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LAW

No. 8436 of December 28, 1998

(as amended by law no. 8546 of November 5, 1999; no. 8656 of July 31, 2000; no. 8811 of May 17, 2001; and no. 9111 of July 24, 2003)¹

**ON THE ORGANISATION OF THE JUDICIAL POWER
IN THE REPUBLIC OF ALBANIA**

In reliance on articles 81 and 83 point 1 of the Constitution of the Republic of Albania, on the proposal of the Council of Ministers,

**THE ASSEMBLY
OF THE REPUBLIC OF ALBANIA**

D E C I D E D:

**CHAPTER I
THE JUDICIAL POWER**

Article 1²

The judicial power is exercised only by the courts, in compliance with the Constitution and the competences provided for by law.

¹ Also including the change made by Constitutional Court decision no. 59/1999.

² In law no. 8811 as passed and published, it was stated that this article was repealed; however, as provided in the law as originally passed in 2001, it is clear that it is actually article 17 that was intended to be repealed.

Article 2

The courts have the competence to examine all criminal, criminal military, civil, and administrative cases, as well as every other case specified by law.

Article 3

In the exercise of their function judges are independent and subject only to the Constitution and the laws.

Article 4

Prosecutors are organised and function attached to the judicial system at all its instances as a centralised organ.

The organisation and functioning of the prosecutor's office, as well as the profession of advocacy, are regulated by separate laws.

Article 4/a Judicial Year³

1. The judicial year begins on May 10 of every calendar year and ends on May 9 of the following year.

2. The ceremony of inaugurating the new judicial year is done in public and solemn form. Judges, prosecutors, officials of the Ministry of Justice, invitees from the Constitutional Court, the Office of the People's Advocate, the National Chamber of Advocacy, the National Chamber of Notaries, and from other institutions or entities whose activity is connected to the field of justice and the judiciary take part.

3. On the date of inauguration of the new judicial year, the President of the High Court, the General Prosecutor and the Minister of Justice make public a Joint Resolution relating to the administration of and problems in the field of justice in the Republic of Albania, in which, among other things, orientations and recommendations for activity in the new judicial year are given.

4. A copy of the Joint Resolution relating to the administration of and problems in the field of justice is sent to the President of the Republic, the Assembly and the Prime Minister of the Republic of Albania.

CHAPTER II ORGANISATION AND FUNCTIONING OF THE COURTS

Article 5

³ Added by law no. 8656.

The judicial system consists of⁴ the courts of first instance, the courts of appeal and the Supreme Court.

Article 6

Courts of the judicial districts, courts for serious crimes and military courts are the courts of first instance.⁵

The courts of first instance adjudicate according to the rules provided for in the codes of procedure, where the composition of the judicial panel is also specified.

Article 7⁶

Courts of appeal adjudicate appeals against decisions of the courts of the judicial districts at the second instance, with a judicial panel composed of three judges.

Courts of appeal adjudicate appeals against decisions of the courts for serious crimes at the second instance, with a judicial panel composed of five judges.

Article 8

Military courts are organised and function within the judicial system according to the competences provided by law.

Article 9

Military courts consist of the courts of first instance and courts of appeal.

Article 10

Military courts of appeal examine appeals against decisions of the military courts of first instance at the second instance. It adjudicates in a judicial panel composed of three judges. Serious crimes are adjudicated by five judges.⁷

Article 11

Courts of the judicial districts⁸ are organised and function in the judicial districts in the whole territory of the country. Courts for serious crimes are organised and

⁴ Law no. 8546 changed “is exercised by” to “consists of” in this sentence.

⁵ Added by law no. 8656.

⁶ As reformulated by law no. 8656. Previously, it read:

“Judges of appeal adjudicate at the second instance appeals against decisions of the courts of the first instance.

Judges of appeal adjudicate with a judicial panel composed of three judges.”

⁷ This sentence was added by law no. 8656. It does not seem to belong in this article, however. Since law no. 9111 provides that the second paragraph of article 10 is repealed, and there is no second paragraph, perhaps the repeal of this sentence was intended.

function in one or more judicial districts.⁹ The territorial competences and the centre of exercise of activity of each of them is set by decree of the President of the Republic, on the proposal of the Minister of Justice, after the opinion of the High Council of Justice has also been taken.

The courts of appeal function in the zones determined by the President of the Republic, on the proposal of the Minister of Justice, after the opinion of the High Council of Justice has also been taken.

Courts of first instance or of appeal for particular fields may also be established by law.

Article 12

The total number of judges of all judicial instances is set by decree of the President of the Republic, on the proposal of the Minister of Justice, after the opinion of the High Council of Justice has also been taken.

Article 13

The High Court is the supreme judicial authority, which has initial and review jurisdiction.

The High Court has its headquarters in Tirana.

The organisation and functions of the High Court are defined by a separate law, based on the Constitution.

Article 14

At the beginning of each year, the chairman of a court of appeal and the chairman of a court of first instance specify for the on-going year the distribution of judges into the criminal and civil chambers of the court.

Judges of sections for special trials are included in the chamber of civil cases.

When the size of the court does not permit it to be organised into at least one civil and one criminal chamber, the division of cases is done among all the judges in an equal manner.¹⁰

Article 14/a¹¹

⁸ Changed by law no. 8656 from “courts of the first instance.”

⁹ This sentence was added by law no. 8656.

¹⁰ Article 14 previously contained the following final paragraph, which was repealed by law no. 8546:
 “In all courts of first instance and of appeals, the chief secretaries are also administrators, who carry out duties similar to those of the Chancellor of the High Court, and they also administer the budget of the Court.”

1. Auxiliary services in the court are directed by the Chancellor and performed by the judicial secretariat, the branches and sectors of administration, economy, finance, computerisation, registration and document retention.

2. The specification of the sectors and the personnel chart for each court is done by order of the Minister of Justice.

Article 14/b¹²

1. A chancellor is appointed and discharged by the Minister of Justice.

2. A person who has a diploma as a jurist and who has work experience in this profession of no less than five years is appointed chancellor. The chancellor earns a salary and paid annual vacation the same as that of a judge of the respective court where he performs his functions.¹³

3. Judicial secretaries and administrative-technical personnel of the court are appointed and discharged by the Chairman of the Court, on the proposal of the chancellor.

4. The head of the budget branch in the court is appointed and discharged by the Minister of Justice.

Article 15

The division of judicial cases in all the instances of the judicial system is done by lot according to the procedures specified by law.

Article 16

Judicial decisions may be subject to examination only on the basis of appeals or recourses through the judicial route, according to the provisions in the codes of procedure or in separate laws.

Article 17¹⁴

[An Inspectorate is established within the High Council of Justice.

The inspectors are appointed and discharged by the President of the Republic, on the proposal of the Minister of Justice.¹⁵

¹¹ Added by law no. 8546.

¹² Added by law no. 8546.

¹³ This sentence was added by law no. 8656.

¹⁴ See note 1 above. All of article 17 was apparently intended to be repealed by law no. 8811.

¹⁵ This paragraph was added by law no. 8546.

Inspectors have the duty of inspecting the courts of first instance and of appeals, verifying the complaints of citizens and other entities about judges, checking the organisation and work of the judicial services, taking evidence about the professional capabilities of judges, within the meaning of article 45 of this law, the work load, verifying and evidencing the property declared, questions of compatibility of activity and the behaviour of judges, and as a whole the efficiency of the courts.¹⁶

The Minister of Justice puts the specialists of the Ministry of Justice at the disposition of the groups of inspection to assist in the performance of the above duties, except those that have to do with the professional capabilities of the judges.

Jurists who meet the conditions to be judges of appeals are appointed inspectors of the High Council of Justice.

They are equal in pay and in other rights to the judges of appeals.

The organisation and function of the Inspectorate at the High Council of Justice is provided for in the Rules of the High Council of Justice].

Article 18

The judicial power has a separate budget, which is administered by it according to the provisions of a separate law.

[The High Council of Justice is a public legal person and its activity is financed from the budget of the state as a separate line].¹⁷

CHAPTER III CONDITIONS FOR BEING ACCEPTED AS A JUDGE OF A COURT OF FIRST INSTANCE AND OF A COURT OF APPEALS

Article 19

Albanian citizens who fulfil the following criteria may be appointed judges:

1. They have full capacity to act.
2. They have higher legal education.
3. They have completed the Magistrates' School.
4. They have no criminal record and enjoy a good reputation.

¹⁶ This paragraph was reformulated by law no. 8546, and the words “verifying and evidencing the property declared, questions of compatibility of the activity and behaviour of a judge” were added by law no. 8656. Originally, the paragraph read “The High Council of Justice appoints the inspectors, who are charged with inspecting the courts of first instance and of appeals to verify the complaints of citizens and institutions, the bodies of judicial services, to take evidence about the professional capabilities of judges within the meaning of article 45 of this law, the work load and as a whole the efficiency of the courts.”

¹⁷ This paragraph was repealed by law no. 8811.

5. They are no younger than 25 years old.

Article 20

Persons who have not graduated from Magistrates' School may also be appointed judges, if they meet the criteria of article 19 of this law and one of the following criteria:¹⁸

1. They have for over three years been pedagogues in the Faculty of Law or in the Magistrates' School, deputies, legal advisers in the Assembly, with the Presidency or the Council of Ministers, or specialists in the Ministry of Justice, the High Court or the General Prosecutor's Office.

2. They have received a diploma from a long-term legal post-university training program abroad, which meets the requirements of Albanian legislation or international agreements.

3. They have worked for five or more years as judges, assistant judges, prosecutors, advocates or notaries and have passed a test of professional qualification organised under this article.

Persons who are appointed judges under point 3 shall be subject to an obligatory theoretical and practical examination, in writing and orally, within six months from the day they are appointed. The examination shall be organised by the High Council of Justice in cooperation with the Magistrates' School and the Faculty of Law of the University of Tirana.

[3/a.¹⁹ For the appointment as judges of assistant judges who currently work in the courts of first instance, the time period specified in point 3 of this article is not an obligatory criterion.]

Article 20/a²⁰

1. On the proposal of the High Council of Justice, the President of the Republic appoints persons who have finished the second year of the Magistrates' School as judges to perform the professional internship provided for in law no. 8136 of July 31, 1996 "On the Magistrates' School of the Republic of Albania," in the courts that have the best conditions for the organisation of this internship.

¹⁸ As reformulated by law no. 8546. Previously, it read: "The High Council of Justice may appoint as judges persons who have not completed the Magistrates' School, if they meet the other criteria specified in article 19 of this law and one of the following conditions:"

¹⁹ Added by law no. 8546 and, apparently, repealed by law no. 8811, which states that it repeals the "seventh paragraph" of article 20. This is the last paragraph, but it appears to be the sixth..

²⁰ Added by law no. 8546.

2. The criteria provided for in points 3 and 5 of article 19 of this law do not constitute an obstacle to the appointment of the persons mentioned in point 1 of this article, but only of them.

3. After the completion of the professional internship, the President of the Republic decrees their designation to the courts of the judicial districts, according to their needs.

Article 21

Vacant positions for judges should be announced by the High Council of Justice.

[Article 22

Candidates for judge are appointed to office by the President of the Republic on the proposal of the High Council of Justice on the basis of a competition.²¹

The procedures for selection and presentation of candidacies are provided in the rules of the High Council of Justice.

In the evaluation of candidacies that meet the conditions provided in articles 19 and 20 of this law, the results of completion of higher education, seniority as a jurist, performance evaluation, post-university qualification, as well as every other objective piece of data that speaks for the superiority of the candidate over other candidates is taken into account.]²²

Article 23

Prior to assuming office, the judges take the following oath:

“I solemnly swear that during the performance of duty I will always be faithful to the Constitution of the Republic of Albania and the laws in force and I will respect the rules of professional ethics.”

The oath of the newly-appointed judges is taken before the judges of the instance where they have been designated to perform their duty.

Article 24

1. Judges of the courts for serious crimes and the courts of appeal are appointed by the President of the Republic on the proposal of the High Council of Justice, on the basis of a competition, after they have worked no less than five years in the courts of first

²¹ As reformulated by law no. 8546. Previously, this paragraph read “Candidates for judge are appointed to office by the High Council of Justice, on the basis of a competition.”

²² The entire article was repealed by law no. 8811.

instance and if they are distinguished for their professional capability and high ethical-moral qualities.

[2. Chairmen and vice chairmen of the courts of first instance and of appeal are appointed by the President of the Republic on the proposal of the High Council of Justice].²³

Article 25

Judges may stay in office until they become 65 years old.

Article 25/a²⁴

In order to fill vacancies and to appoint to office psychologists who take part in judicial panels for the trial of minors, the procedures provided for in articles 21, 22 and 23 of this law are applied.

A psychologist earns 80 per cent of the salary of a judge of the court of the judicial district where he performs his functions, as well as paid annual leave of 30 days.

CHAPTER IV STATUS OF JUDGES

Article 26

Judges enjoy immunity.

Judges of the first instance and of appeal may be criminally prosecuted only with the approval of the High Council of Justice. A judge may be detained or arrested only if he is caught during the commission of a crime or immediately after committing it. The competent organ immediately notifies the High Council of Justice. If the High Council of Justice does not give its consent within 24 hours to send the arrested judge to court, the competent authority is obliged to release him.

Article 27

Judges may not be removed from office, except when:

1. they resign;
2. they reach retirement age;

²³ Article 24 in its above formulation was added by law no. 8546 (and the reference in the first paragraph to the courts for serious crimes, by law no. 8565). Paragraph 2 was repealed by law no. 8811. Initially, article 24 read: "Judges of the court of appeals are appointed by the High Council of Justice after having worked no less than five years in the courts of the first level and having shown high ethical-moral and professional qualities in the performance of duty."

The chairmen and vice chairmen of the courts of first instance and appeals are appointed by the High Council of Justice from the ranks of their judges."

²⁴ Added by law no. 8656.

3. they are criminally convicted by a final court decision;
4. it is concluded that they are physically or mentally incapable or, according to the criteria provided in articles 45 or 48 of this law, their professional insufficiency is concluded;
5. disciplinary measures are taken against them by the competent authority in accordance with the cases provided by law;
6. they commit actions or hold functions at variance with articles 29 to 35 of this law.

In a case when it is decided to initiate a criminal proceeding against a judge, he is suspended from office until a final decision is taken.

In cases when guilt is not proven by a final court decision, the judge has the right to return to his/her prior work and to receive full pay from the time of suspension.

Article 28

Promotion and transfer of a judge from his work is done only with his/her consent, except for the cases provided by this law.

If a court does not function normally because of the temporary absence of judges or because of a work overload, the High Council of Justice, on the proposal of the Minister of Justice, seconds judges from one court to another for a period of no more than three months per year, even without the judge's consent. [In this case, the judge earns a salary supplement of 5 per cent above his salary, which is paid from the court to which he is appointed.]²⁵

At the end of this term, the judge returns to his prior place.

The High Council of Justice, on the proposal of the Minister of Justice, may appoint a judge to adjudicate a number of cases in another court of the same instance, if the judges in this court are insufficient in number.

[In special cases the High Council of Justice, on the proposal of the Minister of Justice, may charge a judge to perform the duty of chairman or vice chairman of a court of first instance or of appeals, for a period of no more than three months.]²⁶ [In this case, the judge earns the respective salary of the duty charged.]²⁷

Article 29

²⁵ This last sentence was added by law no. 9111.

²⁶ This last paragraph was added by law no. 8546, but repealed by law no. 8811..

²⁷ This sentence was added by law no. 9111, stating that it was an addition to the fifth paragraph of law no. 8436. Since the paragraph it was said to be added to was repealed by law no. 8811, it is not clear what the status of the paragraph, with the two sentences indicated, actually is.

Judges are prohibited from being members of political parties or taking part in activities of a political nature.

Article 30

The function of a judge is incompatible with every elective mandate, as well as every other public or private function and activity.

Judges are forbidden to take part in the administration or management of civil or commercial companies, personally or by representation.

Article 30/a²⁸

Judges may serve at management levels in the cabinet of the Minister and in legal-professional structures of the Ministry of Justice. The period of their civil service in these structures is recognised as a period of seniority in work as a judge for purposes of professional career requirements provided in the laws on the organisation of the judicial power, the High Court, the Constitutional Court and the Prosecutor's Office.

Judges who serve as civil servants in the Ministry of Justice are re-appointed judges at their request without a competition.

Article 31

Judges may not be experts in an arbitration proceeding or arbitrators for the parties such a proceeding.

Article 32

A judge shall be prohibited from making statements about proceedings or making known opinions expressed during adjudication sessions that have not yet taken the form of a decision, or declaring the content of official acts or documents of a secret or personal nature.

Article 33

During the adjudication of cases, judges, prosecutors and lawyers should respect the solemnity of the proceeding and wear special clothing. The rules about the solemnity of the adjudication and the clothing are set by order of the Minister of Justice, after receiving the opinion of the President of the High Court, the General Prosecutor and the National Chamber of Advocacy.²⁹

²⁸ Added by law no. 8656.

²⁹ As amended by law no. 8546. Originally, this article read: "During the adjudication of cases, judges shall respect the solemnity of the adjudication and wear special clothing."

Article 34

Judges should preserve their dignity, not permitting actions that compromise the profession, the authorities of justice and their reputation in society.

Article 35

Judges are free to establish societies or other organisations to protect their rights and interests, as well as for professional improvement.

Judges are forbidden to strike.

Article 36

To guarantee order and security, a permanent police service is organised at the courts, which acts according to the orders of the judicial authorities.

Article 37

No judge is responsible in a civil lawsuit that is connected to the performance of his professional duties, except for cases when it is expressly provided by a separate law.

Article 38

Judges have the right:

1. To have special protection for themselves, their family and property, when they themselves ask for it because of serious circumstances or when it is considered essential.
2. To obtain official journals, gazettes and legal magazines free of charge.

Article 38/a³⁰

Special personal protection for the family and property of judges of the courts for serious crimes, as well as their special financial treatment, is regulated by law.

Article 39

Judges enjoy annual paid vacation of 30 days. The annual vacation is to be taken in the months of July and August.

Judges charged with the performance of urgent duties for the period July-August take annual leave at another period, gaining five additional days. Judges who perform

³⁰ Added by law no. 8656.

urgent duties on weekends or official holidays earn a supplemental to their salary in the amount of 50 per cent of daily pay.³¹

Article 39/1³²

Salary in a Judicial District Court and Military Court

1. The initial salary of a judge in a judicial district court and in a military court is equal to 50 per cent of the salary of a High Court judge.
2. The salary of the deputy chairman in a judicial district court and in a military court is equal to 57 per cent of the salary of a High Court judge.
3. The salary of the chairman in a judicial district court and in a military court is equal to 60 per cent of the salary of a High Court judge.
4. The salary of the Deputy Chairman of the Judicial District Court in Tirana is equal to 65 per cent of the salary of a High Court judge and that of the Chairman of the Judicial District Court in Tirana is equal to 70 per cent of the salary of a High Court judge.

Article 39/2³³

Salary in a Court of Appeal

1. The initial salary of a judge in a court of appeal is equal to 70 per cent of the salary of a High Court judge.
2. The salary of the deputy chairman in a court of appeal is equal to 75 per cent of the salary of a High Court judge.
3. The salary of the chairman in a court of appeal is equal to 80 per cent of the salary of a High Court judge.
4. The salary of the Deputy Chairman in the Tirana Court of Appeal is 80 per cent of the salary of a High Court judge, and that of the Chairman in the Tirana Court of Appeal is equal to 90 per cent of the salary of a High Court judge.

CHAPTER V

DISCIPLINARY RESPONSIBILITY OF JUDGES

Article 40

³¹ This second sentence was added by law no. 9111.

³² This article was added by law no. 9111.

³³ This article, also, was added by law no. 9111. Law no. 9111 also repealed law no. 7800 of 2 March 1994 on the pay of judges, its subject matter essentially being covered by articles 39/1 and 39/2.

Judges are responsible for violations of discipline, as well as for the commission of acts and behaviour that seriously discredit their reputation and the authority of justice.

Article 41

The following are considered violations of discipline:

1. Commission of actions that according to law are incompatible with the function of a judge.
2. Disclosure of a secrecy of the investigation or the consultation chamber or other data of a confidential nature.
3. Serious or systematic delays in the performance of duty.
4. Failure to respect the rules of solemnity.
5. Absences from work without reason.
6. Commission of immoral or indecent actions during or outside of work.
7. Commission of actions contrary to the due performance of duty or failure to perform obligatory procedural actions, when it does not constitute a criminal offence.
8. Failure without reason to implement a disciplinary measure imposed.

Article 42

For violations of discipline, as well as other discrediting acts and conduct, these measures are taken:

1. Reprimand.
2. Reprimand with warning.
- [3. Reduction in pay of up to 25 per cent for a period of from three to six months.]³⁴
4. Suspension from duty and transfer to another lower duty within the court for a period of from six months to one year.
5. Transfer to another court of the same level or a lower level.³⁵
6. Discharge from duty.

Article 43

Disciplinary measures against judges are taken by the High Council of Justice on the basis of the evaluation of the kind and nature of the violation committed.

Article 44

A disciplinary proceeding for judges is instituted by the Minister of Justice.

³⁴ Repealed by law no. 8546, and, indeed, inconsistent with the Constitution adopted on November 28, 1998.

³⁵ The words, “of the same level or a lower level,” were added by law no. 8546, which also, for some reason, put the word “transfer” into the Albanian accusative case.

A disciplinary proceeding may be initiated within three years from the date of commission of the violation.

During the verification by the inspectors, it is determined whether any violation of discipline was committed from among those specified by law, the type and seriousness of the violation, the guilt of the person, as well as the data supporting the conclusions drawn.

In any case, the judge who has committed the violation should be heard. The verification of the claims is obligatory.

The results of the verifications made, as well as the written data about them, are reflected in a final act, which is made known to the judge who committed the violation.

[The materials are sent to the Minister of Justice and to the High Council of Justice].³⁶

Before making a decision, the High Council of Justice should hold a hearing on the claims of the parties. The full materials are made available to the judge 10 days before the hearing. He has the right to defend himself on his own or by a lawyer during the hearing.

Article 45

No later than once every two years, the High Council of Justice makes an evaluation of the professional abilities of the judges, based on the quality, volume of work, speed of adjudication, reputation and publication of legal works, as follows:

1. Very good.
2. Good.
3. Acceptable.
4. Incompetent.

The inspector of the High Council of Justice who has prepared the draft act of evaluation of professional abilities first communicates it to the respective judge, and the latter has the right to present his objections within a period of eight days.

[A judge has the right of appeal to the High Council of Justice against the final act of evaluation within ten days from receiving notice. The High Council of Justice investigates the complaint, applying the rules provided in the last paragraph of article 44 of this law].³⁷

³⁶ Repealed by law no. 8811.

³⁷ Repealed by law no. 8811. It may have been intended to repeal the third paragraph of article 48 instead, as that paragraph had been declared unconstitutional by decision 59/1999 of the Constitutional Court. See note below.

An evaluation as “incompetent” constitutes cause for discharge from work.

Article 46

When he is discharged from duty for one of the reasons provided in the Constitution, a judge has the right to appeal to the High Court within 10 days from the notification of the decision of the High Council of Justice.

The adjudication of the case is done by the joint colleges.

CHAPTER VI TRANSITIONAL PROVISIONS³⁸

Article 47

If a court is abolished, the possibilities for assigning its judges to other places in the justice system should also be provided in the respective act of the competent authority.

Article 48

All judges of the first instance who have worked as judges for less than ten years shall be subject to a theoretical and practical qualification examination, in writing and orally.

The examination shall be organised by the High Council of Justice in cooperation with the Magistrates’ School and the Faculty of Law of the University of Tirana. It shall be held no later than June 1, 1999.

[Notwithstanding the specification of article 27 of this law, judges who do not pass the examination are discharged from office by decision of the High Council of Justice. They have the right of appeal provided in article 46 of this law.]³⁹

The notification of the examination and the topics to be treated shall be published in the two newspapers with the largest circulation and posted in the courts at least six months before each examination. These modalities are also respected for article 20.

³⁸ These are the transitional provisions of the original 1998 law, no. 8436. Law no. 8546 has no transitional provisions. Law no. 8656 has one transitional provision (article 12): “The time of beginning of activity of the courts for serious crimes is set by law.”

³⁹ This paragraph was declared unconstitutional by decision no. 59/1999 of the Constitutional Court. Since it applied to a one-time situation (the May 1999 examination of first instance judges with less than ten years experience) it is not, strictly speaking, necessary that it be amended.

This examination may be organised together with each examination provided in article 20 of this law.

Article 49

Law no. 8265 of December 18, 1997 “On the Organisation of Justice in the Republic of Albania” is repealed.

Article 50

This law enters into force 15 days after publication in the Official Journal.

**Promulgated by decree no. 2292 of January 7, 1999
of the President of the Republic of Albania, Rexhep Meidani.**