



Strasbourg, 8 November 2018

**CDL-REF(2018)057**

**Opinion No. 942 / 2018**

Engl. only

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**ALBANIA**

**DRAFT LAW \***

**ON SOME ADDITIONS AND AMENDMENTS**

**TO THE CONSTITUTION**

**AS AMENDED**

\*Translation provided by the Albanian authorities



**REPUBLIC OF ALBANIA  
ALBANIAN PARLIAMENT**

**DRAFT LAW**

No. \_\_\_\_\_/2018

**ON SOME ADDITIONS AND AMENDMENTS TO LAW NO. 8417, DATED 21. 10.  
1998 “CONSTITUTION OF THE REPUBLIC OF ALBANIA”, AS AMENDED**

Pursuant to articles 83/1 and 177/1 of the Constitution, upon the proposal of more than one fifth of the Members of the Parliament,

**THE PARLIAMENT  
OF THE REPUBLIC OF ALBANIA  
DECIDED:**

The following amendments shall be made to Law No. 8417, dated 21. 10. 1998 “Constitution of the Republic of Albania”, as amended:

**Article 1**

The first sentence of paragraph 3 of article 45 shall be amended as follows:

“3. The nationals who are sentenced by imprisonment based on a final judgment for the commission of a crime or nationals who have contacts with persons involved in the organized crime, according to the rules established by a law adopted with three fifths of all Members of the Parliament, shall be exempted from the right to be elected.”

**Article 2**

“The Sixteenth Part/1” shall be added after article 176 of the Constitution, with the following content:

**“SIXTEENTH PART/1  
MECHANISM OF GUARANTEEING THE INTEGRITY OF PUBLIC OFFICIAL**

Article 176/1

Purpose of the control of integrity

1. The integrity control shall be established, with a view of protection and guaranteeing the democratic proper functioning of the Parliament, local governance bodies, constitutional or statutory bodies from the influence or participation in policy making and/or decision-making of senior officials, who have contacts with the persons involved in the organized crime. The integrity control shall be carried out based on the principles of due process and the respect for fundamental rights.

#### Article 176/2

##### Subjects and rules of integrity control

1. The Member of Albanian Parliament, mayor and every director or member of the institutions established by the constitution and by the law, appointed in office by voting from the Parliament, including the function of the Prime Minister or members of the Council of Ministers, shall be subject to the process of integrity control.
2. The subjects provided for in paragraph 1 shall submit a declaration and shall be subject to the integrity control, with a view of identifying those who have contacts with persons involved in organized crime. The integrity control in relation to the persons involved in organized crime shall be based on the background declaration and other evidence, including the decisions of the Albanian or foreign jurisdictions. The declaration can be used as evidence only in this process and in no case during a criminal proceeding.
3. If the subject referred to in paragraph 1 has contacts with persons involved in organized crime, the presumption shall apply in favour of the measure of prohibition to be elected or appointed in public office, termination of the term of office or dismissal from duty and the subject has the burden to prove the opposite.
4. If the subject referred to in paragraph 1, does not submit in due time the declaration about the background or attempts to make inaccurate declarations or hides contacts with the persons involved in organized crime, the presumption shall apply in favour of the measure of prohibition to be elected or appointed in public office, termination of the term of office or job dismissal and the subject has the obligation to prove the opposite.
5. Where the subject referred to in paragraph 1, does not justify the legality of property according to the decision of the responsible constitutional body, the measure of prohibition to be elected or appointed in public office, termination of term of office or job dismissal, shall apply .
6. The conditions, rules and responsible bodies for the enforcement of mechanism of guaranteeing the integrity of the public officials shall be provided by a law adopted by three fifth of all members of the Parliament."

#### Article 3

Article 179/c shall be added after article 179/b with the following content:

“Article 179/c

1. The term of office of the officials elected or appointed in the constitutional and statutory bodies, acquired before the entry into force of this law, shall terminate or shall be null and void, if it is found that the elected or appointed person is involved in the circle of subjects, who have contacts with persons involved in the organized crime.
2. Within 30 days from the entry into force of this law, according to the procedure of article 81, paragraph 2 of the Constitution, the Parliament shall adopt the law defining the conditions and rules to guarantee the integrity of the public official.”

#### **Article 4**

This law shall enter into force 15 days after its publication in the Official Journal.



## ALBANIAN PARLIAMENT

REPORT

## ON THE DRAFT LAW

**"ON SOME ADDITIONS AND AMENDMENTS TO LAW NO. 8417,  
DATED 21.10.1998 "CONSTITUTION OF THE REPUBLIC OF  
ALBANIA", AS AMENDED"**

The integrity of public officials is a prerequisite for democratic governance and the rule of law. Facts and data publicly announced show that cooperation between organized crime and senior public officials is at alarming levels and that culture of impunity against crime-related politicians has been cemented. To guarantee the integrity of senior public officials, Albania has launched a number of measures, which as a whole, have not fully ensured the democratic governance and functioning of the rule of law. Specifically:

- a) **Decriminalization Reform** aims to prevent the election or appointment and dismissal from public office of persons, who are sentenced or have been subjected to security measures or are convicted by virtue of a non-final decision for the commission of crimes, with a view of guaranteeing public confidence in the functioning of state elected bodies, independent and statutory institutions or those of public administration.
- b) **Justice Reform**, which, through a comprehensive re-evaluation process, including the connections with organized crime, aims to ensure the integrity of justice system and restore public confidence in the institutions of this system.

The vetting process, including the assessment of connections with organized crime, shall apply to judges and prosecutors. Meanwhile, by a special law, the same assessment is already extended to the personnel of the State Police or Guard of the Republic. Accordingly, it is a fact that vetting process is not applied to other senior public officials, including MPs, Prime Minister, ministers and heads of constitutional or legal institutions.

**The application of the same vetting standards and principles for the assessment of connections with organized crime also for politicians and other senior public officials, will contribute to the decriminalization of governance in the country. Additionally, this would prevent secret and direct alliances, both before and after elections, between politicians and criminal groups.**

**Full decriminalization and implementation of the same vetting rates to assess the connections with organized crime should also apply to senior public officials, including MPs, Prime Minister, Ministers, mayors and heads of constitutional and legal institutions. This guarantees the principle of equality before law and constitutes a prerequisite for governance not affected by organized crime, clearing from the ranks of politicians and senior officials, individuals linked with organized crime.**

It is true that the Decriminalization Reform proposed by the Democratic Party, brought significant results in view of clearing the governance from individuals with criminal records. During the two years of implementation, from the moment of adoption of law, we have the following results as a result of the implementation of decriminalization:

MP-s dismissed	6
MP-s resigned	3
MP-s under investigation	12
Mayors dismissed	1
Mayors under investigation	3
Senior officials dismissed	45
Other officials dismissed	110
Municipal Advisors dismissed	35
Municipal Advisors resigned	21
Candidates for MPs dismissed	18
Judges resigned	5
Local public officials dismissed	89

MP-s and mayors were discharged or dismissed because they were convicted for serious criminal offences such as trafficking in human beings and favouring prostitution, murder, group rape or international drug trafficking.

Yet, the effects of these decriminalization outcomes by dismissing from public functions, individuals convicted of committing crimes, were no longer applicable because of the transformation into new modalities of cooperation between organized crime and governance.

**These new cooperation modalities are the replacement of the world of crime exponents at the highest level local institutions, with individuals serving organized crime, assigned by them to public functions and duties, as well as politicians directly linked with the organized crime exponents.**

**Consequently, the decriminalization proves to be inadequate to interrupt the governance links with crime.**

**Capturing of the governance from crime** through the involvement of individuals directly linked with organized crime, at the Parliament, local government or high level or key functions of the public administration and law enforcement agencies **poses a serious threat to integrity and functioning of democracy and democratic institutions and to the national security.**

The parliamentary opposition brings to attention the long-standing position adopted on this issue by Paolo Borsellino, a magistrate of the Italian Anti-mafia, symbol of the state war against mafia /organized crime, murdered by the criminal organizations in 1992, who stated: ***"There is a basic misunderstanding, according to which the politician who is under the company of mafia member, if not sentenced by the court, is honest /NO! The court can only conduct assessments of a judicial character. It is the duty of institutions to THROW AWAY politicians close to Mafia, to be honest and to appear as such."***

Criminalization of the governance through organized crime connections with senior public officials must be definitely abolished by a special law that sets out the criteria and circumstances favoring further decriminalization of public institutions, implementation of the vetting against senior officials, with a view of breaking the link between governance and crime, and keeping in place only individuals who have proper integrity of their background.

For this purpose, **we propose the approval of a draft law "On some additions and amendments to Law No. 8417, dated 21. 10. 1998 "Constitution of the Republic of Albania", as amended.**

The purpose of the draft law is to ensure the integrity of persons elected, appointed or exercising a public functions through the extension of the vetting to politicians holding public offices and other constitutional functions, as well as the future protection of the democratic and legal functioning of the constitutional bodies and in general, the democratic system, in accordance with the international standards or practices established by the Council of Europe or other democratic states. This objective is met by preventing the election or appointment in the circumstances of the objective existence of grounds that affect the official's background or public confidence in the functioning of the body where the official is elected or appointed.

The amendments proposed by this draft law provide for that the right to be elected is also limited to citizens, who have inadequate contacts with persons involved in organized crime. For this purpose, "Sixteenth Part / 1" has been added to the Constitution, which enshrines the inclusion in the vetting process of the background integrity control, in order to protect and guarantee the democratic proper functioning of the Parliament, government, local government bodies, constitutional or statutory institutions, from influence or participation in policy making and /or decision-making of persons who have contacts with persons involved in organized crime.

According to the draft law, subjects undergoing the vetting, submit a declaration and are subject to the background integrity control, in order to identify those who have improper contacts with persons involved in organized crime.

If the subject under vetting process has improper contacts with persons involved in organized crime, he / she does not submit in due time the declaration on the background or attempts to make inaccurate declarations or hides improper contacts with the persons involved in organized crime, then according to law, presumption shall apply in favor of the measure of prohibition to be elected or appointed in public function, termination of the term of office or dismissal from office and the subject shall be obliged to prove the opposite. The same prohibition applies also

where, by virtue of the responsible constitution body decision, a lack of justification of the property legality is proven for the subject in question.

It is true and fair that most of the Albanian citizens deem inappropriate the contact and close link between the organized crime and public officials. Consequently, in democracy it should be guaranteed that persons who are considered by most of the voters as inappropriate to decide on their own interests should stay out of the legislative decision-making or the Government. Such measures are intended to protect the democratic functioning of the institutions from the influence of organized crime. Immunity of the policy making and decision-making from such influence is a high public interest.

**The relationship between senior public officials and organized crime exponents is degradation of ethical-moral standard of public officials and a serious obstacle to law enforcement and fight against organized crime and corruption.**

It is hard to imagine in Albania for a police officer, to identify, arrest or prevent the criminal activity of a criminal organization member, if he observes or notes that this individual is all day long under the company of the MP, Minister or Prime Minister, who have in their hands the fate of his employment relationship.

Criminalization of governance, due to close links of senior public officials with organized crime exponents, seriously undermines the economic and social development of the country, thus adversely and irreparably affecting the public interest. Criminal groups, making use of their relationship with senior public officials, urge the latter to work for their own interests, which clearly does not correspond to the interests of ordinary citizens of this country or public interest that should focus on the work of public institutions.

The Opposition deems that the adoption of this draft law and vetting for all politicians holding public positions and other senior public officials must be done without delay and start to be applied immediately.

Albania and Albanians deserve a worthy representation not by people linked with organized crime but by men and women, sons and daughters who work for their own interest and fight organized crime. This draft law serves precisely the full decriminalization of politics, vetting against the constitutional function and the non-use of crime to come to power or maintain power.