

## Introductory Note

This documentation contains the English translation of all important Laws, Constitutional Court Decisions and a Draft Law related to lustration that have been passed or proposed in Albania between 1991 and 2004. It includes the translations of the following documents:

- a) Law Nr. 7666 (passed on 26 January 1993, affecting the licensing of private lawyers, later that year declared unconstitutional by the Constitutional Court of Albania);
- b) Law Nr. 8043 (passed on 30 November 1995, a much broader lustration law, amended several times and also modified by a Constitutional Court Decision, remained in effect until 31 December 2001, when it expired by its terms except for one Article) with all amendments and modifications and some explanation by the translator;
- c) Law Nr. 8001 (passed on 22 September 1995, containing a lustration related provision);
- d) Constitutional Court Decision Nr. 8/1993 (dated 21 May 1993 that struck down Articles 1, 3 and 4 of Law Nr. 7666, these being essentially the entirety of the law);
- e) Constitutional Court Decision Nr. 1/1996 (dated 31 January 1996, modifying Law Nr. 8043, while approving it in general);
- f) Draft Law “On checking the figure of an elected or appointed official in important state organs” (in parliamentary procedure since 29 June 2004), preceded by the Supporting Statement on the Draft Law by the three deputies who proposed it.

As far as we know, this is the most comprehensive documentation of lustration related legal acts, decisions and proposals in Albania in English language. Official translations of these documents in English have not been published. The entire documentation has been done by Ms. Kathleen Imholz who selected and translated all texts mentioned above. Ms. Imholz is a lawyer working in Albania, who has been an adviser to the Government, a professor of commercial law and legal advisor to the Albanian Human Rights Group. She is resident in Albania since October 1996.

We are deeply grateful to Ms. Imholz for providing this documentation and agreeing to its publication on the web page of the project *Disclosing hidden history: Lustration in the Western Balkans*.

Magarditsch Hatschikjan  
Project Director, CDRSEE

[From the Official Journal of the Republic of Albania Nr. 1/1993 (January)]<sup>1</sup>

**LAW  
Nr. 7666 dated 26.1.1993**

**ON  
THE CREATION OF A COMMISSION TO RE-ASSESS LICENSES FOR THE  
EXERCISE OF ADVOCACY AND FOR AN AMENDMENT TO LAW NR. 7541  
DATED 18.12.1991 “ON ADVOCACY IN THE REPUBLIC OF ALBANIA”**

In reliance on article 16 of law nr. 7491 dated 29.4.1991 “On the Major Constitutional Provisions,” on the proposal of a group of deputies

**THE PEOPLE’S ASSEMBLY  
OF THE REPUBLIC OF ALBANIA**

**D E C I D E D:**

**Article 1**

A commission is created in the Ministry of Justice to re-assess the licenses for the exercise of advocacy issued up to the time of entry of this law into force.

The Minister of Justice chairs the commission. He proposes the composition of the commission, which is approved by the High Council of Justice.

**Article 2**

The following amendments are made to law nr. 7541 dated 18.12.1991 “On Advocacy in the Republic of Albania”:

Article 12 is amended as follows:

A license for the exercise of the profession of advocacy is given by the Supervisory Council to Albanian citizens who have completed higher legal education and have not been punished for serious criminal acts and who also fulfill the moral and professional criteria.

Pedagogues of the Faculty of Law also exercise the profession of advocacy.

**Article 3**

Article 12-a is added with this content:

The following are not permitted to work as advocates:

- a) Former officers of State Security and collaborators with it.
- b) Former members of the Committees of the ALP [Albanian Labor Party – the Communist Party] and their apparatus in the center, districts and regions. Former directors of state organs in the center and districts (ministers, deputy ministers, directors of a directorate and chairmen, deputy chairman and secretaries of executive committees in districts and regions).
- c) Former employees of prisons and camps where punishment was undergone.

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<sup>1</sup> Translation by Kathleen Imholz.

d) Those who finished the Faculty of Law on the basis of education of the high school of the party and former chairmen of the offices of cadre of all levels.

e) Those who have taken part as investigator, prosecutor or judge in special or staged political proceedings as well as those who have performed high management functions in the central organs of justice.

f) Those who have used physical or psychological force during investigations, or other actions, as well as those who have taken part in border killings.

#### **Article 4**

An appeal against a decision taken according to article 12-a of this law is brought by the interested person within 30 days to the High Council of Justice, which should examine and respond to the appeal within two months from the date of delivery.

#### **Article 5**

The time of prohibition of exercising the profession of advocacy for the persons who are affected by this law is five years.

#### **Article 6**

This law is effective immediately.<sup>2</sup>

**Promulgated with decree nr. 445 dated 2.2.1993  
of the President of the Republic of Albania, Sali Berisha**

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<sup>2</sup> Translator's note: The publication date of the law was 28.2.1993.

**LAW Nr. 8043 dated November 30, 1995<sup>1</sup>**

**“ON THE CONROL OF THE MORAL FIGURE OF OFFICIALS  
AND OTHER PERSONS CONNECTED WITH THE PROTECTION  
OF THE DEMOCRATIC STATE”**

[As amended by law nr. 8151 dated September 12, 1996; law nr. 8220 dated May 13, 1997;  
law nr. 8232 dated August 19, 1997; and law nr. 8280 dated January 15, 1998;  
also containing indications of certain paragraphs declared unconstitutional  
by Constitutional Court decision Nr. 1/1996 dated January 31, 1996]

**In reliance on article 16 of law nr. 7491 dated April 29, 1991 “On the major constitutional provisions,” in order to secure the purity of the democratic life of the Albanian state in the period of post-communist transition, on the proposal of the Council of Ministers,**

**THE PEOPLE’S ASSEMBLY  
OF THE REPUBLIC OF ALBANIA**

**D E C I D E D:**

Article 1

**The organs and functions as to which this law specifies the conditions to serve in them are:**

[a] deputies in the People’s Assembly of the Republic of Albania; TRANSLATOR’S NOTE: this letter was removed by law nr. 8232 dated August 19, 1997]

**b) the President of the Republic, those elected by the parliament and those appointed by the President of the Republic;**

**c) members of the government, secretaries of state, their deputies, the general directors and directors of directorates of state offices, as well as those on the same level with them in other state structures;**

**ç) in the Presidency, in the administration of the People’s Assembly and of the Council of Ministers, of the ministries and other central institutions, of the Constitutional Court, of the Court of Cassation, of the High State Control, of the Office of the General Prosecutor and in the ranks lower than those mentioned in point “c,” if it is judged in the interest of the protection of the state by the head of the office and of his official data;**

**d) the governor, the vice governors and the directors of the Bank of Albania;**

**dh) in the Armed Forces of the Republic of Albania, for officers whose personnel function is of high grades (general and colonel) and commanders of independent units;**

**e) prefects[, the chairmen and members of the district councils, mayors [this word was removed by law nr. 8232 dated August 19, 1997], as well as communes and the members of the councils of municipalities and communes; [TRANSLATOR’S NOTE: Law nr. 8151 dated September 12, 1996 stated that the provisions of this law dealing with elected officials of local government, that is, this subparagraph, “are repealed so far as they relate to candidates and winners in local councils and candidates for and winners of the office of commune**

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<sup>1</sup> Translation by Kathleen Imholz. Translator’s note: because of all the changes that were made in this law, and which are indicated below, the last text of the law before it expired is highlighted in bold lettering below.

chairman,” in other words, leaving only prefects and mayors of municipalities covered by this clause; since mayors were removed by law nr. 8232, only prefects were still covered];

**ë) in the National Information Service (SHIK), in the Military Information Service (SHIU) and in the Public Order Information Service (SHIR);**

**f) in the Guard of the Republic;**

**g) chiefs of commissariats, police chiefs, employees of the criminal police and other special branches;**

**gj) judges, assistant judges, prosecutors and officers in the judicial police;**

**h) in diplomatic representations of the Republic of Albania;**

**i) in state radio and television, in the state news agency as directors and editors;**

[j) journalists and employees with a high duty in newspapers with a circulation of over 3000 copies; TRANSLATOR’S NOTE: This was repealed by the Constitutional Court decision of January 1996]

**k) in management functions in economic unions, in state financial institutions and those of insurance, as well as in state banks;**

**l) rectors and directors in universities and schools of higher education.**

## Article 2

[TRANSLATOR’S NOTE: Article 2 was changed radically two times, by law nr. 8220 and by law nr. 8280; for clarity, article 2 as originally enacted and as changed by law nr. 8220, are both given below. The bold text that follows is article 2 as in effect when the law expired, that is, the language from law nr. 8280 dated January 15, 1998].

**The appointment or election of candidates to the functions and organs mentioned in article 1 is conditioned on the implementation of the legal criteria that, for the period from November 29, 1944 until December 11, 1990, the candidate shall not have been in the following functions:**

**a – Member or candidate of the Political Bureau of the Party of Labor, except for cases when he worked against the official line or distanced himself from duty publicly;**

**b – Not to have been a senior officer or leading functionary in the organs of State Security, as the chairman of a branch, director or deputy minister and minister of the organs of Internal Affairs.**

**c – Not to have been a collaborator of the organs of State Security with activity of a political character, connected with the criminal acts contemplated by law nr. 7514 dated September 30, 1991 “On the innocence, amnesty and rehabilitation of the former politically persecuted and imprisoned people” or a voluntary collaborator for such actions, not to have been in foreign intelligence services and in other analogous organs.**

**ç – Not to have been punished by a final criminal decision for crimes against humanity, for defamation or false testimony in political cases; not to have been a member of the Central Commission of Banishment-Internments.**

[There follows article 2 as amended by law nr. 8220 dated May 13, 1997. That is, it was the language of article 2 as in effect for the June 1997 parliamentary elections. No other amendments to the law were made by law nr. 8220:

To serve in the organs and functions mentioned in article 1 of this law, a person should

a) not have been a member or a candidate of the Political Bureau, except for cases when he worked against the official line or distanced himself publicly;

b) not have worked as an officer in State Security (legal or illegal) in departments of prosecution and those of protecting high state personalities;

c) not have been registered in the materials of State Security as a collaborator (informer, agent, resident or person who gave shelter) or not have been a conscious collaborator with State Security (not to have been the owner of an apartment put at the disposition of State Security);

ç) not to have been a denouncer, false witness or person who supplied aggravating circumstances in political trials to the damage of the defendants;

d) not to have finished the Higher School of the Ministry of the Interior and its previous analogues in the profile of Security or courses of three months or longer in the same profile, as well as their analogues outside the state;

dh) not to have been or not to be a collaborator of any foreign investigative service or their analogues

e) not to have been punished by court decision for crimes against humanity.]

[There follows article 2 as originally enacted, including amendments made by the Constitutional Court decision of January 1996 and law nr. 8151 of September 1996:

In order to serve in the organs and functions mentioned in article 1 of this law, it is necessary that the person during the entire period November 28, 1944 to March 31, 1991:

a) not have been a member or candidate of the Politburo [Political Bureau], secretary, member of the Central Committee of the Party of Labor of Albania, First secretary of the Party of Labor of Albania in the districts and analogous levels, an employee of the sector for State Security in the Central Committee of the Labor Party of Albania, except for cases when he worked against the official line or distanced himself publicly;

b) member of the government, member of the Presidential Council, chairman of the High Court, General Prosecutor, deputy before the elections of March 31, 1991; except for cases when he worked against the official line or distanced himself publicly;

c) not have worked as an officer of State Security (legal or illegal), in the departments of prosecution and those of protecting high state personalities;

ç) not have been registered in the materials of State Security as a collaborator (informer, agent, resident or person who gave shelter) or not have been a conscious collaborator with State Security (not to have been the owner of an apartment put at the disposition of State Security);

d) not have been a denouncer, false witness or person who supplied aggravating circumstances in political trials to the damage of the defendants;

dh) not have worked as an officer in the structure of the camps and prisons for political prisoners;

e) not have finished the Higher School of the Ministry of the Interior and its previous analogues in the profile of Security or courses of three months or longer in the same profile, as well as their analogues outside the state;

ë) not have taken part as investigator, prosecutor, judge or assistant judge in special political trials;

f) not have been or to be a collaborator of any foreign investigative service or their analogues.

TRANSLATOR'S NOTE: the Constitutional Court decision of January 1996 said in its discussion that the phrase "except for cases when he worked against the official line or distanced himself publicly" appearing in subparagraphs a) and b) above should be extended to all subparagraphs except f); but the end of the Constitutional Court decision, where the

changes made or to be made are indicated specifically (called the “ordering part” of the decision), did not refer to this].

### Article 3

[TRANSLATOR’S NOTE: Article 3 as in effect on 31 December 2001, when the law went out of effect, is that added by law nr. 8280 dated January 15, 1998, which is in bold letters below. For historical completeness, the text of Article 3 as originally enacted in 1995 follows in regular (non-bold) text].

**In special cases, when the interests of the state require it, in the sector of defense, in that of public order and in that of SHIK, it is permitted not to apply the condition contemplated in letters “b,” “c,” and “ç” of article 2, on the condition that the proposal be reasoned and in writing. The proposal made by the interested organs, after being approved by the Prime Minister, is submitted to the Commission for the appropriate decision.**

[Old text: In special cases, but always with the approval of the Prime Minister, the minister of Defense, the minister of the Interior and the chairman of SHIK for their own employees, for the account of their own organ, it is permissible not to apply the condition that is specified in letters “c,” “ç,” “dh,” and “e” of article 2, when its implementation affects important state interests, when the purpose of this law is not violated].

### Article 4

**In order to verify the facts mentioned in article 2, a state commission is established, consisting of the chairman, the vice chairman and five members, honorable citizens of standing [personality], and who are not deputies in the People’s Assembly.**

**The Chairman is named and removed by the People’s Assembly. The vice chairman and one member of the commission are named and removed by the Council of Ministers, while one member will be named and removed by the Ministry of Justice, the Ministry of the Interior, the Ministry of Defense and the National Information Service.**

**Only those who have not committed the activity specified in article 2 of this law may be named members of the commission. The checking of the candidacies for members of the commission is performed jointly by the Prime Minister, the minister of Justice and the chairman of the National Information Service.**

**Membership in the commission is not delegable. The pay of the members of the commission is set by the Council of Ministers.**

**The opinion of the person who has been proposed is received before his appointment as a member of the commission.**

### Article 5

[TRANSLATOR’S NOTE: Article 5 as now in effect is that added by law nr. 8280 dated January 15, 1998, in bold letters below. For historical completeness, the text of Article 5 as originally enacted, and as amended in 1997, follows in regular (non-bold) text].

**The activity of the commission is legitimate when its decisions are taken by a majority of votes and the chairman or vice chairman and 4 members are present.**

**When new data are presented about decisions that have been taken that throw light on the truth, the Commission may review a decision. A review of the decisions may also be made on the request of the President of the Republic, the Chairman of the People's Assembly, the Prime Minister and the leaderships of political subjects.**

[Old text: The activity of the commission is legitimate when the chairman or vice chairman and at least four members are present. The work of the commission is closed and a certificate of verification is given according to the judgment of the majority.

TRANSLATOR'S NOTE: The last phrase about a certificate of verification was added by law nr. 8232, replacing a previous phrase that "its decisions are taken by majority vote"].

### **Article 6**

**The commission may make verifications to prove the facts mentioned in article 2 and may also call for explanations the interested party, specialists and persons who have a connection to the question etc.**

[TRANSLATOR'S NOTE: Article 6 originally had a second paragraph, reading "In the case of a refusal to testify or false testimony or expertise, the persons are criminally liable according to the Criminal Code". This paragraph was repealed by the Constitutional Court decision of January 1996].

### **Article 7**

**The Commission begins the procedure when a request is made:**

- a) by the person who will put up his candidacy for one of the functions in article 1;**
- b) by the work centers mentioned in article 1;**
- c) by a person who will work in one of the duties or organs mentioned in article 1 (paragraphs b through l), this request to be accompanied by the proposal for appointment;**
- ç) by an interested person, against whom accusations in the press or public are made, or by the relatives of one who is no longer alive, when the certificate of verification [TRANSLATOR'S NOTE: the certificate of verification was originally called a "decision;" the change was made by law nr. 8232 dated August 19, 1997, and is reflected in several other articles] is necessary for purposes of rehabilitation, indemnification or putting his personal standing [personality] back in order, or when he has been a holder of the functions that are contemplated in article 1 and he is no longer a candidate for those functions.**

[TRANSLATOR'S NOTE: the Constitutional Court decision of January 1996 referred to above considered it necessary to clarify that the word "person" in point a) above should be understood as both a natural person and a political party (electoral subject), but the "ordering part" at the end of the decision did not refer to this].

### **Article 8**

[TRANSLATOR'S NOTE: Article 8 as now in effect is that added by law nr. 8232

dated August 19, 1997, in bold letters below. For historical completeness, the text of Article 8 as originally enacted in 1995 follows in regular (non-bold) text].

**The Commission gives a certificate of verification within 15 days from the receipt of the request. The certificate shall contain reasoned argument as to whether the person fulfils the requirements of this law connected with the functions mentioned in article 1, or not.**

**When it is verified in the certificate of verification that the citizen does not have any of the legal impediments mentioned in article 2 of this law, this fact shall be reflected in all his documents.**

[Old text: The commission takes a decision within 15 days from receipt of the request. In the decision there shall be reasoned argument as to whether the person fulfils the requirements of this law connected with the functions mentioned in article 1 or not.

When it is verified in the decision that the citizen is not a person among those mentioned in article 2, this fact shall be reflected in all his documents.

TRANSLATOR'S NOTE: the Constitutional Court decision of January 1996 referred to above ordered the People's Assembly to supplement article 8 to assure constitutional guarantees in case the 15 day term called for in this article is not respected; the amendments made by law nr. 8232 as indicated above do not do this nor was it ever done otherwise].

### Article 9

[This paragraph and the next one were stricken by law nr. 8232 dated August 19, 1997. They previously read: Every person who will hereafter put up his candidacy for election to one of the functions of article 1 shall have previously received the decision of the commission that he has not taken part in any functions included in article 2.

When he does not fulfill the conditions to be presented as a candidate in the next elections and nonetheless presents his candidacy for registration, notification shall be made to his electoral subject [political party], public opinion and the Central Election Commission, which does not register him as a candidate].

**When a person does not fulfill the conditions that are required to work in one of the functions mentioned in article 1 (paragraph b through l), he is discharged from work within 15 days from the day of notification by the state commission of the certificate of verification.** [TRANSLATOR'S NOTE: changed from "decision" to "certificate of verification" by law nr. 8232 dated August 19, 1997].

**Persons who have been checked under this law and who have turned out not to be [sic] the functions included in article 2 are not checked again while the law is in force when they repeat the duties contemplated in article 1.**

### Article 10

[TRANSLATOR'S NOTE: Article 10 in effect when the law expired is that added by law nr. 8232 dated August 19, 1997, in bold letters below. For historical completeness, the text of Article 8 as originally enacted follows in regular (non-bold) text].

**A person may appeal against a certificate of verification of the state commission to the court of appeal within 7 days from the day of communication, and the latter shall decide within 15 days.**

[Old text: A person may appeal against a decision of the state commission to the Court of Cassation within 7 days from the day of communication, which shall decide within 15 days].

#### **Article 11**

**It is prohibited to make known to public opinion the facts set out in a certificate of verification [TRANSLATOR'S NOTE: changed from "decision" to "certificate of verification" by law nr. 8232 of August 19, 1997] of the commission, as well as the decision itself, without the preliminary approval in writing of the interested person.**

[TRANSLATOR'S NOTE: a phrase at the end of this sentence "except for the case mentioned in the first paragraph of article 9" was stricken by law nr. 8232].

#### **Article 12**

**A request for the verification of the leadership of political associations and parties who are present in the political and social life of the country may be presented [TRANSLATOR'S NOTE: the Constitutional Court decision of January 1996 repealed the phrase "by the minister of Justice or" at this point in the article] by the leadership themselves, which are notified of the results. In the case of continuation of these persons in those structures, public opinion is informed.**

#### **Article 13**

**The state commission, in the function of fulfillment of the duties charged by this law, has the right to ask to have put at its disposition all archival materials, including the documentation of the Party of Labor of Albania, from which the data about the activity of State Security and particular persons can be taken that have to do with the implementation of this law.**

**The Ministry of the Interior, the National Information Service, the judges and prosecutors, and the General Directorate of the Archives are obligated immediately to present to the commission, at its request, all archival materials requested.**

**At its request, the commission shall immediately have put at its disposition all duplicates of the above documents that are connected with the activity of State Security, with the platform of its work or particular citizens.**

#### **Article 14**

**If the state commission or the organs charged with the protection of the constitutional order observe during their activity data about the persons specified in article 1, they make this known to the heads of the respective structures, which operate according to this law.**

#### **Article 15**

**The public use and maintenance of every document or facsimile of it outside the archives mentioned in article 13, as well as the hiding, destruction, falsification and every other manner of manipulation of the documentation of State Security and the other institutions with the data that is the object of this law, as well as false public accusations against an individual, constitute a criminal act and are punished by up to five years imprisonment.** [TRANSLATOR'S NOTE: a fixed term of five years imprisonment in the original law was changed to "up to five years imprisonment" by the Constitutional Court decision of January 1996].

#### **Article 16**

**In the absence of other legal provisions it is prohibited to have contact with the documentation that is the object of this law for certificates of verification** [TRANSLATOR'S NOTE: "decisions" was changed to "certificates of verification" by law nr. 8232 dated August 19, 1997] **connected with persons after the year 2001 and until the year 2025. The National Information Service, the Ministry of the Interior and the General Directorate of the Archives of the State are charged with the maintenance of the archive.**

#### **Article 17**

**The Council of Ministers is charged with drawing up the necessary rules for implementation of this law.**

#### **Article 18**

**This law is effective on November 30, 1995 and is repealed on December 31, 2001, with the exception of article 16** [TRANSLATOR'S NOTE: this article originally provided that article 14 would also stay in effect, but that was repealed by the Constitutional Court decision of January 1996].

**Promulgated with decree nr. 1311 dated December 4, 1995  
of the President of the Republic, Sali Berisha.**

[Original law, from the Official Journal of the Republic of Albania Nr. 21/1995]<sup>1</sup>

**LAW  
Nr. 8001 dated 22.09.1995**

**ON  
GENOCIDE AND CRIMES AGAINST HUMANITY  
COMMITTED IN ALBANIA DURING THE COMMUNIST REGIME  
FOR POLITICAL, IDEOLOGICAL AND RELIGIOUS REASONS**

[As amended by law nr. 8219 dated 13.5.1997  
and law nr. 8231 dated 19.8.1997]

**In reliance on article 16 of law nr. 7491 dated 29.4.1991 “On the Major Constitutional Provisions,” on articles 1, 3, 6 and 18 of law nr. 7692 dated 31.3.1992 “On an Addition to the Major Constitutional Provisions” and articles 67 and 74 of the Criminal Code of the Republic of Albania, desiring to accelerate criminal cases related to crimes against humanity for political, ideological, class and religious reasons organized and committed by the Communist state in violation of the fundamental human rights and freedoms through physical and psychological violence, staging, falsifying or manipulating data, bringing as a consequence murder, imprisonment, internment and banishment, as well as the massive destruction of religious institutions and objects,**

**THE PEOPLE’S ASSEMBLY  
OF THE REPUBLIC OF ALBANIA**

**D E C I D E D:**

**Article 1**

**The organs of the Prosecutor’s Office, in conformity with the criminal and procedural provisions, are charged with beginning, immediately and with priority, the investigation of activity related to crimes against humanity committed in Albania during the Communist regime for political, ideological and religious reasons.**

**Article 2**

**The perpetrators of the activity contemplated in article 1 of this law will be investigated and tried according to the current Code of Criminal Procedure.**

**Article 3**

[Translator’s note: The two amendments to this law were short ones, both affecting only this article 3 and going along with analogous amendments to law nr. 8043. Law nr. 8280 changed

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<sup>1</sup> Translation by Kathleen Imholz. Translator’s note: The latest text of the law, after all amendments, is highlighted in bold lettering below. It is technically still in effect, although the “lustration” paragraph (paragraph 3) expired by its terms on 31 December 2001, along with law nr. 8043 which elaborated its general principle.

the article significantly and is in bold below. Article 3 as originally enacted, with the small modification made by law nr. 8231, follows in brackets.]

**Hereafter, the perpetrators, ideologists and implementers of the above crimes who were former members of the Political Bureau, former employees of State Security, former collaborators of State Security, witnesses who made denunciations to the injury of defendants in political proceedings except for cases when they acted against the official line and distanced themselves publicly, and persons punished by court decision for crimes against humanity, may not be elected deputies in the People's Assembly and mayors of a municipality or be named to the high administration of the State, the judicial system and the mass media until 31 December 2001.**

**Former collaborators of State Security, as well as witnesses who made denunciations to the injury of defendants in political proceedings, are also exempted from this rule when they have no longer exercised the activity for the past 20 years.**

[As in effect before law nr. 8280: Hereafter, the perpetrators, ideologists and implementers of the above crimes who up to 31 March 1991 were: former members of the Political Bureau and the Central Committee of the PLA [Party of Labor of Albania] and the CPA [Communist Party of Albania], former ministers and former deputies of the People's Assembly, former members of the Presidential Council, former chairmen of the High Court, former General Prosecutors, former first secretaries of the districts, former employees of State Security, former collaborators of State Security and witnesses who made denunciations to the injury of defendants in political proceedings may not be [elected to the central and local organs of government or: these words were stricken by law nr. 8231 dated 19.8.1997] appointed to the high administration of the State, the judicial system and the mass media until 31 December 2001, except when they acted against the official line and distanced themselves publicly.]

#### **Article 4**

**The Council of Ministers is charged with preparing legal acts and approving subsidiary legislation by 15 December 1995.**

#### **Article 5**

**This law is effective immediately.**

**Promulgated with decree nr. 1221 dated 26.9.1995  
of the President of the Republic of Albania, Sali Berisha**

[From the Official Journal of the Republic of Albania Nr. 8/1993 (June)]<sup>1</sup>

## DECISION

The Constitutional Court of the Republic of Albania, consisting of:

Rustem Gjata,	Chairman of the Constitutional Court
Feti Gjilani	Vice Chairman
Hilmi Dakli,	Member
Veli Budo,	Member
Franc Jakova,	Member
Natasha Sheshi,	Member
Thimjo Kondi	Member
Ylvi Myrtja,	Member

assisted by secretary Ylli Memudaj, on 30 April 1993, 21 May 1993 examined in open judicial session case nr. 7 pertaining to:

**COMPLAINANT: The Parliamentary Group of the Socialist Party**

## THE OBJECT

The repeal as unconstitutional of law nr. 7666 dated 26 January 1993 “On the Creation of a Commission to Re-Assess Licenses for the Exercise of Advocacy and for an Amendment to Law Nr. 7541 dated 18 December 1991 “On Advocacy in the Republic of Albania,” because:

1) This law conflicts with article 16 of law nr. 7561 dated 29 April 1992 “On Some Amendments and Additions to the Law ‘on the Major Constitutional Provisions.’” which considers advocacy as a free profession that may be exercised by every jurist who meets specified conditions.

2) According to article 15 of that constitutional law, the High Council of Justice is the only authority that decides on the appointment, movement and disciplinary responsibility of judges of first instance, appellate judges and the office of the prosecutor. Therefore this organ cannot also be given, by an ordinary law, the competency to take away a license for exercising the profession of advocates, who are free professionals.

3) The above-mentioned law nr. 7666 dated 26 January 1993 seriously violates the constitutional principle of the separation of powers, because the right to prohibit the exercise of a profession or craft is left solely to the competency of a criminal court (articles 17 and 24 of the Criminal Code).

## THE CONSTITUTIONAL COURT,

after hearing the respective report,

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<sup>1</sup> Translation by Kathleen Imholz.

## F I N D S:

The content of articles 1, 3 and 4 of law nr. 7666 dated 26 January 1993 “On the Creation of a Commission to Re-Assess Licences for the Exercise of Advocacy...” is unconstitutional for the following reasons:

1) Article 1 of the above-mentioned law provides that: “A commission is created in the Ministry of Justice to re-assess licenses for the exercise of advocacy issued up to the time of entry of this law into force. The Minister of Justice chairs the commission. He proposes the composition of the commission, which is approved by the High Council of Justice.”

This provision is in conflict, first of all, with article 16 of law nr. 7561 dated 29 April 1992 “On Some Amendments and Additions to the Law ‘on the Major Constitutional Provisions,’” the text of which provides that “Advocacy is exercised as a free profession. The activity of advocacy is regulated by separate law.” From this, it is without any doubt that advocacy now in the Republic of Albania is a specialized professional society (the order of advocates) that, according to the respective law or charter, is administered directly by its elected organs. Thus, no organic or ordinary law may avoid the constitutional principle (which is also sanctioned in contemporary international acts) that advocacy is a free profession and consequently self-administering. This juridical character of advocacy is also expressed in articles 3 and 4 of the law dated 18 December 1991 “On advocacy in the Republic of Albania.”

The text of article 3 provides: “To supervise the activity of advocacy, the Supervisory Council is created, consisting of the chairman of the branch of advocacy in the Ministry of Justice and **six advocates elected by the general meeting of advocates. The Supervisory Council of advocates is independent in the exercise of its activity.**” According to article 4, the Supervisory Council is the sole organ that is competent: a) to give a license for the exercise of the profession of advocate when a jurist meets the conditions contemplated in this law; b) to decide on administrative and disciplinary measures for advocates who violate the rules for exercising the profession of advocate.”

Even a cursory examination of the content of article 3 of law nr. 7541 dated 18 December 1991 brings out clearly that mistakes of the Supervisory Council of advocacy in granting licenses for the exercise of this profession (when it does not correct them itself) may be corrected only by the general meeting of advocates, which is their highest organ, and not by a “re-assessment” commission, which, as comes out clearly from articles 1 and 4 of law nr. 7666 dated 26 January 1993, is of a state nature.

II) Article 3 of the law adds article 12/a to the law “On advocacy in the Republic of Albania,” which in quite an imperative manner specifies that those jurists who, during any time period during the party state, have performed one of the numerous duties indicated in this provision, are not permitted to work as advocates.

The formulation of this article clearly expresses that the kind of duty that the jurist performed in the above-mentioned organs of the party state is imposed as the sole criterion determining that his license to exercise the profession is to be lifted, regardless of the fact that the jurist has had and has the appropriate moral and professional characteristics. This avoids the democratic criterion of individual evaluation and conflicts with article 28 of constitutional law nr. 7692 dated 31 March 1993, sanctioning that “everyone has the right to earn his means

of living by lawful work that he has chosen or accepted himself. He is free to choose his profession and place of work...”.

In violation of this constitutional principle, which has also been provided in article 6 of the international covenant on economic, social and cultural rights (to which the Republic of Albania adhered by law nr. 7511 dated 8 August 1991), not even an honest jurist who has performed one of the duties indicated in article 12/a of the law may be an advocate, according to that article. Indeed, in the last paragraph of this article (letter “f”), it is provided that **“those who have used physical or psychological force during investigations, or other actions, as well as those who have taken part in border killings” may not be advocates.**” The content of this article expresses clearly that under either of its clauses, we are faced with the commission of serious crimes. But it is a well-known juridical notion that only a competent court may, by its final decision, find a person whom it has tried guilty of the commission of a crime, and never a commission for the re-assessment of the licenses of advocates.

Thus, two constitutional principles are violated by this paragraph: a) the separation of powers (article 3 of law nr. 7491 dated 29 April 1991 “On the major constitutional provisions,” and b) the presumption of innocence (article 7 of constitutional law nr. 7692 dated 31 March 1993, in which it is said that “No one may be found guilty until his guilt is proven by a final judicial decision.”) It should be added that the principle of the presumption of innocence is also sanctioned in article 14 of the third part of the international covenant on civil and political rights, to which the Republic of Albania adhered by law nr. 7510 dated 8 August 1991.

III) In articles 1 and 4 of law nr. 7666 dated 26 January 1993, it has been specified that the High Council of Justice is given the exclusive competencies to approve the composition of the commissions of re-assessment of licenses for the exercise of advocacy and to examine an appeal against a decision of this commission, which an advocate whose license has been taken away brings within the legal time period.

These two competencies given by this ordinary law to this high organ of the judicial system are unconstitutional, because in article 15, paragraph 2 of law nr. 7561 dated 29 April 1992 “On Some Amendments and Additions to the Law ‘on the Major Constitutional Provisions,’” the text provides that: **“the High Council of Justice is the only authority that decides on the appointment, movement and disciplinary responsibility of judges of first instance, appellate judges and the office of the prosecutor.”** Thus, the prerogatives of the High Council of Justice are applicable only for the above-mentioned functionaries of the judicial power (magistrates) and may not be extended also to advocates, who, as was emphasized above, are free professionals and not magistrates.

IV) Articles 1, 3 and 4 of law nr. 7666 dated 26 January 1993 are also unconstitutional because the Conference on Security and Cooperation in Europe (CSCE), in its meeting held in Copenhagen, on 29 June 1990 approved “The Document on the Human Dimension,” the text of which specifies, among other things, that “the independence of advocates will be recognized and protected, especially so far as concerns the conditions of their inclusion in this profession and the exercise of their activity.” (Article 5, paragraph 13 of this Document).

It is well known that the Republic of Albania is a member with full rights of the CSCE, and in article 4 of law nr. 7491 dated 29 April 1991 “On the major constitutional

provisions,” it has been sanctioned that: “The Republic of Albania recognizes and guarantees the fundamental human rights and freedoms...accepted in international documents.”

Since articles 1, 3 and 4 of law nr. 7666 dated 26 January 1993 “On the Creation of a Commission to Re-Assess Licenses for the Exercise of Advocacy” conflict with the above mentioned provisions of the constitutional laws of the Republic of Albania and consequently are to be repealed, the existence of article four of that law, specifying that “the time of prohibition of exercising the profession of advocacy for the persons who are affected by this law is five years” is no longer justified.

However, article 2 of law nr. 7666 dated 26 January 1993 amending article 12 of the law “On Advocacy in the Republic of Albania” is compatible with the provisions of our constitutional laws in force.

The claim set out in the complaint of the Parliamentary Group of the Socialist Party that only a criminal court may decide to take away the right of an advocate to exercise his profession is groundless. As is expressly said in article 22 letter “b” of the present law “On Advocacy in the Republic of Albania,” the Supervisory Council, after verifying a violation in the performance of duty, may take the measure of removing from an advocate or assistant the right to exercise the profession of advocate for up to five years.

#### **FOR THESE REASONS,**

The Constitutional Court of the Republic of Albania, based on the above-mentioned provisions of the constitutional laws in force in implementation of article 24, point 2 and 10, and article 26 of law nr. 7561 dated 29 April 1992 “On some amendments and additions to the law ‘On the major constitutional provisions,’”

#### **D E C I D E D:**

Articles 1, 3, 4 and 5 of law nr. 7666 dated 26 January 1993 are repealed.

This decision is final and binding.

It is effective immediately, after being officially made known to the Chairmanship of the People’s Assembly, the Parliamentary Group of the Socialist Party and the Minister of Justice.

Tirana, 21 May 1993

Nr. 7 of the Basic Register  
Decision Nr. 8

Translator’s note: Although dissenting opinions of the Constitutional Court were not published at this time in Albania, this decision was not unanimous.

## DECISION

The Constitutional Court of the Republic of Albania, consisting of:

Rustem Gjata,	Chairman of the Constitutional Court
Veli Budo,	Member
Zija Vuci,	Member
Franc Jakova,	Member
Alfred Karamuço,	Member
Metush Saraçi,	Member
Hilmi Dakli,	Member

with secretary Drita Filto, on 30 October 1995, 20 November 1995, 17 January 1996 and 31 January 1996 examined in open judicial session case nr. 17/2 pertaining to:

**COMPLAINANT:** **1. The Parliamentary Group of the Social Democratic Party,**  
represented by Skënder Gjinushi, Paskal Milo and Gaço Apostoli;  
**2. The Parliamentary Group of the Socialist Party,**  
represented by Namik Dokle, Fehmi Abdiu and Pandeli Majko.

## THE OBJECT

1. The Parliamentary Group of the Social Democratic Party: a declaration as unconstitutional of article 3 of law nr. 8001 dated 22 September 1995 “On Genocide and Crimes against Humanity Committed in Albania during the Communist Regime for Political, Ideological and Religious Reasons.”

2. The Parliamentary Group of the Socialist Party: a declaration as unconstitutional of law nr. 8001 dated 22 September 1995 “On Genocide and Crimes against Humanity Committed in Albania during the Communist Regime for Political, Ideological and Religious Reasons” and law nr. 8043 dated 30 November 1995 “On the Control of the Moral Figure of Officials and Other Persons Connected with the Protection of the Democratic State.”

## THE CONSTITUTIONAL COURT,

after hearing the respective report,

## F I N D S:

The Parliamentary Group of the Social Democratic Party and the Parliamentary Group of the Socialist Party have set out the unconstitutionality of the restriction contemplated in article 3 of law nr. 8001 dated 22 September 1995 “On Genocide and Crimes against Humanity Committed in Albania during the Communist Regime for Political, Ideological and Religious Reasons” on the right to be elected to the central and local organs of government and to be appointed to the high state administration, the judicial system and the mass media until 31 December 2001 of persons who, up until 31 March 1991, have been members of the Politburo and the Central Committee of the Albanian Party of Labor (ALP) and its

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<sup>1</sup> Translation by Kathleen Imholz

predecessor the Albanian Communist Party (ACP), ministers, deputies of the People's Assembly, members of the Presidential Council, chairman of the High Court, general prosecutors, first secretaries of the districts, employees of State Security, collaborators of State Security and denouncing witnesses to the detriment of defendants in political trials.

To support this application, they refer to articles 2, 4 and 8 of law nr. 7491 dated 29 April 1991 "On the Major Constitutional Provisions" and articles 19, 25 and 41 of law nr. 7692 dated 31 March 1993 "On the Fundamental Human Rights and Freedoms." These provisions sanction equality before the law, the guaranteeing of the basic human rights and freedoms accepted in international documents, the electoral right and the temporary restriction of particular rights.

Having the above constitutional norms in mind in the overall context of the constitutional legislation of the Republic of Albania, the generally accepted international norms and acts, the unprecedented denial and violation of the fundamental human rights during the Communists regime and the conditions of the transition, the Court considers the complaint of the parliamentary groups of the Social Democratic Party and the Socialist Party related to the restriction for a specified time of the electoral right and of some state employment categories for certain categories of persons to be groundless.

In its introductory part, the constitutional law "On the Fundamental Human Rights and Freedoms," expressing its purpose, emphasizes that "during the fierce and extremely inhuman 46-year long dictatorship of the party-state in Albania, through state terror the civil and political, economic, social and cultural rights and the most basic human freedoms were violated," and that "the general enjoyment and respect of these rights and freedoms constitutes one of the highest aspirations of the Albanian people, and one of the essential preconditions for guaranteeing freedom, social justice and the democratic progress of our society."

It is exactly the subjects contemplated in article 3 of law nr. 8001 dated 22 September 1995 and article 2 of law nr. 8043 dated 30 November 1995 who were the perpetrators, ideologists and implementers of that fierce and inhuman dictatorship that the constitutional law denounces in its preamble. Consequently, the temporary restriction of the rights of these subjects to be elected and appointed to certain state offices constitutes a guaranty for the implementation of all the constitutional provisions and international acts that have to do with the fundamental human rights and freedoms.

It is true, as the Parliamentary Group of the Socialist Party propounds, that in article 25 of the "International Convention on civil and political rights" of the General Assembly of the UN dated 16 December 1966, it is provided that every citizen has the right to vote and be elected, as well as to take part in the management of public affairs. But, as specified in the first paragraph of the same article, only "unreasonable restrictions" of these rights are impermissible.

In addition to the above, the Court is aware that in the second paragraph of article 29 of the "Universal Declaration of Human Rights" dated 10 December 1948, it is specified that "in the exercise of his rights, every person is subject only to restrictions defined by law and only with the purpose...of responding to the requirements of morals...and the general welfare in a democratic society."

Basing itself also on these international provisions, the Court reaches the conclusion that the laws that are the object of examination specify reasonable restrictions that also respond to the correct moral requirements of our democratic society.

The claim of the Parliamentary Group of the Social Democratic Party that “no country of the East has, after a dictatorship, issued similar laws that would restrict the electoral right of particular persons” is not an argument to prove the unconstitutionality of the provisions that are the object of examination. Nonetheless, the Court points out that laws that have established restrictions, including restrictions of the electoral right, have been approved in Hungary, Italy, Austria and other places.

The Parliamentary Group of the Socialist Party has also asked for the repeal of articles 1 and 2 of law nr. 8001 dated 22 September 1995.

In article 1, the prosecutorial organs are charged with conducting, on a priority basis, an investigation of activity related to crimes against humanity committed during the Communist regime.

The People’s Assembly is not outside the framework of its competencies. According to point 10 of article 16 of the law “On the Major Constitutional Provisions,” the People’s Assembly oversees the activity of the General Prosecutor’s Office.

Supporting its request for the unconstitutionality of article 1, the Parliamentary Group of the Socialist Party refers to the content of the first sentence of point 1 of article 15 of the International Covenant on civil and political rights of 16 December 1966: “No one is to be punished for actions or failures to act that do not constitute a violation according to national or international law at the time they were committed.” But this reference is truncated, because point 2 of the same article says: “Nothing in this article is to be interpreted as being against the trial or punishment of any person for actions or failures to act that were considered, at the time they were committed, criminal according to the general provisions of law recognized by all countries.”

So far as concerns article 2, which specifies that the investigation and trial of the crimes contemplated in article 1 will be done according to today’s Code of Criminal Procedure, although it repeats the provision of article 525 of the Code of Criminal Procedure, this does not make it unconstitutional.

As to law nr. 8043 dated 30 November 1995, the Court finds the complaint of the Parliamentary Group of the Socialist Party for the repeal of letter “j” of article 1 to be well grounded.

In article 2 of the law “On the Fundamental Human Rights and Freedoms” and article 1 of law nr. 7755 dated 6 October 1993 “On the Press,” the freedom [lit. right] of the press is guaranteed. The profession of journalist is a free profession, based on personal initiative and activity, and it does not have to do with state activity.

According to the second paragraph of article 6, refusing to testify or giving false testimony or expertise before the commission entails criminal responsibility according to the Criminal Code. The Court observes that false testimony, refusal to testify and false expertise constitute criminal offenses contemplated by articles 306, 307 and 309 only when they are made before the organ of criminal prosecution or the court. Consequently, these criminal

offenses contemplated in the Criminal Code cannot also be extended to other organs. Therefore, this provision should be repealed. It conflicts with the second paragraph of article 6 of the law “On the Fundamental Human Rights and Freedoms,” because it has not been provided as a criminal offense in itself. If it is thought necessary, the legislator can approve a separate provision for this criminal offense, with the respective sanctions.

In article 12, the right of the Minister of Justice to make an application for the verification of the leading organs of political parties and associations is provided. Giving this right to the Minister of Justice conflicts with the second paragraph of article 6 of the law “On the Major Constitutional Provisions.” According to this provision, political parties and other organizations are completely separate from the state. For this reason, the words “by the Minister of Justice or” in article 12 should be repealed.

Although according to article 18, this law is repealed on 31 December 2001, the exception made for not repealing article 14 is in conflict with the purpose and time period for the action of the law in time. Consequently, the words “14 and” should be stricken from article 18.

In article 15, a definite (fixed) punishment of five years has been provided for public use, hiding, getting rid of, or falsifying documents or other unlawful actions that constitute criminal offenses.

The Court considers that this way of setting a fixed punishment is in conflict with the principle sanctioned in the second paragraph of article 47 of the General Part of the Criminal Code for the individualization of sentences against persons and that it hinders the implementation of articles 48, 49 and 50, which deal with mitigating and aggravating circumstances. Therefore, in article 15 of the law, the words “five years imprisonment” should be replaced with the words “imprisonment for up to five years.”

During the examination of the law as a whole, the Court observed that in the first paragraph of article 8, only a time period of 15 days for taking a decision by the commission has been provided, failing to assure the constitutional guarantees if this time period is not respected.

Therefore, the People’s Assembly should make the necessary additions to guarantee that the above time period is respected.

As to the claim of the Parliamentary Group of the Socialist Party that article 3 of law nr. 8043 dated 30 November 1995 wrongfully recognizes to the government offices designated in this provision the competency not to apply the law in special cases, the Court thinks that the claim has no constitutional basis. The exceptions permitted for the cases contemplated in letters “c,” “ç,” and “e” of article 2 because of the needs of duty are conditioned on being only cases where the application of the article does not affect important state interests and always without violating the purpose of the law itself.

As to the complaint<sup>2</sup> about the content of article 4, which regulates the composition of the commission, the Court does not address the merits, because the majority required according to article 26, first paragraph, of the constitutional law “On the Organization of Justice and the Constitutional Court” was not formed.

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<sup>2</sup> Translator’s note: The Court does not use the Albanian word for “complaint” but rather a related word that means “research” or “searching.” Since “complaint” seems clearly to be meant, I have so translated it.

Examining the content of article 3 of law nr. 8001 dated 22 September 1995, as well as article 2 of law nr. 8043 dated 30 November 1995, the Court reaches the conclusion that the exception contemplated in article 3 by the phrase “except for cases when they acted against the official line and distanced themselves publicly” is applicable to all the letters in article 2 except letter “f.”

The Court also considers it necessary to clarify that by the word “person” in letter “a” of article 7 of law nr. 8043 dated 30 November 1995, it should be understood as a natural person as well as an electoral subject.

### **FOR THESE REASONS,**

The Constitutional Court of the Republic of Albania, on the basis of articles 24 (points 2 and 10), 25 and 26 of law nr. 7561 dated 29 April 1992 “On Some Amendments and Additions to Law nr. 7491 dated 29 April 1991 ‘On the Major Constitutional Provisions,’” by a majority of votes

### **D E C I D E D:**

I. The rejection of the complaints of the parliamentary groups of the Social Democratic Party and the Socialist Party for the repeal of law nr. 8001 dated 22 September 1995 as groundless.

II. To repeal the following provisions of law nr. 8043 dated 30 November 1995 “On the Control of the Moral Figure of Officials and Other Persons Connected with the Protection of the Democratic State”:

1. Letter “j” of article 1;
2. The second paragraph of article 6;
3. The words “by the minister of Justice or” in article 12;
4. The words “14 and” of article 18.

III. In article 15 of this law, the words “five years imprisonment” are replaced by the words “imprisonment of up to five years.”

IV. The People’s Assembly shall supplement article 8 of the law to assure the constitutional guaranties in case the fifteen day time period provided in this provision is not respected.

V. The complaint of the Parliamentary Group of the Socialist Party for the other parts of law nr. 8043 dated 30 November 1995 is rejected as groundless.

This decision is final and binding and enters into force the day after its publication in the Official Journal.

The suspension is ordered of the implementation of letter “j” of article 1, the second paragraph of article 6 and the words “by the minister of Justice or” of article 12 of law nr. 8043 dated 30 November 1995 until this decision enters into force.

### **MINORITY OPINION**

I am against the opinion of the majority for the reasons that I list below:

1. Article 3 of law nr. 8001 dated 22.9.1992 [sic] “On Genocide and Crimes against Humanity Committed in Albania during the Communist Regime for Political, Ideological and Religious Motives” is not a provision that provides criminal responsibility.

This law, which extends its effects for the future until the year 2001, that is, for a specific time and for specific groups and categories of persons, provides that “afterwards” they may not be elected to the central and local organs of power nor be appointed to the high state administration, the judicial system and the mass media, defining not only the time but also the persons who have had the functions mentioned in that article from the date 28.11.1944 until 31 March 1991. At the end of the provision, it is said that an exception will be made for the persons mentioned when they acted against the official line of that time and distanced themselves publicly.

This law with its “in futuro” nature has to do with the juridical relationships that enter into the sphere of constitutional law relations, while, so far as it concerns the question of the prohibition of being named to the high administration, it affects relationships that are included in the sphere of administrative law and then those of justice, even going as far as the mass media. That is, it is not a criminal provision.

In the first place, this law takes away or limits the right of specific persons to be elected in the future to the central and local organs of government for a specific time. This limitation, even though temporary, conflicts openly with the content of article 19 of constitutional law nr. 7692 dated 31.3.1993 on “The Fundamental Human Rights and Freedoms,” which conclusively and categorically excludes from this right only citizens whose capacity to act has been taken away.

So far as concerns the right to be elected, the latter law makes an exception only for those arrested and sentenced and who are undergoing punishment of imprisonment. They have only the right to vote. Here we are dealing with a truncated electoral right, for specific cases in a particular manner.

Thus, to make derogations or amendments in those provisions, even in the direction of that which is required by article 3 of law nr. 8001 dated 22.9.1995, as well as that required in law nr. 8043 dated 30.11.1995, a provision approved according to the rules defined in the second paragraph of article 43 of the Major Constitutional Provisions should be issued, that is, these amendments should be approved by the People’s Assembly with a majority of two thirds of all the deputies and not as a simple law. Or this, as a “major question,” should be submitted to a popular referendum.

Otherwise, no amendment is made at all, because article 41 of the law “Fundamental Human Rights and Freedoms” permits the temporary limitation of the exercise of a part of the rights and freedoms recognized by these constitutional provisions by law under conditions of the declaration of a state of war or a state of emergency, which does not exist today. The period of the transition cannot be considered equivalent to a state of war or a state of emergency.

Taking away the electoral right as a supplementary punishment is not even included in today’s Criminal Code. This temporary punishment, for a time up to five years, has also been removed from the old Criminal Code by law nr. 7769 dated 16.11.1993.

In my opinion, this repeals article 9 of law nr. 8043 dated 30 November 1995 “On the Control of the Moral Figure of Officials and Other Persons Connected with the Protection of the Democratic State,” so far as concerns granting permission to put up their candidacy for election to the central and local organs of power. Starting out as above, I say that for a state of law such as ours, the justifications are not valid that these “reasonable limitations” on the electoral right are also accepted by article 25 of the “International Covenant of the General Assembly of the UN” dated 23.3.1966 related to civil and political human rights or that limitations of this kind have been declared by law in Hungary, Austria, Czechoslovakia and other countries. This conclusion, I think, is supported also in the fact that the Copenhagen Document on the Human Dimension of the CSCE, approved 29 June 1990, gives such importance to the electoral right.

With us, the electoral right is a constituent part of a constitutional law approved after the elections of 22 March 1992. The new democratic power promulgated this great charter of human rights and freedoms with human dimensions, of European standards and among those that are most advanced.

2. So far as concerns the part that deals with article 3 of the law in question, that the persons and categories mentioned there may not thereafter hold important posts in the high state administration and the judicial system, this is an exclusive right of the state and its administration. It has in its hands whether or not to employ categories of persons who do not seem appropriate to it, and therefore, in this connection I have no comments, because the state does not have any legal obligation to employ this or that specific person.

3. Law nr. 8443 [sic] dated 30 November 1995 “On the Control of the Moral Figure of Officials and Other Persons Connected with the Protection of the Democratic State” is itself a new law and “discrete” from the first one and in no way its continuation. This is because it takes a completely different position from that of nr. 8001 dated 22.9.1992 [sic]. The new law significantly broadens both the content of the work places as well as the persons who work in these sectors that will be subject to control.

Unlike the first law, the second has to do not only with the future, but also the present. It is directed to the persons designated in article 2 who work in the structures provided in article 1 of the law. Thus, according to the same article 2, to serve in the organs and functions mentioned in article 1, the person should not, during the entire period 28.11.1944 to 31.03.1991, ever have been however briefly in the structures mentioned in article 2.

But just like deputies, whose mandate may be taken away only for the cases expressly contemplated in the constitutional provisions, the mandate of chairmen and members of the district councils, mayors of municipalities and communes and members of the municipal and communal councils may be taken away only under the conditions provided in the respective laws. Therefore, their inclusion in letter “e” of article 1 (except for prefects) is wrong.

In addition, judges and prosecutors may not be removed from office by a decision of this commission. They have constitutional protection for their immovability. According to the second paragraph of the law “On Some Amendments and Additions to Law nr. 7591 [sic] dated 29.4.1991 ‘On the Major Constitutional Provisions,’” the High Council of Justice is the only competent authority that can decide, among other things, on the movement or removal of judges of first instance, appellate judges and prosecutors.

Also by this constitutional law, and specifically the fourth paragraph of article 6, the conditions and the organ that may decide on the removal from office of a member of the Court of Cassation are sanctioned, just as in article 29 the conditions and organ that may remove members of the Constitutional Court are defined. Our constitutional laws do not recognize other organs for the movement of judge and prosecutors. They do not exist.

4. The commission created by the People's Assembly according to article 4 of the law "On the Control of the Figure of Officials etc." has been given enormous competencies with important consequences for this or that person who is subjected to verification.

The decisions of this commission are binding on all state organs. It is, therefore, a non-judicial organ, with extraordinary competencies and with on-going functions, starting from 30 November 1995 and continuing until 31 December 2001.

Establishing those principles as to the activity and validity of the decisions of the commission as well as the right of an interested party to appeal to the Court of Cassation within seven days from the day the decision is communicated bypasses all the other judicial levels such as the district and appellate courts. Thus, interested persons are effectively denied the right to a proper judicial process [due process] contemplated by article 38 of the law on "The Fundamental Human Rights and Freedoms," the right to have a judicial re-establishment of a right spoken of by article 39 of the same law as well as the guaranties contemplated by article 40 of the same law. This is all the more true given that such a right, also according to this provision, is included in the category of rights that may not be restricted even when a state of war or a state of emergency has been declared. Another constitutional principle is also violated in these cases, in my opinion, and concretely that contemplated in article 25, which speaks of the equality of the person in law and before the law.

5. Given the decision that has been made, I find the repeals, amendments, additions and substitutions justified, as well as the requirements imposed in the ordering part of this decision.

**M E M B E R**  
**Veli Budo**

#### **MINORITY OPINIONS FOR PARTICULAR PARTS OF THE DECISION**

Although we are in the majority for the most fundamental problems of the above decision, we are in the minority on several particular issues in it, specifically:

1. The Constitutional Court should not have spoken about the constitutionality of article 3 of law nr. 8001 dated 22.9.1995, because it has been repealed by law nr. 8043 dated 30.11.1995.

Law nr. 8043 dated 30 November 1995 not only defines the procedure for the control of the figure of officials and other persons [and]...the organ that makes the control, not only does it broaden the circle of persons subject to control as well as the organs and functions, but it resolves several questions differently from law nr. 8001 dated 22.9.1995. Precisely those different solutions silently repeal this article. Thus, while article 3 of law nr. 8001 dated 22.9.1995 leaves you to understand, with the definition "may not be elected afterwards...nor appointed," that it is a question only of those who will be elected and appointed after the entry

of this law into force, the other law, nr. 8043 dated 30.11.1995, changes this definition: while the word “afterwards” is used for elected persons, as to which there is no need for comment, for appointed persons it is otherwise provided – not only may they not be appointed “afterwards,” but they are to be removed from these duties if one of the causes of article 2 of the law is verified. As can be seen, this is not a “broadening” but a different treatment of the problem between the old provision and the new one. Similarly, while article 3 of law nr. 8001 provides for all cases the exclusion “when they have acted against the official line and distanced themselves publicly,” law nr. 8043 provides this exclusion only for the persons and functionaries mentioned in letters “a” and “b” of article 2, leaving it to be understood that it is not to be applied for the others. As can be seen, this, too, is a contradiction, which, as said above, serves to argue that article 3 of law nr. 8001 dated 22.9.1995 has been repealed.

While defending this thesis, we stress that this does not change our position expressed in the decision that the limitation for a set time and for specified subjects of the right to be elected or appointed does not conflict with the constitutional provisions and international acts.

2. Since the subject is fundamental rights, we are against giving executive organs competencies in this connection. Thus, in letter “ç” of article 1 of law nr. 8043 dated 30.11.1995, it is left to the competency of the head of the ministry and central institution to expand the circle of subjects subjected to control and removal from office, a competency that should have been given exclusively to a commission independent of the executive. In article 3 of the above law, competencies are given to executive organs to make exceptions in the structures of the Armed Forces. Although the exceptions are necessary, inasmuch as according to the law they are made “without affecting important state interests,” this should have been in the exclusive competency of the General Commander of the Armed Forces.

**M E M B E R**  
Z. Vuci

**M E M B E R**  
A. Karamuço

Tirana, 31 January 1996

Nr. 17/2 of the Basic Register  
Decision Nr. 1

**REPUBLIC OF ALBANIA  
THE ASSEMBLY**

**SUPPORTING STATEMENT**

**"ON THE DRAFT LAW FOR CHECKING THE FIGURE  
OF AN OFFICIAL PERSON ELECTED OR APPOINTED TO THE IMPORTANT  
ORGANS OF THE STATE"<sup>1</sup>**

The purpose of this draft law that we propose to you is checking the figure of official persons who are elected or appointed to important organs of the state.

The activity of the organs of State Security has left ineradicable traces in the memory of all Albanians as an activity that brought murder, imprisonment and internment of many Albanians only because of the fact that they thought differently, only because they wanted democracy to be established in Albania.

How moral would it be for persons who have been collaborators of State Security to continue to remain high officials?!

Can those people be considered credible to the public? Not at all, starting also from the maxim that **"no one is so rich as to buy his past."**

Their decision making would always be suspicious and not in the interest of the public. Such people would be manipulated very often, making their decisions harmful in more than a few cases.

For Albanian society, so sensitized recently to this problem, it would not be enough merely to exclude corrupt persons from the ranks of the public administration and the Assembly, but also the exclusion of persons who have been collaborators of State Security.

We think that it is appropriate to explain not only the constitutional character of this draft law proposed to you for approval, but also that even if it were to contain any infringement on human rights and freedoms, the Constitution does not prohibit such a thing, when it is in the public interest or the defense of other persons. Thus, article 17 of the Constitution says:

"A limitation of the rights and freedoms provided in this Constitution may be established only by law."

The Constitution does not say whether it should be an organic law or an ordinary one that establishes restrictions in relation to the rights and freedoms provided in the Constitution. From this it follows that limitations of the human rights and freedoms may also be done by an ordinary law, such as this one presented to you for approval.

Similarly, in article 23 point 2 of the Constitution, it is provided that:

"Anyone has the right, in conformity with law, to get information about the activity of state organs and persons who exercise state activity."

Article 35, paragraph 2 of the Constitution also provides that

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<sup>1</sup> Filed with the Assembly 29 June 2004. Translation by Kathleen Imholz.

"The collection, use and making public of data about a person is done with his consent, except for the cases provided by law."

This constitutional principle is sanctioned in chapter 2 of the Constitution entitled "personal rights and freedoms." Since the collecting, use and making public of data about a person is related to his private life, it is given such a special importance that it is provided as a constitutional principle. Nevertheless, the Constitution itself leaves space so that in specified cases the collection, use and making public of data about a person is done even without his permission, but it is required that this be provided expressly by law. Therefore, on the basis and for the implementation of articles 23 and 35 of the Constitution, the Assembly has approved law nr. 8517 dated 22 July 1999 "On the protection of personal data," as well as law nr. 8503 dated 30 June 1999 "On the right of getting information about official documents."

In continuation of the laws mentioned above, we present this draft law to you for approval. It has as its principal purpose informing the public whether the official persons, elected or appointed, who are the object of the law have been collaborators of State Security or not. For persons who are or desire to be elected deputies to the Assembly of Albania, and only for them, whether they have been collaborators of State Security or not will not exclude them from running, or to have their mandate taken away. But the high officials who are the object of this law will be discharged, and it will be considered an exclusionary condition of their appointment to the posts that are provided in this law, if the person who wants to be appointed to such positions has been a collaborator of State Security. This exclusion should not be considered as a violation of human rights and freedoms because we are dealing with a limitation that is done for the purpose of protection of the interests of the public.

**Nard NDOKA, Alfred CAKO, Ilirjan BERZANI**

[The draft law follows]

**REPUBLIC OF ALBANIA  
THE ASSEMBLY**

**DRAFT LAW**  
Nr. \_\_\_\_\_ dated \_\_\_\_\_

**"ON CHECKING THE FIGURE OF AN OFFICIAL PERSON ELECTED OR  
APPOINTED TO THE IMPORTANT ORGANS OF THE STATE"**

**CHAPTER I  
GENERAL PROVISIONS**

**Article 1  
Object of the Law**

The purpose of this law is checking the cleanliness of the figure of an official person, appointed or elected to management functions of organs of particular importance, in order to assure the effectiveness of the state organs, on the basis of respecting the constitutional provisions and the laws through checking for relations with the former organs of State Security.

**Article 2  
Definitions**

Except when otherwise specified, the following terms have these meanings in the law:

1. "State Security" is the secret service that operated in Albania during the years 1945-1991;
2. "Data connected with the activity of State Security" are all documents, written, filmed, photographic, auditory materials, data files, lists of payment.
3. "Collaborator of State Security" are all those persons who served in State Security as officer (legal or illegal), in the divisions of prosecution, informant, agent, person supplying shelter or who have had an apartment put at the disposition of State Security.
4. "[By] user of data" will be understood every natural or juridical person who has the right to learn about data related to the activity of State Security.
5. "Competent organ" is the organ designated in this law for checking the cleanliness of the figure of an official person appointed or elected to management functions of particular importance.
6. "Interest person" is any natural or juridical person.
7. "Reasonable purpose" will be considered every purpose that is to the good and in the interest of the public.
8. "Elected persons" within the meaning of this law will be only those persons who are elected directly by the people.

**Article 3  
Subjects Who Are Checked**

The subjects who are checked for the cleanliness of their figure are:  
a) the President of the Republic, deputies of the Assembly, the Prime Minister, the Deputy Prime Minister, the ministers and deputy ministers;

b) civil servants of a high and middle management level according to the definition of article 11 of law nr. 8549 dated 11 November 1999 "On the status of the civil servant;"

c) prefects, chairmen of regional councils, mayors of municipalities, municipal units and communes and members of a municipal council;

ç) directors of directorates and commanders of the Armed Forces in the Ministry of Defense and in the state Information Service;

d) persons who work as advisers in the Presidency, Assembly, Prime Ministry, a Ministry;

dh) judges and prosecutors of all levels;

e) directors of independent public institutions;

ë) officials who are elected and appointed by the Assembly, the President of the Republic, the Prime Minister, the ministers or persons equivalent to them;

f) the general directors, the directors of directorates and the chiefs of sectors (commissariats) in the center, the districts and regions, of the General Directorate of the Police, the General Directorate of Taxes and that of Customs;

g) all persons who have or seek to have management posts in political parties.

## **CHAPTER II ORGANS, COMPETENCIES AND STRUCTURES**

### **Article 4 The Competent Organ**

For purposes of the verification of checking the cleanliness of the figure of an official person appointed or elected to management functions of organs of particular importance, a special commission will be created at the state information service.

The state information service is obligated within 10 days of the beginning of work of the commission to pass all documentation related to the activity of State Security to the disposition of this commission.

### **Article 5 Composition of the Commission**

The commission established to check the cleanliness of the figure of official persons will consist of the general inspector of the declaration of assets, who will be its chairman, and four other members appointed by the President of the Republic for a five year mandate, of whom two will be proposed by ruling parties and two by the opposition, from four parliamentary political parties.

### **Article 6 Conditions for Election as a Member**

A candidate who meets these conditions may be elected a member of the commission for checking the cleanliness of the figure of an official person:

a) to be an Albanian citizen;

b) to have higher juridical education;

c) to have work seniority of no less than 10 years and an age above 35;

d) not to have been convicted of criminal offenses;

e) not to have been removed from work or the civil service with a disciplinary measure;

f) not to have been a collaborator of State Security.

**Article 7**  
**End of the Mandate**

1. The mandate of a member of the commission for checking the cleanliness of the figure of an official person ends when:

- a) with the passage of the time period for which he was appointed;
- b) he is sentenced by final judicial decision for the commission of a criminal offense;
- c) he does not appear for work for more than six months;
- d) he resigns;
- e) by final court decision, he is declared unable to act.

2. If the place of one or more members of the commission is vacant, the President appoints another persons within 15 days on the basis of the proposal of the political forces that had proposed the prior candidate.

**Article 8**  
**Conduct of Activity**

The commission meets four times a month, while in the period of general or local elections as well as in special cases, a meeting is held whenever necessary.

The workings of the commission are held behind closed doors and its decisions are taken by majority vote.

The activity of the commission is legitimate when at least four of its members are present.

**Article 9**  
**Compensation**

The members of the commission will be compensated for their activity with 20,000 lek per month.

**CHAPTER III**  
**THE RIGHT TO GET INFORMATION**  
**AND THE OBLIGATIONS OF THE COMMISSION**

**Article 10**  
**The Right to Get Information**

Every natural or juridical person has the right to ask for information related to the cleanliness of the figure of all the official persons who are the object of this law as well as having the right to use it for reasonable purposes.

**Article 11**  
**Absence of Prior Consent**

The prior consent of the person about whom the data are requested is not essential, except when he resigns officially from the post to which he was elected or appointed as well as when he resigns officially from running for that post.

**Article 12**

### **Notification of the Person about Whom Data are Requested**

Within five days from receiving a request, the commission should notify the person about whom the data are requested, making known the right to have the requested information refused if he resigns from the post to which he was elected or appointed or if he withdraws from running.

The time period put at disposition for this purpose is 10 days.

### **Article 13**

#### **Obligation about the Quality of the Service of Giving Information**

The commission established for checking the cleanliness of the figure of an official person issues rules and creates structural and practical facilities for the receipt by the public, in a precise, full, appropriate and rapid manner, of the information that is requested.

### **Article 14**

#### **Forms of Giving Information**

A full copy of the documentation about which the person seeks to be informed is put at his disposition.

On the request of an interested person or suggesting it itself, the competent organ may offer other forms of giving information to the person who requests it, including the verbal form.

In any case, the person making the request gives written consent to the form offered.

### **Article 15**

#### **Time Period for Response**

The commission fulfils a request within 30 days from its deposit, except when provided otherwise in this law.

## **CHAPTER IV**

### **Appeal**

### **Article 17**

#### **General Rule**

So long as it does not constitute a criminal offense, a violation of the provisions of this law constitutes an administrative infraction and is regulated on the basis of law nr. 7697 dated 7 April 1993 "On administrative infractions," with the necessary amendments and additions.

### **Article 18**

#### **Court Appeal**

Everyone has the right to appeal to court when he feels that the rights provided by this law have been violated.

The provisions of the Code of Civil Procedure that regulate the trial of administrative disagreements are followed for the appeal procedures.

### **Article 19**

## **Indemnification of Damage**

Every person who has suffered damage because of a violation of the provisions of this law has the right to seek indemnification of the damage from the subject who violates the right.

The procedures for appeal and the compensation of damage are regulated by law.

## **CHAPTER V FINAL PROVISIONS**

### **Article 20**

All official persons who are appointed who are the object of this law will be discharged from the duty they have if they show up as collaborators of State Security, and all persons who will show up as collaborators of State Security will not have the right to be appointed to the functions specified in article 3 of this law.

### **Article 21**

Law nr. 8043 dated 30 November 1995 "On checking the figure of officials and other persons related to the protection of the democratic state" and every other provision that is in conflict with this law are repealed.

### **Article 22 Entry into Force**

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