



***Functioning of the judicial  
system in Albania with focus  
on recent changes regarding  
the EU accession process***

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## ***The principle of separation of powers***

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Derives from art. 7 of the Albanian Constitution:

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

Independence of the judiciary, cannot be considered separately by the way a democratic state functions and it is unquestionably, one of the essential guarantees for the respect of human rights.



## *The importance of an independent judiciary*

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The main standards of the independence of judges have been approved by the UN in the 7<sup>th</sup> Congress held in Milan in 1985, in the instrument that appeals to the member states to respect what are considered as “Fundamental Principles regarding the independence of Judicial Organs”.



## *The importance of an independent judiciary*

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- The international organisms have sanctioned the necessity of directives, which, - adopted in the legislation of every country,- constitute the legal guarantees for the independence of the judiciary such as: Recommendation No. R 94(12) of the Ministers of the Council of Europe on October 13, 1994 or the “European Charter on the statute for Judges” approved by the Council of Europe on July 10, 1998.

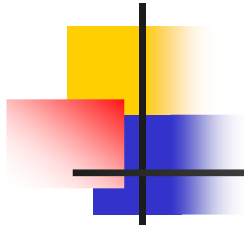


## ***Albanian legislation approaching EU***

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- On 12 June 2006, the *Stabilisation-Association Agreement* between the Republic of Albania and the European Communities, was signed in Luxembourg.

## ***What changes have been done?***



The Albanian legislation has undergone visible changes regarding the adaptation with the European standards for guaranteeing an independent judicial system and it continues to be in evolution.

In 2006, the Albanian government approved the decision “on the national plan for the implementation of the association-stabilization agreement”, for the approximation of the domestic legislation with that of the EU and for the implementation of commitments stemming from this agreement.



## *The judicial system in Albania*

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- The Albanian Constitution (approved by referendum in 1998) provides:
  - 1. The judicial power is exercised by the High Court, as well as by the courts of appeal and courts of first instance, which are established by law.
  - 2. The Assembly may by law establish courts for particular areas, but in no case an extraordinary court.



# *The High Court of Albania*

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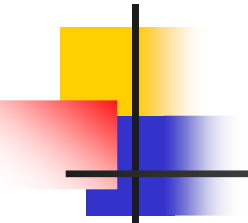
- Article 136 of the Constitution
- 1. The members of the High Court are appointed by the President of the Republic with the consent of the Assembly.
- 2. One of the members is appointed President following the procedure contemplated by paragraph 1 of this article.
- 3. The President and members of the High Court hold office for 9 years without the right of re-appointment.



# The courts of appeal and the district courts

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- Article 136 of the Constitution
- 4. The other judges are appointed by the President of the Republic upon the proposal of the High Council of Justice.
- 5. Only citizens with higher legal education may be judges. The conditions and procedures for selection are defined by law.
- **LAW No. 9877 dated 18 February 2008**
- **ON THE ORGANISATION OF THE JUDICIAL POWER IN THE REPUBLIC OF ALBANIA**



***The law 9877/2008 provides in  
reliance with the Constitution, in  
article 3:***

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- 1. The judicial power is exercised by the courts of first instance, the courts of appeal and the High Court.
- 2. Courts may be created by law for particular fields, but in no case may an extraordinary court be created.



## ***Organization and competences of the first instance courts***

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*The courts of first instance are the courts of the judicial districts & the courts for serious crimes.*

Article 6 of the Law No.9877 provides:

- The courts of the judicial districts are organized and function in judicial districts in the entire territory of the Republic of Albania.

Therefore, there are 22 courts of districts operating in Albania (Tirana , Berati, Dibër, Durrës, Elbasan, Fier, Gjirokastër, Kavajë, Korçë, Krujë, Kukës, Kurbin, Lezhë, Lushnjë, Mat, Pogradec, Pukë, Sarandë, Shkodër, Tropojë, Vlorë, Përmet)



## ***Organisation and competences of the courts***

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The courts for serious crimes are organized and function in one or more judicial districts.

According to the specific law, actually there is only one Court for serious crimes based in Tirana. (first instance)



## ***Organization and competences of the courts of appeal***

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The territorial competences and the centre of exercise of activity for the courts of appeal are set by decree by the President of the Republic on the proposal of the Minister of Justice.

The Minister of Justice makes proposals after first having received the opinion of the High Council of Justice.



## *The courts of appeal*

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- The courts of second instance are the courts of appeal and the courts of appeal for serious crimes.
- There are 6 courts of appeal in Albania (Tiranë, Durrës, Shkodër, Korçë, Vlorë, Gjirokastër).
- There is one Court of Appeal for Serious Crimes based in Tirana.



## *The number of judges*

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- The number of judges for each court of first instance and for each court of appeal is set by decree of the President of the Republic, on the proposal of the Minister of Justice.
- The Minister of Justice makes proposals after having first received the opinion of the High Council of Justice.

## *The number of judges*

- The total number of judges, - including the judges of the first instance and appellate courts - is **374**

Tirana 61; Berati 11; Diber 5; Durrës 24,  
Elbasan 17, Fier 16, Gjirokaster 13,  
Kavajë 7; Korçë 21; Krujë 7; Kukës 6; Kurbin 6;  
Lezhe 9; Lushnje 10; Mat 4; Pogradec 8; Puke  
4; Sarande 9; Shkoder 19; Tropoje 4; Vlore 19;  
Permet 4; The court for the serious crimes 16.

*The organics variate depending on the administrative area they cover.*



## *The number of judges*

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- The courts of Appeal:
- Tirana 25, Durrës 10, Gjirokastër 6, Korçë 6, Shkodër 7, Vlorë 10,
- Court of appeal for serious crimes 11.

Some of the main courts such as the appellate courts of Tirana, Durrës and Vlora have increased the number of the judges, due to the Presidential Decree of September 2009.



## ***Conditions for being appointed a judge***

- For the albanian citizens there are two ways to become a judge in the Republic of Albania :
  - 1- ***to have completed the Magistrates' School***, meeting in addition other legal criteria such as:
    - a) to have full capacity to act;
    - b) to be with higher legal education;
    - ç) not to have been sentenced by final judicial decision for the commission of a criminal offence;
    - d) to have high moral qualities and professional abilities.



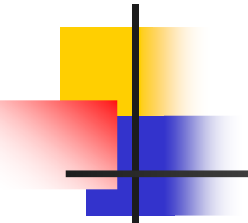
## ***Conditions for being appointed a judge***

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2- there is an open possibility to be recruited in the system, ***for those who have previously worked as judges*** and meet the abovementioned criteria.

However, this is the exception and not the rule, therefore the law requires that such appointments can not exceed 10% of the total number of judges.

*The problem already detected at this article, is the articulation, considering that someone can be appointed even if he/she has exercised the duty of the judge f.e for 2 months previously.*



***Appointment of a judge Law No.  
9877/2008***

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A judge in the court of first instance and in the court of appeal is appointed by the President of the Republic, on the proposal of the High Council of Justice.

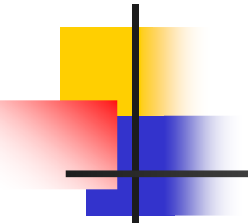


## *Appointment of the serious crimes' judge*

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- A judge of the court for serious crimes is appointed by the President of the Republic on the proposal of the High Council of Justice, on the basis of a competition with *curricula vitae*, after:
  - a) having worked for no less than 5 years in the courts of first instance;
  - b) being distinguished for professional abilities and high ethical-moral qualities;
  - c) being evaluated "**very good**" for professional abilities the last two times;
  - ç) not having a disciplinary measure in force.
- Such criteria are seen as a promotion within the judiciary, as long as the serious crime judges have to be experienced, and selected among those with the best professional performance.

# *Promotion of the judge – legal criteria*

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- A judge of the court of appeal is appointed by the President of the Republic on the proposal of the High Council of Justice, on the basis of a competition with curricula vitae, after:
  - a) having worked for no less than 7 years in the courts of first instance;
  - b) being distinguished for professional abilities and high ethical-moral qualities;
  - c) being evaluated “very good” for professional abilities the last two times;
  - ç) not having a disciplinary measure in force.

The albanian carrier system only provides being promoted from the first instance court, to the appellate court. The high Court judges, – standing on the pyramide of the judicial power, are appointed from the albanian assembly on proposal by presidential decree



## ***Promotion of the judge – the procedure***

*The appellate judges are selected between the candidates, who meet the above mentioned conditions, **on base of their request.***

The High Council of Justice selects based on '**a point system**', actually a missing sublaw – the HCJ decision on this point system, that has not been approved yet.

However, the law provides the main criteria to be applied on this point system, such as:

- seniority in the profession,
- ongoing work results,
- scientific and academic activity.



## ***Promotion of the judge – the procedure***

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On terms of promotion, the HCJ is only proposing to the President of the Republic (the chairman of the HCJ) the candidate selected to become a judge of the court of appeal.

The President issues a decree for the appointment to office of the *judge - candidate*, proposed by the High Council of Justice, within 30 days.

After this time period, the proposal is considered rejected.



## ***The decree No. 1501 dated 29/05/1996 of the President of the Republic***

- (article 312 of the Civil Procedure Code)
- The decree provides the creation of the sections for commercial, family and administrative disputes.
- 17 sections of administrative and commercial disputes and 22 sections of family disputes.
- Not all the courts have these sections: Eg. The District Court of Durrës shall have the territorial competence to solve the commercial and administrative disputes in Durrës and Kavaja District.



## *Status of a judge*

- A judge cannot be moved from duty, except when:
  - a) he resigns;
  - b) he reaches the age of 65, [the age] of going on pension;
  - c) he is punished by final judicial decision for the commission of a crime;
  - ç) he is discharged from duty.



## *Transfer and delegation of judges*

- 1. The transferring of judges may not be done without their consent, except when the needs of a reorganization of the judicial system dictate it.
  
- 2. When a court does not have the ability to examine one or more cases within reasonable time periods, the High Council of Justice may, on the reasoned request of the chairman of the respective court, delegate judges from other courts.
  
- The delegation of judges is done only for specific cases, actually there is a specific decision of the High Council of Justice 'on the criteria and manner of delegation of the judges'. This decision – on the procedure of delegating a judge in a specific case - takes in account:
  - geographical nearness of the courts,
  - individual workload of the judges in the court he/she is delegated from;
  - the sections to which they belong.

# *Incompatibilities with the office of judge*



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A judge may not exercise any other state, private or political activity;

It has been widely debated among lawyers and judges, if a judge is constitutionally allowed to exercise academic activity (teaching at university)

The law does not specify it as an prohibition, nor consents it explicitly. Such an activity does not contradict the essence of the judicial activity. In many countries such an activity is regulated by sublaws, regarding the parameters of the teaching schedule of the judge.



## *Restrictions because of office*

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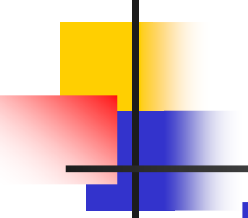
- 1. A judge is also prohibited:
  - a) from being part of political parties or taking part in activity of a political nature;
  - b) from taking part in the administration or direction of commercial companies, personally or by representation;
  - c) from being experts or an arbiter in an arbitration;
  - ç) from making public declarations in connection with proceedings;
  - d) from making known the opinions that were given during trial sessions that have not yet taken the form of a decision;
  - dh) from making declarations in public about anything else that infringes on impartiality in the proceeding;
  - e) from striking.
- 2. A judge should maintain his dignity, not permitting actions that compromise the profession, the organs of justice and his figure in society.



## ***Rights and benefits because of office***

- 1. A judge has the right to have special protection from the state for himself, his family and property, when he asks for it himself, for serious circumstances that endanger life, family, and property, according to criteria and procedures defined by decision of the Council of Ministers.
- 2. A judge earns annual paid leave of 30 calendar days. The annual leave is taken in the month of August. A judge assigned to perform urgent duties in August takes annual leave at another time, gaining five additional days.
- 3. A judge who performs urgent duties on weekends or official holidays earns a pay supplement in the amount of 50 percent of his daily pay.
- 4. Judges may create associations or organizations to protect their rights and interests as well as for their professional advancement.

## ***Pay of a judge and chairman of a court of first instance***

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- 1. The base pay of a judge in a court of first instance is equal to 50 percent of the pay of a judge of the High Court. After five years seniority in service, as provided in article 28 of this law, for every year of seniority this pay is increased by 2 per cent per year, up to 25 years of service.
  - 2. The base pay of a judge of the court of first instance for serious crimes is equal to 50 percent of the pay of a judge of the High Court. After five years seniority in service, as provided in article 28 of this law, for every year of seniority this pay is increased by 2 per cent per year, up to 25 years of service. Over this pay 10 per cent is addition for special work conditions.
  - 3. The base pay of the chairman of a court of first instance is equal to 50 percent of the pay of a judge of the High Court. After five years seniority in service, as provided in article 28 of this law, for every year of seniority this pay is increased by 2 per cent per year, up to 25 years of service. A supplement for management is given over this pay in the amount of 10 per cent.



## ***Pay of a judge and chairman of a court of first instance***

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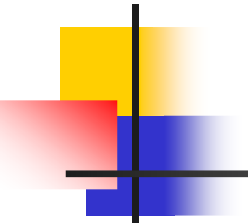
- The base pay of the Chairman of the Court of the Tirana Judicial District and the chairman of the court of first instance for serious crimes is equal to 50 percent of the pay of a judge of the High Court.
- After five years seniority in service, as provided in article 28 of this law, for every year of seniority this pay is increase by 2 per cent per year, up to 25 years of service. Over this pay, 10 per cent is added for special work conditions and 10 per cent is added for management of the court.

# ***Pay of a judge and chairman of a court of appeal***

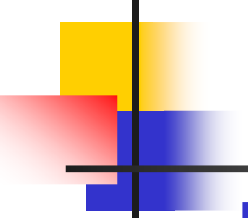
## **Pay of a judge and chairman of a court of appeal**

- 1. The base pay of a judge of a court of appeal is equal to 70 percent of the pay of a judge of the High Court. After 15 years seniority in service, as provided in article 28 of this law, for every year of seniority, this pay is increased by 2 per cent per year, up to 25 years of service.
- 2. The base pay of a judge of the court of appeal for serious crimes is equal to 70 percent of the pay of a judge of the High Court. After 15 years seniority in service, as provided in article 28 of this law, for every year of seniority, this pay is increased by 2 per cent per year, up to 25 years of service. Over this pay 10 per cent is added for special work conditions.
- 3. The base pay of the chairman of a court of appeal is equal to 70 percent of the pay of a judge of the High Court. After 15 years seniority in service, as provided in article 28 of this law, for each year of seniority, this pay is increased by 2 per cent per year, up to 25 years of service. A supplement for management is given over this pay in the amount of 10 percent.

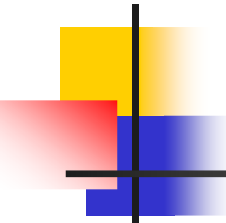
## *Pay of a judge and chairman of a court of appeal*

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- The base pay of the Chairman of the Tirana Court of Appeal and the chairman of the court of appeal for serious crimes is equal to 70 percent of the pay of a judge of the High Court.
  - After 15 years seniority in service, as provided in article 28 of this law, for every year of seniority, this pay is increased by 2 per cent per year up to 25 years of service. Over this pay 10 per cent is added for special work conditions and 10 per cent is added for management of the court, but no more than the pay of a judge of the High Court.

# *Immunity of judges in criminal responsibility*

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- 1. A judge of a court of first instance or a judge of a court of appeal may be criminally prosecuted according to the provisions in the Code of Criminal Procedure. The authorization for beginning a criminal proceeding is done with the approval of the High Council of Justice.
  - 2. A judge may be detained or arrested only if he is caught during the commission of a crime or immediately after its commission. The competent organ immediately notifies the High Council of Justice. If the High Council of Justice does not give its consent within 24 hours to send the arrested judge to court, the competent organ is obliged to release him.
  - 3. In a case when authorization is given to begin a criminal proceeding against a judge, he is suspended from duty until a final judicial decision is taken.
  - 4. In cases when his guilt is not proven by final judicial decision, the judge has the right to return to his prior work and to receive full pay from the time of suspension.

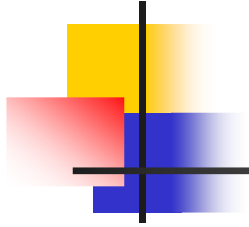
***Reinforcement of institutions and rule of law –  
article 78 of SAA  
(Stabilisation and association agreement)***



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In their cooperation on justice and home affairs the Parties shall attach particular importance to the consolidation of the rule of law, and the reinforcement of institutions at all levels in the areas of administration in general and law enforcement and the administration of justice in particular.

Cooperation shall notably aim at strengthening the independence of the judiciary and improving its efficiency, improving the functioning of the police and other law enforcement bodies, providing adequate training and fighting corruption and organised crime.



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- Thank you for your attention!



# Contacts

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