179/b of the Constitution.

**Article 2
Scope**

This law provides for:

1. the principles of organization of the re-evaluation process for all judges and prosecutors;
2. the methodology, procedure and standards of the re-evaluation;
3. the organization and functioning of the re-evaluation institutions,
4. the role of the International Monitoring Operation, the other state bodies and of the public in the re-evaluation process.

**Article 3
Definitions**

In this law, the following terms shall have these meanings:

1. "Day" implies calendar days, which are calculated according to the rules provided in Article 56 of the Code of Administrative Procedure;
2. "Legal document" means any document prepared by the assessee in the course of the exercise of the professional duty, specifically a court decision, report, indictment, legal opinion, and any other act proving the person's professional capacities;

3. "HIDAACI" means the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest, organized and functioning according to Law "On declaration and audit of assets, financial obligations of elected persons and certain public officials".
4. "Re-evaluation Institutions" shall imply the Independent Qualification Commission, the Special Appeal Chamber and Public Commissioners;
5. "Commission" means the Independent Qualification Commission provided for in Art.179/b, paragraph 5, of the Constitution;
6. "Inappropriate contact" shall mean any meeting, electronic communication, or any other type of wilful contact, which is not in compliance with the assumption of office by the assessee, regardless whether a business relationship, as defined in point 9 of this Article, or any other relationship is established;
7. "Appeal Chamber" means the Special Appeal Chamber of the Constitutional Court, provided for in Article 179/b, paragraph 5, of the Constitution.
8. "Organized crime, trafficking and corruption" includes criminal offences provided in Article 75/a of the Criminal Procedure Code, which fall under the competences of the Serious Crime Court, or any other court which may substitute it in the exercise of these competences;
9. "Business relations" shall be any professional or commercial relationship, bearing a connection to the activities carried out by the assessee and their clients, which, at the moment of its establishment, is considered to be a sustainable relation or not a sustainable relation under the Law no "On prevention of money laundering and financing of terrorism";
10. "Proficiency assessment body" means the Inspectorate of the High Council of Justice functioning according to Law no.8811/2001 "On organization and function of High Council of Justice", as amended, the relevant structure of the General Prosecution Office or the institutions that perform the professional evaluation according to the law;
11. "Asset" means all movable and immovable properties in Albania or abroad, according to the provision of Article 4 of the Law no 9049, dated 10/04/2013, "On the declaration and audit of assets, financial obligations of elected persons and certain public officials", as amended, which are in the ownership, possession or use of the assessee;
12. "Re-evaluation period" means the period of the work of an assessee during which their ethical and professional performance is assessed according to this law;
13. "Related Persons" shall mean the circle of persons related to the assessee, commissioner, public commissioner or judge, consisting of the spouse, cohabitant, adult children as well as any other person mentioned in the family certificate as provided by the office for civil registry to assessee, commissioners, public commissioners and judges for the period of re-evaluation.
14. "Other related persons" shall mean any natural or legal person who turns out to have or to have had ties of interest with the assessee, commissioner, public commissioner or judge, resulting from any property interest or any business relation.
15. "Person involved in organized crime" shall mean any person that has been convicted or criminally proceeded against, whether in Albania or outside the territory of the Republic of Albania, regarding one of the criminal offences provided in paragraph 1 of Article 3 of the Law no. 10192, dated 3.12.2009 "On preventing and striking at organized crime, corruption and trafficking through preventive measures against

assets”, as amended, expect the case when he/she was declared not guilty by a final court decision. The person shall be considered to be involved in organized crime even if: a) Instituted criminal proceedings against him/her have been dismissed by the prosecuting body because of the death of the person, or in cases when it was impossible to have him/her as a defendant and he/she cannot be convicted. b) he/she has been found not guilty by the court because the criminal offence was committed by a person that was impossible to be indicted and convicted;

16. “Assesseees” means all persons provided for in Art.179/b of the Constitution;
17. The wording “has not held a political position in the public administration” shall mean he or she has not have been member of the Assembly, prime minister, deputy prime minister, minister, deputy minister or official employee in the Cabinet of the President of the Republic, of the Speaker of the Assembly, of the Prime minister, of the Deputy Prime Minister, or of a Minister assuming the office of the cabinet director, advisor, assistant, spokesperson or personal secretary to the head of the cabinet;
18. The wording “has not held a leadership position in a political party” means that he or she has not been member of steering organs according to the provisions of the statute of the political party;
19. “Legitimate income” shall be the income of the assessee of the and his or her related persons, according to the definitions of the source of income provided in law “On tax income”;
20. “Trust” is a fiduciary agreement where the ownership is held by the trustee for the account of the beneficiary, according to the Law ‘On prevention of money laundering and financing the terrorism’ as well as according to foreign legislation;
21. “International observers” shall mean persons appointed by the International Monitoring Operation and notified in accordance with Article B of the Annex of the Constitution.

Article 4

The object and principles of re-evaluation process

1. The re-evaluation process shall be carried out in three components:
 - (a) asset assessment,
 - (b) background assessment, and
 - (c) proficiency assessment.
2. The Commission and the Appeal Chamber are the institutions which decide on the final evaluation of the assessee. The decision shall be based on one or several criteria, on an overall evaluation of the three criteria, or the overall assessment of the proceedings.
3. The re-evaluation process shall start automatically with the entry of this law into force. The re-evaluation institution shall take the decisions within as short a time period as possible, once a case is ready to be decided.
4. Cases of re-evaluation of judges at the Constitutional Court, at the High Court and the General Prosecutor shall be treated as a matter of priority in time by the re-evaluation institutions.
5. The Commission and Appeal Chamber shall exercise their duties as independent and impartial institutions, based on the principles of equality before the law, constitutionality and lawfulness, proportionality and other principles which guarantee the rights of assesseees for a due legal process.

6. If it is the case, the re-evaluation institutions may apply also the procedures provided in the Code of Administrative Procedures, or in the Law "On the organization and functioning of administrative courts and adjudication of administrative disputes", if these procedures have not been provided in the Constitution or by this law.

7. The right to information provided for in Law "On the right for information" may be limited by complying with the principle of proportionality if giving the information causes an evident and grave damage to the administration of the re-evaluation process.

CHAPTER II INSTITUTIONS

Article 5

Re-evaluation institutions

1. The re-evaluation process of all assesses shall be carried out by the Commission, the Appeal Chamber and the Public Commissioners in collaboration with international observers.

2. The Appeal Chamber shall reviews appeals against decisions of the Commission and it shall have a 9-year mandate.

3. The Appeal Chamber shall, during his mandate, in compliance with the Constitution, the law "On organization and functioning of Constitutional Court", and the legislation regulating the issues of governance of the justice system, have the jurisdiction to adjudicate:

- a) disciplinary misconducts of Constitutional Court judges, the members of High Judicial Council, the High Prosecutorial Council, the Prosecutor General, and the High Justice Inspector;
- b) appeals against decisions of the High Judicial Council, High Prosecutorial Council as well as High Justice Inspector, imposing disciplinary sanctions against judges, prosecutors and other inspectors.

Article 6

Criteria on selection of members of the re-evaluation institutions

1. Member of the Commission and Appeal Chamber shall be appointed the Albanian citizen who fulfils the following conditions:

- a) having completed the second level of university law studies with the degree 'master in science' in Albania or law studies abroad and has obtained an equivalent degree according to the rules on equivalencing diplomas foreseen in the law;
- b) having a professional experience of not less than 15 years as judge, prosecutor, advocate, professor of law, civil service employee at senior level or another recognised activity in the field of administrative law or in other fields of law;
- c) having obtained a high score for his or her professional and ethical skills and moral integrity, as long as he or she has been subject to previous evaluation;
- ç) has not held a political position in the public administration or a leadership position in a political party for the last 10 years;
- d) is not under criminal investigation and has not been convicted by final decision in connection with the commission of a crime, a criminal misdemeanour deliberately or has not been not subject to the prohibitions provided in the law "On guaranteeing the integrity of the elected or appointed persons or who exercise public functions";
- dh) has not been dismissed for disciplinary reasons or does not have any disciplinary measure in force under the law at the time of application;

- e) has not been a member, collaborator or favoured by the State Security before 1990 “On the right of information to the documents of the former security service of the People’s Socialist Republic of Albania;
- ë) has not been judge, prosecutor, legal advisor or legal assistant during the last two years prior to putting up their candidacy;
- f) has not been member of the High Level Experts Group of the Parliamentary Ad Hoc Committee for the reform in the justice system, or expert appointed by the political parties and the Ministry of Justice;
- g) is not older than 65 years;
- gj) has a very good command of English.

2. Compliance of the above mentioned criteria shall be taken into consideration in particular based on the data mentioned below:

- a) scientific grades in the field of law;
- b) special experience of the candidate in a certain field of law;
- c) seniority in the profession;
- ç) study experience and professional experience abroad;
- d) having an average mark of not less than 8, in case it has completed the second level of university law studies with the degree ‘master in science’ in Albania or law studies abroad and has obtained an equivalent degree according to the rules on equivalencing diplomas foreseen in the law;

3. The criteria provided in paragraph 1 of this Article apply accordingly for the election of a Public Commissioner, with the exception of the employment experience, which should be not less than 10 years.

Article 7

Presentation and review of applications for the positions of members of the re-evaluation institutions

1. The President of the Republic shall announce immediately the call for the expression of interest for positions of all members of the re-evaluation institutions on the official website and in two newspapers of the highest circulation in the country. The call for the expression of interest shall contain the deadline when the candidates have to submit the expression of interest, the post address where they shall be submitted and the accompanying documents.

2. The deadline for the submission of the application and the accompanying documents shall be 15 days.

3. The application of the candidates shall be registered in the protocol register of the President of the Republic. The applicant shall obtain a receipt establishing the application number, date and list of the filed documents.

4. The candidate, in his submitted request, refers to the vacancy position for which he or she is applying. If no preference is mentioned by the candidate, the application is considered for all vacancies. Attached to the request, the candidate files two copies of the following documents:

- a) professional Curriculum Vitae including contact details, official email and postal address;
- b) Notarized or equivalent copy of the diploma issued by the institutions;
- c) Notarised or equivalent copy of the documents issued by the respective institution, which attest conditions provided in Article 6 of this Law;
- ç) a document signed by himself/herself, that the applicant provides for admitting the specific limitations regarding secrecy of electronic communications for the duration of

CDL-REF(2016)069

the mandate as a member of the re-evaluation institutions, in accordance with Annex no.1 to this law;

5. Within seven days from the deadline for the submission of applications, after consultation with the International Monitoring Operation, the President of the Republic shall compile a candidate list of applicants who meet the formal criteria for each position and a separate list of applicants who do not meet these criteria. This process is monitored by the International Monitoring Operation, which shall have full access to all application documents.

6. The President of the Republic, immediately forwards to the International Monitoring Operation the prepared lists as provided in paragraph 5 of this Article and all the individual files of the candidates and publishes the full list of candidates in the official website, categorized according to the position. In case the President of the Republic does not complete the process within 45 days from entry into force of the Annex of the Constitution, this competence shall be carried out by the Ombudsperson.

7. A panel of at least three representatives of the International Monitoring Operation shall assess the candidates. Not later than 14 days from the day of submission of the two lists by the President of the Republic, the panel shall, on the basis of its reasoned assessment, submit its recommendations concerning the qualification and selection of the candidates to the President, who then forwards them to the Parliament. If the President does not exercise his competences within five days, the competence shall be transferred to the Ombudsperson.

Article 8

Parliamentary ad hoc committee for the verification of candidate

1. Within three days of receiving the list of applicants who meet the formal criteria, the list of applicants who do not meet the formal criteria and the list of International Monitoring Operation recommendations, the Assembly shall approve the establishment and composition of an ad hoc committee with six members consisting of equal representation from the parliamentary majority and opposition, as well as the parliamentary procedures for the functioning of the committees and the conduct of the voting process according to this Article and Article 9 of this law.

2. The Speaker of the Assembly, within the day of submission of the lists provided in paragraph 1 of this Article notifies the date and time of the meeting of the plenary session for the establishment and the composition of the ad hoc Committee for the evaluation of candidates. In this notice, the Speaker of the Assembly requires to the parliamentary groups of the parliamentary majority and the minority to submit within the next day of the day of the notice, their proposals for the composition of this ad hoc committee. The Speaker of the Assembly, within the next day of establishment of the ad hoc committee, forwards to all its members the documents of all candidates.

3. The committee, after completion of the hearing with the candidates decides:

a) with at least four votes, to transfer a candidate from the list of those who do not meet formal criteria to the list of those who do.

b) with at least five votes, to transfer an applicant from the International Monitoring Operation's recommendations list to the list of candidates for voting.

4. The list for voting includes the candidates who meet the formal criteria except those who have not been recommended by the International Monitoring Operation and who have not been approved upon decision of the ad hoc committee according to paragraph 3 of this Article.

5. Within ten days of its establishment, the ad hoc committee shall forward the list prepared according to paragraph 4 of this Article, to the ad hoc selecting committees. The other two lists shall not be forwarded for voting.
6. The General Secretary of the Assembly takes the necessary measures for establishing the conditions for the exercise of the activity of the ad hoc committee for the verification of candidates.
7. The ad hoc committee functions based on the provisions of this law and, as far as it is possible based on the Regulation of the Assembly.

Article 9

Parliamentary ad hoc committees for the selection of the candidates

1. Within ten days of receiving the list of candidates, who meet the formal criteria, the list of applicants who do not meet the formal criteria and the list of International Monitoring Operation recommendations, the Assembly shall approve the establishment and composition of two ad hoc committees for selection consisting respectively of:
 - a) 12 members, 6 proposed from the parliamentary groups of majority and 6 proposed from the parliamentary groups of minority.
 - b) 6 members, 3 proposed from the parliamentary groups of majority and 3 proposed from the parliamentary groups of minority.
2. The Speaker of the Assembly, within 3 days from the submission provided in paragraph 1 of this Article notifies the date and time of the meeting of the plenary session for the establishment and the composition of the two ad hoc committees for selection of candidates. In this notice, the Speaker of the Assembly requires to the parliamentary groups of the parliamentary majority and the minority to submit within two days, starting from the day of the notice, their proposals for the composition of these ad hoc committees of selection.
3. A member of the Assembly may be member of only one of the ad hoc selecting committees. The members of the ad hoc committee for the verification of the candidates is not inhibited to be member of one of the ad hoc selecting committees.
4. Within 30 days of its establishment the ad hoc selecting committee shall conduct the procedure for the voting of the candidates. In the first meeting of each ad hoc selecting committee, there shall be approved the calendar for the hearings with the candidates and the General Secretary shall be tasked with notifying the candidates.
5. The General Secretary of the Assembly takes the necessary measures for establishing the conditions for the exercise of the work activity of the ad hoc committees selecting the candidates.
6. The ad hoc committee functions based on the provisions of this law and, as far as it is possible, based on the Regulation of the Assembly.

Article 10

Voting process of the parliamentary ad hoc committees selecting the candidates

1. The voting process is done through an electronic system which enables the secret voting where each member votes for one candidate.
2. Each member of the six member selecting committee shall select from the candidate list for voting a candidate for judges of the Appeal Chamber, without debate and in a secret and electronic vote where one member of the commission may elect one candidate.
3. The members of the ad hoc committee participate in all voting rounds until the final selection of the 6 judges of the Appeal Chamber. The electronic system enables the

implementation of this voting process by generating an electronic report containing the results of the voting, which guarantees the impossibility of identifying the vote.

4. Every member of the ad hoc committee is obliged to vote. If one of the members does not vote, the voting process shall be repeated once more. In case also during the second voting round one of the members does not vote, the Speaker of the Assembly is notified for the initiation of the procedures for substituting the member of the ad hoc committee who has not voted. The Assembly shall elect a new member of the ad hoc commission observing his affiliation to the parliamentary group within 3 days.

5. The ad hoc committee then selects the seventh judge from the remaining candidates on the candidate list through a simple secret electronic voting, where the candidate with the most votes is selected. In case of a tie, a manual lot shall be used between the two candidates who received the highest number of votes. The procedures for drawing the lot are reflected in the minutes which are signed by all members of the ad hoc committee.

6. The procedure foreseen in paragraph 5 of this Article shall apply also for the selection of the two substitute members for the position of judge at the Appeal Chamber.

7. Each of the members of the 12 member ad hoc selecting committee shall select, from the candidate list for voting, a candidate for commissioner, without debate and in a secret and electronic vote where one member may elect one candidate. The rules foreseen in paragraph 3 and 4 of this Article apply also during the voting procedure of the ad hoc selection committee with 12 members. The procedures foreseen in paragraph 5 and 6 of this Article shall apply also for the selection of the two substitute members for commissioners at the Commission.

8. The committee shall then select two candidates from the candidate list for voting for public commissioner, using a vote where the two candidates with the most votes are selected. The procedure provided in paragraph 5 of this Article applies also for the selection of the two Public Commissioners and the two substitute candidates for Public Commissioner.

9. If a candidate has applied for more than one position and has been selected in one of the previously voted positions selected in order, his/her name is automatically removed from the electronic system from the lists of candidates for voting for functions which will be voted later on.

10. The General Secretary of the Assembly, within two days from the termination of the voting process, prepares a final list of the elected commissioners, judges and public commissioners. The list, along with the voting results produced by the electronic system shall be sent to the Speaker of the Assembly, who immediately notifies the date and time of the meeting of the plenary session and forwards the list to the members of the Assembly.

Article 11

Voting in the plenary session

1. Within 10 days, the Assembly approves the list of candidates as a block with 3/5 of votes of all members.

2. If the Assembly does not approve the list of candidates as a block under paragraph 1 of this Article, the Speaker of the Assembly shall return it to the ad hoc selecting committees to repeat the selection process and to provide a second list within 10 days. The ad hoc selecting committees shall apply the same rules provided in Article 10 of this law.

3. The Assembly, within 10 days after second list is submitted, can reject the list as a block by 2/3 votes of all its members. If the list is not rejected, the selected candidates are considered elected.

4. The decision of the Assembly to approve the list of selected candidates shall be published in the next edition of the Official Gazette.
5. If the list is rejected by the Assembly under paragraph 3 of this Article, the organs foreseen in this law shall be in charge to initiate the procedures for filling the vacancies in accordance with the procedures foreseen in the Constitution and this law.

CHAPTER III ORGANIZATION AND FUNCTIONING OF RE-EVALUATION INSTITUTIONS

Article 12

President of the Commission and Appeal Chamber

1. The activity of the Commission is chaired by its President and in his or her absence, by the oldest member in age, assigned by him or her, except for the cases where the law provides differently.
2. The President of the Commission shall be elected upon secret voting, upon the majority of all members, for a period of 3 years without the right to re-election.
3. The meeting for the election of the President shall be chaired by the oldest member in age. Where more than one candidate is running and during the voting none of them took the foreseen number of votes, a new voting occurs and, following this, voting shall occur among the candidates having obtained the highest number of votes. Where none of the candidates have received the majority of the votes or the votes are divided equally, the President shall be appointed by lot. The lot shall be organized by the International Monitoring Operation.
4. Paragraph 1, 2 and 3 of this Article shall apply accordingly for the President of the Appeal Chamber.

Article 13

Competences of the President of the Commission and Appeal Chamber

1. The President shall have the competences as follows:
 - a) Prepares, convenes and leads the meeting of the members,
 - b) Represents the Commission or Appeal Chamber to the relations with third parties,
 - c) Ensures the management of the institution;
 - ç) signs the other acts of the Commission or Appeal Chamber, with the exception of the decisions;
 - d) chairs the lot as provided in Article 14, 15, and 18 paragraph 4 of this law.

Article 14

Organization of the Commission

1. The Commission shall be organised in four adjudication panels, composed of 3 members each elected by lot. Substitute members shall be assigned by lot.
2. The distribution of the cases to the panels and the assignment of the rapporteur is done by lot.
3. The panel of the Commission is lead by a chairperson of the panel, who is elected among the respective members. In his or her absence, the panel is chaired by the oldest member by age.
4. Tasks of the Chairperson of the panel are:
 - a) to call and to chair the internal meetings and oral hearings.

b) to coordinate the work and to ensure in a reasonable time the transcribed decision.

5. The rapporteur of the case shall:

- a) prepare the file which shall be discussed by the panel;
- b) undertake all procedures for ensuring the evidences which are deemed necessary for the decision making process of the panel;
- c) undertake all necessary steps for drafting the necessary documentation, up to the finalization of the case;
- ç) seek additional information in accordance with the provisions of this law;
- d) proposes a reasoned decision by way of submitting the grounds thereof.

Article 15

Organization of the Appeal Chamber

1. The Appeal Chamber shall adjudicate in adjudicating panels composed of 5 judges, each elected by lot for each case.
2. The panel of the Chamber shall be presided over by the chairperson who shall be selected by lot along with the rapporteur.
3. The Chairperson of the panel and the rapporteur shall carry out the tasks as provided in paragraph 4 and 5 of Article 14 of this law.

Article 16

Disciplinary liability of members of the re-evaluation institutions

The member of the re-evaluation institutions shall be disciplinarily liable, specifically for the following reasons:

1. failure to submit the self-recusal from the review of the case, if there are reasonable doubts on the existence of cases of incompatibility for the exercise of his or her function, according to the legislation in force and if the member is aware of such circumstances;
2. behaviours, acts and other actions of the judge, creating unfair profits or damages for parties to proceedings;
3. failure to inform the President or competent authorities according to law, regarding the interventions or exercise of other forms of improper influence by lawyers, political officials, public officials and other entities;
4. interference or any other improper influence to exercise the duty of another member;
5. unjustified, intentional or repeated non-performance of his or her respective functions;
6. filing a self-recusal and accomplishment of those actions which are not based on grounds provided in law or are done intentionally to derive unfair profits for the litigants and third parties, or with a view of preventing the judge from the legal obligation to examine the case or aiming at its potential review by other judges, or when the resignation has taken place lately, regardless of being aware of the fact for which he or she resigns;
7. repeated or serious breach of the rules of solemnity and rules of conduct in relations with litigants and with the members and personnel of the re-evaluation institutions;
8. repeated and unjustified delays and procrastinations of procedural actions and during the exercise of function;

9. public disclosure of opinions delivered by the member himself or by other member during the process that has not yet become a formally public act;

10. breach of the obligation of confidentiality and non-disclosure of information resulting from the on-going or completed investigation or trial, including the publication and distribution also due to negligence, of confidential or procedural acts, or resulting from the matters under a process of investigation or trial.

11. public disclosure of statements and in media on matters, except for press communications within the limits of his or her duty;

12. distorted submission of facts on the acts being issued;

13. use of the mandate of the member, with a view of deriving for oneself or for others unjustified profits.

14. being in the company of persons being under criminal prosecution or being subject of a criminal proceeding or of convicts, save the cases of the rehabilitation of convicts or persons who are relatives of blood-related or law-related judges and having improper business relations with these persons;

15. unfair direct or indirect benefit of gifts, favours, promises or preferential treatments of any kind, either by lawful actions, granted due to the function he or she exercises or as a result of his or her use of the magistrate position;

16. improper behaviour to meet obligations in relations and in communication with state institutions and their officials, other cases of improper unjustified behaviour.

17. other cases provided in this law.

Article 17

Dismissal procedures for the members of the re-evaluation institutions

1. Disciplinary investigation may be initiated against institutions members in case of sufficient evidence from reliable sources that they have committed a disciplinary offense.

The initiation of disciplinary investigation can be requested by following persons:

a) Every commissioner against commissioners;

b) Every judge against judges of the Appeal Chamber;

c) Every international observer against the Public Commissioner, the Commissioner and judges of the Appeal Chamber.

2. The request to initiate disciplinary investigation shall be made in writing to the General Secretary of the Commission or the Appeal Chamber, as the case may be. Reporting on disciplinary violations by the public shall be submitted to the international observers.

3. The investigation shall start without reasonable delay after identifying the disciplinary misconduct. Disciplinary proceedings shall be archived without a final decision, if the member of the institution withdraws from duty.

4. The Disciplinary Commission shall be composed of 3 judges of the Appeal Chamber elected by lot, on case basis, without the participation of the member subject to disciplinary proceedings according to the law. The investigatory judge shall be elected by lot among all members of the Appeal Chamber, without the participation of the member subject to disciplinary proceedings. The lot shall be organised by the Secretary General of the Appeal Chamber.

5. The investigating judge shall draft a report on investigation results of the misconduct and shall immediately present it to the Disciplinary Commission for review.

6. The Disciplinary Commission within 15 days of the date of receipt of the report shall decide as follows:

CDL-REF(2016)069

- a) Issuing a disciplinary measure in accordance with the legislation that regulates the status of judges or prosecutors.
- b) issuing a disciplinary measure and sending the case, to the General Prosecution Office or specialized prosecution office according to Article 148 paragraph 4 of the Constitution, as the case may be, when it ascertains that the misconduct for which the member is being charged constitutes also a criminal offence.
- c) non issuance of a disciplinary measure, as long as it finds out that there is no cause for such a measure.

7. The member of the re-evaluation institutions, subject to disciplinary proceedings, has the right to be informed, counselled and heard during disciplinary proceedings. The Disciplinary Commission in assuming its functions must have balanced regard to the principle of independence, impartiality and credibility and the right to privacy. The legislation that regulates the status of judges or prosecutors may be applied as far as possible.

Article 18

Organisation and administration of the re-evaluation institutions

1. The re-evaluation institutions shall have personnel and equipment for assuming the tasks entrusted by this law. The organisational structure, classification of salaries for the personnel of the institutions of re-evaluation shall be approved by the Assembly upon proposal of the relevant institution. The personnel of the re-evaluation institutions shall be composed by the legal service unit and the administrative employees.
2. The Appeal Chamber shall also be assisted by the supporting structures of the Constitutional Court.
3. The employment relationships of the staff of the re-evaluation institutions shall be regulated in this law and in the Labour Code.
4. The responsible authority for the recruitment of employees shall be the ad hoc committee established near each institution. The ad hoc committee shall be composed of two members of the Commission or Appeal Chamber, respectively elected by lot, as well as the oldest Public Commissioner in age. For the recruitment of the employees of the Public Commissioner, the ad hoc committee shall be composed of the two Public Commissioner and the oldest judge in age of the Appeal Chamber.

Article 19

Budget of the re-evaluation institutions

1. The budget of the re-evaluation institutions shall be financed by the state budget law, where they are mentioned as separate institutions.
2. The re-evaluation institutions shall propose each year the draft budget in the parliamentary commission covering legal issues, which presents it for approval to the Assembly, as integral part of the state budget.
3. The re-evaluation institutions apply their budget independently, as approved by the Assembly.
4. The institutions shall have the right to use secondary revenues, obtained from international projects, donations and their publications.
5. Financial audit of the re-evaluation institutions shall be done by the High State Audit.

Article 20

The Secretary General

1. Within 30 days after the entry into force of this law, the President of the Republic shall publish the vacancies for the two Secretaries General, on its website and in two of the highest circulation newspapers in the country. All interested persons may apply for these positions within 20 days after the publication in the website. The President of the Republic prepares the files and hands them over to the institutions once they have begun their functioning.
2. The procedure for the recruitment shall be carried out based on a transparent and open procedure of the selection of the most qualified candidates. The evaluation of the interested candidates shall be carried out by the ad hoc commission established in the respective institutions.
3. Secretary General is the Albanian citizen who fulfils following criteria:
 - a) has completed the second level of university law studies or economic studies with the degree 'master in science' in Albania or law studies or economic studies abroad and has obtained an equivalent degree according to the rules on equivalent diplomas foreseen in the law;
 - b) has work experience in management and leading position not less than 10 years;
 - c) no criminal investigation has been initiated against him/her; has not been sentenced by a final court decision for committing a crime as well as a criminal offence, deliberately;
 - ç) be fluent in English;
 - d) no disciplinary measure of dismissal from office or any other effective disciplinary action in compliance with the legislation has been taken against him/her at the time of application;
 - dh) has not held a political position in the public administration or a leadership position in a political party for the last 10 years;
4. The ad hoc committee decides on the selected candidate based on the submitted documents.

Article 21

Duties of the General Secretary

The duties of the secretary general are:

- a) represents the institution in respect to all relations with third parties, if the relevant President of the re-evaluation institutions is not able to perform this duty;
- b) administers the register of files;
- c) organizes and leads the daily work of the all the staff with the exception of the advisory staff;
- ç) deals with issues related to public relations;
- d) organises the work for the preparation of the annual report on financial expenses.
- dh) recruits the personnel in compliance with the Labour Code
- e) performs any other administrative task assigned by the President of the relevant re-evaluation institution.

Article 22

Legal Service Unit

1. The Legal Service Unit is functioning attached to the Commission and the Appeal Chamber assuming advisory and supporting activity in the decision-making process. The Legal Service Unit is composed of legal advisors, and economic advisors under the supervision of the meeting of the commissioners or judges.
2. The procedure for the recruitment shall be carried out based on a transparent and open procedure of the most qualified candidates. The evaluation of the interested candidates shall be carried out by the ad hoc commission established in the respective institutions
3. Legal advisor is the Albanian citizen who fulfils the following criteria:
 - a) has completed the second level of university law studies with the degree 'master in science' in Albania or law studies abroad and has obtained an equivalent degree according to the rules on equivalencing diplomas foreseen in the law;
 - b) Work experience in the justice system or public administration not less than 7 years;
 - c) Has not been sentenced by a final court decision for committing a crime or a criminal offence, deliberately, and no criminal investigation has been initiated against him/her;
 - ç) no disciplinary action of dismissal from office or any other disciplinary action in force in compliance with the legislation has been taken against him/her at the time of application;
 - d) be fluent in English;
4. Financial advisor is the Albanian citizen who fulfils the following criteria of having:
 - a) has completed the second level of university economic or mathematic studies or law studies with the degree 'master in science' in Albania or law studies or economic studies abroad and has obtained an equivalent degree according to the rules on equivalencing diplomas foreseen in the law;
 - b) work experience in the financial field non less than 7 years;
 - c) has not been sentenced by a final court decision for committing a crime or a criminal offence, deliberately, and no criminal investigation has been initiated against him/her;
 - ç) no disciplinary action of dismissal from office or any other disciplinary action in force in compliance with the legislation has been taken against him/her at the time of application;
 - d) be fluent in English.

Article 23**Duties of the advisor**

1. Duties of the legal advisor are to:
 - a) analyse the file and preparation of the case report;
 - b) perform any other tasks assigned by Rapporteur of the case.
2. Duties of economic advisors are to:
 - a) study the file from the financial/economic point of view and prepare the report on the case, in particular financial assessment of assessee's assets;
 - b) perform any other tasks assigned by rapporteur of the case.

Article 24**Media Relations**

The re-evaluation institutions shall have a responsible person for the public communication relation.

Article 25

Protection of the members of the re-evaluation institutions and local and international staff

The members of the re-evaluation institutions, their related persons, the staff of the re-evaluation institutions, as well as the supporting staff of the International Monitoring Operation shall be entitled to special protection by the state for their life, health and assets, as defined in the legislation in force on the special protection.

Article 26

Declaration of assets by the members of the re-evaluation institutions

1. The member of the re-evaluation institution shall, upon initiation of the exercise of the duty, have the obligation to submit the annual asset declaration. Inaccurate disclosure of this asset declaration shall constitute a ground for dismissal from the duty in accordance with this law.
2. The member of the re-evaluation institution, the general secretary, the financial and legal advisors as well as their related persons, shall have the obligation to submit an annual declaration of assets and up to three years after its termination, within the terms foreseen by Law "On the declaration and audit of assets, financial obligations of elected persons and certain public officials".
3. The member of the re-evaluation institution shall not be subject to the re-evaluation process in accordance with Article 179/b of the Constitution.

Article 27

Guarantees of impartiality

1. The member of the re-evaluation institution shall declare and avoid any situation of conflicts of interests, based on the Law "On prevention of conflicts of interest". Any decision taken in situations of conflicts of interest, apart from any legal consequences in the decision-making process, shall constitute a serious disciplinary misconduct.
2. In the case a member of the re-evaluation institution is unable to decide an assigned case for reasons mentioned in Article 30 of the Administrative Procedure Code or Law "On prevention of conflict of interest in exercising public functions", he or she shall notify immediately in written form the panel. The recusal of a commissioner, judge or public commissioner from the examination of case shall be decided by another panel designed by lot.
3. Each person who possesses information on the existence of the conflict of interest grounds mentioned in paragraph 1 of this Article shall notify immediately in written form the Panel, which shall forward the request to another Panel for decision, assigned by lot.

Article 28

Conditions for ensuring trust and confidentiality

1. The electronic communication of members of re-evaluation institutions shall be monitored by the Independent Investigation Unit established in accordance with Article 148 paragraph 4 of the Constitution, while their financial income shall be monitored by the Directorate General for Money Laundering Prevention upon their approval provided under Article 7, paragraph 3 letter ç) of this law, for the whole duration of their mandate.
2. The member of the re-evaluation institution and their personnel shall handle all information related to the re-evaluation procedure in compliance with the principle of confidentiality and data protection. The re-evaluation institutions are exempt from this

obligation only when the information is given to the assessee or to bodies legally entitled to request such information due to their official function.

Article 29

Salaries and other benefits of the members and advisors

1. Members of the re-evaluation institutions shall work full time.
2. Commissioners and Public Commissioners shall receive the salary and other financial benefits in accordance with the legislation that regulates the status of judges or prosecutors.
3. The judge at the Appeal Chamber shall receive the salary and other financial benefits in accordance with Law "On organization and functioning of the Constitutional Court in the Republic of Albania".
4. The members of the re-evaluation institutions shall receive an additional monthly allowance due to work-related difficulties.
5. The legal/financial advisor shall receive respectively 80% of the monthly salary of the respective member of the re-evaluation institution. They receive an additional payment due to work-related difficulties, as appropriate.
6. Upon termination of the mandate of the re-evaluation institutions, the legal/financial advisor, upon his or her consent, shall have the right to be appointed in functions or public functions which he or she had before his/her appointment or in positions equivalent to them in the public administration.

CHAPTER IV ASSET ASSESSMENT

Article 30

Object of asset assessment

The object of asset assessment is the declaration and audit of assets, the legitimacy of the source of their creation, of meeting the financial obligations, including private interests, for the assessee and persons related to him or her.

Article 31

Initiation of the asset assessment procedure

1. The assessees shall fill out the asset declaration as per Annex 2 attached to this law, within 30 days from the date of entry into force of this Law, addressing it to HIDAAC.
2. HIDAAC shall initiate immediately the checking procedure, as provided in Article 4 paragraph 4 and Article 33 of this law.
3. Within three months after entry into force of this law, the assessees shall, under Article 179/b, paragraph 4, second sentence, of the Constitution, be entitled to file a written request addressed to the Commission regarding the assets assessment. The request shall be attached to the assets declaration, according to Annex 2 of this Law.

Article 32

Declaration of assets

1. The assessee and his or her related persons shall, along with the declaration of assets, submit all the necessary documents justifying the veracity of his or her statements regarding legitimacy of the source of the creation of assets.

2. In case the assessee is objectively not able to present the document which justifies the legitimacy of the creation of the assets, he or she should attest to the re-evaluation institutions that the document has disappeared, has been lost and cannot be remade or cannot be obtained in any other way. The re-evaluation institutions decide if the non-presentation of substantiating documents is for justified reasons. This rule applies also in case the responsible organ for issuing the justifying documents does not reply in due time.
3. If the assessee or related persons have assets outside the territory of the Republic of Albania, he or she shall submit the bank statement of last years, most current property registration records, or other documents demonstrating the value of the foreign-located asset.
4. The assessee and his or her related persons or other related persons who have been declared in the capacity of donors, lenders and borrowers, when they confirm these relations, shall bare the obligation to justify the legitimacy of the source of the creation of these assets.
5. The declarations of private and property interests previously submitted to HIDAACI can be used as evidence by the Commission and the Appeal Chamber.

Article 33

Procedure of re-evaluation of assets

1. HIDAACI based on declarations of assets shall conduct a full audit procedure in compliance with this law, the Law "On the declaration and audit of assets, financial obligations of elected persons and certain public officials, Law "On prevention of conflict of interest in exercising public functions" and Code of Administrative Procedures.
2. The General Inspector of HIDAACI, for the purpose of re-evaluation, can request through the Directorate General for Money Laundering Prevention or Ministry of Justice records of assets owned by assessees and their related persons, documents being used abroad by the assessees and persons related to them or the financial data on any financial transactions in the country or abroad according to Law "On prevention of money laundering and financing of terrorism" of assessees and their related persons. Such documents or information can be used as evidence before the Commission or Appeal Chamber.
3. HIDAACI provides full access to international observers, in order for them to search information, to consult, copy or investigate declarations of assets submitted by the assessee or his or her related persons and their accompanying documents.
4. HIDAACI shall conduct a full audit procedure as soon as possible but no later than 180 days of asset declaration submission.
5. Upon completion of the audit, the General Inspector of HIDAACI shall prepare a reasoned and detailed report, finding, as appropriate:
 - (a) accurate declaration in compliance with the law, with legitimate financial sources and not found in situation of conflicts of interest;
 - (b) lack of legitimate financial sources to justify their assets;
 - (c) hiding of assets;
 - (d) false declaration;
 - (e) assessee found in situation of conflicts of interests.

CHAPTER V BACKGROUND ASSESSMENT

Article 34

Object of the background assessment

The object of background assessment shall be the verification of assessee's declarations and other data with the purpose of identifying assessee's with inappropriate contacts with persons involved in the organized crime, in accordance with the principles and conditions provided for in Article DH of the Annex of the Constitution.

Article 35

Initiation of the procedure for Background Assessment

1. Assessee's shall fill out the declaration form on background assessment as per Annex no. 3 of this law, within 30 days from the date of entry into force of this Law and shall send it to the Classified Information Security Directorate.
2. The National Security Authority shall initiate immediately the background assessment procedure, as provided Article 4, paragraph 4, as well as Articles 37 and 38 of this law.
3. Within six months after entry into force of this law, the assessee mentioned in Article 179/b paragraph 4 second sentence of the Constitution may file a written request addressed to the Commission regarding the background assessment. The request shall be attached to the background assessment declaration, as per the Annex 3 of this Law.

Article 36

The structure responsible for background assessment

1. The re-evaluation institutions in collaboration with the Classified Information Security Directorate are the responsible authorities for background checks. The Classified Information Security Directorate shall be entitled to appoint additional staff to carry out the background check for the purposes of this law. Persons conducting the background assessment shall comply with all applicable standards for the protection of privacy and confidentiality in office.
2. The Classified Information Security Directorate, State Intelligence Service (SIS) and Internal Intelligence and Complaint Service near the Ministry of Internal Affairs shall establish a working group for the implementation of this law. Personnel shall be seconded from these structures to support the working group for a time period not less than 1 year.
3. The Classified Information Security Directorate, based on the request of the working group or of the re-evaluation institutions shall be entitled to communicate with foreign countries to obtain the necessary information about persons involved with organized crime or persons suspected of being involved with the organized crime for the purposes of this law.

Article 37

Tasks of the working group

The working group has, in the course of the procedures for the background check, to abide by the general requirements as follows:

- a) Accurate verification of identity, in the past and present, for every individual;
- b) Verification whether he/she has criminal tendencies of involvement in organized crime;

- c) General evaluation whether the individual might be put under the pressure of criminal structures;
- ç) Checking whether he/she has been or is or attempts to be involved covertly, solely, in complicity or in the composition of a criminal organisation;

Article 38

Standards of background assessment

1. The background assessment shall be conducted based upon accurate evidence, on confidential information, as well as on other available information.
2. The background assessment shall be conducted objectively, free of impacts of personal hostile or friendly character, which might favour or disfavour the assessee.
3. The background assessment shall include an evaluation of evidence and information that are connected to the circumstances which are taken account of in findings under paragraphs 4 and 6 of this Article and mitigating circumstances under paragraphs 5 and 7 of this Article. The assessment has to take account of the circumstances which are taken account of in the finding, as well as the mitigating circumstances of this finding. The assessment that does fail to contain the elements provided for in this paragraph is incomplete.
4. Conditions that are taken account of in the finding that an inappropriate contact with a person involved with the organized crime exists, are:
 - a) The assessee has been photographed or a witness describes a meeting with a person involved with the organized crime.
 - b) The assessee or his or her related person has held a non-random communication with a person involved with the organized crime.
 - c) The assessee or his or her related person exchanges money, favours, gifts or property with a person involved with the organized crime
 - ç) The assessee is closely related to a person involved with the organized crime.
 - d) The assessee participates in or attends meetings, with one or more persons involved with the organized crime. The person's alleged membership in organized crime is well known, has been published, or is a matter documented in the respective registers.
5. Mitigating conditions that are taken account of in finding an inappropriate contact with a person involved with the organized crime exist, if:
 - a) The assessee is believably submitting that he/she is unaware that the person is a person involved with the organized crime. This circumstance can be counterbalanced by the circumstances provided for in in paragraph 4.
 - b) The assessee's family relationship with the person involved with the organized crime is distant, or involves rare family contact.
 - c) The assessee has been open, truthful and complete about the contacts and has distanced himself or herself from them. This condition can be counterbalanced by the timing of the contacts or the perception of reasons of actions undertaken by the assessee.
 - ç) The assessee was aware that the person is a person involved with the organized crime, but was unaware of the fact that he or she would attend a meeting or was tricked into attending. This circumstance can be counterbalanced by the circumstances provided for in in paragraph 4 of this Article.

CDL-REF(2016)069

- d) The assessee's contacts were over five years ago and there are no indications that they continued. This condition can be counterbalanced by the degree of seriousness of the contacts and/or by circumstances provided for in paragraph 4.
- dh) Any other mitigating circumstance, which is submitted credibly by the assessee.
6. Conditions that are taken into account in finding that the declaration form was not completed fully and truthfully exist, if:
- a) The assessee fails to list a contact which is established by credible evidence;
 - b) The assessee fails to list a contact which is corroborated and considered credible out of the information of intelligence and reliable services;
 - c) The assessee fails to list a contact which is established by relevant and credible information and by other evidence; as long as the assessee has other contacts which were either listed or established under this paragraph; if there is other evidence of a benefit, action or consequence from the contact which creates a reasonable suspicion that the obtained information is the only plausible explanation.
7. The mitigating circumstances which are taken account of in the finding that the declaration form was not completed fully and truthfully exist if:
- a) The assessee lists a contact but the date or location is not correct, and this appears to be due to simple error or confusion.
 - b) The assessee fails to list a contact, but has been truthful and complete about other contacts, and this omission appears to be due to simple error or confusion.
 - c) The contact occurred at a location with numerous people and it is credible that the contact would not have been memorable or seemed insignificant. This circumstance can be counterbalanced by the degree of seriousness of the contact or by other factors under this paragraph.
 - ç) The assessee fails to list a contact which involves a family member, and circumstances of that contact would not have been memorable or seemed significant. This circumstance can be counterbalanced by the degree of seriousness of the contact or by other factors under this Article.
 - d) The assessee is believably submitting that he/she is unaware that the person is a person involved with the organized crime. This circumstance can be counterbalanced by circumstances provided for in paragraph 6 of this Article.
 - dh) Any other mitigating circumstance which is submitted credibly by the assessee.

Article 39

Procedure of Background Assessment

1. The Classified Information Security Directorate in collaboration with the working group within 60 days of the formation of the working group, shall verify whether the information is accurate and whether the assessee has any inappropriate contacts with persons involved with the organized crime or alleged members of organized crime. At the end of the 60 days, the Classified Information Security Directorate may ask the Commission for a 30 days extension in particular if information from other states has been requested.
2. Within 10 days since the completion of the check, the Classified Information Security Directorate shall, after the document/report was prepared by the working group, submit it to the Commission. This document/report determines whether an assessee has completed the declaration form fully and truthfully, and whether there is information in the declaration or elsewhere which indicates that the assessee has inappropriate contacts with persons involved in the organized crime, and the finding about the appropriateness for assuming the

office. This document shall provide information on those contacts and circumstances considered under Article 38 of this law. The information shall not be made public if it endangers the safety of a source or is a result of a condition from the government of another state.

CHAPTER VI PROFICIENCY ASSESSMENT

Article 40

The object of proficiency assessment

The object of Proficiency Assessment is the evaluation of the ethical and professional activity of the assessees in compliance with this law and the legislation that regulates the status of judges or prosecutors.

Article 41

Initiation of the re-evaluation procedure for the Proficiency

1. Assesseees shall fill out the professional self-evaluation form within 30 days from the date of entry into force, as per Annex no 4 attached to this law, and shall send it to the proficiency assessment body.
2. Within three months after entry into force of this law, the assessee mentioned in Article 179/b paragraph 4 sentence two of the Constitution may file a written request addressed to the Commission with the purpose to be re-evaluated. The request shall be attached to the professional self-evaluation form as per annex no 4 of this Law.
3. The proficiency assessment period for the effect of this law shall be for the three previous years of assuming office, since the entry into force of this law. In case the assessee has less than three years in office, the re-evaluation period shall consist of all years of assuming the office.
4. The proficiency re-evaluation may be extended from 1 January 2006 onwards, referring to the information available on ethical and professional performance. The Commission or Appeal Chamber shall take this information into consideration if the rapporteur or the international observer considers it to be indispensable for the re-evaluation process.

Article 42

Sources for the proficiency assessment

1. The Constitutional Court judges, High Court judges and all judges and prosecutors shall be re-evaluated based on sources provided in the legislation that regulates the status of judges or prosecutors. The General Prosecutor shall be evaluated based on the performance of his duties provided in Article 8 of the Law no 8737/2001 "On the organisation and functioning of the prosecution office in the Republic of Albania", as amended, for 3 year period since the start of the mandate.
2. The legal adviser at the Constitutional Court, the legal assistant at High Court and administrative courts and the legal assistant at the Prosecution Office, that are not magistrates, shall be assessed based on:
 - (a) prepared reports and legal opinions; and
 - (b) results of the exam at the School of Magistrates.

CDL-REF(2016)069

3. The inspector shall be re-evaluated based on the criteria contained in the decision 36, dated 29.04.2015 of the High Council of Justice “On the criteria and procedures for the proficiency and ethic evaluation of the chief inspector and the inspectors of the High Council of Justice”.
4. The provisions of second paragraph of this Article shall apply to former advisors of the Constitutional Court and former legal assistants of the High Court with at least 3 years of work experience in this function as well as for the inspectors who are not magistrates.
5. Former judges, prosecutors shall be re-evaluated based on following sources;
 - a) 5 legal documents produced by the assessee during the period of assuming office;
 - b) Performance evaluation reports during the period of assuming office;
 - c) If no evaluation reports are available for the former judges or prosecutors, the assessee shall undergo the exam of the School of Magistrate in accordance with paragraph 2, letter b of this Article and the provisions of Law regulating the functioning of the School of Magistrates.

Article 43

Procedure for the proficiency assessment

1. The re-evaluation procedure shall be carried out in accordance with the legislation that regulates the status of judges or prosecutors, as far as applicable.
2. The relevant proficiency assessment body reviews legal documents compiled by the assessee during the period subject to re-evaluation. The body, after reviewing the legal documents selected by the assessee according to Annex 4 and 5 other legal documents selected through an objective and random system, shall prepare a detailed and reasoned report. This report shall be submitted to the Commission, immediately, but not later than 90 days of filing the proficiency self-evaluation form.
3. The assessee and the relevant bodies shall ensure that the re-evaluation institutions receive the necessary documents. If the re-evaluation institutions do not obtain the documents required, the Rapporteur shall send a notice to the assessee or the relevant organ to provide them within 5 days. Failure to cooperate may result for the assessee in an assessment of “inadequate”, while relevant organs are held liable according to Article 50 paragraph 6 of this law.
4. If the Rapporteur has become aware from the citizens or the public or other reliable resources in accordance with Article 49 of this law regarding reliable facts on the performance of the assessee, he may continue with the proficiency assessment.
5. The Rapporteur, in extraordinary cases where information is complex or difficult to obtain, may request an extension of the re-evaluation period from the Commission.

Article 44

Re-evaluation report

The Rapporteur shall prepare the proficiency report based on the report of the Inspectors, the information received from other sources, and on evaluation criteria foreseen in the legislation that regulates the status of judges or prosecutors and other legal acts. In the end, the rapporteur shall propose for the assessee as follows:

- a) “Competent”, where the assessee has demonstrated an acceptable quality of work, fair judgment, has observed rights of litigants or victims, and is acceptably efficient and effective.

b) "Deficient", where the assessee has demonstrated an unacceptable quality of work, poor judgment, has not routinely observed rights of litigants or victims, or is inefficient or ineffective. The Commission shall recommend a training program at the School of Magistrates designed to repair these deficiencies within one year;

c) "Inadequate", where the assessee has demonstrated an unacceptable quality of work, poor judgment, has not routinely observed rights of litigants or victims, or is ineffective to the extent that the training program at the School of Magistrates cannot resolve this issue within a year or has not successfully passed the exam at the School of Magistrates.

CHAPTER VII PROCEDURE OF RE-EVALUATION

Article 45

The general rules of the case investigation

1. Members of the Commission, judges at the Appeal Chamber and international observers shall investigate and assess all necessary facts and circumstances for the re-evaluation procedure.
2. During the administrative investigation, the Commission, the Appeal Chamber and the international observer may request information from any subject of public law according to Articles 49 and 50 of this law. They shall administer all documents which ascertain acts, facts, qualities or subjective situation necessary for the realization of the investigation.

Article 46

Notification

1. The notification and any communication during the re-evaluation process shall be made at the electronic address of the assessee provided in the asset declaration provided in Article 31, paragraph 1 of this law.
2. If the assessee is on annual leave or maternity leave, the notification shall be made at the private email address of the assessee provided in the asset declaration provided in Article 31 paragraph 1 of this law.
3. The assessee is entitled and obliged to access and use the official electronic address during the re-evaluation process.
4. In case of failure of notification according to the provisions mentioned above, other forms of notification foreseen in the Administrative Procedure Code are valid.

Article 47

Rights of the assessee

Rights of the assessee during the re-evaluation process are provided in Articles 35 - 40 and 45-47 of the Administrative Procedure Code.

Article 48

Cooperation during the investigation process

The assessee is obliged to cooperate with the Commission and the Appeal Chamber which shall, in the decision making process, take into account the readiness and behaviour of the assessee during the process.

Article 49**Tools for searching evidence**

1. The Commission or the Appeal Chamber, in order to establish facts and circumstances pertaining to the case, has the rights to:
 - (a) obtain legal documents according to Article 3, point 2) of this law;
 - (b) collect declarations from the assessee, witnesses, experts and the public;
 - (c) take other written documents according to the forms provided in the law or documents taken through other photographic, recording or other technical means;
 - (ç) inspect and control movable and immovable assets based on the competent court decision.
2. The testimony of a witness or expert during criminal proceedings, may be used as evidence.
3. Facts known to the Commission or generally known facts and presumed facts from the law, do not need further evidence.
4. The Commission or the Appeal Chamber shall base decisions only on documents from known sources, on reliable evidence, or which are strongly consistent with other evidence. They are entitled to evaluate according to their internal conviction each indicia holistically regarding the circumstances of the case.
5. Documents or information obtained from foreign state sources in compliance with this law shall be considered by the Commission or Appeal Chamber.
6. The request to take evidence shall be rejected by the Commission or the Appeal Chamber if it is not allowed by the law or:
 - a) if taking of such evidence is superfluous;
 - b) the fact which is required to be established is insignificant for the decision-making or it may turn out established in the course of proceedings;
 - c) the exhibit is wholly inappropriate or unobtainable;
 - d) it is made to protract the proceedings;
 - dh) a fact in favour of the assessee is alleged to be established, which even if it is considered to be true, does not have any impact on the decision making.
7. A request to inspection can be rejected by the Commission or Appeal Chamber, if the inspection is deemed to be not necessary for establishing the truth.
8. The rules determined in paragraph 6 of this Article apply also for summoning the witness, whose summons has to be affected outside the territory of the Republic of Albania.
9. The rejection of the request for taking the evidence shall be made in reasoned decision of the Commission or Appeal Chamber by providing the arguments for its rejection.
10. A finding, submitted in the form of a statement, document or report submitted by an international observer shall constitute evidence establishing a fact, circumstance or legal standard which exists or has already occurred. The finding shall present the circumstances for that finding. The Commission or the Appeal Chamber shall give it the deference of an expert report. The refusal of the finding shall be done in reasoned decisions of the Commission or Appeal Chamber.
11. A written opinion by an international observer shall be considered to be a conclusion about a concrete circumstance during the re-evaluation process or which emerges out of the facts in individual cases. The opinion may be persuasive to the decision-making of the Commission or Appeal Chamber, but it does not have the value of evidence.

12. The rejection of the request of the international observer for taking evidence is made by a grounded decision of the Commission or Appeal Chamber, providing arguments for the rejection.

Article 50

Access to information

1. The Commission, Appeal Chamber, and international observers shall collaborate with state institutions, individuals or legal entities, domestic or foreign, to verify truthfulness and accuracy of statements made by the assessee.

2. The Commission, Appeal Chamber and international observers shall have full access to all databases like specialized prosecution office according to Article 148 paragraph 4 of the Constitution, especially, to the following:

a) on the criminal records of the assessee;

b) personal files of assessees, statistical data, legal documents and files selected for evaluation, self-assessments, supervisors opinions, data on training, and complaints against persons subjected to evaluation, results from the verification of complaints, as well as decisions on disciplinary measures against assessees;

c) data in immovable properties of the assessee registered with the immovable property register or obtained through a notarial act not registered with the Immoveable Properties Registration Office. For this purpose, the Commission or the Appeal Chamber have the right to request information from the immovable property register and/or the Albanian notarial register;

ç) bank accounts, tax information, vehicles database, border entry and exit data;

d) data on ownership rights or interests on assets of every kind, moveable or immovable, corporeal or incorporeal, material or immaterial, including those evidenced in electronic or numeric format, including but not limited to instruments such as loans, traveller's cheques, bank cheques, payment orders, all types of securities, standing orders and letters of credits, and any interest, dividends, other income or value deriving thereof.

dh) data on possible business relationships, commercial activities or other professional activities.

e) data that prove the existence of money in cash or other monetary market means or interests and/or payments, including but not limited to cheques, receipts, certificates of deposits, debit or credit cards, electronic payment cards, securities, and any other document that proves the existence of a monetary obligation or other deposited value and an obligation to pay to the assessee a corresponding amount in cash money or other form;

ë) data that prove the existence of trusts or other similar agreements.

3. If the data and information on cases provided in paragraph 2 of this Article, are kept and administered electronically or processed and updated through a computer system, the public institution or legal private entity exercising a public function are obliged to provide the Commission and Appeal Chamber with the necessary access codes to fully access the information needed for the evaluation. The levels of access for each case are run through the security level determined based on the function and need for information from the Commission and Appeal Chamber.

4. Upon request from the Commission or Appeal Chamber, second level banks and other entities exercising banking and financial activities in the Republic of Albania are obliged to provide any information on deposits, accounts and transactions of the person subjected to

evaluation or persons related to them. Private institutions shall be reimbursed by the re-evaluation institutions for each request including for access to database and copies issued for documents.

5. Data collection, processing and administration as per this Article is subject to rules on personal data protection determined by the legislation in force. The Commission or the Appeal Chamber takes appropriate organizational and technical measures to protect personal data from illegal or accidental destruction, accidental loss, to protect access or disclosure by unauthorized persons, especially when data processing is done electronically, as well as by any other illegal form of processing, in compliance with the personal data protection legislation.

6. Within 15 days from receipt of the request, any state body or public legal entity is obliged to collaborate with the Commission and Appeal Chamber for the delivery, access to and verification of data, facts or circumstances. Failure or refusal to collaborate, obstruction, delays or misconduct of the verification process shall be reported to the prosecution office as criminal offence, according to Article 248 of the Criminal Code, and shall constitute disciplinary misconduct.

7. The Commission, the Appeal Chamber and international observers have the right to request international cooperation within the framework of international treaties and diplomatic channels. Request are handled by the competent ministry.

Article 51

Conclusions based on facts

If the assessee does not present evidence in accordance with Article 85 of the Administrative Procedure Code and in case the evidence they possess is incomplete, the Commission and the Appeal Chamber may decide based on the available evidences, on the general assessment of the case and on their internal conviction.

Article 52

Burden of Proof

1. The Commission and the Appeal Chamber shall, while examining the case, be led by the principle of objectivity and proportionality.

2. If the Commission or the Appeal Chamber concludes that the evidence has reached the standard of proof under Article 45 of this Law, the assessee shall have the burden of proof to provide further evidence or explanations to establish the opposite.

3. The provisions of Article 82 of the Code of Administrative Procedure do not apply.

Article 53

Participation of public in denunciation of facts

1. Each person who becomes aware of facts or circumstances which might constitute evidence related to the re-evaluation criteria has the right to inform directly re-evaluation institutions. The re-evaluation institution is obligated to review whether the information is received by a known or anonymous person.

2. The information shall contain the description of the data to assess the legal misconduct according to the re-evaluation criteria, specifically details on the suspected action or practice, legal consequences, circumstances on facts which leads to the conviction that there has been law infringement as well as the data of the informant.

3. Withdrawal by the informant from the reporting does not lead automatically to the dismissal of the investigation if the Commission or the Appeal Chamber considers that alleged action or practice contains sufficient grounds for an ex officio investigation.
4. The Commission or Appeal Chamber shall publish a denunciation template in order to facilitate submission of information by the public.
5. The rights and interests of persons who denounce shall be automatically protected in trustable, effective and appropriate manner, according to the same standards provided in Law "On whistle-blower and protection of whistle-blowers".

Article 54

Justice collaborator

1. The person who participated in the commission of a criminal offence of corruption with the assessee is entitled to address the competent prosecution office for investigating criminal offences of corruption charges according to the criminal legislation.
2. The prosecutor can grant to the person the status of justice collaborator if the latter is willing to give sufficient evidence, about a concrete corruption charge involving him or her and the assessee.
3. The person is entitled to be represented by a defence council.
4. If a collaboration agreement is reached, the justice collaborator must give full information, without any reserve or condition, on all the facts, events and circumstances, which serve as decisive evidence for the discovery, investigation and prevention of corruption of assesses. The written statement of a justice collaborator done in front of the prosecutor constitutes an essential evidence for the re-evaluation process and all other legal procedures.
5. The justice collaborator is not prosecuted for the corruption criminal offences he has committed with the assessee, referring to his testimony. A copy of the testimony and collaboration agreement shall be given to the justice collaborator and re-evaluation institutions.
6. The collaboration agreement can be revoked, if the justice collaborator is not delivering evidence to the re-evaluation institutions or made false testimony for which he shall be held criminally liable in accordance with the criminal legislation.
7. The assessee having benefitted the amount shall be obliged to return it to the justice collaborator even if the latter violated the law. The assessee is not legitimate to claim that the enrichment has been lost in the meantime. The reimbursement can be claimed directly from the related persons of the assessee, if it is asserted that an amount exceeding 100.000 ALL has been transferred to him without legal cause since 1.1.2006. Assessee and related persons have the right to file regress claim before the court against the third persons who might have benefitted the respective amount.

Article 55

Hearing

1. The Commission shall invite the assessee to a hearing in conformity with the rules provided in the Administrative Procedure Code. International observers shall be notified in advance about the hearing.
2. The Commission's hearing shall be held in public as provided in Article 20 of Law "On the organization and functioning of administrative courts and adjudication of administrative disputes".
3. The Commission shall have the right to interrogate the assessee. If the assessee consents to answer, the international observer may ask questions. The assessee has the

right to refuse to answer questions. Questions can include a test of knowledge and practical skills in the field of law where the assessee is currently working or has worked within the last year.

4. The Commission may reasonably limit the time provided for the assessee to speak.
5. All deliberations for making the decision regarding the assessee are held behind closed doors in the presence of the international observer. The decisions by the Commission shall be taken by open vote and by simple majority of the panel members. In case of dissenting or concurring opinions during the decision making process, the Commissioner which has a dissenting/concurring opinion shall provide grounds regarding is opinion in writing. International observers are entitled to write a dissenting opinion which shall accompany the final decision. Minutes of deliberations of the case shall be kept by the register staff of the Commission.
6. The decision is announced at the end of the hearing.
7. The written decision shall be notified to the assessee, the public commissioner and international observers within 30 days after the end of the hearing. The decision shall be published on the Commission's website.

Article 56

Resignation of assessees

1. The assessee has the right to resignation not later than three months from the entry into force of this law. The resignation shall be submitted in written form to the President of the Republic and shall be published in its official website. In case of resignation, the Commission shall issue a decision on the termination of the re-evaluation procedure.
2. If assessee resigns, the assessee shall have the right to receive a transitory payment according to Article 7 paragraph 1 of Law "On supplementary state pensions of officials who exercise constitutional functions and other state officials".

Article 57

Decision of the commission

1. The Rapporteur shall provide the reasoning of the decision of the Commission in writing.
2. The decision shall contain the introduction, the descriptive justifying and the ordering part.
3. In the introduction of the decision shall be mentioned:
 - a) the official name of the Commission
 - b) the panel which has adjudicated the case and the administrative assistant;
 - c) time and place of the issued decision;
 - ç) name and generalities of the assessee, as well as their representatives;
 - d) opinion of the assessee or his/her representatives;
4. In the descriptive-justifying part shall be mentioned:
 - a) circumstances of the case, as they have been assessed during the process, and the conclusions drawn by the Panel;
 - b) evidence and reasons on which the decision is based;
 - c) Report and Recommendation of the Rapporteur.
 - ç) legal provisions on which the decision is based.
5. In the ordering part, among others shall be mentioned:
 - a) alternative determined by the panel;
 - b) if the Panel has decided to issue a disciplinary measure;
 - c) the right of appeal and the time-period for its filing.

Article 58

Disciplinary measures

1. At the end of the process, the Commission may decide regarding the assessee:
 - a) Confirmation in duty;
 - b) Suspension from duty for a period of one year and the obligation to follow the training program according to the curricula approved by the School of Magistrates;
 - c) Dismissal from office.
2. In case of the assesseees provided in Article 179/b paragraph 4, second sentence of the Constitution who have passed successfully the re-evaluation, the Commission can decide:
 - a) appointment as judge or prosecutor in accordance with the provisions of the legislation that regulates the status of judges or prosecutors.;
 - b) refusal of appointment as judge or prosecutor, in accordance with the provisions of the legislation that regulates the status of judges or prosecutors.

Article 59

Confirmation in duty

1. The decision on the confirmation in duty for the assessee may only be issued if the assessee meets all the following conditions together:
 - a) Achieves trustable level of asset assessment;
 - b) Achieves trustable level of background assessments;
 - c) Achieves a minimally qualified score in the proficiency assessment;
2. The above mentioned paragraph is not applicable in case of Article 61 paragraph 5 of this law.
3. The Commission shall reason in its decision that the assessee is qualified to resume assuming office, explaining reasons of not issuing a disciplinary action.
4. Although the Commission decides to issue the decision of confirmation in duty, it has the right to transfer the file to the competent inspecting disciplinary body, if the Commission identifies reasons which constitute disciplinary misconduct in accordance with the legislation that regulates the status of judges or prosecutors, or if it identifies reasons to be considered during the periodic evaluation. This decision is not appealable. The competent body begins without delay consideration of reasons in accordance with the legislation that regulates the status of judges or prosecutors.

Article 60

Suspension from duty and the obligation to attend the training program

1. The suspension from office and the obligation to undertake a one year training program shall be rendered to the assessee if deficiencies have been detected in his or her proficiency that can be remedied.
2. If the assessee completes the training program, the School of Magistrates shall provide the General Secretary of the Commission and international observers with final exam scores and certifying whether the deficiency has been remedied or not remedied.
3. The Commission shall notify the assessee within 10 days to submit a written explanation why he or she has not successfully completed the training program during the suspension period. A copy of the notification shall be given to the international observer.

Article 61
Dismissal from office

The dismissal from office of the assessee shall be imposed as disciplinary measure in the following cases:

- 1) If it emerges that he has declared more than twice the legitimate income during the assets evaluation, including persons related to him or her;
- 2) If it emerges that the assessee presents grave concerns of background check, since he/she has inappropriate contacts to persons involved in the organized crime, which makes it impossible for the assessee to hold the position;
- 3) If it emerges that the assessee lacked full disclosure regarding the background check and the asset assessment under Article 39 and 33 and of this law;
- 4) If it emerges that he is inadequate regarding the proficiency assessment;
- 5) If the overall assessment in the sense of Article 4 paragraph 2 of this law finds that the assessee jeopardizes the public trust in the judicial system and he/she is under the circumstances of impossibility to remedy the deficiencies by a training program.

CHAPTER VIII
APPEAL

Article 62

Rights of the assessee after the decision of the Commission

1. The assessee, who has exercised the right to appeal against the Commission's decision on the disciplinary measure of dismissal from office, shall be suspended *ex lege* from his or her duties pending the decision of the Chamber of Appeal. During the suspension period, the assessee shall have the right to receive 75% of the salary in accordance with Article F paragraph 5 of the Annex of the Constitution.
2. In such a case, the assessee shall not be entitled to examine and adjudicate cases. He/she is obliged to provide a functioning email address in order to continue the communication with the re-evaluation institutions during the process.
3. If no alternative electronic address is available, the assessee shall be notified in accordance with Article 52 of Law "On the organisation and functioning of administrative court and the adjudication of administrative disputes".

Article 63

Filing the Appeal

1. The decisions of the Commission shall be appealed within 15 days from its notification in the Appeal Chamber by the Assessee and/or the Public Commissioner.
2. The Appeal shall be submitted to the Commission which has issued the decision according to Article 46 of the Law "On the organisation and functioning of administrative court and the adjudication of administrative disputes".
3. The rules on administrative appeal provided in Article 128 of the Code of Administrative Procedure are not applicable.

Article 64

Notification of the Appeal

The Appeal shall be notified to the assessee and public commissioner in conformity with the rules provided in Article 42 of this law and Article 52 of the Law "On the organisation and functioning of administrative court and the adjudication of administrative disputes".

Article 65

Judicial proceedings

1. The judicial proceedings before the Chamber of Appeal shall be in conformity with rules provided in Articles 47, 48 /1; 49, 51, 55 of the Law no 49/2012 "On the organisation and functioning of administrative court and the adjudication of administrative disputes".
2. The international observer shall submit a written recommendation to the Public Commissioner to file an appeal. This recommendation shall be issued by a commission composed of at least 3 representatives of the International Monitoring Operation.
3. In case of appeal by the Public Commissioner, the Appeal Chamber shall adjudicate the case in hearing proceedings.

Article 66

Decision of the Appeal Chamber

1. Following the examination of a case, the Appeal Chamber shall:
 - a) uphold the decision of the Commission
 - b) Modify the decision of the Commission;
 - c) quash the decision of the Commission;
2. The Appeal Chamber, in the reasoning of its decision, may give indication to the Commission helping it to decide on similar cases.
3. The decision of Appeal Chamber ordering dismissal has *ex lege* immediate effect.

Article 67

Reinstatement of time limits of appeal

1. When the assessee and public commissioner have forfeited the right to appeal they may submit a request within 15 days, from the date that the he or she becomes aware of the reason, but not later than the decision taken by the Assembly as provided in Article 179/b, paragraph 9 of the Constitution to seek the reinstatement of the right to appeal.
2. The request shall be reviewed by the Appeal Chamber and shall be admitted only if the appeal has not been filed in time due to legitimate and reasonable grounds.

CHAPTER IX

FINAL PROVISIONS

Article 68

Transitory relations among institutions

1. Proficiency Assessments completed by the relevant proficiency assessment body at the date of initiation of the functioning of the Commission or Appeal Chamber shall be handed over to the latter. Minutes of the handover of the legal documents, and reports related to proficiency assessments shall be signed by the representative of the proficiency assessment body and one Commissioner selected by lot.
2. The School of Magistrate shall, for the purposes of implementing this law, organize an extraordinary exam for admitting 25 candidates for magistrate (divided in judges and prosecutors) respectively for each academic year 2016- 2017 and 2017-2018.

CDL-REF(2016)069

3. The Bureau of the Assembly within 5 days from the entry into force of this law, approves in regard to electronic voting system:

- a) the necessary limit funds;
- b) terms of reference for the conduct of the electronic system and offering the service, as well as;
- c) the necessary procurement procedures avoiding the rules foreseen by the legislation in force on public procurement;

The Assembly, within 25 days from the entry into force of this law, shall guarantee the funds and shall conduct the necessary procurement procedures for the electronic voting system foreseen in Article 10 of this law. Each parliamentary group shall appoint its experts for the supervision of the establishment and functioning of the electronic system.

4. The responsible organs shall, immediately upon entry into force of this law, be tasked to take the necessary legal and administrative measures for its implementation.

Article 69

Sublegal acts

1. Within 30 days from entry into force of this law, the Council of Ministers shall be in charge of taking the necessary measures to provide office premises to the re-evaluation institutions, and provide for the necessary conditions for the observation of the requirements of this law.

2. Upon entry into force of this law, the School of Magistrates shall be in charge to approve the rules and the procedure for the testing provided in Article 42 paragraph 2, letter b) of this law.

3. 30 days after establishment of the re-evaluation institutions, the meeting of the commissioners, or judges or public commissioner shall approve the rules on the activities of the respective re-evaluation institutions.

4. The procedures on the organization of the lot provided in Articles 14 and 15 of this law shall be approved, as appropriate, upon decision of the meeting of the commissioners, or judges or public commissioner.

Article 70

Dissolution of re-evaluation institutions

1. The re-evaluation institutions shall cease operations in accordance with Articles 179/b paragraph 9 of the Constitution.

2. Unless otherwise authorized by Assembly, the only mandate which shall continue shall be the Secretary General and sufficient staff to complete duties.

Article 71

Entry into force

This law enters into force 15 days after its publication in the Official Gazette.

**SPEAKER
ILIR META**

Approved on 30 08 2016