



Strasbourg, 13 August 2009

Opinion no. 524 / 2009

CDL(2009)124
Eng.Only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

LAW¹

**ON THE CLEANLINESS
OF THE FIGURE OF HIGH FUNCTIONARIES
OF THE PUBLIC ADMINISTRATION AND ELECTED PERSONS**

OF THE REPUBLIC OF ALBANIA

¹ EURALIUS Translation – 17 January 2009
From the Official Journal of the Republic of Albania Nr. 202/2009

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ON THE CLEANLINESS OF THE FIGURE
OF HIGH FUNCTIONARIES
OF THE PUBLIC ADMINISTRATION AND ELECTED PERSONS

In reliance on article 78 and 83 point 1 of the Constitution, on the proposal of a group of deputies,

THE ASSEMBLY
OF THE REPUBLIC OF ALBANIA

D E C I D E D:

GENERAL PROVISIONS

CHAPTER I

Article 1 - Purpose of the law

This law has the purpose of checking the cleanliness of the figure of every public functionary elected or appointed, in connection with his participation in the policy-making and implementing structures of the violence of the dictatorship of the proletariat, as well as in the structures of the former State Security for the period 29 November 1944 until 8 December 1990.

Article 2 - Object of the law

The object of this law is the determination of the subjects and high state functionaries who are incompatible with the public activity of an official because of being a member, director or collaborator in the policy-making and implementing structures of the violence of the dictatorship of the proletariat or the former State Security for the period 29 November 1944 up to 8 December 1990, the cases of incompatibility, the verification procedures and the consequences of these procedures.

Article 3 - Subjects of verification

Subject to verification, according to this law, are all public functionaries, elected or appointed, who currently exercise or will exercise one of the following functions:

- a) the President of the Republic of Albania;
- b) the deputies of the Assembly of Albania;
- c) members of the Council of Ministers, deputy ministers, political functionaries, general secretaries, general directors and directors of the directorates of the ministries [lit. "dikastera" or "offices"; although this is an old, rarely used and not defined word, in the context it probably means the ministries], as well as those equivalent to them in other central state or independent institutions;
- d) members of the High Council of Justice, as well as judges and prosecutors at the courts and prosecutor's offices of all levels;
- e) high functionaries of the Presidency, the administration of the Assembly, the High Council of Justice, the High Court, the Constitutional Court, the General Prosecutor's Office, according to the levels defined in letter "c" of this article;
- f) the governors, deputy governors and directors of the Bank of Albania;
- g) functionaries in the Armed Forces of the Republic of Albania, the General Staff of the Army, as well as officers with the ranks of "General" and "Colonel";
- h) prefects, chairmen of the regional councils, as well as mayors of municipalities and communes;

- i) directors of directorates of the public administration at the regional level;
- j) in the State Information Service (SIS), in the Military Information Service (MIS) and in every other intelligent [sic] service;
- k) in the Guard of the Republic;
- m) management functions in the State Police up to the level of region and commissariat;
- n) directors of diplomatic representations;
- o) members of the Academy of Sciences, rectors, deputy rectors and deans in public universities, as well as directors of high schools and secondary technical-professional schools;
- p) the General Director, the deputy general directors, the director and deputy director of Radio, the director and deputy director of Television and the directors of the departments of Albanian Public Radio-television; the director, deputy director and directors of the departments at ATA [the Albanian Telegraphic Agency] as well as the members of the steering councils of public media;
- q) every other person decreed by the President of the Republic or elected by the Assembly.

Article 4 - Incompatibility of functions

The cleanliness of the moral figure of a public functionary defined in article 3 of this law is incompatible with his having held, during the period 29 November 1944 up to 8 December 1990, of one of the following duties/qualities:

- a) member or candidate of the Political Bureau, member of the Central Committee of the APL [Albanian Labour or Communist Party], except for cases when he has acted against the official line or has removed himself from office in a public manner;
- b) members of the Presidium of the People's Assembly;
- c) Chairman of the High Court, General Prosecutor and chairman of the General Investigation Office;
- d) Minister, Deputy Minister of Internal Affairs and every employee of the organs of State Security, as well as chairmen of the branches of internal affairs;
- e) persons who completed the High school of the Minister of Internal Affairs in the profile of Security, or have performed courses of three months or more in the same profile, or in their analogues inside or outside of the state, and who have worked as investigator, prosecutor or judge without being graduated as a "jurist";
- f) a person sentenced by final criminal decision for crimes against humanity or for the criminal offences of defamation, false denunciation or false testimony in political processes;
- g) collaborator of the organs of State Security with activity of a political nature, which is related to the political criminal offences provided by law no. 7514 dated 30.09.1991 "On the innocence, amnesty and rehabilitation of former sentenced persons and politically persecuted persons," amended, or a voluntary collaborator for such offences;
- h) member of the Central Commission of Banishment/ Internment;
- i) investigator, prosecutor or assistant prosecutor, judge or assistant judge in political processes;
- j) denouncer or witness for the prosecution in political judicial processes.

Article 5 - Conflict of interest

No person who is in the conditions of incompatibility of functions according to article 4 of this law can take part in the Authority for Checking Figures in any kind of position nor may he be a part of judicial bodies that examine this law or cases related to its implementation.

CHAPTER II **AUTHORITY FOR CHECKING THE FIGURE**

Article 6 - Status and composition of the Authority

1. For the implementation of this law, the Authority for Checking the Figure (the Authority) is created.
2. The Authority is organised and functions in an independent manner, according to the rules defined in this law and in its rules of functioning.
3. The Authority is a permanent supervisory and control organ of the moral cleanliness of the figures of public functionaries.
4. The Authority consists of five members, who are proposed as follows:
 - a) two representatives of the parliamentary majority;
 - b) two representatives of the parliamentary minority;
 - c) the chairman by consensus.
5. The members of the Authority are approved by the Assembly of Albania. If the place of one or more members is vacant because of the absence of proposals, or the inability of election according to point 4 of this article, the Assembly appoints the respective member between at least two candidacies proposed by civil society.
6. The chairman and members of the Authority earn pay according to the respective pay table of law no. 9584 dated 17.7.2006 "On pay, compensation and the structures of the independent constitutional institutions and other independent institutions created by law," amended.

Article 7 - Conditions for being elected a member of the Authority

A member of the Authority for Checking Figures should meet these conditions:

- a) to be an Albanian citizen;
- b) to have higher legal education;
- c) to have work seniority of no fewer than five years;
- d) not to have been criminally punished;
- e) not to have been discharged from duty or to have received a disciplinary measure during the exercise of duty;
- f) to have a clean moral figure, according to the criteria of this law.

Article 8 - Self-declaration of moral cleanliness

Every candidate for member, before appointment, should make a declaration about the cleanliness of his figure in connection with the incompatibility of functions, as defined in article 4 of this law.

Article 9 - Verification of the moral cleanliness of a candidate for member

1. Every candidate for member of the Authority proposed according to article 6 of this law is subjected to the verification procedure of the cleanliness of his figure according to this law.

2. This verification is done by the Directorate of the Security of Classified Information within 10 days from the receipt of notification of the proposal by the Assembly.
3. The results of a verification of the members of the Authority are made public.

Article 10 - Beginning of duty by the members of the Authority

1. The members of the Authority begin the exercise of duty within five days from their approval by the Assembly.
2. At its first meeting, the Authority, under the direction of the chairman, elects a deputy chairman.

Article 11 - End of the mandate of a member of the Authority

1. The mandate of a member of the Authority is five years.
2. The mandate of a member ends prematurely in cases when:
 - a) he resigns;
 - b) he dies;
 - c) he is criminally punished by final decision;
 - d) he is declared incompetent to act by final judicial decision;
 - e) he exercises duty in violation of the rules of confidentiality of the verification procedures;
 - f) he exercises duty with repeated and unjustified violations of the procedural rules that regulate the functioning of the Authority;
 - g) he commits actions that seriously infringe his integrity.
3. The end of the mandate of a member is declared by decision of the Authority.
4. Within 10 days from receiving the decision declaring the end of a mandate, the Assembly of Albania starts the procedure to replace the member, following the procedure provided in article 6 of this law.

Article 12 - Secretariat of the Authority

1. During its activity, the Authority is supported by a secretariat, the recruitment of which is done by the Authority on the basis of professional and moral capacity.
2. The number of auxiliary personnel and the budget of the Authority are approved by the Council of Ministers.

CHAPTER III **VERIFICATION PROCEDURE**

Article 13 - Starting the verification procedure

The Authority starts the verification procedure of the moral cleanliness of functionaries:

- a) on initiative, for all the subjects defined in article 3 of this law;
- b) on the request in writing of the head of an institution or organ that appoints him, for a public functionary;
- c) on the request of the subject himself, when he is a candidate in an independent manner in an electoral process.

Article 14 - Obligation to notify of new appointments or elections

1. Within 10 days, the director of every institution deposits a notification with the Authority of candidates for appointment to one of the functions defined in article 3 of this law. The act of appointment is made only after receipt of the certificate of verification of the figure of the official from the Authority.
2. In the case of those elected to the Assembly, to the organs of local government or to other representative organs, the candidates who compete are subjected to verification of the figure of the official before registration as a candidate in the respective electoral process. This notification is made by the candidate or by those who propose him.
3. The Central Election Commission does not register a candidate if he does not submit a verification certificate.

Article 15 - Calling a meeting for the verification procedure

The Chairman of the Authority or, in his absence, the deputy chairman calls a meeting for the verification procedure within three days from the date of receiving the request for verification from the subjects defined in article 14 of this law.

Article 16 - Rules for a meeting of the Authority

1. The Authority performs the procedures of verification of the moral cleanliness of figures under the direction of its chairman and, in his absence, by the deputy chairman.
2. For every request to start the verification procedure or for every case taken under the process of verification on initiative, the Authority opens a special file, in which are deposited:
 - a) the request;
 - b) every act documenting the verifying activity;
 - c) every act of a document type received in this process.
3. A meeting of the Authority is valid when at least four members take part in it.
4. Minutes are kept at every meeting, which are checked for accuracy by the chairman and, in his absence, by the deputy chairman. At the end of the meeting, these minutes are signed by all members who took part in it.
5. In every case, the verification procedure should end within 30 days from the date of submission of the request for verification or the date of beginning the verification procedure on initiative.

Article 17 - Incompatibility and conflict of interests

1. At the beginning of a meeting for the verification of the figure of every functionary, a member of the Authority signs a declaration about the absence of incompatibility or conflict of interest between him and the subject under verification.
2. Every member of the Authority has the obligation to submit to a meeting every circumstance of incompatibility or conflict of interest that any other member of the Authority has with the subject being verified.

3. A member of the Authority is obligated to resign from participation in a verification procedure of the figure of a functionary in any case when there exist important reasons of incompatibility or conflict of interest between him and the subject being verified, such as to affect his position in the verification procedure. The resignation is examined and accepted by a simple majority of the members of the Authority.

4. In a case when a member of the Authority does not resign from participation although he has the obligation, his exclusion is decided by a meeting of the Authority, after the member has first been heard. In this case, the Assembly is notified.

Article 18 - Receipt of data

1. In the service of fulfilling the duties assigned in this law, the Authority asks for all archival materials to be put at its disposition, including the documentation of the former Party of Labour of Albania, from which data might be taken about the activity of former State Security and particular persons, which have to do with the implementation of this law.

2. The Interior Ministry, the State Information Service, the Ministry of Defence, the courts and prosecutor's offices, the General Directorate of the Archives or any other state institution are obligated to send to the Authority, within 20 days from receiving a request, all archival material requested by the Authority.

Article 19 - The voting

1. Every member has the obligation of voting for or against, as well as the obligation to reason the vote given. Abstention is not permitted.

2. The vote of a member in the minority and the reasons for this voting are noted in the minutes.

3. The verification certificate for the subject verified is issued as compatible when at least three members of the Authority have voted *pro*.

4. Within two days from the meeting, the chairman issues a certificate that reflects the result of the verification procedure of the moral cleanliness of the functionary.

Article 20 - Final results of the verification procedure

1. At the end of the verification procedure, the Authority:

a) Decides, when it turns out that the subject verified has not been included in the activities defined in article 4 of this law, to issue a clean certificate of moral figure. This certificate is filled out according to the forms of annex "A" and "A/1" attached to this law and is signed by the chairman or in his absence by the deputy chairman. The certificate is communicated to the one who requested the verification procedure as well as to the subject verified.

b) Decides, when it turns out that the subject verified has been included in the activities defined in article 4 of this law, to issue a verification certificate of the moral figure according to the forms of annex "B/1" attached to this law. This certificate, signed by the chairman or, in his absence, by the deputy chairman, is made known to the subject verified as confidential material. After receipt of the certificate according to this letter, the subject verified has the right to learn about the acts included in his file at the Authority by signing a form for the protection of classified information.

2. When the official does not agree with the result provided in letter “b” of point 1 of this article, he has the right to submit claims in writing and probative documents on the case within 10 days from receipt of the notification.

3. The Commission examines the claims and documents of the subject and, within 10 days from their submission, decides:

- a) to notify the requesting subject within three days of the rejection of his claims and to issue a verification certificate according to form “B”; or
- b) to issue the certificate according to letter “a” of point 1 of this article.

Article 21 - Value of a verification certificate

A verification certificate according to letter “b” of point 1 of article 20 of this law has full probative force of the fact of the cleanliness of the figure of every elected or appointed public functionary.

Article 22 - Judicial appeal

1. A verified subject may appeal the verification certificate according to letter “b” point 1 of article 20 of this law to the court of the judicial district.

2. At the request of the subject being verified, the court decides to hold the trial behind closed doors.

3. The verified subject may appeal the decision of the court of the judicial district to the court of appeal within the time periods provided in the Code of Civil Procedure. The verified subject may exercise a recourse to the High Court within the time periods provided in the Code of Civil Procedure.

Article 23 - Consequences of the certificate in the case of persons who will perform a public function

1. Immediately after receiving a verification certification issued according to letter “a” of point 1 of article 20 of this law, the one who requested the procedure or the verified subject himself submits it for deposit at the institution where he will begin to perform the public function or at the organ that registers candidates for the electoral process.

2. Immediately after receiving a verification certificate issued according to letter “b” of point 1 of article 20 of this law, the one who requested the procedure calls the verified subject and notifies him of his disqualification from the further continuation of the procedure of appointment or election because of the unworthiness of his figure.

3. When the subject verified declares that he has brought a judicial appeal and submits a copy of the act of appeal, the procedure of point 2 of this article is not suspended until the decision of the court has become final.

Article 24 - Consequences of the certificate in the case of persons in office

1. Immediately after receiving a verification certificate issued according to letter “a” of point 1 of article 20 of this law, the one who requested the verification procedure deposits it in the individual personnel file.

2. Within three days from the issuance of a verification certificate according to letter “b” of point 1 of article 20 of this law, the person who requested the verification procedure deposits

the certificate in the individual personnel file and notifies the verified subject of the holding of a closed-door information session within three days. In this session, two persons designated by the head of the institution or appointing organ take part. During the holding of this session, minutes are kept, which are signed by all those present. The subject verified is given a copy of the minutes if he requests it.

3. When the subject verified declares that he has appealed the verification procedure held by the Authority and submits a copy of his appeal, the information session is postponed, to be held immediately after the judicial decision is final.

4. In other cases, when the subject verified declares at the end of the session or deposits an immediate resignation from duty, the act of resignation is archived in the personal file of the subject, and the verifying material (verification certificate and minutes of the information session) remains confidential.

5. When the subject verified declares that he does not wish to resign from his function, then within 10 days from the information session, on the basis of the verification certificate, his work relations end with the motivation "unworthiness of the figure of the functionary."

Article 25 - Transparency with the public

1. The Authority creates an electronic register of all the cases verified and publishes information on its official page about the number of cases verified. This information is updated every week.

2. The Authority makes public on its official page the identity of all the officials qualified as incompatible to continue duty, as to whom the procedure of disqualification according to article 23 of this law has not been conducted or work relations have not concluded according to article 24 of this law.

Article 26 - The right to learn about one's personal file

1. Every Albanian citizen has the right to learn about the personal data in connection with him contained in the files of the former State Security, according to the definitions of this law.

2. To learn about these data, the citizen submits a request in writing to the State Authority. Within 30 days from submission of the request, the Authority is obligated to return a negative response if there are no data or, if there are data, to make it possible for the citizen to become acquainted with them. In any case, the citizen is made aware only of his personal data and is prohibited from becoming aware of data or names of third persons that his file might contain.

3. Detailed rules about the implementation of this article are defined in the Rules of Functioning of the Authority.

CHAPTER IV **TRANSITIONAL PROVISIONS**

Article 27 - Archival fund

Within three months from the entry of this law into force, duplicates of the documents and the archival fund of the commission created by law no. 8043 dated 30.11.1995 "On the control of the figure of officials and other persons related to the protection of the democratic state" are made available to the Authority.

Article 28 - Verification of the figure of officials in office

Within six months from the beginning of its functioning, the Authority completes the verification of the cleanliness of the figure of every functionary, according to the order of priority defined in article 3 of this law.

CHAPTER V
FINAL PROVISIONS**Article 29 - Time period of the activity of the Authority**

1. The activity of the Authority according to this law continues until 31 December 2014.
2. Within one month from the entry of this law into force, the Assembly approves the Rules of Functioning of the Authority. The manner of division of responsibilities and communication between the Authority and its technical secretariat are a part of these rules.

Article 30 - Entry into force

This law is effective 15 days after publication in the Official Journal.²

² Tr. note: This law was not returned by the President nor did he sign it; therefore it was considered "promulgated" according to Article 84/2 of the Constitution at the end of the day on 14 January. It was published in an issue of the Official Journal bearing the date of 15 January 2009, so it will go into effect on 30 January.