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Citations:

Bluebook 20th ed.
English unofficial translation of the Constitution of 1991 as amended to 1998. 1
(1991) Chapter I: General Provisions

ALWD 6th ed.

Chicago 7th ed.
, "Chapter I: General Provisions," Albanian Constitutional Legislation: The Law on
the Major Constitutional Provisions : 1-4

McGill Guide 9th ed.
, "Chapter I: General Provisions" 1.

MLA 8th ed.
"Chapter I: General Provisions." Albanian Constitutional Legislation: The Law on the
Major Constitutional Provisions, , , p. 1-4. HeinOnline.

OSCOLA 4th ed.
, 'Chapter I: General Provisions' 1

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ALBANIAN CONSTITUTIONAL LEGISLATION:
THE LAW ON THE MAJOR CONSTITUTIONAL PROVISIONS¹

CHAPTER I
GENERAL PROVISIONS

Article 1

Albania is a parliamentary republic. National sovereignty derives from the people and belongs to them.

Article 2

The Republic of Albania is a democratic state, based on the rule of law. Man's dignity, his rights and freedoms, free development of his personality as well as the constitutional order, equality before the law, social justice, social assistance and pluralism are the foundations of this state, whose duty it is to respect and protect them.

Article 3

The fundamental principle of state organization is the separation of the legislative, executive and judicial powers.

People exercise their power through their representative organs and through referendums.

The representative organs are elected by free, general, equal, direct and secret ballot.

State activity is exercised only by the state bodies recognized by law.

Article 4

The Republic of Albania recognizes and guarantees the human rights and fundamental freedoms of the individual and ethnic minorities, recognized by international documents.

¹ Law on Major Constitutional Provisions, No.7491, dated April 29, 1991. Note: this is not an official translation.

Article 5

The legislative power belongs to the People's Assembly of the Republic of Albania.

The Head of State is the President of the Republic elected by the People's Assembly.

The rights and duties of the President are defined by this Law.

The supreme organ of the Executive Power is the Council of Ministers.

The rights and duties of the Council of Ministers are defined by this Law.

The judicial power is exercised by courts which are independent and guided solely by Law.

Article 6

Political pluralism is one of the fundamental conditions of democracy in the Albanian state.

The political parties and other organizations are created and exercise their activity according to the law. They are fully separated from the state.

The activity of political parties in military units and institutions of the Ministry of Defense and the Ministry of Interior [currently the Ministry of Public Order], the Ministry of Foreign Affairs and diplomatic representations abroad, the General Prosecutor's Office, investigation offices, courts, etc. is forbidden. The way in which these organs are depoliticized and made non-partisan is prescribed by law.

Article 7

The Republic of Albania is a secular state.

The state respects the freedom of religious faith and creates conditions to exercise it.

Article 8

The legislation of the Republic of Albania considers, recognizes, and respects the generally accepted principles and norms of international law.

The strict and equal application of juridical norms is compulsory for all the state organs, political parties, other organizations, employees as well as for other physical and juridical persons.

All citizens are equal before the law.

Article 9

In its foreign policy, the Republic of Albania protects its independence and national interests, pursues the policy of cooperation, good neighborliness, and international peace and security.

The Republic of Albania pays attention to the recognition of and respect for the national and democratic rights of Albanians residing outside the state borders of the Republic.

Article 10²

The country's economy is based on the diversity of ownership, the free initiative of all economic subjects and the regulatory role of the state.

Economic initiative of juridical and physical persons should not develop contrary to the social interest and should not affect the security, freedom and dignity of man.

The unlawful activity of private subjects, which widely touches the interests of social groups or individuals, which opposes and damages the principals of the free market economy and of the national and international economic and fiscal policies, which infringes the economic and social stability of the country, is placed under specialized national and international public institutions for administration.

The degree of intervention, as well as the control and administration of these private subjects by the above-mentioned institutions, is defined by the law.

In these cases the state has the right and the duty to take possession of the property of private subjects only for defense of the interests of injured parties.

No one can be denied the right to file a complaint in court against the control measures, the administration, and the disposal of his property, as well as to ask for full compensation of damages suffered.

Article 11

Subjects of the right to ownership are the state, juridical and physical persons.

All kinds of ownership enjoy equal legal protection.

The assets which are objects of the state property are defined by law.

Article 12

Foreign juridical and physical persons may gain the right to ownership under the conditions foreseen and guaranteed by law.

As foreign physical or juridical person has the guaranteed right to carry out independent economic activity, to invest in Albania, to form joint ventures or sole partnerships under the conditions provided for by law. He has also the guaranteed right to transfer the profits to his own country.

² Article 10 was added by Law No. 8255 article 1, dated November 19, 1997. For an Addition to Law No. 7491 dated April 29, 1991 "On the Major Constitutional Provisions".

Article 13

The juridical and physical persons are bound to contribute in supporting the state expenditures in proportion with their income.

No tax or levy can be imposed except by law.

Article 14

The trade unions recognized by law are juridical persons and may enter into collective employment contracts with public or private subjects. The way of stipulating these contracts is defined by law.

CHAPTER II

THE SUPREME ORGANS OF STATE POWER

A. People's Assembly

Article 15

The People's Assembly is the highest organ of the state power and the only legislative body.

The People's Assembly exercises sovereignty on behalf of the people and state, in forms and limits provided for under this law.

Article 16

The People's Assembly has the following main competencies:

1. It defines the main directions of the internal and foreign policy of the state.
2. It adopts and amends the constitution and laws.³
3. It adopts the economic and social draft programs for the country's development and their synthetic indices, as well as the state budget.
4. It decides for the partial and general mobilization, the state of emergency as well as for the state of war in cases of armed aggression against the Republic of Albania or when this is necessary to fulfil obligations deriving from international treaties.
5. It ratifies and renounces:

³ Article 16/2 was amended by Law No.7561, article 31, "For some amendments and completion to Law No. 7491, dated April 29, 1991 'On major constitutional provisions'," (approved April 29, 1992). Flet. Zyrt., 1992, No. 2, p. 81.

- treaties of political character;
- treaties or agreements of military character;
- treaties or agreements related with the borders of the Republic of

Albania:

- treaties or agreements concerning the fundamental rights and duties of citizens;
- treaties from which derive financial obligations for the state;
- treaties or agreements which results in changes to the legislation;
- treaties or other agreements which foresee that their ratification or denunciation be done by the People's Assembly.

6. It grants amnesty.

7. It decides on people's referendums.

8. It elects and removes the President of the Republic of Albania.

9.⁴

10. It controls the activity of the Council of the Ministers and the General Prosecutor's Office.

11. It controls the activity of the Albanian Radio Television, the Albanian News Agency, and other official media for public information which are under its jurisdiction. The status of these organs is defined by law.

12. It delineates the administrative-territorial structure of the country.

13. It decides on the creation or dissolution of the ministries or other organs equal to them.

Article 17

The number of deputies of the People's Assembly and the electoral system is defined by law.⁵

The People's Assembly is elected for a 4-years term.

The People's Assembly convenes the first session no later than two months from the day of its election.

The elections to the People's Assembly are held no later than 3 months from the day its mandate expires.

In case of war or state of emergency the People's Assembly can function longer than the scheduled term, until the war or the state of emergency continues.

The activity of the People's Assembly ends at the same day the new People's Assembly meets on its first session.⁶

⁴ Article 16/9 was abrogated by Law No. 7561, article 31. (See f. n. 2.)

⁵ Article 17, first paragraph, was amended by Law No. 7555, article 1, "For some amendments to Law No. 7491, dated April 29, 1991, 'On major constitutional dispositions'." (approved February 4, 1992), Fl. Zyr., 1992, No. 1, p. 34.

⁶ Article 17, last paragraph, was added by Law no. 7558, article 1, "For some amendments and completion to Law No. 7491, dated April 29, 1991, 'On major constitutional dispositions'." (approved April 9,

Article 18

The People's Assembly elects its Presidency, which consists of the Chairman and two Vice-Chairmen.

The activity of the People's Assembly and its Presidency is conducted according to the regulations adopted by the People's Assembly.

Article 19

The People's Assembly convenes its sessions no less than 4 times a year.

The sessions of the People's Assembly are convened upon the decision of its Presidency. The Presidency convenes the session of the People's Assembly also when this is requested by the President of the Republic, the Council of the Ministers, or by one fourth of the deputies.

The meetings of the People's Assembly start when the majority of the deputies is present.

The meetings of the People's Assembly are open, except in special cases when the People's Assembly decides otherwise.

Article 20

The People's Assembly elects from its ranks permanent and temporary commissions.

In its first session, the People's Assembly elects a commission to examine the mandates of the deputies. At the proposal of the commission, the People's Assembly confirms or annuls the mandates of the deputies.

The permanent commissions are bound to examine the draft laws and normative decrees of the President of the Republic, to follow and control the activity of the ministries and other state organs according to their respective sectors, and to submit issues to the People's Assembly or the Council of Ministers. The temporary commissions are set up for specific matters.

Article 21

It is the duty of the deputy to the People's Assembly in his activity to serve the people and the homeland conscientiously. The rights and duties of the deputy are defined by law.

Article 22

The deputy to the People's Assembly enjoys immunity.

The deputy cannot be prevented from accomplishing his duties, nor from obtaining information which is not a state secret.

1992), Flet. Zyr. . 1992. No. 2, p. 63.

The deputy cannot be checked, arrested, detained, or penally prosecuted without the consent of the People's Assembly. The deputy may be arrested without the consent of the People's Assembly only in cases when he commits an apparent and grave crime.

The deputy has no legal responsibility for the activities he carries out and the stands he adopts while performing his duty as deputy or for the vote he casts.

Article 23

The legislation process may start from the President of the Republic, Council of the Ministers, every deputy, as well as a group of 20,000 nationals enjoying the right to vote.

The laws and other acts of the People's Assembly, except the constitutional ones, are considered adopted, when voted for by the majority of the deputies present, but no less than one third of the deputies.

The laws are announced no later than 15 days following their approval and enter into force 15 days after being published in the Official Gazette, except for the cases when foreseen differently by the laws themselves as well as in the case of organic laws.

B. President of the Republic

Article 24

The President of the Republic of Albania is the Head of State and represents the whole unity of the people.

Article 25⁷

The President of the Republic of Albania is elected by the People's Assembly for a five-years term, without debate, by secret ballot, and by two-thirds majority of the votes of all deputies. In case the required majority is not ensured in the first ballot, the second voting is held in which the President is elected by the absolute majority of the vote of all the deputies.

The candidate for President is proposed by a group of no less than 20 deputies.

A deputy cannot take part in more than one group of deputies which proposes a candidate for President.

In case there are more than two candidates for the post of the President of the Republic, the two candidates who have won the greatest number of votes in the first voting have the right to run for the second voting. The candidate who wins the absolute majority of the votes of all the deputies is considered elected.

⁷ Article 25 was amended by Law No. 7558, article 2. (See f.n. 5.)

Article 26⁸

Every Albanian national who has reached the age of 40 and meets the requirements to be elected as deputy may be elected President of the Republic.

After being elected by the People's Assembly, the President of the Republic takes an oath before it.

The election of the President of the Republic is held no later than 30 days before the mandate of the outgoing President of the Republic expires.

The same person cannot be elected President of the Republic more than twice successively.

In case the President is elected from among the ranks of the deputies, he gives up the mandate of the deputy.

The function of the President is irreconcilable with any other function, with exception of those foreseen by this law, and with the function of the President of the Party.

Article 27

The President of the Republic is discharged or dismissed before the expiry of his mandate only when:

- a) he has committed the crime of high treason or has violated this Law.
- b) health conditions prevent him from performing the duties.
- c) has resigned on his own free will.

Article 28⁹

The President of the Republic has these main competencies:

1. Guarantees the respect of this law, of other laws, as well as of the rights and freedoms of citizens.
2. Convenes the first session of the new legislature of the People's Assembly.
3. Fixes the date of elections to the People's Assembly and to organs of the local authorities.
4. Declares the laws and referendums decided upon by the People's Assembly.
- 4/a. Proposes to the People's Assembly to decide on referendums.
5. Enjoys the right to, within 15 days of a law's adoption by the People's Assembly, return a law to the People's Assembly once for reconsideration via a request for reconsideration that states his reasons for doing so.
6. He nominates the Chairman of the Council of the Ministers and accepts his resignation.

⁸ Article 26 was amended by Law No. 7558, article 3. (See f.n. 5.)

⁹ Articles 28/4a, 28/5, 28/7, 28/7a, 28/8, 28/8a, 28/10, and 28/18a were amended by Law No. 7558, articles 4, 5, 6, 7, 8, 9, 10, and 11. (See f.n. 5.)

7. Upon the proposal of the Chairman of the Council of the Ministers, he appoints, discharges, or dismisses by decree ministers and other members of the Government. Within 10 days, this decree is presented to the People's Assembly by the President of the Republic for approval.

7/a. In specific cases, he enjoys the right to participate in the meeting of the Council of Ministers and propose the inclusion in the agenda of topics he deems need to be treated. When he takes part in the meeting, he chairs it and signs the decisions taken.

8. Upon the proposal of the Chairman of the Council of Ministers, he appoints and discharges directors of other central institutions, the director and the vice director of the National Intelligence Service.

8/a. He asks for opinions and information in writing from directors of institutions of the executive power on matters dealing with their duties.

9. After getting the opinion of the Chairman of the Council of Ministers and of the Chairman of the Presidency of the People's Assembly, he may dissolve the People's Assembly prior to the expiration of the term of the legislature, when its composition does not permit the performance of the functions of the Assembly itself and makes impossible the country's governance. In this case, the elections to the People's Assembly are held no later than 45 days from the day of dissolution.

The President cannot exercise this competence over the last six months period of his mandate.

10. He prepares international treaties and agreements, ratifies and renounces those not examined by the People's Assembly itself.

11. He appoints and discharges the diplomatic representatives upon the proposal of the Chairman of the Council of Ministers.

12. Accepts letters of credence and letters of recall submitted from the diplomatic representatives of foreign states.

13. Endorses the requests for granting or relinquishing Albanian nationality.

14. Exercises the right of pardon.

15. Awards decorations and honorable titles.

16. Grants the right of political asylum.

17. When it is impossible for the People's Assembly to convene, he declares the partial and general mobilization as well as the state of emergency. In such cases, the declaration is submitted for approval to the People's Assembly within five days.

18. When the convocation of the People's Assembly is impossible, he declares the state of war in cases of armed aggression against the Republic of Albania.

18/a. Communicates with the People's Assembly through messages which are read in plenary sessions.

19. Issues decrees of an individual character, as well as decisions: in urgent cases, he also issues decrees of a normative character, which are submitted for approval to the People's Assembly in its nearest session.

Article 29

The acts issued by the President of the Republic on the exertion of competencies foreseen in the items 10, 11 and 19 of Article 29 of this law assume

juridical effect after being undersigned, on a case-by-case basis, by the Chairman of the Council of Ministers, or by the respective minister, or by the persons equal in stature with them.

Article 30

When the seat of the President of the Republic is vacant for any reason whatsoever, his competencies are exercised temporarily by the Chairman of the Presidency of the People's Assembly, excluding those foreseen in items 5, 6, 7, 9 and 19 of Article 28 of this law.

The election of the President of the Republic takes place no later than 15 days from the day when the seat of the President has remained vacant.

Article 31

The President of the Republic enjoys immunity for the acts undertaken during his office with the exception of cases of high treason or violation of this law.

In such cases, the question of responsibility may be discussed in the People's Assembly on the request of no less than one fourth of the deputies. The respective decision is adopted through a secret ballot with a majority of two thirds of deputies.

Article 32

The President of the Republic is the General Commander of the Armed Forces and Chairman of the Council of Defense.

The Council of Defense is set up to direct, organize and mobilize all the country's forces and resources for the defense of the Homeland.

The composition of the Council of Defense is decided by the People's Assembly on the proposal of the Chairman of the Council of Defense.

Article 32/a¹⁰

Attached to his office, the President of the Republic can set up advisory bodies of assisting character.

¹⁰ Article 32 a was amended by Law No. 7558, article 12. (See f.n. 5.)

CHAPTER III

SUPERIOR ORGANS OF GOVERNMENT ADMINISTRATION

Article 33

The Council of Ministers is the highest executive organ.

The Council of Ministers is nominated in the first session of the People's Assembly.

The President of the Republic nominates the Chairman of the Council of Ministers and, upon the latter's proposal, the Ministers also.

The composition of the Government and its programme are adopted by the People's Assembly with a majority vote, within 5 days from the date it has been submitted.

In the case the Chairman of the Council of Ministers does not get the vote of confidence, he submits immediately his resignation to the President of the Republic, who nominates the new Chairman of the Council of Ministers.

Before commencing their offices, the Chairman of the Council of Ministers and the Ministers take an oath before the President of the Republic.

Article 34

The deputies enjoy the right to propose, at any time, a no-confidence motion regarding the Council of Ministers or any of its members. The no-confidence motion should be signed by at least one-tenth of the deputies and cannot be examined by the People's Assembly until three days after its presentation.

The rejection by the People's Assembly of a proposal forwarded by the Government does not necessarily bring about the compulsory resignation of the Government.

Article 35

The Council of Ministers is composed of the Chairman, Vice-Chairmen, the ministers and other persons defined by law.

Any Albanian citizen permanently domiciled in the Republic of Albania and who enjoys the right to be elected may become member of the Council of Ministers.

The member of the Council of Ministers should not have, except for the mandate of the deputy, any other state or professional functions and should not take part in executive boards of economic and trade organizations.

The member of the Council of Ministers may leave his seat vacant even when he does not get the vote of confidence or when he resigns.

The Council of Ministers is a collective organ. The decisions are adopted when approved by an absolute majority of its members.

The ministers are collectively responsible for the acts of the Council of Ministers

and individually for acts of their own institutions.

The composition, attributes and organization of the Council of Ministers are provided for by law.

Article 36

The Council of Ministers has the following competencies:

1. Directs the activity for the implementation of the domestic and foreign policy of the state.

1/a. Organizes the general governance of state administration. ¹¹

2. Issues decisions, orders and instructions in compliance with the Constitution and laws and for their implementation; they are signed by the Chairman of the Council of the Ministers and, if they are of a normative character, they are to be published in the Official Gazette, except in specific cases foreseen by law.

3. Directs and controls the activity of ministries and other central organs of the state administration. Coordinates and monitors the activity of local organs of administration ensuring the compulsory and consistent implementation of the laws and acts of the Government.

4. Directs the activities necessary for the national defense in conformity with the decisions of the Council of Defense.

5. Adopts measures for the security, preservation, and strengthening of juridical order and of citizens' rights.

6. Makes international agreements, adopts, and renounces those that are not subject to ratification.

7. Prepares economic and social programmes for the country's development and the synthetic economic indices, the state budget, pursues and controls public finances and the monetary and credit system.

8. Divides or unifies the administrative territorial units.

9. Adopts measures to ensure the preservation and protection of the environment, suitable working conditions, and the protection of the citizens health.

Article 37

The Council of Ministers abrogates illegitimate acts of the Ministries and other central organs of state administration.

Article 38

The Chairman and the Vice-Chairman of the Council of Ministers constitute the Presidency of the Council of Ministers.

By decision of the Council of Ministers, the Presidency may be charged with

¹¹ Article 36/1a was added by law No. 7558, article 13. (See f.n. 5.)

examining and solving various questions within its competencies.

The Chairman of the Council of Ministers represents the Council of Ministers, presides over its meetings, directs its general activity, and responds for it, ensuring the unity of political and administrative management of the Government, and coordinating the affairs of the other Ministries and central institutions.

Article 39

The ministers and other persons of equal stature, direct the ministries and the other central institutions in specific branches of the respective ministries.

The ministers bear responsibility for the activity of the respective ministries.

On questions which fall under their competencies the ministers issue orders, regulations and instructions based on the laws, ordinances and decisions of the Council of Ministers as well as on their implementation. The acts of Ministers of normative character are published in the Official Gazette, except in specific cases foreseen by law.

Article 40

The ministers abrogate unlawful orders and instructions of subordinate organs, enterprises and institutions.

Article 41

The members of the Council of Ministers are responsible penally for the violation of this law as well as of other laws related to the exercise of their functions. Penal prosecution is undertaken with the consent of the People's Assembly.

Article 41/a¹²

The State Control Service is the highest organ of economic and financial control. The main objective of the State Control Service is financial control and the evaluation of the implementation of law in the public sector.

The State Control Service is a legal public entity, independent in exercising its duties, and it has a separate budget adopted from the People's Assembly.

The State Control Service presents the annual report of its activity to the People's Assembly.

The disputes between the State Control Service and other state institutions (public) are judged in the first instance by the Court of Appeals.

¹² Article 41a was added by Law No. 7596, article 1, "For an addition to Law No. 7491, 'On major constitutional dispositions'," (approved August 31, 1992), Flet. Zyr., 1992, No. 6, p. 279. Article 1 of Law No. 7596 was amended by Law No. 8266, dated December 19, 1997. For an Amendment of Article 41/a of Law No. 7596, dated August 31, 1992 "For an Addition to Law No. 7491, dated April 29, 1991 "On the Major Constitution Provisions."

The deputy and the vice-deputy are selected from the People's Assembly upon the proposal of President of the Republic with an absolute majority of votes for 7 years term, but not more than twice in row. Only for the first term of selection, the first vice-deputy is selected for 5 years term and the second vice-deputy for 3 years term. The term of the directors of the State Control Service finishes earlier only for these reasons:

- resignation from duty;
- punishment with a final decision for a crime;
- charge with a incompatible duty;
- medical state that makes impossible the fulfilling of the duty;
- death.

The organization and functioning of the State Control Service is defined by a separate law.

CHAPTER IV¹³

ORGANIZATION AND FUNCTIONING OF LOCAL POWER

Article 1

The territory of the Republic of Albania is divided in communities, municipalities and districts.

Local power is organized and functions within every community, municipality, and district.

Article 2

The organs of local power are elected directly by the people through free, general, equal, and secret ballot.

The way in which the local government bodies are elected is defined by law.

Article 3

The organization and functioning of the local government is based on the principles of self-government, independence, local autonomy and decentralization.

In their activity the local government bodies are based on the constitutional provisions and on the laws and acts issued according to them and for their implementation.

The principles of the organization and functioning of the local government cannot affect the unified national character of the Albanian state.

The competencies of local government bodies are defined by law.

¹³This chapter was added by Law No. 7570. "For some additions to Law. 7491, dated April 29, 1991, 'On major constitutional provisions.'" (approved: June 3, 1992), Flet. Zyr. , 1992, No. 3, p. 124.

Article 4

The community and the municipality are the smallest units in the organization of local government.

The community is composed of a number of villages or of a small town with some villages.

The community's organs are: the council of the community and the chairman of the community.

The change of the community's borders is made with the prior consent (approval) of its inhabitants who have the right to vote.

Article 5

The municipalities are set up in towns which have not been included in communities.

The organs of the municipalities are: the council of the municipality and the mayor.

The organization and the functioning of the municipality in the capital is defined by law.

Article 6

Smaller administrative-territorial subdivisions are set up in commons and municipalities. The way their bodies are set up and function is defined by law.

Article 7

The district is composed of a number of communities and municipalities which are interdependent.

The representative body in the district is the district council.

The district council elects the presidency and its head, which are executive bodies.

Article 8

The local government bodies in the district have the duty to coordinate the activity of the communities and municipalities within their territory.

Article 9

The members of the councils are not held responsible for the opinions expressed and the vote cast during the exercise of their functions.

Cases in which membership on the council is incompatible with other functions are defined by law.

Article 10

Local government bodies are legal entities. They have assets and property recognized by law and exercise economic activity within and outside their territory.

Article 11

Local government bodies have their own budget.

Financial sources and their use, as well as the obligations toward the state, are defined by law.

For special communities and municipalities, the state advances financial contributions.

Article 12

The elected bodies of the local government may be dismissed only in cases provided for by law.

The dismissal of the elected organs of the local government is made through a reasoned decree of the President of the Republic, upon the proposal of the Council of Ministers.

Article 13

Local government bodies may issue normative acts which have effect within the area of the respective administrative-territorial unit.

CHAPTER V¹⁴

THE ORGANIZATION OF THE JUDICIARY AND THE CONSTITUTIONAL COURT

1. The Judicial System

Article 1

The judicial power is separate and independent from the other powers. It is exercised only by the organs recognized by the law "On the Major Constitutional Provisions."

Article 2

Courts are the sole authorities to resolve cases and disputes concerning the law "On the Major Constitutional Provisions" and other laws by imposing criminal

¹⁴ This chapter was added by Law No. 7561. (See f.n. 2.)

punishment, civil liability, and by recognizing the rights and obligations of the parties, as well as by ordering measures to protect and establish the abovementioned rights after a fair and equitable legal process and in conformity with the international standards.

Article 3

Justice shall be granted in the name of the people.

The instances and the manner in which the people may participate in the granting of justice shall be defined by law.

Article 4

Justice shall be granted in accordance with the principle of legality and equality before the law on the basis of the observation of justice.

Article 5

The judiciary consists of the Court of the Cassation, the Courts of Appeals, the Court of First Instance and Military Courts.

The establishment of extraordinary courts is prohibited.

The organization and competencies of the courts are regulated by law.

Article 6

The Court of Cassation is the highest judicial authority. Its members must be Albanian citizens, holding a degree in law, with outstanding professional qualifications and no less than seven years of experience in a legal institution or as a lecturer at the Faculty of Law.

The President and the Vice Presidents of the Court of Cassation are elected by the People's Assembly upon the proposal of the President of the Republic. The Judges of the Court of Cassation are elected by the People's Assembly.

The President and Members of the Court of Cassation are elected for a term of seven years and may be reelected. They cannot be arrested, detained, or punished for actions connected with the fulfillment of their duties as member of the Court of Cassation.

A Judge of the Court of Cassation may be removed from his office only on basis of a reasoned decision of the People's Assembly when it is certified that he has committed a serious criminal act, specifically provided for in law, or when he is mentally incapacitated.

Article 7

The Court of Cassation cannot try cases in the first instance, and it enjoys appellate power to review cases for errors of law. It can review for errors of law those court decisions which are either presented on appeal or requested by the Court itself.

Article 8

In exercising their competencies, the judges are independent and subject only to the law "On the Major Constitutional Provisions" and to the other laws in general.

When, during the hearing of a case, the Court judges that an act is not compatible with the law "On the Major Constitutional Provisions" or the laws in general, it suspends the trial and submits the case to the Constitutional Court.

Article 9

Judicial decisions must be reasoned. They cannot be annulled, overturned or changed, except by a decision of a higher court, as provided for by law.

All state organs and other public authorities are obliged to enforce judicial decisions and acts.

Article 10

The judges of the District Court and the Court of Appeals have immunity and cannot be removed from their office while performing their functions.

Their immunity may be withdrawn, and they may be removed from office only by a competent body in cases consistent with the procedures provided for by law.

No law may limit the guarantees of the judges as provided for by this constitutional law as well as by international standards.

Article 11

Judges are obliged not to take part in trials where there exists legal reasons that may compromise their impartiality and where their conduct may cast aspersions upon the judicial system or diminish its dignity.

Article 12

Trials are conducted orally and in public. The law may prohibit the presence of the public or of the mass media only in special circumstances, when this is necessary for national security, public order, or for the best interest of minors, the private parties, and justice.

All the procedures in the organs of justice are carried out in the Albanian language. The defendant, witnesses, and other participants in the trial who do not know or understand the Albanian language enjoy the right to communicate through an interpreter.

Article 13

The General Prosecutor's Office is the authority with jurisdiction over criminal prosecutions both during investigation and trial.

In judicial activity, prosecutors protect the public interest, the juridical order and the rights and liberties of citizens.

Prosecutors are organized and function within the judicial branch as a unique and centralized organ.

In exercising their competencies, prosecutors are subject to the law, to the orders of superior prosecutors, and to the decisions of the respective judicial authorities.

Prosecutors enjoy immunity.

Article 14

The General Prosecutor and his assistants are elected by the People's Assembly upon the proposal of the President of the Republic. They enjoy immunity as well as rights foreseen by Article 6 of this constitutional law for the judges of the Court of Cassation.

The organization and other competencies of the General Prosecutor's Office are regulated by law.

Article 15¹⁵

The High Council of Justice is headed by the President of the Republic and is composed of the Chief Justice of the Court of Cassation, the Minister of Justice, the General Prosecutor, and nine lawyers distinguished for their abilities. They are elected once in five years as provided by Law, enjoying no right for immediate re-election, as follows:

- Three members are from the ranks of the Judiciary;
- Two members are from the ranks of the prosecutors;
- Four members are elected by the Parliament out of whom two are from the ranks of lawyers, one from the professors of the Law Faculty and one from the ranks of the Judiciary.

The High Council of Justice is the only authority which decides upon the nominating, transferring and disciplinary responsibilities regarding the judges of the first level, those of Appeal and prosecutors, as well.

The High Council of Justice's way of operation and exercising its activity is defined in the internal rules it approves.

¹⁵ Article 15 was amended by Law No. 8234, dated August 27, 1997. For an Amendment of Law No. 7561, dated April 29, 1992. "Some Amendments and Additions to Law No. 7491, dated April 29, 1991 "On the Major Constitutional Provisions".

Article 16

The legal profession is exercised as a free profession. Its activity is regulated by a special law.

The task of lawyers is to give clients necessary legal assistance and advice in conformity with the law and norms of professional ethics.

II. The Constitutional Court

Article 17

The Constitutional Court is the highest authority that protects and guarantees the Constitution and legislation. It also gives final interpretations of the Constitution.

In exercising its functions it is independent and subject only to the Constitution.

Article 18¹⁶

The Constitutional Court is composed of nine members, five elected by the People's Assembly and four by the President of the Republic.

The members of the Constitutional Court elect, through a secret ballot, their chairman, who holds this office for three years with the right of reelection.

The term of the three members of the Constitutional Court, selected in the first election, ends in three years. They are selected by casting lots among each group of judges elected by the People's Assembly and by the President of the Republic. After three other years, three other judges are replaced in the same way, by casting lot. The newly elected judges hold their offices for a 12 year term.

The replacement of a judge of the Constitutional Court for the reasons provided by Article 23 is not considered as a rotation.

If the three-year term finishes or when one of the reasons provided by Article 23 is verified, the selection or the appointment of the new judge is done within 30 days.

The non-execution of the rotation suspends the functions of the Constitutional Court.

If after the execution of the rotation the new judges are not selected or appointed within the above mentioned term, the Constitutional Court functions with the members left.

¹⁶ Article 18 was added article 1 of Law No. 8257, dated November 19, 1997, For an Addition to Law 7561, dated April 29, 1992 "For Some Amendments and Additions to Law No. 7491, dated April 29, 1991 "On the Major Constitutional Provisions."

Article 18/1¹⁷

The Constitutional Court should accomplish the first rotation within 30 days of the entry into force of this law.

Article 19

The Constitutional Court judges, before commencing the exercise of their functions, take an oath before the President of the Republic.

The oath is as follows: "I SWEAR SOLEMNLY THAT DURING THE ACCOMPLISHMENT OF MY DUTY, I WILL ALWAYS STAY LOYAL TO THE CONSTITUTION OF THE REPUBLIC OF ALBANIA."

Article 20

Members of the Constitutional Court are elected among lawyers noted for their abilities, who have been working no less than ten years in juridical matters or as lecturers at the Faculty of Law, and who have a high moral reputation.

Article 21

The Constitutional Court Judge cannot be a member of the Parliament, member of the Council of Ministers, judge, investigator, or prosecutor, member of any political party or other political organizations or trade unions, nor be engaged in other private or public activities which may affect his impartiality or independence.

Article 22

The judges of the Constitutional Court do not bear responsibility for decisions taken or opinions issued while exercising their functions. They may not be prosecuted, arrested, detained, or condemned without the authorization of the Constitutional Court.

Article 23

The term of a Constitutional Court Judge ceases when:

- a) he does not exercise his duty for justified reasons for more than six months;
- b) he presents his resignation;
- c) he is appointed to another position which is not compatible with his judicial function;
- d) his term expires. In this case, the judge may continue to perform his functions beyond his term only if a case that has begun cannot be concluded within his term;

When, for one of the above mentioned reasons, the term of the Constitutional Court Judge ends before the expiration of his stated term, either the People's Assembly or the President of the Republic, depending on the means by which the

¹⁷ Article 18/1 was added by Law 8257, article 2 (See f.n. 16.)

judges was initially elevated to the Court, elects a new judge who will remain in this office until the end of the term of the replaced judge.

Article 24

The Constitutional Court has the following competencies:

- 1) It makes interpretations of the Constitution and the Constitutional laws.
- 2) It judges whether laws and acts that have the force of law are compatible with the Constitution.
- 3) It judges whether acts and regulatory provisions are compatible with the Constitution and with the law.
- 4) It decides on the compatibility with the constitution of international agreements concluded in the name of the Republic of Albania--both before and after ratification--as well as on the compliance of the laws with generally accepted norms of international law and with agreements to which Albania is a party.
- 5) It resolves disagreements as to the jurisdiction of the executive, legislative, and judicial powers, as well as those between local authorities and the central powers.
- 6) It decides questions connected with the constitutionality of parties and other political and social organizations and can prohibit their activity.
- 7) It resolves questions concerning the lawfulness of the election of the President of the Republic and members of Parliament, as well as questions concerning the people's referenda, proclaiming the final results.
- 8) It investigates penal accusations raised against the President of the Republic.
- 9) It resolves conclusively complaints of persons alleging that an illegal act has violated their fundamental constitutional rights.
- 10) It decides on the suspension of the implementation of a law if such a law is incompatible with the law "On the Major Constitutional Provisions", and on the suspension or repeal of acts and other provisions when it observes that they are not compatible with the law "On the Major Constitutional Provisions" or with law, as well as taking measures it deems appropriate for the question it is adjudicating.

When the Court determines that there has been a violation of a right protected by constitutional law, it gives recognition to this right and guarantees it, and if necessary, it takes action to remedy the consequences and to make appropriate compensation.

The Constitutional court can also decide that state organs, social organizations or juridical persons abrogate, cancel or change the individual decision that caused the infringement of the constitutional right of the person.

Article 25

The Constitutional Court may initiate constitutional review either upon a motion or on its own initiative.

The President of the Republic, a parliamentary group, one fifth of the Deputies, the Council of Ministers, judges and local government organs, and any person claiming a violation of his or her constitutional rights or freedoms may initiate a motion for review.

Article 26

The Constitutional Court decides by a majority of the judges' votes. The judges in the minority have the right to attach to the court decision their dissenting opinion in writing.

The decisions of the court are final and irrevocable. They must be reasoned. In cases of doubt or disagreements concerning the content of the decision, the Court has the right to interpret it, either ex officio or on the request of interested persons, within 30 days from the date of request.

Laws, acts having the force of law, regulatory provisions, and the particular provisions that are proclaimed incompatible with the law "On Major Constitutional Provisions," generally accepted norms of international law, or with the agreements to which Albania is a party, are considered null and void the day following the publication of the decision in the "Official Gazette."

In other cases, the decision of the Constitutional Court comes into force as provided for in law.

When laws or other acts are abrogated, canceled or changed, therefore requiring a legal adjustments due to the circumstances, the decision of the Constitutional Court shall be made known to the People's Assembly and to other competent organs so that measures foreseen by the constitution may be taken by them.

Article 27

The acts of the Constitutional Court express the constitutionality and legality of the cases that this Court judges.

Article 28

The organization and functioning of the Constitutional Court, its procedures for the resolution of cases, and other fundamental questions concerning the accomplishment of its tasks are determined by law.

III. Transitory Provisions

Article 29

The administration of justice is under the authority of the Ministry of Justice.

The judiciary has its own budget, which is fixed in order to be sufficient for its normal function, and it is proposed by the Council of Ministers and approved by the People's Assembly.

Article 30

The salary of the judges and the prosecutors is determined by law.

CHAPTER VI¹⁸

FUNDAMENTAL FREEDOMS AND HUMAN RIGHTS

Article 1

Right to Life

The right to life of any individual shall be protected by law.

No one shall be deprived of his life, except where a judgement is to be enforced because of an extremely grave crime committed deliberately, where the law provides for the death penalty.

The death penalty shall not apply to juveniles under the age of 18 at the time the crime was committed, or to women.

Article 2

Freedom of Expression

The freedom of expression may not be violated.

Any prior censorship is prohibited.

No law may be enacted to restrict the freedom of speech, press or any other mass media, except in those cases where the protection of children's interests or the lives of people are concerned.

Everyone enjoys the right to freely express his opinions by speaking, writing or any other means of dissemination.

The right to information may not be denied to anyone.

The exercise of these freedoms and rights may not be restricted, except in those cases prescribed by law, which constitute necessary means in a democratic society in the interests of national security, territorial integrity, public safety and order, or for the prevention of crime, for the protection of health or morals, the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

¹⁸ This chapter was added by Law No. 7692. "For an adding to Law No. 7491, dated April 29, 1991, 'On major constitutional dispositions.'" (approved March 31, 1993). Flet. Zyrt. . 1993. No. 3. p. 161. The preamble is especially interesting:

Considering that, during the fierce and extremely inhuman dictatorship of the Party-State, which lasted for 46 years in Albania, civil, political, economic, social and cultural rights and the very fundamental freedoms of the individual were violated and denied by means of state terror.

Considering that respect and provision for the unrestricted enjoyment of these rights and freedoms constitutes one of the highest aspirations of the Albanian people and a prerequisite to the provision of liberty, social equality and democratic prosperity of society.

Article 3

Abolition of Torture

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

Article 4

Prohibition of Forced Labor

No one may be compelled to undertake any forced labor, except for the cases where a judgement is to be enforced, or during military service or any other service deemed necessary in a situation of emergency, or where any natural calamity threatens the life or the health of people.

Article 5

An Individual's Freedom and Personal Security

An individual's freedom and personal security may not be violated.

No one may be taken into custody without sufficient evidence.

The detained person shall be given an immediate explanation concerning the reasons for the detention and, within a reasonable time, shall appear before a judge.

No one may be kept in custody for more than 48 hours.

Every person kept in custody or under arrest shall be given the explanation that he is under no obligation to submit a declaration and that he has the immediate right to communicate with a lawyer.

The arrested person shall have the right of appeal against his arrest, in a court.

Article 6

No Punishment Without a Law

No one may be accused of or found guilty for an offence which was not punishable by law at the time the offence was committed.

No sentence graver than the one provided for by law at the time the offence was committed may be imposed.

The advantageous criminal law shall have a retroactive effect.

Article 7

Presumption of Innocence

Everyone shall be presumed innocent until otherwise proved and a final judgement delivered.

Article 8

Criminal Procedure Guarantees

- No one, during criminal proceedings, shall be deprived of the right to :
- a) be informed immediately and in detail about the nature of the charge he is accused of;
 - b) have sufficient time and facilities to prepare for his own defense;
 - c) have the aid, free of charge, of a translator in those cases where the accused cannot speak or understand Albanian;
 - d) be defended by himself or by a lawyer that he has chosen, and be able to speak freely and privately with the latter, and be provided with a legal aid by any lawyer, where the accused does not possess sufficient means;
 - e) question witnesses and request the appearance of further witnesses, expert and other persons who can clarify the matter by giving evidence.

Article 9

Prohibitions Against Forced Confessions and Testimony

No one may be forced to give evidence against himself or to confess his guilt.

Article 10

Invalidity of Unlawful Evidence

No one may be found guilty on evidence collected and produced unlawfully.

Article 11

The Right to Speak During a Trial

No one may be denied the right to speech prior to being sentenced.

Article 12

Prohibition Against Double Jeopardy

No one may be judged or sentenced more than once for a single offence, except for where a higher court has ruled that the case shall be judged again.

Article 13

The Right to Appeal

Everyone shall have the right of appeal against a judgement, to a higher court established by law.

Article 14

The Right to Rehabilitation and Compensation

Anyone being punished due to a misjudgment or due to encroachment by an unlawful administrative act shall have the right to rehabilitation and compensation in compliance with the law.

Anyone suffering damage due to the act of another shall have the right to be compensated in accordance with the law.

No prisoner may be denied humane treatment or moral rehabilitation.

Article 15

Prohibition Against Encroaching on the Private Life and Dignity of the Individual

The private life and dignity of an individual may not be encroached upon.

Information concerning the private life of an individual may be collected only with his permission, or where this is indispensable in carrying out investigations for an offence, or by the approval of a competent governmental body, assigned by law, for reasons of national security.

The collection, handling and final use of personal data, as well as the supervision and secrecy thereof are governed by law.

No one may be denied the right to know the content of the information collected about him, except for where the interests of criminal proceedings or national security are involved.

It is prohibited to use personal data for purposes other than those for which it was collected.

Article 16

Inviolability of Dwelling and Individual

The dwelling is inviolable.

Entry into a house without the permission of the dweller is possible only by a

court decision in cases prescribed by law, or where this is necessary to avoid imminent danger to the life or health of dwellers, to protect property, or when a crime is being, or has just been, committed.

No one may be subjected to a personal search, except in cases of entering or leaving the territory of the state, or in cases where public security is imminently threatened.

Article 17

Privacy of Correspondence

The privacy of correspondence or of any other means of private communication may not be encroached, except for a judgement in the interest of criminal proceedings or by the approval of a competent governmental body, assigned by law, in cases where it is considered indispensable for reasons of national security.

Article 18

Freedom of Conscience and Religion

The freedom of thought, conscience and religion may not be violated.

Everyone may freely change his religion or beliefs and may manifest them either alone or in community with others and in public or in private life in worship, teaching, practice and observance.

Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health and morals, or the rights and freedoms of others.

Article 19

The Right to Vote and Be Elected

Every citizen above the age of 18 has the right to vote and be elected. Those citizens who have forfeited their legal and civil capacity are excluded from this right.

The persons arrested and those who are serving a sentence shall have the right to vote only.

The vote is personal, equal and secret.

Article 20

The Right to Organization

No one may be denied the right to collective organization for any lawful purpose. Restrictions on civil servants exercising such a right may be prescribed by law.

Article 21

The Right to Assembly

Peaceful assembly, without arms, may not be restricted.

Assemblies in squares and public passages may be organized with the prior permission only of competent bodies, who may refuse permission only when there is sufficient ground to believe that security and public order are seriously threatened.

Article 22

The Right to Freedom of Movement

Everyone has the right to choose his dwelling and to freely move around the territory of the country, except in the cases where the law provides restrictions, for reasons of health and public security.

Everyone shall be free to travel abroad and return.

Article 23

Prohibition of Deportation and Extradition

No Albanian citizen may be deported from the territory of the state.

Extradition of a citizen may be allowed only where it is provided for explicitly in International Conventions to which the Republic of Albania is a party.

Mass deportation of foreigners is prohibited. Foreign individuals may be deported in cases prescribed by law.

Article 24

Citizenship

No one may be deprived of his Albanian citizenship without his consent, or of the right to renounce his citizenship.

The terms for gaining and giving up citizenship are governed by law.

All Albanian citizens residing abroad enjoy the protection of the state.

Article 25

Equality Before the Law

All persons are equal by law before the law.

No one may be discriminated against on account of sex, race, ethnicity, language, religion, economic and financial, educational and social conditions, political opinions, parentage, or any other personal circumstances.

Article 26

The Right of Minorities

Individuals belonging to minorities shall enjoy, with no discrimination and in equality before the law, the fundamental human rights and freedoms. They may freely express, preserve and develop their own ethnic, cultural, religious, and linguistic identity, teach and be taught in their mother tongue, and associate in organizations and societies to protect their interests and identity.

Nationality shall be determined on the basis of accepted international norms.

Article 27

The Right to Private Property and Inheritance

No one may be denied the right to own private property, either alone or jointly with others, or the right to inheritance.

The acquisition, enjoyment and transfer of property, and the right to inheritance are governed by law.

No one's property may be expropriated, unless this is in the public interest and remains subject to full compensation.

Article 28

The Right to Employment

Everyone shall have the right to earn a living by lawful employment of his own choice and accord. Everyone shall be free to choose his profession, working place, and system of professional training.

Article 29

Trade Union Freedom

The employees shall have the right to freely associate in trade unions to protect their interest in matters concerning labor and social insurance.

Article 30

The Right to Strike

The right to strike by employees, when they intend to ameliorate their working conditions, to demand higher wages or any other profit obtained through work, may not be restricted.

The terms and rules for exercising such a right and the guarantees to provide the necessary services for society, are laid down by law.

Article 31

The Right to Insurance and Social Assistance

Everyone reaching the retirement age or suffering from a disability to work shall have the right to social insurance, in conformity with a system laid down by law.

Employees becoming unemployed for reasons beyond their will and control shall have the right to compensation according to the terms prescribed by law.

Article 32

Marriage and the Family

Everyone of marriageable age shall have the right to freely choose his/her partner and found a family.

Marriage and the family shall enjoy special protection by the state.

Contracting and dissolving of a marriage shall be governed by law.

Article 33

Protection of Children and Women

Children, juveniles, pregnant women and young mothers shall enjoy the right to special protection provided by law.

Children born out of wedlock shall have rights equal to children born within wedlock.

Article 34

Health care by the State

Everyone shall have the equal right to health care by the state.

Compulsory medication shall be administered only for the benefit of the patient. in those cases envisaged by law.

No-one shall be subjected to a medical or scientific experiment without his consent.

Article 35

The Right to Education

Everyone shall have the right to an education free of charge. which lasts no less than 8 years.

General secondary education shall be open to everyone.

Secondary and higher vocational training shall be conditioned only on professional criteria.

Pupils and students shall have the right to be educated in private schools. too.

University autonomy shall be guaranteed.

Article 36

The Freedom of Creation and the Intellectual Property Rights

Everyone shall enjoy the freedom of creation in science. technique. literature and arts.

Copyright shall be protected by law.

Article 37

The Right to Petition

Everyone. alone or jointly with others. shall have the right to address requests. claims. or suggestions to competent governmental bodies.

Article 38

Due Process

The freedom. the property or the rights acknowledged by law may not be encroached without a due process.

Article 39

Judicial Restitution of a Right

No one, suffering encroachment of a right, acknowledged by this Constitutional Law, may be denied judicial restitution of the right.

Article 40

Right to a Fair Trial

No one may be denied the right to a fair, public and quick trial by a competent, impartial and independent court.

The presence of the public and mass media during the trial may be restricted when the interests of the public order or morality, national security, the private life of the parties in court, or the justice require it.

Article 41

Temporary Restriction of Rights

The exercising of some specific rights may be temporarily restricted by law in a situation of national emergency or war, with the exclusion of the rights provided for in Articles 1 (Right to Life), 2 (Freedom of Expression), 3 (Abolition of Torture), 6 (Prohibition Against Forced Confessions or Testimony), 19 (Freedom of Conscience and Religion), 25 (Equality Before the Law), 39 (Judicial Restitution of a Right), and 40 (Right to a Fair Trial).

CHAPTER VII¹⁹

THE FLAG, EMBLEM, NATIONAL ANTHEM, NATIONAL DAY, AND CAPITAL OF THE REPUBLIC OF ALBANIA

Article 2

National flag of the Republic of Albania shows a double-headed eagle with open wings situated in the heart of a red field in accordance with the traditional type of this century.

Article 3

Emblem of the Republic of Albania shows a double-headed black eagle placed on a shield of "variaz" type and red color. The red shield has a straight black line

¹⁹ This chapter was added by Law No. 7637 article 1. "For the flag, emblem, national anthem, national holiday and the capital of the Republic of Albania." (approved November 13, 1992). Flet. Zyrt. . 1992. No. 9. p. 460.

above it which grows narrow at the bottom. The words "Republic of Albania" are inscribed on it in black.

Article 4

The National Anthem of the Republic of Albania is the Anthem of the National Flag.

Article 5

The National Day of the Republic of Albania is November 28.

Article 6

The Capital of the Republic of Albania is Tirana.

CHAPTER VIII

FINAL PROVISIONS

Article 42

The local authorities are freely administered and are elected according to rules defined by special law.²⁰

The investigation office depends administratively on the Ministry of Justice.

Article 43

The draft amendments to this law may be submitted by the President of the Republic of Albania, by the Council of Ministers, or by one fourth of all the deputies.

The adoption of amendments is made by the People's Assembly with a majority of two thirds of all the deputies.

Article 44

The provisions of this law operate until the adoption of the Constitution of the Republic of Albania, whose draft will be prepared by the Special Commission appointed by the People's Assembly.

The composition of the commission and the schedule for the presentation of the draft constitution are defined by a special decision of the People's Assembly.

²⁰ Article 42, first paragraph, was amended by Law No. 7561, article 32. (See f.n. 2.)

Article 45

The Constitution of the People's Socialist Republic of Albania, adopted on 28 December 1976, as well as its later amendments, are abrogated.

Article 46

This law enters into force immediately.