

THE REPUBLIC OF ALBANIA

THE ASSEMBLY

LAW

Nr. 9284 dated 30 September 2004

ON PREVENTING AND STRIKING AT ORGANIZED CRIME

In reliance on articles 78 and 83 point 1, of the Constitution, on the proposal of the Council of Ministers,

THE ASSEMBLY

OF THE REPUBLIC OF ALBANIA

D E C I D E D:

CHAPTER I

GENERAL PROVISIONS

Article 1

Object

This law defines the circle of persons suspected as participants in organized crime, as well as the competencies and criteria for sequestering and confiscating the assets that are related to these crimes.

Article 2

Purpose

The purpose of this law is preventing and striking at organized crime through the detection, identification, sequestration and confiscation of unlawful properties of persons suspected as participants in organized crime, as well as determining the way these assets are used.

Article 3

Circle of Suspected Persons

1. The provisions of this law are applicable to persons as to whom there exists a reasonable suspicion, based on evidence, of:

a) participation in criminal organizations or structured criminal groups, according to the provisions of articles 333 and 333/a of the Criminal Code and the commission of crimes by them;

b) participation in terrorist organizations or armed bands, according to the provisions of articles 234/a and 234/b of the Criminal Code and the commission of crimes by them;

c) the commission of the crimes, for terrorist purposes, contemplated in the special part, chapter VII, of the Criminal Code;

c) the commission of the crimes contemplated in articles 109, 109/b, 110/a, 114/b, 128/b, 278/a, 282/a, 283/a and 284/a of the Criminal Code.

2. The provisions of this law are also applicable to:

a) the spouse;

b) children;

c) persons close to the suspected persons by blood or marriage (ancestors, descendants, brothers, sisters, uncles, aunts, nephews, nieces, children of brothers and sisters, father-in-law, mother-in-law, son-in-law, daughter-in-law, sister-in-law, stepson, stepdaughter, stepfather and stepmother);

c) natural or juridical persons as to whom there is data that their assets or activities are wholly or in part, directly or indirectly, owned by the persons contemplated in point 1 of this article.

3. This law is also applicable to unlawful assets of suspected persons committed before the entry of this law into force.

Article 4

Object of the Investigations

1. Investigations are performed about the financial means, assets, economic activities, manner of living, and sources of income of the persons contemplated in article 3 of this law.

2. The investigations are done, in particular, to verify whether these persons have permits, licenses, authorizations, concessions and other rights to conduct economic, commercial and professional activity, as well as to verify whether they enjoy contributions, financing or credit of any kind given by or gained from the state, public juridical persons or entities or international institutions.

3. The investigations and trials according to this law are supported in the civil and administrative procedural rules in force, in addition to those contemplated and specifically referred to in this law.

CHAPTER II

PRELIMINARY VERIFICATIONS

Article 5

Competence for Preliminary Verifications

The prosecutor carries out actions himself and through the Judicial Police for the investigation of the financial assets, properties, economic activities, manner of living, and sources of income of suspected persons.

Article 6

Obligation to Hand Over Information and Documents

1. Directly or through the Judicial Police, the prosecutor may ask any office of the state administration, public juridical person or entity, and other natural and juridical persons for data and copies of documents that are judged essential for purposes of the investigation of the persons contemplated in article 3 of this law.

2. Relying on an authorization issued by the prosecutor or the court, the officers of the Judicial Police may order the sequestration of the documents examined, according to the rules provided in articles 208, 209, 210 and 211 of the Code of Criminal Procedure.

Article 7

Preliminary Sequestration

1. When there is a real and concrete danger of the loss, misappropriation or alienation of funds, assets and other rights for which the implementation of the measure of confiscation is contemplated according to the provisions of this law, the prosecutor may ask the court to order their prior sequestration, even before the date of the judicial session is set.

2. The request of the prosecutor for prior sequestration is examined by the judge in his presence no later than five days from the submission of the request.

3. In the trial of the case, the court takes into account the conditions and procedures applicable according to articles 16 and 26 of the law.

4. The measure of sequestration is valid for a six month period beginning from the day after the decision is announced.

5. In the case of complicated investigations, on the request of the prosecutor, the court may extend the term of application of the measure of sequestration for three month periods, but not for more than one year from the date when the time period for the measure of sequestration declared according to point 4 of this article ends.

Article 8

Extension of the Investigation to Subjects Threatened by Criminal Organizations

When there are sufficient data to judge that the ownership of assets and the exercise of specified economic activities are under threat or influence by criminal organizations or are in such conditions that might facilitate the activity of persons who are suspected according to this law, the prosecutor asks the court to compel a person who have the title of ownership or who own under any title funds or assets of any kind with a value that is not in conformity with his income or economic abilities, in order to justify the lawfulness of its provenance.

Article 9

Temporary Suspension of the Administration and Disposition of Property

1. When there are sufficient data to judge that the disposition of assets and the exercise of the economic activities defined in article 8 facilitates the activity of persons suspected according to this law or persons against whom a criminal proceeding has begun for one of the crimes contemplated by articles 109, 109/b, 110/a, 114/b, 128/b, 278/a, 282/a, 283, 283/a, 284/a, 284/c, 284/ç, 287, 333, 333/a and by chapter VII of the Criminal Code, the court orders, on the request of the prosecutor, the temporary suspension of the administration and ownership [1] of the activities and assets that are used, directly or not, for the performance of these economic activities.

2. The temporary suspension of the administration and disposition of the activities and assets is ordered for a period no longer than six months and, on the request of the prosecutor, further extensions of the time period may be ordered, for another period no longer than six months.

3. In a decision given according to point 1, the court also designates one or more administrators from the list of experts of the Agency for the Administration of Sequestered and Confiscated Assets, respecting, to the extent applicable, the provisions of this law.

4. If immovable properties or assets registered in public registers are included in the measure of temporary suspension of administration and disposition, the appointed administrator gives notification of this measure to the offices where the registers are kept within 15 days from the date the decision is announced.

Article 10

Sequestration

1. When there is a real and concrete danger that the activities and assets specified in article 9 will be lost, misappropriated or alienated, the prosecutor may ask the court to order sequestration, in conformity with what is contemplated in the provisions of this law.

2. The measure of sequestration is ordered for a time period that is the same as that designated for the temporary suspension of administration and disposition, according to point 2 of article 9 of this law.

Article 11

Court Decision When the Time Period of Suspension and Sequestration Ends

No later than 10 days before the date when the time period for the measure of temporary suspension of administration and disposition or sequestration ends, the court orders, according to articles 9 and 10 of this law:

- a) the re-setting of the time period for these measures;
- b) the forfeiture of the assets, when there are well-grounded reasons that they are the product of unlawful activities or constitute an investment of them;
- c) the revocation of the measure.

Article 12

Court Decisions When the Measure of Suspension and Sequestration is Revoked

1. With a decision of revocation of the measure of temporary suspension of the administration and disposition and the measure of sequestration, the court may impose an obligation on the owner of the assets or the person who has them in his use or administration, or part of them, to give notice for a period no less than five years to the Tax Police of acts of ownership, purchase or payments made, payments received, professional duties of administration or guardianship, as well as other contracts or acts, according to the type and value designated by the court depending on the assets and the income of the person, but not for a value less than two million leke.

2. The notifications contemplated in point 1 are made within ten days from the conclusion of the act and, in any case, by 31 January of each year, for acts performed in the preceding year.

3. A person who does not respect the obligations of notification within the time periods defined in point 2 of this article is punished by imprisonment of from six months to three years. In addition to the sentence of imprisonment, the confiscation of the items earned and payments received as to which the obligation of notification was not respected is also ordered.

Chapter III

TRIAL OF A REQUEST FOR THE SEQUESTRATION OF ASSETS

Article 13

Criteria for the Sequestration of Assets

1. On the request of the prosecutor, and setting out the respective reasons, the court orders the sequestration of assets as to which there are data that they might be, directly or indirectly, in the ownership of a person against whom investigations according to this law are being conducted, when:

a) their value turns out to be of dimensions that do not respond to the income declared or the economic activity conducted by him;

b) on the basis of sufficient data, there are well-grounded reasons to think that these items are the product of unlawful activities or constitute an investment of them.

2. The prosecutor may ask the court to compel the person against whom investigations are being conducted, or those who have the title of owner or own any kind of title, funds or assets of any kind with a value that does not comport with their income or economic abilities to justify the lawfulness of their provenance.

Article 14

Performance of Other Investigative Actions

On the request of the prosecutor or on its own initiative, the court may perform other actions in addition to those provided in chapter II of this law.

Article 15

Proceeding in the Absence of the Suspected Person

On the request of the prosecutor, the court may also order the continuation of a proceeding and the measure of sequestration in cases when the person suspected according to article 3 of this law does not have a known residence within the country, has left the country or despite all the searches made is not found.

Article 16

Sequestered Assets that Belong to Third Persons

1. When during the judicial examination it comes out that sequestered assets belong to third persons, the court calls them, even on its own initiative, by a reasoned decision, to intervene in the process that is being held according to this law.

2. Within the time period set by the court, the third person has the right to present his claims in session and to seek that other data necessary for the sequestration decision be received.

Article 17

Execution of the Measure of Sequestration

For the execution of the measure of sequestration according to this law, the ways provided in the Code of Civil Procedure are applicable.

Article 18

Sequestration Expenses

1. The expenses for sequestration according to this law are prepaid by the state and compensated by the person against whom the investigations are conducted if the sequestration of the assets is ordered.

2. The expenses prepaid by the state are not compensated if the court does not order the measure of sequestration of the assets.

Chapter IV

ADMINISTRATION OF SEQUESTERED ASSETS

Article 19

Administrator of Sequestered Assets

1. The court designates the administrator of sequestered assets in the decision of sequestration according to this law.
2. The administrator is selected from the ranks of persons employed or authorized by the Agency for the Administration of Sequestered and Confiscated Assets.
3. The Agency for the Administration of Sequestered and Confiscated Assets may, on the request of the administrator, authorize it to ask for the help of specialists or other persons, who are compensated for the work done.

Article 20

Duties of the Administrator

1. The administrator has the duty of safekeeping and administering the sequestered assets. He also has the duty of increasing the value of the assets, if possible.
2. On its own initiative or the request of the prosecutor, the court may discharge the administrator from his duty at any time because of his incapacity or failure to fulfil his duty.

Article 21

Prohibitions for the Administrator

Except when he is authorized in advance by the court, the administrator is not permitted to take part in a trial, make a loan, sign a conciliation agreement, arbitration agreement, promise, guarantee, mortgage or alienation of the sequestered assets or perform other legal actions of administration that are not ordinary.

Article 22

Reporting by the Administrator

1. Within 15 days from his appointment, the administrator is obligated to submit to the court a detailed report of the basic elements of the existence and condition of the sequestered assets. On a continuing basis, according to the time periods set by the court, the administrator submits periodic reports to it about the administration of the sequestered assets, accompanied by the respective documentation if requested.
2. The administrator is also obligated to notify the court about other assets that might be subject to the measure of sequestration, the existence of which he becomes aware of during the administration.
3. The administrator is also obligated to send the reports specified in points 1 and 2 of this article to the prosecutor.

Article 23

Paying the Expenses of Administration

1. The expenses that are necessary or beneficial for the safekeeping and administration of the sequestered assets are paid by the funds secured by the administrator in every kind of lawful quality or source.
2. If sufficient funds to meet the expenses according to point 1 of this article are not earned through the administration of the sequestered assets, they are prepaid by the state, through the Agency for the Administration of Sequestered and Confiscated Assets.
3. In cases when the measure of confiscation of the assets is ordered, the expenses paid for the administration of these assets by the administrator or the Agency for the Administration of Sequestered and Confiscated Properties are included in the accounts of their administration. If the funds of the accounts of administration are not sufficient to meet the payment of these expenses, they are paid, in whole or in part, by the state, without the right of compensation.
4. When the court orders the revocation of the measure of sequestration, the owner of the assets is obligated to compensate the profits that his assets have had during the administration. He has the right to ask for compensation in the amount of the reduction of the value of the assets or the damage that has been caused to them.

CHAPTER V

CONFISCATION OF SEQUESTERED ASSETS

Article 24

Request for the Confiscation of Sequestered Assets

The measure of confiscation is ordered on the request of the prosecutor, who submits to the court the reasons on which he bases the request.

Article 25

Decision of the Court on Confiscation

1. Within three months from submission of a request according to article 24 of this law, the court orders confiscation of sequestered assets whose lawful provenance is not verified.
2. The decision of the court on confiscation may be announced at a later time but not more than 12 months from the date of submission of the request. On the request of the prosecutor, the court may order the extension of this time period for an additional one-year period.
3. In the determination of the time periods provided in points 1 and 2 of this article, the court takes account of the time of suspension of the trial.

Article 26

Refusal of the Request for Confiscation

The court orders the refusal of the request for confiscation of assets and revokes the measure of sequestration, even on its own initiative, when

- a) the data are insufficient to prove the participation of the suspected person in the criminal activities contemplated in article 3 of this law;
- b) it turns out that the sequestered assets have a lawful provenance;

c) it turns out that the sequestered assets are not, directly, or indirectly, in the full or partial ownership of the suspected person.

Article 27

Relations with the Criminal Proceeding

1. The measure of sequestration or of confiscation may also be ordered against assets sequestered in a criminal proceeding.
2. The implementation of the measures ordered according to point 1 of this article is suspended for the whole period the criminal proceeding is being conducted.
3. The measures ordered according to point 1 of this article are extinguished when the confiscation of the same assets is ordered in the criminal proceeding.

Chapter VI

APPEAL

Article 28

Appeal against Decisions of Sequestration or Confiscation

1. An appeal can be taken to the court of appeals against the decision of the court for the sequestration of assets or the confiscation of sequestered assets according to the time periods and conditions of an adjudication contemplated in the Code of Civil Procedure. The appeal does not suspend the implementation of the decision.
2. An appeal to the High Court may be taken against the decision of the court of appeals within 30 days from the date the decision is rendered.

Article 29

Execution of a Decision of Confiscation and the Revocation of Sequestration

1. A decision of the confiscation of sequestered assets is executed immediately after being announced.
2. The decision of revocation of the measure of sequestration of assets is executed fifteen days after notification to the interested parties.

CHAPTER VII

USE OF CONFISCATED ASSETS

Article 30

Passage of Confiscated Assets in Favor of the State

1. Assets confiscated by judicial decision according to this law pass in favor of the state.
2. A final decision on the confiscation of assets is sent immediately to the Agency for the Administration of Sequestered and Confiscated Assets.

Article 31

Competency for the Manner of Use of Confiscated Assets

1. The manner of use of movable property, immovable property and assets that serve in economic and commercial activities is set by the Minister of Finance, on the basis of a report of technical and financial evaluation, as well as the possibilities of their use determined by the Agency for the Administration of Sequestered and Confiscated Assets, in conformity with the criteria of articles 33, 34 and 35 of this law, as well as in advance consultation, within 10 days from submission of the report of evaluation, with the units of local government where the immovable property is found.
2. The report of technical and financial evaluation is submitted to the Minister of Finance within 90 days from the notification of the judicial decision contemplated in point 2 of article 30 of this law.
3. The Minister of Finance specifies by order the manner and conditions and use of the immovable properties confiscated and issues accompanying instructions for their use within 30 days from the submission of the report of technical and financial evaluation, but no later than 120 days from the date of notification of the judicial decision contemplated in point 2 of article 30 of this law.

Article 32

Duties of the Administrator of Confiscated Assets

The administrator appointed by the court during the phase of sequestration of assets continues the exercise of duties, in the name and for the account of the Agency for the Administration of Sequestered and Confiscated Properties, until he is replaced by it with another person.

Article 33

Use of Movable Property and Monetary Means

The administrator carries out actions necessary to deliver to the accounts of the Agency for the Administration of Sequestered and Confiscated Assets funds in monetary means:

- a) confiscated, which will not be used for the administration of other confiscated assets or which will not be used for the indemnification of the victims of the criminal acts of organized crime;
- b) earned by the sale of movable properties that are not used in the activity of a commercial juridical person and of the titles, in net value, earned from the sale of the assets for the indemnification of the victims of organized crime. If the procedures of sale are uneconomic, the Minister of Finance orders the transfer of ownership, without payment, or the destruction of the confiscated assets by the administrator;
- c) that are earned by repayment of personal loans, if the procedure of getting them back is uneconomic or, when after verifications by the Agency for the Administration of Sequestered and Confiscated Assets about the payment ability of the debtor, it turns out that he is insolvent, the personal loans are annulled by the Minister of Finance.

Article 34

Use of Immovable Property

1. Confiscated immovable property:
 - a) is sold for the indemnification of the victims of organized crime;
 - b) passes to the administration of the organs of the system of justice, public order and civil defense, for the fulfilment of their functions or for social purposes;

c) passes to the ownership of the units of local governments where the immovable property is found, for the fulfilment of their functions or for social purposes.

2. In cases of use for social purposes, the central institution or unit of local government may administer the immovable property directly or give it for use, without compensation, to non-profit organizations or other public entities that have for the object of their activity social, cultural and health rehabilitation of those in need, especially those affected or endangered by crime, including therapeutic centers and organizations and those of rehabilitation and curing the users of narcotic substances, as well as assistance centers and those for rehabilitating the victims of trafficking in human beings.

3. The central institution or units of local government are obligated to use the immovable property according to the designated manner of use within one year from the passage into administration or ownership.

4. Every six months, the central institutions administering, and the local units that own, confiscated immovable properties send the Agency for the Administration of Sequestered and Confiscated Assets a detailed report about the situation and manner of use of the immovable property.

Article 35

Manner of Use of Assets and Commercial Activities

1. Confiscated commercial activities and immovable properties that are established in the activity of commercial juridical persons pass to the ownership of the state.

2. Relying on the technical and financial evaluation of the Agency for the Administration of Sequestered and Confiscated Assets, when there turn out to be well-grounded projections about the continuation or revival of the commercial activity and the assets according to point 1 of this article, or possible solutions that offer preservation or a satisfactory level of employment, they are administered and used as follows:

a) they are given for use, by rent and in other forms of use for compensation, to public or private juridical persons under specified conditions charged on them;

b) they are given for use, by rent and in other forms of use for compensation, to community of workers of the juridical person whose activity has been confiscated, without conditions set for the beneficiary. It is not permitted to give them for use by rent to communities of workers of the confiscated juridical person if its members are the spouse or relatives by blood or marriage or a person who lives with the person against whom the measure of confiscation has been applied;

c) they are sold to subjects who have presented a request, for a price no lower than the value determined by the Agency for the Administration of Sequestered and Confiscated Assets. A sale is ordered when such a solution offers more priority with the public interest or when the income from the sale will be used for the indemnification of the victims of organized crime. In cases when the sale is done at the end of the term of a contract of lease or grant of use for compensation, the lessee or user, respectively, may exercise the right of first refusal to purchase within 30 days from the announcement of the procedure of sale, which is made by the minister of Finance;

ç) they are put into liquidation, if such a solution offers more priority with the public interest or when the funds that will be secured from the liquidation will be used for the indemnification of the victims of organized crime.

Article 36

The Agency for the Administration of Sequestered and Confiscated Assets

1. The Agency for the Administration of Sequestered and Confiscated Assets is the institution responsible for the administrative of sequestered and confiscated assets.

2. Detailed rules about the organization, competencies and functioning of the Agency for the Administration of Sequestered and Confiscated Assets are set by the Council of Ministers.

3. Detailed rules for the criteria of valuation, the manners and procedures of giving in use and alienating confiscated assets are set by the Council of Ministers.

Article 37

The Consultative Committee for Measures against Organized Crime

1. For coordination of the activities in implementation of this law, for the evaluation of the progress of the administration and use of sequestered and confiscated assets, the giving of an opinion on requests for the financing of projects by the Special Fund for the Prevention of Criminality and for Legal Education, and for other questions related with preventing and striking at organized crime, the Consultative Committee for Measures against Organized crime is created at the Council of Ministers.

2. The Committee is called by the Prime Minister, and the heads of the institutions responsible for preventing and striking at organized crime who are under the Council of Ministers, the General Prosecutor, the Chairman of the Office of Administration of the Judicial Budget, the Chief Registrar of Immovable Properties of the Republic of Albania, and the directors of national associations of municipalities and communes take part in it.

3. Representatives from public institutions or other organizations, foreign and local, active in fields with interest for the implementation of this law may also be invited to take part in the activities of the Committee.

4. The Committee meets at least once every three months. On the proposal of the Prime Minister, the Committee approves detailed rules for its functioning.

Article 38

Periodic Reporting to the Council of Ministers

At the end of every fiscal year, the Minister of Finance submits to the Council of Ministers a report about the administration of assets sequestered and confiscated pursuant to this law.

Article 39

Special Fund for the Prevention of Criminality and for Legal Education

1. For a five year period, beginning with fiscal year 2005, 50 per cent of the income in the State Budget earned according to articles 33 and 35 will be used for the creation of a Special Fund for the Prevention of Criminality and for Legal Education.

2. This Fund will serve for the financial support of projects that aim at the administration of confiscated immovable properties for institutional or social purposes or for the public interest, as well as concrete projects for:

a) rehabilitating and curing users of narcotic substances, as well as assistance and rehabilitation of victims of trafficking in human beings;

b) improvement of infrastructure, services and living in areas with social problems;

c) the conduct of school programs and activities for legal education;

c) the promotion and development of education of the work of the young generation and, in particular, persons who are unemployed or who live in areas with social problems.

3. In addition to central institutions, the beneficiaries of the financing of projects according to point 2 of this article may be:

a) the units of local government where the confiscated immovable properties are located;

b) non-profit organizations or other public entities that have for the object of their activity social, cultural and health rehabilitation of those in need, especially those affected or endangered by crime, including therapeutic centers and organizations, centers for rehabilitation of and curing users of narcotic substances, as well as centers for assistance to and rehabilitation of the victims of trafficking in human beings, which have conducted such activities for the last three years before submission of the application.

4. Requests for the financing of projects according to this article, the verification and preparation of the documentation for the opinion of the Consultative Committee for Measures against Organized Crime, and the follow up of their implementation is done by the structures of the Agency for the Administration of Sequestered and Confiscated Assets.

5. The Minister of Finance, relying on the opinion of the Consultative Committee for Measures against Organized Crime, by order determines the financing of a project and the manners of use of the fund put at the disposition of the applicant.

Article 40

Transitional Provisions

1. The Council of Ministers is charged with issuing substatutory acts in implementation of points 2 and 3 of article 36 of this law within six months from its entry into force.

2. Until the day the Agency for the Administration of Sequestered and Confiscated Assets starts its activity, its functions are exercised by the structures of the Ministry of Finance.

Article 41

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

SPEAKER

SERVET PËLLUMBI

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SUPPORTING STATEMENT

On the Draft Law "On Preventing and Striking at Organized Crime"

1. The draft law "On Preventing and Striking at Organized Crime" constitutes one of the priority and important initiatives of the Council of Ministers in the framework of the continuation and intensification of legislative and institutional measures for effectively striking at and preventing organized crime.

This initiative is part of and fulfils an important element of the package of legislative measures contemplated in the program of the government for 2004. In addition to this draft law, a number of measures are also included in this package of reforms connected with criminal reform, the amendment and completion of the Criminal Code and the Code of Criminal Procedure, according to the standards, requirements and models contemplated in international law, including the Palermo Convention, as well as the successful experiences of the countries of Western Europe in the treatment and meeting of the problem areas of organized crime and the phenomena that accompany and nourish it.

2. The forms of organized crime constitute a threat and a principal hindrance for normality and the consolidation of the functioning of democratic institutions and the state of law and the market economy in Albania.

In addition, organized crime relies on, nourishes or encourages other phenomena, such as terrorism, trafficking, money laundering and corruption. At the same time, this phenomenon threatens and creates insecurity with local

and foreign investors, as well as affecting the level of credibility and of respect for the law and institutions by the citizens.

In order to prevent and fight these phenomena, concrete and systematic legal measures and policies have been programmed and are being implemented, aiming at increasing the effectiveness of the functioning of the organs of the system of justice and other institutions that apply the law, through

- the preparation and implementation of legislation that is as contemporary as possible;
- the creation and effective functioning of specialized structures against the forms of organized crime;
- the improvement of infrastructure, equipment and technology;
- an increase of financial sources;
- an increase of human resources, selection of employees by merit and transparently, care for the career and discipline, professional formation and treatment;
- inter-institutional coordination in the exercise of the respective duties and responsibilities;
- international cooperation in the field of criminal law.

3. In this framework, it is essential that the policies and measures against organized crime be supported in legislative initiatives that aim at including aspects both to crush and punish it, as well as preventative aspects.

This important reform has been preceded, relies on and at the same time serves the effective implementation of the legislation approved in recent years, including the amendments that were made to the Criminal Code and the Code of Criminal Procedure in 2001, 2003 and 2004. In addition, important is the ratification of the European convention "On laundering, search, seizure and confiscation of the proceeds of crime," the convention against trans-national organized crime (the Palermo Convention) and two of its supplemental protocols, the European criminal convention and the civil convention "On corruption," etc.

In addition to these reforms and measures, it is contemplated also that several new laws approved in recent months will especially serve the prevention and fight against organized crime.

In February 2004, important amendments in the Code of Criminal Procedure were approved, which avoid the serious deficiencies of this legislation as to the forms, conditions, procedures, and public and private environments, as well as the breadth of the criminal offenses where our organs of the criminal proceeding, the Judicial {Police and the prosecutor's office, may apply special investigative means. Now, audio-visual surveillance in any form, the infiltration of police agents, simulations etc. are applicable for all forms of organized crime, trafficking and other serious criminal offenses.

In March 2004, the law "On the protection of witnesses and collaborators of justice" was approved, constituting an important element for filling a legislative vacuum and serving as a means that can be used effectively by the organs of the criminal proceeding in order to encourage and secure data, testimony and decisive evidence, especially in cases of organized crime, from witnesses and other individuals sentenced or under investigation, through cooperation and special protection for them in exchange for these contributions.

4. Continuing the forms undertaken up to today and the other legislative measures that accompany this draft law, the aim is the confiscation of all assets gained by the activities of criminal organizations and other structures groups of organized crime. In the way, it is aimed to strike effectively at the economic base, which constitutes the purpose of the activity and the decisive support for it in facing the state.

Through the approval and implementation of this new law, the aim is:

- to strike at the challenges that crime poses for our state and citizens;

- to strike at and prevent the phenomenon of encouraging especially the young to enter the road of crime, where the moral and example that they offer is that of quick enrichment;

- for the assets gained or stolen through crime to be taken and put under the administration of specialized structures of the state;

- for them to be put at the disposition of social and educational activities, for creating centers of education and rehabilitation of the victims of crime;

- for them to be used to strengthen the economic base and the improvement of the equipment at the disposition of state organs included in the fight against organized crime and for the compensation of work results of their employees;

- their use in the framework of international cooperation.

The draft law provides for the sequestration and confiscation of assets that result from organized crime, through an administrative procedure not essentially connected with the fate of a criminal proceeding, accompanied by criteria, procedures and structures responsible for the identification, discovery, blocking and decision making about the existence of the lack of any legal justification and a determination of the criminal origin of the assets.

Through this special legislation against criminal assets, similar with the legislation of various schools of the law, such as the Italian anti-Mafia law, the Irish law, etc., the prosecutor's office and other state organs, according to the duties and responsibilities set by law, will be able to carry out all actions for the identification, immediate sequestration and confiscation of criminal assets, presenting the respective motives.

Unlike an ordinary criminal proceeding, the new law, through administrative and civil procedures, among other things obliges the owner of assets to prove and justify the provenance of particular financial assets, as well as the fact that these assets are not connected with or controlled by persons suspected of being members of organized crime. This makes it what is known as a reversal of the burden of proof also for persons suspected of being incriminated and, in particular, included in the activities of organized crime.

Similarly, the legislation provides for the creation and functioning of a special state structure for the administration and distribution of the assets of crime, confiscated in a criminal proceeding or according to this new law. The correct administration of the assets confiscated and their distribution and use for social purposes will be the core of the activity of the Agency for the Administration of Sequestered and Confiscated Assets.

5. The draft law "On preventing and striking at organized crime" is a part of these initiatives, meeting one of the essential elements that accompany and make more effective the traditional criminal legal mechanisms and the activity of the institutions of criminal prosecution for preventing and striking at organized crime and other criminal phenomena.

The draft law aims at setting several very important normative rules for the responsible institutions, defines the duties, procedures and criteria that should be applied for the sequestration and confiscation of the assets of persons suspected as participants in organized crime and terrorism, but also in several other especially serious forms, such as trafficking, kidnapping etc.

Starting with the purpose and the character of the measures, procedures and sanctions that it contemplates, first of all, persons who are suspected as members of criminal organizations or organized groups, organizations or forms of cooperation for terrorist persons, armed bands etc. are subject to this draft law, also relying on being up to date with international conventions about especially dangerous criminal phenomena.

As the experience of our institutions shows, as well as that of countries with outstanding and successful experience against organized crime, the latter, feeling the pressure in its confrontation with the state, tries to become more sophisticated and to hide the origin and use of the assets stolen or secured through crime. For these reasons, the investigations, verifications and measures against the assets of members of organized crime take account of and are extended also to persons connected with or controlled by them. Thus, also included in these verifications and measures are the spouse, children, persons who have lived with the suspects in the last five

years, and natural or juridical persons for whom there is data that the assets or activities are controlled, in whole or in part, directly or not, by the suspects

The principal organs responsible for meeting obligations according to this draft law are the prosecutor's office, the Judicial Police and the structures of the Ministry of Finance. In fulfilling their mission, these institutions operate by applying, with some exceptions of a procedural nature, the administrative legal provisions and those of a civil proceeding, having at their disposition all the legal means to verify, suspend, block, sequester and confiscate unlawful assets of persons suspected of being members of organized crime and persons related to or controlled by them.

Against this circle of persons, investigations are carried out about their financial means, assets, economic activities, manner of living, sources of income, relation with the rights, contributions, financing or credit of any kind gained from the state, international institutions etc.

In addition to other measures for the verification of the case and the preparation of requests for confiscation directed to the court, in the case of real dangers of the loss, misappropriation or alienation of the funds and assets, the court may order preliminary sequestration against them, on the request of the prosecutor.

Another important element of the draft law is the equality of the parties before the court in the obligation to present evidence and legal justifications connected with the respective claims.

Under such conditions, in addition to the ordinary responsibility of the state institutions the court has the right to compel even persons who have the title of an owner, or who have any kind of title, funds or assets of any kind, of a value that does not comport with their income or economic abilities, to justify the lawfulness of the provenance of these assets. At the same time, the court may also order the temporary suspension of the administration and disposition of the activities and assets that are used, directly or not, for the performance of these economic activities.

The expenses for the measures taken according to this draft law in every case are paid by the state preliminarily, while their administration is entrusted to an administrator of sequestered property, who is appointed to this role by the court from among the employees of or persons certified by a new institution that is created, the Agency for the Administration of Sequestered and Confiscated Assets. The amount of confiscation is set by request of the prosecutor, who submits to the court the reasons on which he bases his request.

New very important elements of the draft law are the criteria, procedures and responsibilities of the institutions that deal with the treatment, administration and use of the sequestered and confiscated assets. It is thought that the principal responsible decision-making authority on these questions, according to the provisions of the draft law, will be the minister of Finance, who is supported by the technical analyses and the preparatory work done by the Agency for the Administration of Sequestered and Confiscated Assets.

The draft law contemplates that the confiscated funds and assets be used for the indemnification of the victims of organized crime or be given in administration to the organs of the system of justice, public order, civil defense, and the units of local government for purposes of fulfilling their functions or for social purposes. The central institution or unit of local government may administer immovable property directly or give it in use, without compensation, to non-profit organizations or other public entities that have the social, cultural and health rehabilitation of the strata of society in need as the object of their activity.

The Agency for the Administration of Sequestered and Confiscated Assets is contemplated to play a special role in the treatment, administration and distribution of the confiscated unlawful assets. The organization, composition and procedures for its functioning and realizing its obligations according to this draft law are contemplated to be defined in detail in substatory acts of the Council of Ministers, relying on the already programmed assistance and experience from international institutions.

In order to come to the assistance of the structures charged with duties according to this draft law, for purposes of coordination and orienting them in important decision-making or in the development of policies for this field

and the measures against organized crime, in general, the Consultative Committee for Measures against Organized Crime is contemplated to play an important role. It will be directed by the Prime Minister and will have

in its composition the heads of the institutions responsible for preventing and striking at organized crime in the organs of the executive and judicial power, as well as the representatives of the units of local government.

In order that effective, preventative and educational steps and initiatives be better served, a part of the income secured from the administration of sequestered assets is contemplated to be set aside for the creation of a special fund for the prevention of criminality and for legal education.

[LAST PART OF THE SUPPORTING STATEMENT IS MISSING]

[1] Tr. note: "Zotërim" is translated as ownership. "Pronësia" is the usual word for ownership. "Zotërim" has more of a sense of control – owning and/or being the master of the activities and assets referred to.