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Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Honouring of obligations and commitments by Albania

Information note by the co-rapporteurs on their fact-finding visit to Tirana (9-11 February 2009)¹

Co-rapporteurs: Mr Jaakko LAAKSO, Finland, Group of the United European Left, and Mr David WILSHIRE, United Kingdom, European Democratic Group

¹ This information note has been made public by decision of the Monitoring Committee dated 31 March 2009.

I. Introduction

1. We visited Tirana from 9 to 11 February 2009. The purpose of the visit was to discuss the recently adopted lustration law and follow up Assembly Resolution 1650 (2009) regarding the complaints about the composition of Albania's delegation to the Parliamentary Assembly.
2. We met with a wide range of politicians and officials (including the President, Prime Minister, Vice-Prime Minister, Speaker of the National Assembly, Minister of Interior, Chairman of the Constitutional Court and Prosecutor General), as well as with leaders of parliamentary groups from the governing and opposition parties, and representatives of the international and diplomatic community, including the Head of the OSCE mission in Tirana and EU ambassadors.²
3. We want to thank the Albanian parliamentary delegation and its secretariat for the organisation of our visit at particularly short notice. We had extremely open and frank discussions on all issues of interest. We also wish to thank Mr Olsi Dekovi, Director of the information office in Tirana, for his assistance in the organisation of additional meetings in parallel with the official programme.

II. Lustration Law

4. On 22 December 2008, a law "on the lustration of the figure of high functionaries of the public administration and elected officials" (Lustration Law) was adopted by the National Assembly of Albania despite expressions of public concern, including from the international community. Only the ruling majority voted in favour.
5. The law led to critical comment from international organisations, diplomatic representations in Tirana, and the Secretary General of the Council of Europe, in view of its serious constitutional implications.
6. An analysis of the law by Council of Europe experts has revealed issues of concern in relation to Council of Europe standards, including: the very broad reach of the law in terms of the categories of officials who may be affected and the fact that it includes people currently holding office; the fairness and proportionality of the lustration proceedings; the severity of the sanctions foreseen and the fact that there is no time limit³.
7. Within Albania, the Lustration Law has raised serious concerns and strong criticism from various people - including the High Council of Justice, the judges' associations, the association of prosecutors and the association of advocates.
8. The Lustration Law was automatically enacted early in January after the President of the Republic, Mr Topi, failed to issue a decree to promulgate it. According to the Albanian Constitution, once the parliament adopts a law, the President of the Republic has three options: issue a decree promulgating it, veto the law which is then sent back to parliament, or keep silent which automatically leads to the enactment of the law.
9. On 30 January 2009, members of the Socialist Party lodged a complaint with the Constitutional Court of Albania arguing that the new Lustration Law was incompatible with the Constitution and requesting the suspension of its implementation. Two other similar complaints have been lodged by the Association of Judges and the Albanian Helsinki Committee.
10. During our visit, the Constitutional Court informed us that a decision would be taken in the next few days regarding the suspension of the implementation of the Lustration Law pending the decision of the Constitutional Court on the complaint challenging its constitutionality.
11. All our interlocutors representing the ruling majority stressed that the law had now entered into force and that the parliamentary debate could not be reopened.
12. Prime Minister Berisha reminded us that every lustration law involved temporary restrictions of human rights. In his view, the Albanian law is fair and proportionate, and provides persons concerned the right of appeal to a court (unlike in other countries). He stressed that he would welcome help from of the Council of Europe with the implementation of the law, but was not prepared to ask the parliament to review the law itself.

² See Appendix III

³ Article 11 of the law provides for a 5-year mandate of the « Authority for checking the figure » but the law provides no time limit for the sanctions.

13. On 22 January 2009, the Speaker of the Albanian parliament sent a letter to the Chairman of the Monitoring Committee explaining the ruling majority's views on the Lustration Law.

14. President Topi explained that, in 2006, he had been pressing for a lustration law but that the draft which was being considered at the time was very different from this new law. He also expressed the wish that the international community, including the Council of Europe, could provide expert help with the issue so that Albania could deal with its past, without weakening the democratic institutions of the country, and in full compliance with its international obligations.

15. According to its opponents⁴, the law violates 18 articles of the constitution⁵.

16. The Assembly has already expressed its view and recommendations regarding lustration processes in member states. Assembly Resolution 1096 (1996) on measures to dismantle the heritage of former communist totalitarian systems sets out clear guidelines to ensure that lustration laws and similar administrative measures comply with the requirements of a state based on the rule of law⁶.

17. The European Court of Human Rights concluded in a 2006 case that, if a State is to adopt lustration measures, it must ensure that those affected by them enjoy all procedural guarantees under the European Convention of Human Rights.⁷

18. We were given two conflicting explanations of the timing of this law and the rush in which it was adopted in Parliament, even though the issue was raised a long time ago in the parliament. First, the proximity of a general election and secondly the important corruption cases currently under investigation by prosecutors.

19. We believe that lustration procedures must follow strict criteria in order to ensure that all cases are treated with fairness and in compliance with the requirements of a state based on the rule of law. We have therefore advised the Albanian authorities, including the Constitutional Court, to send the Lustration Law to the European Commission for Democracy through Law (Venice Commission) to have an expert opinion on whether this lustration law meets these criteria.⁸

20. Following our visit to Tirana, the Constitutional Court of Albania, on 16 February, decided to suspend the implementation of the Lustration Law pending its decision on the complaint challenging its lawfulness and also decided to send the law to the Venice Commission for an *amicus curiae* opinion.

21. We conclude that the Venice Commission should be asked for an opinion as to whether this lustration law meets agreed European standards and recommend that the Monitoring Committee make such a request as a matter of urgency.

III. The procedure used in Albania to select its Parliamentary Assembly delegation

22. At the opening of the Assembly 2009 session, on 26 January, the credentials of the Albanian delegation were challenged under Article 25 of the Statute of the Council of Europe and Rule 6 of the Assembly's Rules of Procedure. Those challenging the credentials claimed that one member of that delegation for the 2008 session had been removed from the delegation for the 2009 session in breach of the relevant provisions of the Parliamentary Assembly's Rules of Procedure.

23. In its Resolution 1650 (2009)⁹, the Assembly found that the appointment of the Albanian delegation to

⁴ See complaint referred to the Constitutional Court by members of the Socialist Party on 30 January 2009.

⁵ The complaints lodged by the Constitutional court reads that the lustration law violates the principles of constitutionality (violates Articles 4, 81/2, 116, 124, 127, 128 of the Constitution), the separation and balance of powers (Article 7), the rule of law (Preamble of the Constitution and its spirit), the independence of the judiciary and the immovability of the judge (Articles 135, 137, 138, 139, 140, 145, 147 of the Constitution), as well as several of the fundamental constitutional human rights and freedoms, such as, for example, the right to work (Article 49), the right to protect honour and human dignity (Article 3), the right to be presumed innocent (Article 30), the right not to be punished twice for the same offence (Article 34) and the right to be elected (Article 45).

⁶ See Resolution 1096 (1996) Report on Measures to dismantle the heritage of former communist totalitarian systems, Doc. 7568, 3 June 1996, Rapporteur: Mr Severin, Romania, Socialist Group.

⁷ *Turek v. Slovakia* application no. 57986/00

⁸ See declaration to the press presented in Appendix IV.

⁹ See also doc. 11809 on the Challenge on procedural grounds of the still unratified credentials of the Parliamentary Assembly delegation of Albania.

the Parliamentary Assembly had been made in compliance with the relevant article and rule.

24. Noting that the matters giving rise to the challenge related to the internal procedures of the Albanian parliament and mindful of the fact that we were about to visit Tirana, the Assembly suggested that we use the opportunity to discuss the complaints with Albanian parliamentarians.

25. During these discussions we established the following.

26. On 28 December 2008, the Secretary of the Albanian delegation sent an electronic mail to Strasbourg advising that the 2009 delegation would be the same as the 2008 one.

27. On 8 January 2009, a new letter was sent, this time by Mrs Jozefina Topalli, Speaker of the Albanian Parliament, to Mr Lluís Maria de Puig, President of the Assembly advising that Mr Aleksandër Biberaj was to be replaced by Mr Ilir Rusmali, as member and chairman of the delegation.

28. In a letter of 22 January 2009 to the President of the Assembly, Mr Biberaj explained that he had not been informed about this change until just before the opening of the January part-session of the Assembly.

29. When we met Mr Biberaj in Tirana he told us that he had neither been consulted about or given reasons for the change.

30. During our visit, Mrs Topalli informed us that the change had been decided on over the Christmas holiday period in the absence of the people concerned from the country. She explained that at the first 2009 plenary session of the Albanian National Assembly on 26 January (i.e. after the credentials had been challenged) she informed the parliament about the change in the PACE delegation.

31. Mrs Valentina Leskaj, Chairperson of the Socialist Party (SP) group in parliament and other members of opposition in parliament told us that the Speaker informed the parliament about the changes but did not take into account the contestation by the SP group. She claimed that this failure to consider the objections amounted to a breach of Article 7.3 of the Assembly's Rules of Procedure.

32. It is beyond our terms of reference to involve ourselves in the internal administrative working of the parliament of a Member State. However we do consider that it might help avoid future unhappiness if the Albanian parliament were to review Article 7.3 in the light of recent events.

APPENDIX I

Preparation of the 2009 parliamentary elections

1. The next Albanian parliamentary elections will take place on 28 June 2009.
2. We enquired into the preparation of the next general elections during our last visit in September 2008¹⁰. During our February 2009 visit we made a courtesy call on the newly elected Chairman of the Central Electoral Commission (CEC), Mr Arben Ristani.
3. He briefed us on steps taken to: improve the accuracy of civil registers and voters' lists; develop a uniform system of addresses for buildings; introduce new identity documents; and limit the excessive role of political parties in electoral procedures and the election administration.
4. He also briefed us on the changes made to the status of the Central Electoral Commission.
5. We did not have sufficient time or opportunity to fully explore the arrangements being made and changes being introduced in the run up to the general election, but hope that either we or an Ad Hoc Election Observation Mission is able to do so in due course.

¹⁰ See AS/Mon (2008)30rev. information note by the co-rapporteurs on their fact-finding visit to Tirana and Vlora (15-18 September 2008)

APPENDIX II

Tema newspaper

1. Having had our attention drawn to claims that recent administrative and legal measures had led to the closure of the Albanian daily newspaper *TEMA*, we agreed to a request to meet the newspaper's Director, Mr Mero Baze, and raised the issue with the authorities.
2. Mr Baze claimed that, on 16 December 2008, the Ministry of Economy, Trade and Energy, cancelled without notice the 20-year contract that the daily newspaper *TEMA* held for its premises inside the state-owned building. The newspaper subsequently filed a lawsuit. On 6 January 2009, the Tirana District Court issued an order to the Ministry to stop its eviction measures until a final ruling on the case was made. In a press release issued on 9 January, the Minister stated that all the contracts between the Ministry and the businesses situated in the building had been cancelled, citing "public interest" as the sole cause and, as a result, 10 other businesses had left the premises.
3. We were told that, on 8 January, police blocked the entrance to the *TEMA* premises, citing a government decision according to which these premises were declared of special importance, since they would serve as a site for the printing of the new ID cards and biometric passports, and thus no business could use them. Police action continued throughout the day of 9 January, leading to a gathering of journalists protesting against it in front of the building.
4. Tema's director, Mero Baze, and other journalists, alleged that the effective blocking of the newspaper is politically motivated because they have published corruption claims involving government members and officials.
5. Mr Baze also sought to link his car bursting into flames outside his home to the publication of these allegations.
6. We did not have sufficient time or opportunity to fully investigate these allegations but will do so during our next visit and include it in our report on the honouring of obligations and commitments by Albania.

APPENDIX III

Programme of the fact-finding visit to Tirana (9-11 February 2009)

Mr Jaakko LAAKSO, member of Parliament
Mr David WILSHIRE, member of Parliament
Ms Marine TREVISAN, co-secretary of the Monitoring Committee

Monday, 9 February 2009

- 15:45 Meeting with the Ambassadors of the United Kingdom, Sweden, Denmark and the Czech Republic
- 17:00 Meeting with Mr Astrit PATOZI, Chairman of the Parliamentary Group of the Democratic Party, and with Mr Arjan MADHI, Mr Ndue SHPANI, Mr Tritan SHEHU, Mr Paulin STERKAJ, members of the Group
- 18:00 Meeting with Mr Neritan CEKA, Democratic Alliance Party, Deputy Speaker of Parliament
- 18:30 Meeting with the Chairman of the Socialist Democratic Parliamentary Group, Mr Skënder GJINUSHI
- 19:00 Meeting with the Chairman of the Socialist Movement for Integration and Democratic Left Party Parliamentary Group, Mr Pëllumb XHUFI,
- 19:30 Meeting with the leader of the Socialist Party, Mr Edi RAMA
- 20:00 Working dinner with Mr Robert BOSCH, Head of the OSCE presence in Tirana

Tuesday, 10 February 2009

- 08:00 Meeting with Mr Mero BAZE, Director of Tema, Albanian Daily Newspaper
- 09:00 Meeting with the Speaker of the Albanian Parliament, Mrs Jozefina TOPALLI
- 10:00 Meeting with the Vice Prime Minister, Mr Genc POLLO
- 11:00 Meeting with the Minister of Interior, Mr Bujar NISHANI
- 12:00 Meeting with the Chairman of the Constitutional Court, Mr Vladimir KRISTO
- 13:00 Lunch hosted by the Speaker of the Albanian Parliament, Mrs Jozefina TOPALLI
- 15:00 Meeting with the Chairman of the SP Parliamentary Group, Mrs Valentina LESKAJ
- 16:00 Meeting with the Chairman of the Central Elections Commission, Mr Arben RISTANI
- 17:00 Meeting with the Prosecutor General, Mrs Ina RAMA
- 18:00 Meeting with the Albanian delegation to the PACE
- 20:00 Dinner hosted by the Chairman of the Parliamentary delegation to the PACE, Mr Ilir RUSMALI

Wednesday, 11 February 2009

- 08:45 Meeting with the Ambassador of Spain
- 09:30 Meeting with the Prime Minister of the Republic of Albania, Mr Sali BERISHA
- 10:00 Meeting with the President of the Republic of Albania, Mr Bamir TOPI

APPENDIX IV

Albania's new Lustration Law should be reviewed by Council of Europe Venice Commission, say PACE co-rapporteurs

Strasbourg, 12.02.2009 – The co-rapporteurs of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE) for Albania have made it clear that there is scope for a major party-political confrontation ahead of June's election over Albania's new Lustration Law and urged all concerned to do all they can to avoid this.

Jaakko Laakso (Finland, UEL) and David Wilshire (United Kingdom, EDG) spent two days in Tirana discussing the new law and the way in which decisions on Albania's delegation to PACE were taken.

They urged the Constitutional Court and the government to send the adopted Lustration Law to the Council of Europe Venice Commission to ensure that it fully complies with Albania's obligations as a Council of Europe member state.

One way to avoid creating a crisis, the co-rapporteurs pointed out, might be to delay implementation of the Lustration Law until the Constitutional Court has reviewed its constitutionality and the Venice Commission has had the opportunity to consider it.

Regarding the way in which Albania's PACE delegation was decided, the co-rapporteurs reaffirm that it must be for each of the 47 member states to take their independent decisions whilst keeping in mind the need to honour their obligations to the Council of Europe and to work within their own internal rules.

Albania: PACE co-rapporteurs welcome the delay in the implementation of the Lustration Law

Strasbourg, 17.02.2009 - "The decision of Albania's Constitutional Court to suspend the implementation of the controversial Lustration Law is a welcome development," said the co-rapporteurs of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE) for Albania, Jaakko Laakso (Finland, UEL) and David Wilshire (United Kingdom, EDG).

"The Court has used its power to suspend implementation until it has taken a final decision on the complaints lodged by the Socialist Party, the Association of Judges and the Albanian Helsinki Committee," they added.

The co-rapporteurs met Vladimir Kristo, Chairman of the Constitutional Court, in Tirana last week. On this occasion, they urged the court to refer the law to the Council of Europe's Venice Commission to advise on its compliance with European legal, democratic and human rights principles and standards. They said they were delighted that the court has now done so.

Commenting on the announcement of the court's decision, the co-rapporteurs said that they were relieved that a way had been found to pause and reflect on the details of this very controversial law.

Mr Wilshire further added: "Nobody is saying that Albania should not have a lustration law of some sort and experts are offering to help implement one. However some of the details of the current law really do need modification".