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FEBRUARY 2020 ISSUE

Muja Law brings you the Legal Bulletin. This publication is a collection of the most important legal updates published by our office during February.

The purpose of this monthly issue is to help professionals and businesses have a clear understanding of the dynamics of Albanian legislation and easily navigate through recent legal changes frequently published by our legal office.

NORMATIVE ACT NO.1, DATED 31.01.2020

“ON PREVENTIVE MEASURES IN THE FRAMEWORK OF STRENGTHENING THE FIGHT AGAINST TERRORISM, ORGANIZED CRIME, SERIOUS CRIMES AND THE CONSOLIDATION OF PUBLIC ORDER AND SECURITY”

➤ The purpose of the Normative Act is the emergency and temporary intervention in the conditions of a need to strengthen and intensify the fight against organized crime, criminal organizations and structured groups, as well as criminal and terrorist groups, armed gangs and individuals involved in serious crimes. *The Normative Act has a temporary effect and will apply until 31.12.2020.*

➤ The Normative Act aims to consolidate the security in the country, by increasing the capacity and level of detection, tracking and prevention of organized crime, serious crimes, terrorism and the organized crime’s use of unlawful property.

❖ Subjects of the Normative Act

➤ Persons, who until the entry into force of this act have been convicted by a final criminal decision, inside or outside the territory of the Republic of Albania, with the exception of persons for whom there is an acquittal, for:

a) participation and commission of crimes by the criminal organization, armed gang and structured criminal group provided for in Chapter XI of the Criminal Code;

b) participation and commission of crimes by terrorist organizations and crimes for terrorist purposes, provided in Chapter VII of the Criminal Code;

c) the commission of the offenses set forth in Articles 77, 78, 78/a, 79, 79/a, 79/b, 79/c, 109, 109/b, 110/a, 114, 117, 128/b, 134, third paragraph, 136, 138/a, 139, 140, 141, 151, 152, 278/a, 282/a, 283, 283/a, 284 and 284/a, of the Criminal Code.

➤ Persons who, until the entry into force of this act, are under investigation, within or outside the territory of the Republic of Albania, with the exception of persons for whom there is a decision to dismiss the prosecution or criminal case for:

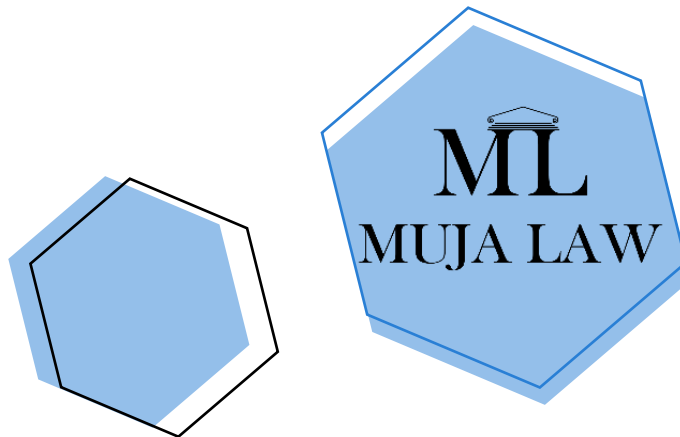
a) participation and commission of crimes by the criminal organization, armed gang and structured criminal group provided in Chapter XI of the Criminal Code;

b) participation and commission of crimes by terrorist organizations and crimes for terrorist purposes, provided by Chapter VII of the Criminal Code;

c) the commission of the offenses set forth in Articles 77, 78, 78/a, 79, 79/a, 79/b, 109, 109/b, 110/a, 114, 117, 128/b, 134, third paragraph, 136, 138/a, 139, 140, 141, 151, 152, 278/a, 282/a, 283, 283/a, 284 and 284/a, of the Criminal Code.

➤ Natural and legal persons, Albanian or foreign nationals, as well as stateless persons, for whom the proclamation procedure has been initiated or for which there are suspicions based on elements of fact for their involvement in any form of terrorism and its financing, committed within or outside the territory of the Republic of Albania, in accordance with the legislation in force, for measures against terrorism financing.





❖ Applications of the Normative Act

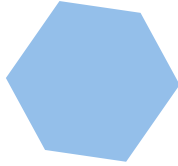
- The provisions of the Normative Act shall apply only to the subjects and assets of the subjects provided in this act, only for the time and conditions provided for therein.
- The preventive measures of a material nature provided for in the Normative Act shall not be imposed on property that, prior to the entry into force of this act, is in the process of judicial review or for which it has been decided through a court decision, pursuant to criminal law, law on prevention and crackdown of organized crime, trafficking, corruption and other crimes through preventive measures against property, as well as legislation on the financing of terrorism.

❖ Types of measures

- The Normative Act provides the application of two types of preventive measures: a) preventive measures of a personal and property nature; and b) preventive measures of an economic nature.
- The preventive measures of a personal and property nature provided for in the Normative Act may be implemented jointly or separately independently of one another.
- Preventive measures of an economic nature shall be applied in relation to personal and property preventive measures.

❖ Bodies

- In the framework of coordinating activities for the design, monitoring, supervision and implementation of the preventive measures provided for in the Normative Act, and for the purpose of exchanging information, enhancing cooperation with foreign law enforcement authorities over time, as also for implementing this act, is established the National Coordination Committee for the Prevention and Fight against Organized Crime ("*Committee*").
- The Committee is chaired by the Interior Minister and is composed of the Minister of Justice, the Minister of Finance and Economy, the Prosecutor General, the head of the Special Prosecution Office against Corruption and Organized Crime, the Director of the State Intelligence Service, the Director General of the State Police, the Director of the Coordination Center against



Violent Extremism and the Director General of the Directorate for the Prevention of Money Laundering.

- Additionally, an important role is given to the "Operation Force of Law" ("OFL"), a special structure of the General Directorate of State Police for preventing, detecting, documenting and combating organized crime and serious crimes.



COMPETENT COURT AND PROSECUTION OFFICE

- ❖ The request for preventive measures and the opposition to the measures taken in accordance with the provisions of the Normative Act shall be examined in the first instance by the Special Court against Corruption and Organized Crime in accordance with the legislation in force.
- ❖ Appeals against court decisions concerning the imposition of preventive measures shall be heard by the Court of Appeal, in whose jurisdiction belong the matters of organized crime and corruption, as defined by the legislation in force.
- ❖ The competent prosecution, within the framework of the measures provided for in the Normative Act, is the Special Prosecution Office against Corruption and Organized Crime, in accordance with the legislation in force.

SEIZURE OF PROPERTY BY THE STATE POLICE IN CASES OF EMERGENCY

In case of need and urgency when there is reasonable information or suspicion, based on elements of the fact that the assets of the subjects, referred to in the Normative Act, whether owned or in use or in possession directly or indirectly, are provided unjustifiably in relation to the level of income or profits from lawful activity, declared by the subjects in accordance with the provisions of the applicable law, and when the property is in danger of being alienated, destroyed, damaged, transferred, transported or in any other case suspected of jeopardizing the implementation of a possible seizure measure, the Director General of the State Police shall order the seizure of the assets.

ASSETS' DECLARATION

- ❖ The subjects of the Normative Act, to whom a preventive measure is imposed, according to the provisions of this act, are obliged to:
 - a) declare to the OFL structures their movable and immovable property within 30 (thirty) days from the moment the preventive measure is finalized;
 - b) declare to the OFL structures all changes in their property with a value of not less than 5,000,000 ALL, within 30 (thirty) days from the date of the change;
 - c) declare to the OFL structures any financial transaction worth more than ALL 1,000,000 within 30 days of its execution.



INSTRUCTION NO.2727, DATED 04.02.2020

“ON IMPLEMENTATION PROCEDURES OF LAW NO. 90/2019, ‘ON THE REVALUATION OF IMMOVABLE PROPERTY’ AND SETTING OF THE SERVICE FEE”

In virtue of the Instruction of the Minister of Finance and Economy and the General Director of State Cadaster Agency, all individuals who own a registered immovable property (land and/or building), or acquire and register it by September 30, 2020, shall be entitled to reevaluate that property within this period at market value. This includes the cases in which the immovable property has previously been reevaluated.

An individual may choose whether to reevaluate the property by the State Cadaster Agency (“SCA”) or by a licensed expert in property valuation. In order to benefit from the revaluation, the individual must first pay the revaluation tax (3% of the taxable amount) and the service fee, according to law No. 90/2019 “On revaluation of immovable properties”.

If the individual owns more than one immovable property and wants to reevaluate each of them, the revaluation procedure will be individual for each of those properties. *Applications for immovable properties revaluation shall be submitted until September 30, 2020. Applications filed with the SCA within September 30, 2020, but not completed, will be processed after this date, if the revaluation tax has been paid within the above date.*

➤ Calculation of property revaluation taxable base for individuals

If the individual chooses to re-evaluate the property by SCA, it shall be done at the minimum fiscal prices, applicable at the time

of conducting the revaluation process and in accordance with the provisions of the tax instruction on immovable property rights’ transfer. In this case, the taxable amount will be calculated as the difference between the revalued amount (subject to the applicable fiscal minimum prices) and the deductible amount.

If the individual chooses to reevaluate the property by a licensed expert, the taxable amount will be calculated as the difference between the value reflected in the property valuation act and the deductible. In any case, the value reflected in the property revaluation act by the licensed expert may not be less than the minimum fiscal price.

The deductible value, as in the above cases, is the value of the property under the deed (of ownership gain) or the previous revaluation (for which the tax has previously been paid). In cases where the immovable property turns out to be registered without a sale-purchase contract, then in order to determine the deductible, the SCA’s local directorate shall rely on the value of the minimum fiscal prices at the time of registration of the act of acquiring the ownership.

For the implementation of this instruction, within 5 days after its entry into force, the Ministry of Finance and Economy shall ask the responsible Ministry for infrastructure and the National Housing Entity the price list of the average cost of houses’ construction, in digital format.



APPLICATION PROCEDURE BY INDIVIDUALS

The revaluation procedure by individuals can be done online, or in person in front of SCA local directorate.

A. Online application

The individual or their representative can apply online for the property revaluation service through the government e-Albania portal, by filling the identification data of the immovable property or by uploading a scanned copy of the property's documentation. In order to obtain an official document reflecting the revaluation's registration, the individual must also apply for the service of obtaining a copy of the immovable property's card or certificate (for properties that have not been subject to initial registration). The application for these services shall be addressed to the competent SCA local directorate/office for the territory, where the immovable property is located.

Afterwards, an invoice shall be signed and stamped electronically by the local SCA office and, along with the service charges, will be sent to the applicant through the government e-Albania portal.

When an individual requests the revaluation through an act of a licensed expert, he/she shall physically send via mail the original property revaluation act, signed and stamped by the property valuation expert, as well as a notarized copy of the latter's license. Afterwards, the sending, via the platform, of an electronically signed and stamped tax invoice, together with the service charge, shall be performed by the SCA local office. For this procedure, in addition to the online application, the individual must submit the above physical documentation via mail to the local office of SCA.

Once the payment of the revaluation tax and service fees has been verified, the individual's application shall be considered completed and the SCA is obliged to reflect the revaluation in the immovable property registry.

B. Application in front of SCA

Exceptionally, in cases where it is impossible to administer the application through the government e-Albania portal, the application must be submitted to the reception desk (counter) at the competent local directorate/office of SCA, submitting a "Revaluation Request" form. In order to obtain an official document reflecting the revaluation registration, the individual must also apply for the service of obtaining a copy of the immovable property's card or certificate (for properties that have not been subject to initial registration).

The individual or his/her representative, with a power of attorney, shall in any case be presented with an identification document at the SCA Reception Office. He/she will be provided with two copies of the "*Revaluation Request*" form, from the responsible employee, which shall be completed by the applicant.

The employee then shall calculate the tax to be paid by the applicant for the registration of the revaluation and shall provide a copy of the form to the individual or his representative. The individual or his/her representative shall also be provided with an invoice for payment of the tax and service fees.

Upon payment of tax and service fee in the bank, the individual must submit proof of payment to the local SCA department. The proof of payment is then attached to the application form. Upon payment of tax and service fees, the application shall be considered completed and the local directorate shall reflect the revaluation in the immovable property registry.

APPLICATION PROCEDURE BY LEGAL PERSONS

Legal persons, which have recorded immovable property with a value less than that of market value as their assets in the 2019 financial statements, are entitled to reevaluate these properties at market value, within the application period.

The representative of the legal person submits to the Regional Tax Directorate, where the legal person is registered to, the following documents:

- a) Voluntary declaration for revaluation of assets;
- b) Power of attorney for the legal representative, if such procedure is conducted by a legal representative appointed by him;
- c) A copy of the independent valuation expert's license;
- d) A copy of the service's invoice of the valuation expert;
- e) The original act of immovable property's revaluation signed and sealed by the valuation expert;
- f) The financial statement (balance sheet) of 2019, in which results the revalued immovable property recorded in the assets, including the explanatory annexes of the revalued property;
- g) A copy of the property revaluation payment's statement, at a rate of 5% of the difference between the revaluation value and the value of the immovable property recorded in the financial statements. Payment shall be made to one of the commercial banks on behalf of the Treasury of the Ministry of Finance and Economy.

The legal person holds an immovable property card, stating the relevant value of the immovable property from the moment of initial recognition of the asset and the relevant tax paid under applicable legislation.

The date of immovable property's revaluation shall be considered the date when tax payment is done.

Difference between the value resulting from revaluation, according to the relevant act of the expert and the value recorded in the financial statements, shall be recorded in the financial statements in accordance with law no. 9228, dated 29.04.2004, "*On Accounting and financial statements*", as amended, and in compliance with law no. 8438, dated 28.12.1998, "*On Income Tax*", as amended.

This value shall not be depreciated for tax purposes.

➤ Revaluation Service fee

The revaluation service fee for individuals at the SCA is 1200 ALL.

➤ Benefits from revaluation procedure

After carrying out a revaluation, for individuals under this instruction, in cases of ownership transfer of the revalued immovable property, pursuant to Law no. 8438, dated 28.12.1998, "*On Income Tax*", as amended, the tax is calculated according to the legislation in force on the realized profit, as the difference of the value at the moment of ownership transfer, with the revalued amount for which the tax was paid. If this difference is negative, the individual does not pay tax.



DECISION NO.678, DATED 13.02.2020 OF THE COMPETITION COMMISSION

Instruction “On best practices for conducting procedures related to the implementation of articles 4 and 9 of Law No. 9121, ‘On Protection of Competition’, as amended”

➤ Starting a procedure

A case related to an alleged violation of article 4 (“Anti-competitive agreement”) and 9 (“Abuse of dominant position”) of Law No. 9121/2003, “*On protection of competition*”, as amended, may start with a complaint from an enterprise or on the initiative of the CA. There is also the possibility that other institutions like the Parliament or other regulators request the CA to conduct a general investigation in any sector of the economy.

Citizens or enterprises can provide to CA information that is important in stimulating investigations. Therefore, CA encourages citizens and businesses to report suspected violations of competition rules. *This can be done either by filing an official complaint or by simply giving CA information on the market.*

The CA may open a case on its own initiative. CA can take this initiative when it has certain facts/data regarding a case, or in cases where this data is provided and the information is collected in the context of any questionnaires in any sector of the economy, informal meetings with industry representatives, or by monitoring markets. Cases related to anti-competitive agreements can also be initiated based on an application for relief from fines.

➤ Preliminary Investigation - Investigative Measures

All cases, no matter how a case begins, undergo an initial assessment phase. During this phase, the CA examines whether the case will go to further investigation and if so, specifies in particular the parties, markets and conduct to be investigated.

Initial assessment means that in some cases investigative procedures will not be followed because the case does not need further investigation. In this regard, CA focuses its human resources on cases

where a breach appears to be potentially detectable, ensuring the application of articles 4 and 9 of the law no. 9121/2003 “*On protection of competition*”, as amended.

Request for information, as well as inspection, may be one of the first investigative measures. Requests for information can be made both before and after the procedure is opened.

When the first investigative measure is addressed to the enterprises (normally a request for information or an inspection), the addressees are informed of the fact that they are subjects of a preliminary investigation, as also on the case and the purpose of such investigation.

➤ Request for information

The CA can request enterprises and associations of enterprises to provide all necessary information. Information may be requested in writing by the Secretariat or by decision of the Competition Commission.

It should be highlighted that requests for information may be sent not only to the enterprises under investigation, but also to enterprises or to other associations of enterprises that may have relevant information on the case. Information is needed, in particular when it allows the Commission to verify the existence of the alleged violation mentioned in the request.

Information is necessary especially if it enables the CA to verify the existence of a violation. Where enterprises respond with inappropriate information and documents that are not relevant to the case, the CA may return this type of information to the addressee.

The addressee of a request for information is protected by the principle of privilege against self-incrimination.

The request for information shall specify what information is required and the time limit within which the information will be provided. Addressees are given a reasonable timeframe to respond to the request. In this case, CA takes into account the complexity of the case and that of the information.

If enterprises have difficulty in responding and filing the information within the given time limits, they may request the CA to extend this period. In this case, a written request must be made before the expiry of the time limit specified in the CA request.

The request for information also requires the addressee to indicate whether he considers the information provided in the response to be confidential. In this case, the addressee must provide a non-confidential version of the information.

The non-confidential version of the information shall be filed in the same format as the confidential version to which the paragraphs have been replaced. In general, the non-confidential version should be filed at the same time as other documents. If the enterprises do not comply with these requirements, the CA may assume that the documents or statements do not contain confidential information.

During the investigative phase, the CA may hold meetings (or make telephone calls) with the parties subject to the proceedings, with the complainants or third parties. When a meeting is held at the request of the parties, complainants or third parties, they generally have to submit an agenda in advance of the issues to be discussed at this meeting, and if appropriate, a presentation that includes the issues in more detail.

Any written document prepared by the parties participating in these meetings shall be part of the file. A non-confidential version of this documentation may be made available to the parties under investigation during the file access phase, if the matter is further pursued.

The CA may request the parties in this meeting to submit all information in writing.

The law and regulations also provide for the possibility of receiving statements from natural and legal persons who are deemed to have valuable information in connection with the alleged infringement. For this reason, CA may interview (also by telephone or video conference) any natural or legal person who consents to be interviewed for the purpose of gathering information. In this case, the interviewee is informed about the legal basis of the interview, its voluntary nature and the opportunity to consult with a lawyer. CA informs him about the purpose of the interview and its recording.

➤ Inspections

The CA has the right to carry out inspections at the premises of an enterprise and under certain circumstances in other premises, including private premises.

➤ Legal Professional Privilege

Some types of confidential communications, between external or independent lawyers and their clients, may be protected by the principle of Legal Professional Privilege (also referred to as "Lawyer/Client Relations"/ LPP). These communications are protected by legal professional privilege, if they are made for the purpose and interest of the exercise of client protection rights in the proceedings followed in a competition case.

The parties must present to the CA appropriate justification for this claim by providing also redacted versions, in which parts that are under the protection of the LPP principle have been removed. In some cases, a cross-examination of these documents by CA representatives usually during an inspection (usually the subject/object of the letter or communication, title, or other superficial elements) enables them to reach a conclusion if such types of documents are involved. However, there may be cases where the enterprise does not allow such a thing, because such viewing cannot be carried out without the contents of the document being deconstructed.

The preliminary investigation ends with the Preliminary Investigation Report.



➤ In-depth investigation (Opening of proceedings)

CA initiates proceedings when the initial assessment concludes that further investigations are needed.

The decision to open the proceedings defines the parties to the proceedings and briefly describes the object/purpose of the investigation. In particular, it defines a conduct implying potential violation of Articles 4 or 9 of Law No. 9121/2003 “*On protection of competition*”, as amended, that will include the investigation and may identify the territory and sector(s) where that conduct occurs.

The CA shall publish the opening of proceedings. The Competition Commission’s decision to initiate an in-depth investigation establishes the time limit within which the parties to the investigation as well as other interested parties may express their views on the decision. Although there is no legal obligation in this regard, the parties to the investigation should be informed in advance of the opening of proceedings before this process can be made public.

The opening of proceedings does not in any way prejudice the existence of a breach. It simply indicates that CA will pursue the matter further.



➤ Investigative Report

An important procedural step in proceedings that may lead to a prohibition decision is the approval of the Final Investigation Report by the Secretariat. However, the approval of the Final Investigation Report does not prejudice the outcome of the investigation. This may lead to the closure of the case without the adoption of a prohibition decision or a commitment decision by the Commission.

The Final Investigation Report sets out the Secretariat's preliminary position regarding the alleged violation, following an in-depth investigation. Its purpose is to inform the parties concerned of the allegations made against them in order to enable them to exercise their right to be defended, in writing or orally, at a hearing.

Although not legally binding, the Final Investigation Report should clearly indicate whether the Secretariat proposes to impose fines on enterprises. It will also show the essential facts and aspects of the law, which may contain elements for imposing a fine, such as the duration and significance of the violation and whether the violation was committed intentionally or negligently. The Final Investigation

Report will also mention facts that may lead to aggravating and mitigating circumstances.

➤ Making a decision regarding the breach of competition principles

Decisions concerning violations of Articles 4 and 9 of Law No. 9121/2003 “*On protection of competition*”, as amended, shall be adopted by the Commission, on a proposal from the Secretariat.

The right of the parties to the proceedings to be heard before a final decision affecting their interests is a fundamental principle. The CA is committed to ensuring that the effective exercise of the right to be heard is respected in its proceedings. Therefore, before adopting a decision finding that there is a violation, the CA shall give the parties subject to the proceedings the opportunity to be heard (in writing or orally) on the issues raised.

The CA shall grant this right, by notifying them of the Final Investigation Report, drawn up by the Secretariat for each of the parties subject to the proceedings. When submitting the Report, the Secretariat shall specify a time limit within which the parties may submit their written submissions.

If requested in their written statements, the Commission shall hear the parties at a hearing. Where necessary, third parties may be invited to attend the hearing if such persons so request in their written statements.

Immediately after the decision has been approved, the parties shall be informed of the decision. In the interest of transparency, a non-confidential version of the CA decisions will be published in the CA Official Bulletin and on the official website of CA.

➤ Interim measures

At any time during the procedure, the Commission may adopt necessary provisional measures in the event of an emergency from a serious and irreparable risk causing harm to competition.



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Muja Law is a family-run law office where we work hard for the success of our clients and to provide excellence in legal service. Our roots go back to 2001 when our Managing Partner, Krenare Muja (Sheqeraku), opened her law practice office in Tirana, Albania. Krenare’s son Eno joined her in 2014, and the other son Adi entered the practice in 2019. What started in Tirana as a small, family-run law office has grown and flourished in the community for the last 20 years. The office consists of various respected and talented lawyers who possess outstanding educational and community service backgrounds and have a wealth of experience in representing a diverse client base in various areas of the law.

The office is full-service and advises clients on all areas of civil, commercial and administrative law. With significant industry expertise, we strive to provide our clients with practical business driven advice that is clear and straight to the point, constantly up to date, not only with the frequent legislative changes in Albania, but also the developments of international legal practice and domestic case law. The office delivers services to clients in major industries, banks and financial institutions, as well as to companies engaged in insurance, construction, energy and utilities, entertainment and media, mining, oil and gas, professional services, real estate, technology, telecommunications, tourism, transport, infrastructure and consumer goods. In our law office, we also like to help our clients with intermediary services, as an alternative dispute resolution method to their problems.

While we have grown over the past 20 years and become recognized as one of Albania’s leading law offices, we are grounded in the essence of “who” we are and “where” we started. *We understand the importance of family, hard-work, and dedication.*

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