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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**

#### **Preliminary draft report<sup>1</sup>**

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<sup>1</sup> This preliminary draft report has been made public by decision of the Monitoring Committee dated 5 June 2009.

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## 1. INTRODUCTION

1. Albania joined the Council of Europe on 29 June 1995. Upon accession, Albania accepted the obligations incumbent on all member states under Article 3 of the Statute: compliance with the principles of pluralist democracy, the rule of law and the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms. At the same time, it entered into a number of specific commitments which it agreed to honour within specified deadlines, and which are listed in Opinion No. 189 (1995) on Albania's application for membership of the Council of Europe.

2. The last report (Doc. 11115) on the honouring of obligations and commitments by Albania was presented to the Parliamentary Assembly on 25 January 2007 by Mr Platvoet (former co-rapporteur) and Mr Wilshire and led to the adoption of Resolution 1538 (2007).

3. On 5 November 2007, the committee appointed Mr Laakso co-rapporteur, replacing Mr Platvoet, who had left the Assembly.

4. We visited Tirana and Vlora on 15-18 September 2008. We presented an information note on our visit to the Monitoring Committee on 19 November 2008<sup>2</sup>. Subsequently, we prepared the present preliminary draft report with a view to receiving comments by the Albanian parliamentary delegation within a maximum of three months. Once we have considered them, we will present an updated report to the committee with a view to an Assembly debate, if possible later this year, after the general elections in the country in June 2009.

5. We reiterate our thanks to the Albanian parliamentary delegation and its secretariat for the excellent organisation of the programme for our visit. We were able to have extremely frank discussions and obtain information at all levels.

6. However, the absence of a Council of Europe representative in Tirana makes monitoring more difficult and was regretted by all the representatives of the international community that we met during our September visit.

## 2. MAIN DEVELOPMENTS SINCE JANUARY 2007

### 2.1. Political developments

7. Albanian politics from January 2007 to December 2008 have continued to be dominated by the two largest political parties: the Democratic Party, which leads the ruling majority, and the Socialist Party in opposition. During this period, important reforms have been carried out, such as the Constitutional reform, the reform of the judiciary system and the NATO invitation.

#### 2.1.1. *The local elections of 2007*

8. The local elections, originally scheduled on 20 January 2007, were postponed to 18 February 2007 because of delayed political agreements. The Democratic Party won the local elections by a very small margin over the Socialist Party. The Socialist Party won the main municipalities of the country, except Shkoder, while the Democratic Party won in the rural areas.

9. According to normal practice, the Parliamentary Assembly of the Council of Europe did not observe these elections. An International Election Observation Mission, including a 17-member delegation of the Congress of Local and Regional Authorities of the Council of Europe, was deployed on election day.<sup>3</sup>

#### 2.1.2. *The election of the President of the Republic*

10. In July 2007, it became necessary to elect a new President. The constitution provides for the election of the President by the qualified majority of 3/5 of the votes of the total number of members of parliament. Five rounds of voting are permitted.

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<sup>2</sup> Doc. AS/Mon (2008) 30 rev. declassified. We received comments by the Albanian authorities to this document on 16 January 2009. We have made them available to all members of the Monitoring Committee (see doc. AS/Mon(2009)02).

<sup>3</sup> See Statement of Preliminary Findings and Conclusions by the International Election Observation Mission on the 18 February 2007 Local Elections in Albania. See also below the chapter on elections and electoral reform.

11. Since the ruling Democratic Party and allies did not have the necessary number of seats, an agreement with the opposition was required. They were unable to agree and the country was very close to an institutional crisis.

12. The opposition maintained that it was its turn to propose the name of the candidate, since the last President elected in 2002 was proposed by the Democratic Party, which was in opposition at the time. In the absence of an agreement, the opposition decided not to participate in the votes. After boycotting the first three votes, ten members from the opposition finally took part in the fourth round.

13. In the event, Mr Bamir Topi was elected President of the Republic on 20 July 2008 by the required 3/5 majority of the total number of members of parliament (85 votes) at the fourth round, making early parliamentary elections unnecessary.

### 2.1.3. The constitutional reform

14. On 21 April 2008, the Albanian Parliament approved a package of amendments to the Constitution by a large majority. The small political parties voted against the changes, complaining that they had been excluded from the discussions and that the amendments were unconstitutional.

15. The amendments provided for:

- the change of the electoral system from a mixed one to a regional proportional system;
- changes in the mandate of the members of the parliament and of the President of the Republic;
- the introduction of the principle that the President is elected for a non-renewable term;
- changes of procedure in the election of the President of the Republic, introducing an absolute majority vote at the fourth and fifth voting rounds;
- changes to the rules regulating a motion of confidence in the Council of Ministers;
- a time limit on the mandate of the General Prosecutor.

16. Unfortunately, the constitutional changes were not referred to the Venice Commission for an opinion before their adoption. However, following a decision by the Monitoring Committee during the June 2008 part-session of the Assembly, the views of the Venice Commission were requested.

17. In its opinion, adopted at its meeting on 12 December 2008, the Venice Commission concluded:

*“The constitutional amendments adopted in April 2008 are generally in line with European standards. The majority of the amendments can be regarded as improvements and clarifications of the existing text. This does not apply to the amendments to Article 104 on the vote of confidence and Article 149 on the Prosecutor General. The latter amendment does indeed appear a regrettable step back making this institution less independent.*

*The amendments to the electoral provisions of the Constitution seem mostly welcome. The Constitution will henceforth contain less detail on electoral rules. This is welcome but only if the legislative rules which will be adopted are in line with European standards. In particular, it will be crucial to ensure in the electoral law that elections will continue to be organised by an independent and impartial body. The new electoral system based on a proportional system within regions follows the example of other European countries. This seems a good model, which strikes a balance between the need for proximity between the voters and those elected and the need for a representative system, provided the electoral districts are not too small. For these reasons the implementation of the constitutional amendments in the electoral law is of particular importance and the Venice Commission is available to assess the revised electoral legislation.”<sup>4</sup>*

18. We would appreciate receiving comments by the Albanian delegation on the Venice Commission's opinion and how they envisage implementing it. We would also encourage the Albanian authorities to request an opinion by the Venice Commission on the revised electoral legislation.

## 2.2. The Gërdec incident

19. An explosion occurred on 15 March 2008 in Gërdec, a small village 12 kilometres from the capital, in a plant for the destruction of ammunitions. 26 persons died and more than 300 persons were injured. The village was completely destroyed and factories located close to it were seriously damaged.

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<sup>4</sup> See document CDL-AD(2008)033. The full text of the opinion is reproduced in Appendix I.

20. The Finance Ministry allocated 13 million euros for compensation and rebuilding. On 10 June 2008, they announced that they had distributed 90% of this sum. On 12 June the Council of Ministers added a further 7.5 million euros for rebuilding businesses and to help residents of Manze and Marikaj. Despite the financial assistance, most of those affected by the tragedy are critical of the government's handling of the situation.

21. Many families in the area have refused to relocate. In mid May 2008, claims regarding unfair assessment of damaged buildings caused an investigation into possible bribery cases.

22. To date, five people have been arrested in connection with the explosion. On 16 June 2008, the Assembly lifted the immunity of former Defence Minister Fatmir Mediu in response to the General Prosecutor's accusation of abuse of power. Mr Mediu had resigned three days after the explosion.

23. Seven other officials from the Ministry of Defence and managers of the private company disposing of the ammunition have been arrested on charges of negligence.

24. The explosion of the ammunition depot is still under investigation. The General Prosecutor's Office should continue its inquiries without political interference. In terms of safety, the international community has repeatedly required that the 800 metre safety perimeter around the explosion site be respected as an exclusion zone, until it is certified as safe.

25. A further 100,000 tons of excess ammunition, mostly Russian and Chinese artillery shells made in the 1960s or earlier, are stored in former army depots across Albania. The country has pledged to dispose of the ammunition by 2010, and is receiving assistance from the US, Canada and other NATO countries.

### **2.3. Economic situation**

26. In 2007, GDP grew by 6%<sup>5</sup>.

27. On the debit side, there has been a decline in the construction sector.

28. The economic growth has been led by domestic demand funded by borrowing and the continual inflow of remittances. Exports and direct foreign investments have also increased.

### **2.4. International relations**

#### *2.4.1. European Union (EU)*

29. Albania participates in the Stabilisation and Association Process (SAP), which is the EU overall policy framework for Western Balkan countries. Albania signed the SAA with the EU on 12 June 2006. The SAP is based on a progressive partnership, in which Albania benefits from regional and financial assistance, as well as on a far-reaching contractual relationship with the EU, including trade preferences, through the Stabilisation and Association Agreement (SAA).

30. Ratification of the SAA with Albania is underway<sup>6</sup>. An Interim Agreement, which entered into force in December 2006, allows Albania to benefit from the SAA's trade-related conditions. Co-operation provisions of the 1992 Trade, Commercial and Economic Co-operation Agreement (TCECA) will remain in force until the SAA is ratified.

31. In January 2006, the European Council adopted a revised European Partnership for Albania. The European Partnership identifies short and medium term priorities which Albania should address, serves as a checklist for the assessment of progress, and provides guidance for EU assistance.

32. In July 2006, Albania adopted a National Action Plan, revisable yearly, to implement the European Partnership recommendations. Progress on these reform priorities is encouraged and monitored by the European Commission (EC), notably through the annual Progress Reports and through political and economic dialogue.

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<sup>5</sup> See the Annual Report of the Bank of Albania for 2007 available at <http://www.bankofalbania.org>, as well as Albania 2008 Progress Report, Commission of the European Communities, doc. SEC(2008)2692final of 5 November 2008.

<sup>6</sup> Currently, there are only 2 EU Member States that have not yet ratified the SAA with Albania, namely France and Greece.

33. In January 2007, a new Instrument for Pre-Accession Assistance (IPA) replaced the Assistance for Reconstruction, Development and Stabilisation (CARDS) programme, as the main EC financial instrument for co-operation with Albania and other Western Balkans countries. Its major objective is to streamline all pre-accession assistance in a single framework and to unite, under the same regulation, both candidate and potential candidate countries, thereby assisting them in progressive alignment with the standards and policies of the European Union. The Multi-Annual Indicative Planning Document (MIPD) 2007-2009 for Albania under the IPA was adopted in May 2007 and Albania will receive a total amount of 212.9 million euros.

34. An EU-Albania agreement on visa facilitation was signed in September 2007 and entered into force on 1 January 2008, which makes travelling to the EU easier for Albanian citizens. It complements the EC-Albania readmission agreement, which came into force in May 2006. These agreements will facilitate people-to-people contacts between citizens of the EU member states and citizens of Albania.

35. On 5 November 2008, the EC published its 2008 Progress Report on Albanian's preparations for further integration with the EU, covering the period from October 2007 until October 2008<sup>7</sup>. The Commission called for additional measures to develop a "culture of democracy" in Albania and to reinforce the rule of law, the independence of state institutions and the fight against organised crime and corruption.

36. In a statement issued on 25 November, Commissioner Olli Rehn stressed the need to guarantee that the forthcoming legislative elections in Albania be free and fair. The Commission welcomed the recent adoption by the Albanian Parliament of a new electoral code.

37. On 26 November 2008, Albanian Foreign Affairs Minister, Lulzim Basha, stated that his country would soon submit a formal application to join the EU.

#### 2.4.2. NATO

38. The relations between NATO and Albania date back to 1992, when Albania joined the North Atlantic Co-operation Council (renamed the Euro-Atlantic Partnership Council in 1997). Relations expanded when Albania joined the Partnership for Peace in 1994.

39. In April 2008, Albania was invited to start accession talks with the Alliance. The NATO Allies signed accession protocols with Albania on 9 July 2008 and the ratification process is ongoing. During the period leading up to accession, NATO will be involving Albania in Alliance activities to the greatest extent possible, and will continue to provide support and assistance, including through the Membership Action Plan.

#### 2.4.3. Countries in the region

40. Albania has continued to foster positive relations with its regional partners, both multilaterally and bilaterally.

41. The proclamation of independence by the Kosovo Assembly in February 2008 has been welcomed in Albania. Albania has recognised the independence of Kosovo and advocates its recognition by other states.

42. Relations with "the former Yugoslav Republic of Macedonia" have continued to expand, with a number of political and technical meetings taking place. A memorandum on co-operation between the Public Prosecutor's Offices of the two countries has been signed and the agreement on cultural co-operation has entered into force. After the decision of the government of "the former Yugoslav Republic of Macedonia", at the end of 2007, to introduce a visa regime, an agreement was reached in February 2008 between the two governments to allow the free movement of their citizens.

43. Relations with Montenegro have developed further, with Albania opening an embassy in Podgorica. The two countries have established the first joint border crossing point in the Western Balkans at Muriqan/Sokobine.

44. Relations with Croatia, Bosnia and Herzegovina and Serbia have remained positive and stable. Trade has continued to be relatively limited.

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<sup>7</sup> Albania 2008 Progress Report, Commission of the European Communities, doc. SEC(2008)2692 final of 5 November 2008

### 3. HONOURING OF OBLIGATIONS AND COMMITMENTS

#### 3.1. Council of Europe Conventions

45. Albania has honoured almost all formal commitments made on its accession to the Council of Europe to sign and ratify conventions within the agreed deadlines. To date, 70 Council of Europe conventions have been ratified by Albania.

46. On 6 February 2007, Albania ratified the Council of Europe Conventions on the Prevention of Terrorism, on Action against Trafficking in Human Beings and on Laundering, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. Albania has also ratified the UN Optional Protocol to the Convention against Torture and Cruel Inhuman or Degrading Treatment or Punishment (OPCAT). An independent monitoring system of places of detention required by this Convention began operating in January 2008.

47. Following the ratification of Protocol No.13 to the ECHR (abolition of the death penalty in all circumstances), the Albanian Parliament has passed amendments to the Military Penal Code, abolishing the death penalty in circumstances of war.

48. The European Charter for Regional or Minority Languages remains the only Council of Europe convention mentioned in the accession Opinion on Albania, which has neither been signed nor ratified, despite repeated calls by the PACE to do so<sup>8</sup>.

49. Albania ratified the Rome Statute of the International Criminal Court on 31 January 2003, but has signed Article 98 agreements with the United States of America which excludes the extradition of US citizens and military personnel from Albania. The Commissioner for Human Rights, in the report on his 2007 visit to Albania<sup>9</sup>, strongly supported the principle that individuals suspected of crimes against humanity, genocide and war crimes should be brought to justice irrespective of their nationality.

#### 3.2. Democracy

##### 3.2.1. Elections and electoral reform

50. Resolution 1538 (2007)<sup>10</sup> attached great importance to the local elections of February 2007, considering them a major test for the capacity of the Albanian authorities to organise free and fair elections.

51. However, the local elections of 2007 were considered by the report of OSCE/ODIHR as only partly meeting OSCE commitments and other international standards for democratic elections. According to the report, although amendments to the electoral legal framework were adopted as a result of a last-minute political agreement rather than a comprehensive electoral reform effort, they did address a number of previous OSCE/ODIHR recommendations<sup>11</sup>.

52. With regard to the general elections, the 2008 constitutional reform changed the electoral system from a mixed one<sup>12</sup> to a proportional regional one<sup>13</sup>. The new system ends the opportunity to use the so-called "Dushk" strategy<sup>14</sup>.

53. Following the 2008 constitutional amendments, the status of the Central Electoral Commission (CEC) has been changed from a constitutional body to a body created by law (i.e. the Electoral Code). This change should not affect the functioning and duties of the CEC.

<sup>8</sup> See Opinion No. 189(195), sub-para. 17 (xi), Resolution 1377 (2004), para. 17 and Resolution 1538 (2007), para. 10.

<sup>9</sup> See Report by the Commissioner for Human Rights, Mr Thomas Hammarberg, on his visit to Albania, 27 October-2 November 2007, Strasbourg, 18 June 2008, CommDH(2008)8.

<sup>10</sup> See Doc. 11115, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe. Text adopted by the Assembly on 25 January 2007.

<sup>11</sup> See Statement of Preliminary Findings and Conclusions by the International Election Observation Mission on the 18 February 2007 Local Elections in Albania.

<sup>12</sup> 100 members were elected directly in single-member constituencies and 40 members were elected proportionally on the basis of the national lists of the political parties.

<sup>13</sup> See above paragraphs 17 and 18 on the opinion of the Venice Commission on the constitutional reform which positively assessed the changes regarding the electoral system.

<sup>14</sup> The use of voting strategies (so-called "Dushk" from the name of the city where this practice was used for the first time) was considered to run counter to constitutional provisions for proportionality and to be disproportionately rewarded, potentially skewing the outcome of elections.

54. The Ad Hoc Parliamentary Committee for Electoral Reform, created by parliament on 30 June 2008 (after the failure of previous committees to reach an agreement), continued to work on the preparation of the amendments to the Electoral Code. The right of veto of the two main political parties was removed. This aimed at facilitating progress as parliamentary elections have to be held by Summer 2009.

55. Although all the main political parties declared their willingness to complete the reform of the Electoral Code before the end of July 2008, the process has taken longer. The new Electoral Code was finally adopted by parliament on 19 November 2008. The President sent the text back to parliament raising concerns regarding the deadlines for decreeing the date of the next two parliamentary elections. The parliament overwhelmingly approved the new Electoral Code, for the second time, on 29 December 2008, after passing an amendment that took into account the President's concerns. On 31 December 2008, the President promulgated the new Electoral Code. The next parliamentary elections were fixed on 28 June 2009.

56. According to the new code, electoral commissions will be composed of representatives of the two biggest parties. Smaller parties fear that their votes will not be counted in this case and see the move as the end of their hopes to be represented in the new parliament after the next general elections.

57. The 2009 general elections will be a true test for Albania's democratic maturity. Now the challenge lies in the implementation of the Electoral Code.

58. The new National Registry of Citizens was officially adopted on 27 November 2008 and all civil status offices was to start using it in December 2008. The true test for this system remains its accurate day-to-day implementation by the civil status offices.

59. The Ministry of the Interior has started the production of new identity cards.

60. With Council of Europe assistance, the Albanian Ministry of Justice drafted a new Law on the Protection of Personal Data which was approved by parliament in March 2008. With major funding from the European Commission, the civil status data of 4.2 million citizens was computerised by July 2008.

61. In August 2008, the Ministry of Interior began to issue printed civil status certificates at the civil status offices in Tirana, and in two other local government units. By October 2008, all 320 civil registry offices were supposed to be able to issue printed birth certificates.

62. During our visit in September 2008, government officials confirmed their strong determination and confidence that they could fulfil their commitment and organise free and fair elections in 2009.

### *3.2.2. The parliament*

63. Since the last report, the Albanian Parliament has made steady progress in establishing its proper role within the constitution. It has also installed a new, modern voting system.

64. The increasing role of the parliament as a place of debate and its ability to reach cross-party agreement was demonstrated by the amendments adopted to the Constitution and the Electoral Code in January 2007 before the local elections, the constitutional reform of April 2008 and the reform of the judiciary in 2008.

65. Cross-party agreement was also achieved in the run-up to the NATO Summit in Bucharest in April 2008, enabling Albania to achieve accession to the Organisation. Further co-operation will be required to maintain progress.

66. Parliament's determination to reform the judiciary system led to the setting up of a sub-committee in February 2008 to develop the National Pact on Justice. The Pact was approved by parliament in March 2008.

67. The work of the ad hoc Committee established in September 2006 to inquire into the verification of assets, nepotism and conflicts of interest of state officials and persons related to them over the period 1996 – 2006 was blocked from the outset by the members of the opposition who decided not to participate in the work of the committee. They wanted to limit its mandate to the verification of assets, nepotism and conflicts of interest of Prime Minister Berisha and the members of his family.



68. A new Inquiry Committee on the work of the General Prosecutor was initiated by the Democratic Party on 25 October 2007 with a view to controlling the activity of the General Prosecutor for the period 2006 – 2007. The final report presented by the committee listed serious breaches of law committed during the exercise of his duties by the General Prosecutor and led to his subsequent dismissal by the President of the Republic.

69. The opposition boycotted the meetings of the Inquiry Committee considering it illegal. For his part, the General Prosecutor considered the Inquiry Committee anti-constitutional and initiated a procedure before the Constitutional Court.

70. The decision of 20 May 2008 of the Constitutional Court focused on the conflict of competences between the parliament and the institution of the Public Prosecutor, declared that the parliament does not have competence to control and evaluate the decisions of the prosecutors in individual cases, but did not explicitly decide on the constitutionality of the Inquiry Committee.

71. During our visit, some of our interlocutors considered there was a lack of transparency and an absence of public debate on important issues under discussion in parliament. The hasty adoption of a highly contested lustration law by parliament on 22 December 2008, with only ruling majority votes, despite prior strong public concern, including from the international community, is a recent example. The law has serious constitutional and political implications. The passing of the law saw the issuing of critical statements from international organisations and diplomatic representations in Tirana, including from the Secretary General of the Council of Europe<sup>15</sup>. We recall Assembly Resolution 1096 (1996) on measures to dismantle the heritage of former communist totalitarian systems, in which the Assembly recommended that: any individual lustration measures should not exceed five years; the lustration process should end by 31 December 1999, and that lustration should not apply to candidates in elections.

72. We have received comments on the lustration law addressed by the Speaker of Parliament to the Secretary General of the Council of Europe in a letter from 8 January 2009<sup>16</sup>. We would like to receive comments from our parliamentary delegation, both from the majority and the opposition parties. We will subsequently present our position to the committee in our updated draft report.

73. On 9 January 2009 (after the preparation of the draft report), the Speaker of the Parliament, Ms Jozefina Topalli, sent a letter to the President of the Parliamentary Assembly, Lluís Maria de Puig, informing him that Mr Ilir Rusmali, member of the Parliament of the Democratic Party, Chairman of the Legal Affairs, Public Administration and Human Rights parliamentary committee, becomes a member and Chairman of the Albanian delegation to PACE for 2009, replacing Mr Aleksandër Biberaj.

74. Members of the Parliamentary Assembly of the Council of Europe, including the co-rapporteurs, have been told that some Albanian parliamentarians believe that the removal of Mr Biberaj was done in a way which is in breach of the rules of the Albanian parliament

75. As a consequence, the credentials of the Albanian delegation to the Parliamentary Assembly of the Council of Europe were challenged on procedural grounds on the opening day of the January 2009 part-session. The Assembly's Committee on Rules of Procedures, Immunities and Institutional Affairs prepared a report on the matter, and the Assembly will take a final decision on Thursday 29 January 2009. The new Albanian delegation took its seats provisionally in the Assembly until then, with voting and speaking rights, but they may not vote on its own credentials.

76. We now need to get the full facts about what must be a democratic process and would like the Albania delegation to give us more information on this decision.

77. In the light of these recent developments and the proximity of the June elections, we would like to visit Albania in the coming weeks and gather all relevant information about this matter and the Lustration Law.

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<sup>15</sup> An analysis of the law by Council of Europe experts has revealed several issues of concern in relation to Council of Europe standards, namely as regards: 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 limit. The full text of the declaration by Terry Davis, Secretary General of the Council of Europe, is reproduced in Appendix II.

<sup>16</sup> They are reproduced in Appendix III together with the reply from Secretary General from 14 January 2009.

### 3.2.3. The government

78. The current Democratic Party government is working to implement its 2005 manifesto. Implementation has included the establishment of the National Strategy for Development and Integration and the Medium Term Budget Process within an Integrated Planning System. This requires the Department for Strategy and Donor Coordination, in collaboration with the Ministry of Finance and the Ministry of European Integration, to prepare an annual Integrated Planning System Calendar.

79. The national strategy for 2007-2013 was approved by the Council of Ministers on 12 March 2008. It sets out policy priorities which, to be implemented, need to be translated into medium-term expenditure plans.

80. For the first time, the national strategy was the result of extensive consultations with a broad spectrum of stakeholders, ranging from different levels of government to members of parliament, civil society, academics and experts, professional organisations, local self-government and donors.

81. To increase the role of civil society and its participation in the policy making process, the government has approved the Civil Society Fund for supporting the development of civil society in Albania and allocated 1.3 million euros.

82. As a result of the reform of the public administration, some subordinate institutions and agencies have been merged, resulting in a reduction of 16% in civil servant posts and 33% in administrative and support posts. Public sector salaries have been raised by 5% to 70% depending on category<sup>17</sup>.

83. The training plan for civil servants has been revised to better reflect current needs. A new law on the organisation of the police devolves responsibility for human, material and financial resources from the Interior Ministry to the police itself.

84. We are convinced that further progress and implementation of these much needed reforms will need practical assistance to implement them.

### 3.2.4. Local Self-Government<sup>18</sup>

85. Lack of financial resources is making implementation of decentralisation very difficult.

86. When implementing Recommendation 201 (2006) of the Congress within the framework of the constitutional reform of January 2007, parliament changed the mandate of local and regional councillors and mayors from three to four years. This change has been well received by all political parties because it provides an opportunity for local government authorities to implement the programmes for which they have been elected.

87. A law passed in July 2007 has replaced the Construction Police with a Constructions' Inspectorate as proposed by the Congress recommendations. The new Constructions' Inspectorate is organised at local and national level and gives the local authorities the possibility of taking independent decisions regarding illegal constructions within their jurisdiction.

88. A new legal framework was approved in February 2008 on local public authority borrowing. This law seeks to increase local government powers and ensure a transparent process of economic stability.

89. During our meeting in September 2008, Mr Edi Rama, Mayor of Tirana, told us that he believed that neither the decentralisation process, nor the implementation of the adopted laws on local government had started.

## 3.3. Rule of law

### 3.3.1. Fight against corruption and organised crime

90. Corruption and organised crime were considered by PACE as "the single biggest threat to the functioning of democratic institutions and the rule of law in Albania"<sup>19</sup>.

<sup>17</sup> Albania 2007 Progress Report, Commission of the European Communities, doc. SEC(2007) 1429 of 6 November 2007

<sup>18</sup> See also section 2.1.1 on local elections of 2007 and section 3.2.1 on elections and electoral reform

<sup>19</sup> PACE Resolution 1377 (2004)

91. In its Resolution 1538 (2007) the Parliamentary Assembly welcomed the measures taken by the Albanian government to establish and enforce a zero tolerance policy in the fight against organised crime, trafficking and corruption.

92. The government has drafted a new anti-corruption strategy for 2007-2013 in co-operation with the Council of Europe. The fact that the new strategy covers an extended period shows a positive change in approach from short-term solutions to more effective and sustainable measures. The government continues to consider the fight against corruption and organised crime as its first key priority.

93. Despite efforts by the Government, corruption remains widespread and continues to be a very serious problem in Albania. From a survey conducted by the Institute for Development, Research and Alternatives (IDRA) and made public at the beginning of May 2008, it appears that almost 92% of the general public believes that corruption is widespread and 47% that it was on the increase in 2008<sup>20</sup>.

94. According to the latest assessment report by the Group of States against Corruption (GRECO) in October 2007<sup>21</sup>, Albania has implemented satisfactorily or dealt with in a satisfactory manner just over half of the 13 recommendations contained in the Second Round Evaluation Report. Four recommendations have been partly implemented and two recommendations have not. GRECO's recommendations included implementing measures to encourage the reporting of corruption and new legislation implementing the liability of legal persons for offences of corruption, trading in influence and money laundering. Recommendations to include persons and institutions with a duty to report suspicious transactions in the area of money laundering, as well as private accountants and auditors in the fight against corruption have yet to be implemented.

95. According to Transparency International, the current government has been vocal about anti-corruption reforms it has championed over the past years and which appear to be showing initial results. An official task force created to fight corruption and economic crime has increased the number of officials prosecuted and sentenced for corruption, also building confidence among the public that corruption can be punished in Albania. In 2007, 224 officials were identified as involved in corruption and power abuse, 53 of them were arrested and prosecuted. A systemic approach was also taken in reducing corruption in tax administration, procurement and services to business, leading to a modernisation of such services. The implementation of electronic systems for taxes, procurement and business licenses reduced opportunities for extortion.<sup>22</sup>

96. Institutional ability to investigate and prosecute corruption was strengthened by setting up a new task force against corruption and economic crime in the Prosecutor's Office, which co-ordinates with police and intelligence structures. In the recent reorganisation of the police, the structures dealing with economic and financial crime were upgraded to the level of directorate and a special anti-corruption section was set up. Anti-corruption investigations led to the arrest of a number of high-level officials. Prosecutors, judicial police and judges have been trained on anti-corruption legislation.

97. A law on conflicts of interest was adopted in 2007.

98. The High Inspectorate for Declaration and Audit of Assets (HIDAA), an independent body which collects revenue declarations from public officials, made progress in enforcing asset declaration obligations. On 13 March 2008, an agreement to collaborate in the fight against corruption was signed between HIDAA, the Prosecutor's Office and the Police. As a consequence, at the beginning of June 2008, HIDAA presented to the Prosecutor's Office the files of 22 officials who had failed or refused to present their declaration.

99. In September 2007, the Prosecutor's Office arrested six high-level government employees on corruption charges, including the former Deputy Minister of Public Works, Transport and Telecommunications, the general director of roads, and the director of procurement. They were accused of involvement in a bribery scheme for construction tenders. On 19 May 2008, the Court of Appeal of Tirana found the former Deputy Minister and three other high officials from the Ministry guilty of corruption and sentenced them to imprisonment.

100. A number of former and present local officials are under investigation for abuse of power and corruption, especially in issuing construction permits and abuse of land property rights.

<sup>20</sup> See IDRA survey at [http://www.idra-al.org/pdf/en/IDRA-CPE-2008-Survey\\_Summary-of-Findings\\_EN.pdf](http://www.idra-al.org/pdf/en/IDRA-CPE-2008-Survey_Summary-of-Findings_EN.pdf)

<sup>21</sup> Greco RC-II (2007) 12

<sup>22</sup> *The annual Corruption Perceptions Index 2008, 2008 Corruption Perceptions Index 2008 Regional Highlights: South Eastern Europe and Central Asia*, [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi](http://www.transparency.org/policy_research/surveys_indices/cpi)

101. By August 2007, prosecutors had opened 555 cases for abuses of government office, arbitrary action, and distortion of equality in public procurement tenders. Of these, 36 covered specifically corruption charges. 28 cases resulted in investigations and 17 officials were prosecuted<sup>23</sup>. We would like to receive updated statistics concerning these cases.

102. In September 2007, a draft law on the simplification of the procedures for lifting the immunity of members of parliament, signed by a group of parliamentarians from the majority parties, was presented to the parliament's Committee of Legal Affairs, Public Administration and Human Rights.

103. The opposition members of the committee considered the proposal anti-constitutional, arguing that, in order for the draft law to be approved, it was necessary first to make changes to the relevant provisions of the Constitution.

104. In reply to the requests from the majority parties to pass the law, Socialist Party MPs renounced their immunity. To date this has had no obvious effect.

105. In December 2007, parliamentary immunity was lifted from Mr Lulzim Basha, a former Minister of Public Works, Transport and Telecommunications and current Minister of Foreign Affairs, at the request of the General Prosecutor, so he could investigate allegations of abuse of duty and corruption in respect of the construction of the Rreshen – Kalimash road (see above).

106. After the Gërdec incident, immunity was also lifted from the former Minister of Defence, Mr Fatmir Mediu. Parliament voted for the lifting of his immunity on 16 June 2008, after complaints by the Socialist Party that the prolongation of the procedures for more than one month showed a clear wish of the majority not to collaborate with the judicial authorities.

107. After the survey of IDRA, the Prime Minister has reiterated his wish to adopt a law on the simplification of the procedures for the lifting of the immunity of members of parliament. For their part, the leaders of the opposition appear to agree in principle with the proposal but are asking for proper public consultation. During our visit in September 2008, we had the feeling that our interlocutors seemed to agree on the necessity of such a reform, but were finding it difficult to achieve the necessary cross-party agreement on how to do it.

108. A number of high-profile organised crime arrests, both in and outside Albania, have improved the security situation in Albania's cities and helped increase public trust in the police<sup>24</sup>.

109. Police response to serious crimes has improved and in most cases suspects have been arrested within 48 hours. New tactical and investigative equipment has been introduced, increasing police capacity to address organised crime and robberies involving use of weapons.

110. Co-operation between Interpol Tirana and its counterpart offices, especially in neighbouring countries, has improved. This has allowed a considerable number of international arrest warrants to be executed, resulting in extradition of suspects to Albania to face court proceedings. Co-operation with neighbouring countries in tackling vehicle theft has improved.

111. Investigation and prosecution of corruption in the police and the judiciary still require more attention. No substantial progress has been made in strengthening strategy and co-ordination between law enforcement officials and agencies in charge of overseeing public expenses and procurement.

112. Initiatives have been launched to focus the Customs Administration's activities in the fight against corruption and a special telephone number has been publicised for reporting suspected acts of corruption amongst its staff members.

113. In order to detect and end corrupt practices and avoid conflicts of interest, the efficiency of the Disciplinary Committee and the Sector of Ethics at the General Directory of Customs has been enhanced, with the intention of disclosing and reprimanding corruptive acts which may occur amongst customs officials. 48 alleged violations were investigated by the Disciplinary Committee. 5 officials were dismissed and disciplinary action was taken against others.

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<sup>23</sup> For the data, see Country Reports on Human Rights Practices 2007, released by the Bureau of Democracy, Human Rights, and Labour, U.S. Department of State, on 11 March 2008.

<sup>24</sup> Albania 2007 Progress Report, Commission of the European Communities, doc. SEC(2007) 1429 of 6 November 2007

114. The computerisation of tax administration continues to be a priority. It will allow the implementation of the programme of computerised management of tax collection.

115. An electronic procurement system has been operational since December 2007. It now plays an important role in reducing corruption by enabling the private sector to monitor public procurements effectively. To improve transparency and fight against corruption, the Agency of Public Procurement has publicised a telephone number for reporting acts of corruption.

116. The Procurement Ombudsman's Office has also received many complaints regarding irregularities in the procurement process. It has started administrative investigation procedures in a number of these.

117. Co-operation with the countries of the region in the prevention of and fight against corruption has been improved. Albania ratified in August 2008 the Memorandum of Understanding between the Governments of the Republic of Albania, Bosnia and Herzegovina, Republic of Croatia, "the former Yugoslav Republic of Macedonia", Republic of Bulgaria, Republic of Moldova, Republic of Montenegro and the Republic of Serbia for co-operation in the fight against corruption, through the "Anticorruption Incisive of the South Eastern Europe".

118. A Regional Anti-corruption Initiative Office has been established, to which the Albanian government has been one of the first countries to contribute financially.

119. The National Action Plan against the trafficking of stolen vehicles was approved in February 2008. It involves police, customs and vehicle registration authorities and tax offices. Poor co-ordination between these bodies hampers success in fighting vehicle theft.

### 3.3.2. Functioning of the judiciary

120. A weak, badly remunerated and partly corrupt judiciary has been one of the Council of Europe's major rule of law concerns in Albania. Implementation of national judicial decisions, although improving, is still reported as poor.

121. There are currently 150 cases pending against Albania before the European Court of Human Rights. In the course of the reporting period, seven judgments were delivered. In six of them, the Court found a violation. Most of the cases are related to the right to a fair trial due to the failure to enforce a final judicial decision (Article 6§1)<sup>25</sup>. Following the decision of the Court in the case *Beshiri and others v. Albania*<sup>26</sup>, many cases concerning restitution of property and violation of the applicant's right to receive compensation for unlawful nationalisation of land<sup>27</sup> (Article 1 of Protocol No. 1) were brought before the Court.

122. The reform of the judiciary is progressing and the authorities reiterated their commitment to reinforcing the rule of law in the country. Opposition leaders, international observers and NGO representatives we met told us they believed that this was being done in a hasty and uncoordinated way.

123. In February 2008, parliament passed a new law on the organisation of the judiciary. It was supported by both the government and opposition parties. It was only adopted after a long period of consultations with the interested groups and help from a group of experts. In March 2008, a National Pact on Justice was endorsed by the main political parties. However, a clear reform strategy and vision for the judiciary is still missing.

124. The new law on the judiciary improves the criteria regarding the career of judges, the evaluation of their professional skills, their rights and obligations. For the first time, the law establishes objective criteria for the appointment of the heads of the courts and fixes their mandate. The law establishes the legal basis for the creation and organisation of the Administrative Courts.

<sup>25</sup> See for example *Driza v. Albania* (33771/02) and *Ramadhi and Others v. Albania* (38222/02), judgments of 13 November 2007

<sup>26</sup> See *Beshiri and Others v. Albania* (7352/03) judgment of 22 August 2006

<sup>27</sup> In its judgments, the Court has called on Albania, as a matter of urgency, to take all necessary statutory, administrative and budgetary measures to ensure claimants "speedily" receive the compensation or land awarded to them under the Property Restitution and Compensation Act, 1993 (Property Act). Those measures are to include the creation of an adequate fund to pay those applicants entitled to financial compensation.

125. The law introduces a graduated salary scheme for individual judges. This scheme is only available to judges who have graduated from the Magistrates' School. It also defines clear career paths for judges. However, the law fails to clarify the separate competences of the inspectorates of the Ministry of Justice and of the High Council of Justice.

126. The High Council of Justice is implementing a new system for the professional evaluation of lower court judges, which is proceeding slowly.

127. A decree reduced the number of district courts from 29 to 21. This should increase efficiency. The ability of the courts to manage their budget has improved significantly.

128. A new Serious Crimes Court building is being built in Tirana and is nearing completion. The civil case management system was extended to all Albanian district and appeal courts. However, procedures remain slow and opaque<sup>28</sup>.

129. Judicial infrastructure remains poor, especially in the Tirana district court and court of appeal. Courts continue to lack adequate space for courtrooms, archives and equipment. One consequence of this is a lack of transparency as the public cannot attend all trials.

130. Lack of office space and equipment for bailiffs and insufficient assistance from other authorities, such as the police and the Immovable Property Registration Office, also delays the enforcement of judgments. Enforcement of court rulings in cases involving state institutions often takes more than the legal six month time-limit.

131. In October 2008, the Council of Ministers approved a series of draft laws on the lawyer's profession, notaries, administrative courts and the bailiff's office, aiming at harmonising national legislation with EU standards. They were enacted without full public consultation.

132. The current General Prosecutor, Mr Ina Rama, was appointed in November 2007, after the dismissal by the President of the Republic of the previous General Prosecutor for serious breaches of the law during the exercise of his duties<sup>29</sup>.

133. The changes introduced in the Constitution on 21 April 2008 modified the mandate of the General Prosecutor from an unlimited to a 5-year term with the possibility to be re-appointed. We reiterate that the Venice Commission, in its opinion adopted in December 2008 upon our request, considered that this amendment was a step back and risked compromising the impartiality of the Prosecutor General, especially in the period when he or she is seeking re-election. A longer term without the possibility to be re-appointed would be preferable.<sup>30</sup>

134. On 29 December 2008, the parliament adopted a law amending the law on the organisation and functioning of the Prosecutor's Office. Following inspections, the Minister of Justice is now able to recommend the initiation of disciplinary proceedings against prosecutors. Concern has been expressed by the latter that the new law might result in future government interference with their work.

135. In April 2008, a co-operation agreement was signed between the Prosecutor General and the state police aiming at improving timely completion of investigations. The investigative capacity of the prosecution service remains weak.

136. The work of the High Court of Justice was hampered in May 2008 due to the expiry of the mandate of six of its fifteen members. According to the Constitution, the members of the High Court of Justice are appointed by a decree of the President of the Republic and are subsequently confirmed by a vote in parliament. Because of a dispute on another matter between the President of the Republic, the majority and the opposition in parliament, the process of appointment was delayed. An ad hoc committee was set up by the President to facilitate reaching a consensus. The committee invited all the political parties to send their suggestions regarding the criteria for the selection of the new candidates. The six judges were eventually appointed on 31 July 2008.

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<sup>28</sup> Albania 2008 EC Progress Report, p. 9  
[http://ec.europa.eu/enlargement/press\\_corner/key-documents/reports\\_nov\\_2008\\_en.htm](http://ec.europa.eu/enlargement/press_corner/key-documents/reports_nov_2008_en.htm)

<sup>29</sup> See also section 3.2.2.

<sup>30</sup> See Doc. CDL-AD(2008)033. See also above and Appendix I.

### 3.4. Human rights

137. Mr Emir Dobjani was re-elected as Ombudsman in February 2005 for a second five year term.<sup>31</sup> In 2007, 2567 complaints were processed, of which 1155 (45%) fell outside his terms of reference; 616 complaints (24%) were resolved in favour of the complainants<sup>32</sup>.

138. In its 8 years of existence, the Office of the Ombudsman has sent 120 recommendations to parliament for the improvement of laws, decisions and government decrees. 85% of them have been adopted with the help of the Constitutional Court.

139. In March 2008, the Ombudsman launched a national campaign on torture prevention, in co-operation with the Centre for Rehabilitation of Torture Victims. He enlarged his torture prevention unit by five staff members.

#### 3.4.1. Police conduct, pre-trial detention and prison conditions

140. Because of lack of funding and infrastructure, the transfer of responsibility for pre-trial detention centres from the Ministry of Interior to the Ministry of Justice, due to take place in 2003, was only completed in 2007. Since then reports of police ill-treatment of detainees has decreased. There has also been some progress in the implementation of recommendations by the European Committee for the Prevention of Torture (CPT), but more remains to be done.

141. Recurrent reports of the use of excessive force and ill-treatment by police officers, most of them during pre-trial detention, suggest that much still remains to be done to resolve this serious problem.

142. The right to a fair trial is guaranteed by the Constitution but the law is not yet being implemented properly. Persons deprived of their liberty are often not informed of the reasons for arrest or about their rights.

143. Torture and other cruel, inhuman, or degrading treatment or punishment is prohibited by the Constitution and law but, until 2007, the Albanian Criminal Code did not comply with international definitions and standards and lacked provisions for redress, including fair and adequate compensation.

144. In February 2007, the legal definition of torture in the Criminal Code was amended to comply with Article 1 of the UN Convention against Torture. The law on the rights and treatment of inmates has been accordingly amended. The Prosecutor General issued formal instructions to prosecutors and the police to observe human rights in criminal proceedings.

145. The Ombudsman now has unlimited access to prisons, a right which he exercises regularly without warning. After the ratification of the UN Optional Protocol to the Convention against Torture and Cruel Inhuman or Degrading Treatment or Punishment and the changes in the law on the rights and the treatment of inmates, a new mechanism for the prevention of torture is operational within the Ombudsman's office.

146. Basic safeguards against ill-treatment during pre-trial detention are still not applied in a consistent and effective manner: detainees do not get timely access to a lawyer and are often not brought before a judge within the constitutional time periods. The failure to investigate and prosecute allegations of ill-treatment effectively and efficiently continues to contribute to a climate of impunity<sup>33</sup>.

147. An inter-ministerial supervisory commission was established in 2006 and charged with the co-ordination of institutions responsible for the implementation of CPT recommendations. Besides representatives from various ministries and institutions, the commission also includes NGO representatives, an Albanian CPT expert and experts from the Ombudsman's office. It is tasked to report on implementation to the government. It may also suggest immediate and mid-term measures. The commission's composition

<sup>31</sup> The Albanian People's Advocate is elected by three fifths of all members of the parliament for a five year period, with the right of re-election.

<sup>32</sup> For the 2007 report of the Ombudsman, see <http://www.avokatipopullit.gov.al/English/Reports/Report%202007.pdf>

<sup>33</sup> See Report by the Commissioner for Human Rights, Mr Thomas Hammarberg, on his visit to Albania, 27 October-2 November 2007, Strasbourg, 18 June 2008, CommDH(2008)8, as well as Country Reports on Human Rights Practices 2007, Released by the Bureau of Democracy, Human Rights, and Labour, U.S. Department of State, March 11, 2008. See also the 2008 Amnesty International Report on Albania at <http://thereport.amnesty.org/eng/regions/europe-and-central-asia/albania>

and working methods add value to the overall prison reform process. Every effort should be made to increase the commission's effective functioning.

148. The Directorate General for Prisons has drafted "Standing Rules" for a series of prisons aiming at improving living conditions, promoting human treatment and preventing degrading treatment, use of violence and torture.

149. Following the Council of Europe Commissioner for Human Rights visit, the Albanian Ombudsman issued a report in February 2008 on conditions in detention facilities to the new Director General of the Directorate for Prisons. It states that the main problems remain overcrowding, poor hygiene, and the detention of minors and the mentally ill in the same cells as other detainees. According to the report, by the end of 2007, there were 4,554 people in pre-trial detention centres and prisons, whereas capacity allowed for a maximum of 3,616.

150. During our visit, we were informed that the government is refurbishing old buildings and building new prison facilities across the country. The construction of new prisons (in Fushë-Kruja and Korça) and the Vlora pre-trial detention centre were now completed. A new detention centre for juveniles in Kavaja and a new pre-trial detention centre with a psychiatric facility, in Durrës are under construction. These new establishments have been designed in accordance with CPT's recommendations and should help reduce the overcrowding.

#### *3.4.2. Access to information and freedom of the media*

151. Freedom of expression and the press is constitutionally guaranteed. During the last decade, pluralism in the Albanian media has gradually increased. At present, the total number of media outlets is more than 250, covering printed media, radio and television stations.

152. Defamation is still criminalised in Albania. The Albanian Criminal Code creates offences of defamatory expressions and "insults". The Civil Code lacks a proper civil defamation framework. However, for more than two years, there have been no criminal defamation cases against journalists. Draft laws modifying the criminal and the civil code in this respect were approved by parliament's Laws Committee in February 2007, but have not yet been presented to the Assembly.

153. Existing legislation covering relations between journalists and their employers are weak. The overwhelming majority of journalists are still working without contracts. The Albanian Labour Code is not respected in practice in the media sector<sup>34</sup>.

154. An adequate and independent regulatory mechanism is required to guarantee an independent and autonomous broadcasting media. When the composition of the National Council of Radio and Television (NCRT) and the Steering Council of the Public Radio and Television (SCART) was discussed in parliament, cross-party agreement was achieved. It is now important that these regulatory bodies should strengthen their independence.

155. The NCRT took rigorous action against private television operators broadcasting outside their licensed area. However, NCRT's human and financial resources remain limited given its tasks, particularly as regards frequency allocation, preventing pirate occupation of frequencies, fighting copyright piracy and monitoring broadcasters.

156. In April 2007, parliament passed a new law (drafted with Council of Europe assistance) on Numeric Digital Transmissions to regulate the functioning of the digital media in Albania and to prevent a monopoly developing. The law was opposed by interest groups and the opposition (who boycotted the vote).

157. A new timetable for submitting a broadcasting law to parliament was prepared in September 2008. This led to the holding of a round-table discussion on "Harmonisation of the broadcasting legislation in Albania with European standards" on 9 and 10 October 2008 in Tirana. Government officials, parliamentarians, regulators and media professionals discussed with a Council of Europe expert the issues that will be regulated in the new broadcasting law.

158. Before parliament approves a new law, it is essential that proper consultations take place with the Council of Europe and the European Union. The consultation timetable must give the two organisations sufficient time for review by experts and the meetings requested by the parliament.

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<sup>34</sup> See Report by the Commissioner for Human Rights, Mr Thomas Hammarberg, on his visit to Albania, 27 October-2 November 2007, Strasbourg, 18 June 2008, CommDH(2008)8



159. The government signed a contract for the privatisation of 76% of the state-owned company Albtelecom following extended negotiations with the successful bidder for the 2005 privatisation tender. The contract was ratified by the parliament in July 2007.

#### 3.4.3. Freedom of religion

160. According to the Constitution of Albania, there is no official State religion and the rights and freedoms of all religions are guaranteed.

161. The main religious communities are Muslim (mainly Sunni and Bektashi), and Christian (mainly Orthodox and Catholic). Generally, they co-exist harmoniously.

162. The government supports positive relations between religious communities. Albania continues to provide a valuable example of religious harmony in the region. However, religious communities remain adversely affected by the authorities' failure to provide for full restitution of properties and other belongings.

#### 3.4.4. Property reform

163. Registration and restitution of property confiscated during the communist regime is one of the problems still awaiting a solution in compliance with the constitutional guarantee of the right to property.

164. Since the initial deadlines provided for in the law on restitution and compensation of property had not been met, parliament extended the deadline for submission of property claims to the end of December 2008.

165. A first trench of informally constructed buildings on state land has been legalised through payment of a fee, which is credited to the compensation fund for former owners.

166. Illegal buildings in some coastal areas have been demolished. The Property Restitution and Compensation Agency has improved its internal organisation, transparency and accountability and has made some progress in accelerating the processing of claims. A database to identify, assess, manage and prioritise the 41,000 outstanding restitution and compensation claims is being tested<sup>35</sup>.

167. However, the pace of restitution and compensation remains slow. Information on results is not publicly disclosed. State bodies dealing with property registration, restitution and compensation are not yet sufficiently co-ordinated. Further efforts are required to address the problem of property restitution to religious communities. The new strategy needs to be effectively implemented and monitored. The existing legislation requires improvement, as planned in the strategy.

168. According to the director of the Agency for the Return and Compensation of Property, the combined 2007-08 budget allocated by the government for property compensation was approximately \$11 million. The total cost for the compensation of owners across the country was estimated at \$3.5 billion.

169. After the judgment of the Court of Human Rights in the case *Beshiri and others v. Albania*, in which the Albanian government was found in violation of Article 6 of the ECHR for taking an excessive time (more than 5 years) to execute the final decision of the national court on the financial compensation of Mr Beshiri, an Intergovernmental Committee has been set up, but it is not yet clear what steps the Albanian government will take to speed up the process.

170. The maps recording land values were completed by the beginning of 2008. They will help speed up the legalisation of illegal constructions.

171. At the end of March 2008, parliament agreed some amendments to the law on the legalisation, urbanisation and integration of the illegal constructions. The opposition parties claimed they were anti-constitutional.

172. The President of the Republic declined to confirm the amendments and requested their reconsideration because of objections by opposition parties. Parliament agreed a revised law in June 2008. However opposition parties remain unhappy.

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<sup>35</sup> See Albania 2007 Progress Report, Commission of the European Communities, doc. SEC(2007) 1429 of 6 November 2007

### 3.4.5. Minorities

173. Albania recognises three national minorities (Greek, Macedonian and Serbian-Montenegrin) and two ethno-linguistic minorities (Aromanian and Roma).

174. A climate of respect and tolerance generally prevails regarding minority groups. Albania ratified the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which has now entered into force.

175. Albania has made efforts to enhance the implementation of the Framework Convention on the protection of national minorities since the adoption of the first Opinion of the Advisory Committee<sup>36</sup>. A State Committee on Minorities was established with a view to formulating recommendations on improvements of minority protection and agreements were signed between central and local authorities in order to find solutions regarding place establish geographical names in minority languages.

176. The Albanian Constitution provides that persons belonging to minorities have the right to be taught in their mother tongue. Updated syllabuses now allow members of minorities to include subjects in their mother tongue in their curricula. Schools specifically for members of the Greek and Macedonian minorities have significantly higher teacher-pupil ratios than the national average. The Ministry of Education and Science issued an instruction allowing Roma children to enrol in schools without being registered.

177. Several radio and television operators broadcast in minority languages, mainly Greek and Macedonian. Greek, Macedonian and Aromanian minorities have their own newspapers. The Ministry of Tourism, Culture, Youth and Sports supports publication of a magazine focusing on the culture and social issues of the Roma and organises annual national festivals to promote the cultural heritage of all Albania's minorities.

178. An amendment to the Criminal Code has been adopted, making racial motivation for criminal offences an aggravating factor. More recently, Albania adopted a law on personal data protection, which provides legal guarantees for future ethnic data collection.

179. During our visit to Vlora, we had a meeting with representatives of the Bosniac community. They told us that they were well integrated within the Albanian society, but stressed that the teaching of the Bosniac language was only possible thanks to the assistance provided by their "kin-state". They wished that the criteria for opening a class in minority language would be reviewed so as to allow them to do so. They asked that the Albanian authorities consider them as a national minority, since it is important for them to have their existence as a distinct group acknowledged.

180. The Advisory Committee on the Framework Convention notes that affording Bosniacs protection as a national minority covered under the Framework Convention would allow their specific needs to be met<sup>37</sup>.

181. We believe that further dialogue is needed between the authorities and the Bosniac communities.

182. During our meeting with representatives of the Greek minority in Vlora, they confirmed the climate of tolerance in which they live. However, the legal guarantees regarding the use of minority languages with administrative authorities and place names were not sufficiently clear.

183. The currently available minority language public broadcasting is limited to minority zones and concerns only the Macedonian and the Greek minorities. Serbo-Montenegrins, Roma and Vlachs/Aromanians are not included in regular programming. Current legislation does not specify amounts of time for broadcasting in minority languages.

184. Albania has not signed the European Charter for Regional and Minority Languages, arguing that it cannot yet afford the relevant expenditure. Further action is required to overcome problems faced in providing education in minority languages.

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<sup>36</sup>See the Second Opinion on Albania of the Advisory Committee On The Framework Convention For The Protection Of National Minorities of 28 May 2008 ACFP/OP/II(2008)003 and comments of the government of Albania on the second opinion of the Advisory Committee on the implementation of the Framework Convention for the Protection of National Minorities by Albania (received on 4 November 2008) GVT/COM/II(2008)005.

<sup>37</sup>idem

185. The economic and social situation of the Greek, Macedonian, Serbian-Montenegrin and Aromanian minorities is generally good. People belonging to these minorities fully participate in the economic, social and political life of the country and often have organisations representing their interests. The Aromanian ethnolinguistic minority is particularly active in its efforts to preserve its ethnic and linguistic heritage.

186. Albania is not participating in the 2005-2015 Decade of Roma Inclusion. The National Strategy for the Improvement of the Roma Living Conditions is being implemented, but has not yet yielded results: it lacks adequate funding and resources. No state budgetary resources are currently allocated for its implementation - the Ministries of Health, Culture, Education, Transport and the Interior allocate funds annually from their budgets. Other contributing factors include weaknesses in the strategy's priorities and indicators, poor coordination and lack of effective local government participation. Dialogue with the Roma community needs improvement.

187. A number of Roma are still not included in the civil registry and continue to face obstacles in their access to employment, education and housing.<sup>38</sup>

188. The Roma minority still faces poverty, discrimination, extremely high illiteracy rates and very difficult living conditions. Less than half of all Roma children go to primary school, and only about 25% complete primary education. The Roma population's very low level of education and professional qualifications limit access to the formal labour market, which exacerbates poverty. The Roma often work in informal sectors, and begging is widespread among women and children.

189. Many Roma families are not registered with the authorities. This excludes them from social assistance, impedes access to basic services, including education and health, and increases the risk of human trafficking.

#### *3.4.6. Gender equality and domestic violence*

190. The equal rights of all citizens are guaranteed by the Albanian Constitution – however, direct and indirect discrimination against women remains a consistent problem. Albania is essentially a patriarchal society with a history of silence regarding violence against women.

191. Albania has, however, taken several important steps in developing policies and laws that promote gender equality, including the adoption of a National Strategy and Plan of Action against Gender-based Violence and the Strategy Promoting Gender Equality. Further work is still needed on the implementation of both. The 2004 Law on Gender Equality does not ensure full protection against discrimination, as it covers discrimination only in relation to public life.

192. The National Institute of Statistics (INSTAT), with help from the United Nations, is currently conducting a comprehensive household survey into domestic violence. State efforts to combat this crime and support victims have needed improvement. This is now happening with the government adopting the “National Strategy on Gender Equality and Domestic Violence 2007 – 2010” in December 2007.

193. It is hoped that the adoption of the strategy will allow a change from a more ad hoc approach to a more strategic and systematic approach in addressing this crime.

194. On 1 June 2007, the Law on Measures against Violence in Family Relations entered into force. This law provides the first firm protection mechanism for victims of domestic violence. The law includes protection measures and penalties for breaches of protection orders. This law provides an additional opportunity for the authorities to encourage victims to report domestic violence. However, it does not make domestic violence a specific offence.

195. A Law on Gender Equality in Society was adopted in April 2008. Amongst the measures it contains are requiring at least 30% of appointed positions to be allocated to the under-represented gender and 30% of all candidates in general and local elections to be from the under-represented gender.

#### *3.4.7. Children's rights*

196. Albania has ratified the relevant international Conventions relating to Children's rights, including the United Nations Convention on the Rights of the Child, which it ratified in 1992.

<sup>38</sup> See also Report by the Commissioner for Human Rights, Mr Thomas Hammarberg, on his visit to Albania, 27 October-2 November 2007, Strasbourg, 18 June 2008, CommDH(2008)8

197. In March 2008, the Optional Protocol to the Convention on the Rights of the Child entered into force. In April 2008, parliament voted some amendments to the Penal Code to protect children from physical or psychological abuse. The provisions also include the prohibition of using children for the production of pornographic materials and forcing them to work or beg.

198. An inter-ministerial committee on the rights of the child and a child rights secretariat (within the Ministry of Labour, Social Affairs and Equal Opportunities) have been set up.

199. Education in Albania is free and compulsory between the ages of 6 -14 years, and is free up to the age of 18. However, according to most recent statistics, although there appears to be a trend of increasing enrolment throughout all levels of education, attendance rates remain low, particularly for children living in poverty. According to UNICEF, the net primary school enrolment ratio from 2000-2005 was 96% for boys and 95% for girls whereas the net primary school attendance ratio from period 1996-2005 was 54% for boys and 50% for girls. Many children reportedly leave school early and engage in child labour.

200. The government has established juvenile sections within six district courts to deal especially with juveniles. This is a welcome development as the treatment of juveniles in criminal proceedings should be entirely separate from that of adults. The rehabilitation of the young person is important and every effort must be made to offer young detainees facilities to support their continued physical, intellectual and emotional development.

201. Registration of all children immediately after birth, in accordance with Article 7 of the Convention on the Rights of the Child, has yet to be achieved. The problem appears greatest among those living in poverty.

202. Albania has ratified ILO Convention No. 138 on minimum working age and ILO Convention No. 182 on the types of child labour. Article 54 of the Albanian Constitution enshrines the right of every child to protection against violence, ill-treatment, exploitation and work that can impair his or her health or morality and endanger life or development. The European Social Charter requires Albania to ensure special protection for children against dangers in relation to their work.

203. Albanian legislation reflects international norms for the minimum working age. However, these laws seem to have little practical impact in the minds of those employing children in Albania - particularly in relation to agricultural work and begging.

204. The government is addressing the issue of domestic violence against children with specialised training for police officers and the reorganisation of regional police directorates establishing separate units for protection of minors and dealing with domestic violence. Regional police directorates have been provided with psychologists supporting the work of these units<sup>39</sup>.

#### *3.4.8. Homosexuality*

205. A draft anti-discrimination law has been submitted to the parliament. Among its provisions, it addresses equal opportunities for all irrespective of sexual orientation. If adopted and properly implemented, the new law should bring to an end the reported continuing arbitrary arrests and police abuse of homosexuals<sup>40</sup>. It would ensure compliance with the Assembly's recommendation to "counter all forms of discrimination".<sup>41</sup>

206. The Ombudsman is entitled to consider complaints about discrimination or mistreatment by state authorities including the police. However, there is no opportunity to complain against sexual discrimination in employment.

#### *3.4.9. Trafficking in human being*

207. Once a major source and transit country for trafficking in human beings, Albania has undertaken significant efforts in recent years to fight this crime more effectively. It has created a legislative and operational framework covering the areas of investigation and prosecution, protection and prevention.

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<sup>39</sup> See Report by the Commissioner for Human Rights, Mr Thomas Hammarberg, on his visit to Albania, 27 October-2 November 2007, Strasbourg, 18 June 2008, CommDH(2008)8

<sup>40</sup> Resolution 1538 (2007) on the honouring of obligations and commitments by Albania

<sup>41</sup> Resolution 1538 (2007) on the honouring of obligations and commitments by Albania

208. Since 2004, trafficking in human beings has been a specific offence under the Criminal Code. Trafficking for the purposes of labour and sexual exploitation carries a 5 to 15 year term of imprisonment. Trafficking in children and women has been made distinct criminal offences with penalties of up to 20 and 15 years of imprisonment respectively. Albania ratified the Council of Europe Convention on Action against Trafficking in Human Beings on 6 February 2007. The Penal Code was amended to criminalise trafficking in human beings in February 2008.

209. Albania ratified the UN Convention against Transnational Organised Crime and its attached protocols in August 2002, subsequently introducing the comprehensive definition of trafficking in human beings as used in the Palermo protocol for the legal definition in its Criminal Code. A Law on Witness Protection and secondary legislation for the implementation of the law were adopted in 2004. Further legislative reforms were undertaken or are in the process of being drafted.

210. Albania has also created the institutional framework needed to tackle trafficking in human beings more effectively. The Office of the National Co-ordinator for the Fight against Trafficking in Human Beings was established in October 2005 within the Ministry of Interior as the main co-ordinating body and focal point for anti-trafficking activities. The Co-ordinator has the rank of Deputy Minister of Interior.

211. In July 2008, the 3-year renewable and adaptable National Strategy to Combat Human Trafficking and the National Action Plan were adopted.

212. Cross-boarder co-operation with neighbouring countries has improved with the signing of a number of bilateral agreements, mainly in the fields of law enforcement and boarder control, including a bilateral abolition of child trafficking agreement with Greece.

213. A nationwide toll-free help line for trafficking victims has been opened. The National Reception Centre for Victims of Trafficking has been established. The services provided include counselling, health care, education and professional skills trainings. The government is co-operating widely with both international organisations and local NGOs.

214. The government has continued its efforts to protect and reintegrate victims of trafficking. The Ministry of Labour, Social Affairs and Equal Opportunities is implementing a micro-loan programme for female victims of trafficking to help them start small businesses, foster reintegration and prevent re-trafficking.

215. However, generally, the government's efforts to protect and reintegrate victims of trafficking remain modest and Albania is still a transit country of women trafficking.

#### *3.4.10. Protection of personal data*

216. On 10 March 2008, the parliament approved a law "on the protection of personal data" and a Commissioner of Data Protection was appointed by parliament.

217. Albania now conforms with the requirements of the European Council and the European Parliament and the Convention of the Council of Europe "On the Protection of Individuals with regard to Automatic Processing of Personal Data" and its additional Protocol.

## **4. THE NEXT STEPS**

218. Our preliminary draft report will be submitted to the Albanian parliamentary delegation for comments within a maximum of three months. We hope that every individual member of the delegation will be encouraged to submit comments.

219. We have deliberately refrained from drawing any conclusions or making any definitive recommendations until we have heard from our Albanian colleagues.

220. At the end of the three month consultation period, we will finalise this draft report and prepare a Preliminary Draft Resolution (containing our conclusions and recommendations to the Albanian authorities) for debate and (hopefully) adoption by the Monitoring Committee and subsequently by the Parliamentary Assembly.

221. Following adoption of the final report, it is important not only to debate it thoroughly in the Albanian Parliament, but also to ensure wide public debate throughout the country.

APPENDIX I

**European Commission for Democracy through Law**  
**(Venice Commission)**

**Opinion**

**On the amendments to the Constitution of the Republic of Albania**  
**(adopted on 21 April 2008 by the Assembly of the Republic of Albania)**

**adopted by the Venice Commission at its 77<sup>th</sup> Plenary Session (Venice 12-13 December 2008)**  
**on the basis of comments by Mr Sergio BARTOLE (Member, Italy),**  
**Mr Jeffrey JOWELL (Member, United Kingdom), Mr Oliver KASK (Member, Estonia)**

**I. Introduction**

1. At its meeting in Strasbourg during the Third Part of the 2008 Session of the Parliamentary Assembly, the Monitoring Committee decided to ask the opinion of the Venice Commission on the amendments to the Constitution of the Republic of Albania adopted on 21<sup>st</sup> April 2008 (document CDL(2008)095).
2. Messrs Bartole, Jowell and Kask were appointed as rapporteurs and provided comments (documents CDL(2008)108, 109 and 110). A first discussion on the basis of these comments took place at the 76<sup>th</sup> session of the Commission on 17 October in the presence of Mr Ilir Rusmajli, President of the Legal Affairs Committee of the Assembly of the Republic of Albania. Subsequently Mr Bartole provided a revised version of his comments taking into account this discussion.
3. The present Opinion was adopted by the Commission at its 77<sup>th</sup> Plenary Session on 12-13 December 2008.

**II. Preliminary remarks**

4. The Amendments to the Constitution focus on the provisions on electing the Assembly and the President. When examining the text, it has to be borne in mind that the revision of the constitutional provisions on the election of the Assembly was required by an OSCE/ODIHR Election Observation Mission Report concerning the parliamentary election of the Republic of Albania of 3 July 2005 and by a joint opinion on amendments to the electoral code of the Republic of Albania adopted by the Venice Commission and OSCE/ODIHR (CDL-AD(2007)035). Both the mentioned documents underlined that the electoral legislation then in force did not give to the voters the possibility of clearly and rightly understanding the electoral procedure and its results. Moreover, the documents criticised that the political parties were allowed to easily bypass the provision of Article 64 subsection 2 of the Constitution, which required that “the total number of deputies of a party or a party coalition shall be, to the closest possible extent, proportional to the valid votes won by them on the national scale in the first round of elections “.
5. In Albania the quick manner in which the amendments were adopted without extensive public discussion was widely criticised. At the 76<sup>th</sup> session of the Commission Mr Rusmajli pointed out that, while the procedure in which the text of the amendments had been adopted was indeed speedy, there had been beforehand a long and extensive discussion of the issues addressed by the amendments. The Commission nevertheless underlines the need for extensive public discussion before adopting constitutional amendments, providing not only members of parliament but also civil society with a real opportunity to provide their input. During its 77<sup>th</sup> Plenary Session, the Commission was informed that the Albanian parliament had subsequently amended its rules of procedure as regards amending the Constitution. The Commission hopes that these new rules of procedure will lead to a new approach on this matter.

**III. Comments on specific amendments**

*Article 1 amending Article 64 of the constitution*

6. Article 64 of the Constitution formerly provided for an electoral system that used both (1) single-member electoral zones (100 deputies) and (2) a nationwide constituency for the allocation of supplemental mandates (40 deputies) to political parties and coalition lists. Apart from a threshold of 2.5% for political parties and 4% for coalitions in order to be represented in parliament the total number of deputies had to correspond to the closest extent possible to the number of valid votes cast. In the light of the complexity of

that system (and its apparent openness to abuse), this amendment introduces a regional-proportional system, with a total of 140 deputies. The new subsection 3 provides that the law on elections will set out the detail on the implementation of this provision, the determination of the electoral zones and the number of seats to be obtained in each of them.

7. In general, electoral matters should not be regulated in detail in the Constitution. In Albania there is, however, an evident concern to ensure the stability of the electoral choices in a political framework where conflicts are frequent and there is no common acceptance or interpretation of important rules of the democratic game. While it is therefore welcome that the new constitutional regulation is less detailed and complex, it also seems appropriate that the basic choice in favour of a regional-proportional system is set forth in the text of the Constitution.

8. The practical consequences of this choice depend to a large extent on the size of the new electoral districts. The smaller these districts are, the more difficult it will be for smaller parties to gain seats. While the present intention of the Albanian legislator seems to use the twelve regions as electoral districts, there is no constitutional guarantee that the size of electoral districts will not be reduced in the future. Only the principle of proportionality as such is now protected by the Constitution and no longer its concrete application through the requirement that the distribution of seats had to correspond to the closest possible extent to the distribution of votes. The smaller political parties will therefore no longer be able to claim a violation of electoral principles if the number of seats attributed to them is considerably smaller than would correspond to the number of their votes.

9. Despite the abolition of the threshold to be represented in parliament, the new electoral system is therefore clearly less favourable to smaller parties. This is, however, not in violation of European standards and, provided it is faithfully implemented, the reform should be viewed positively, as it introduces a system that is less complex than the previous system, as well as being closer to the voters, more easily implemented and better understood by ordinary voters.

#### *Article 2 amending Article 65*

10. The amendments to this article mainly aim at providing more clarity and are of a more technical nature. Sub-section 1 provides that the outgoing Assembly remains on duty until the first session of the newly elected Assembly. The scope of this provision could be further clarified. According to sub-section 3, if the Assembly is dissolved prior to the termination of its full mandate, elections are held no later than 45 days after its dissolution. Although that principle is common in democratic countries, an exception could be appropriate for the duration of the mandate of the Assembly in this case. If early elections are held, the time at which general elections are held will remain the same for future elections as well. If those elections are held in a period when e. g. the budget should be adopted, the provision may bring some difficulties for all electoral periods, not only once. It could be thus suggested to stipulate that ordinary general elections will take place at a certain date or month of the year when the mandate of the Assembly ends. The term of the mandate is less important than the functioning of the parliament and the constitutional system. The new subsection 4 provides that the Assembly may not approve laws during the period of 60 days prior to the termination of its mandate except when extraordinary measures have been imposed (under Part XVI of the Constitution – Article 170 et seq.). Disabling the Assembly for its last 60 days may prevent an unpopular government from abusing the end of its mandate. However, the electors voted for a 4 year term and not for 4 years minus 60 days, and there is a danger that during that period governance will be paralysed, a situation which might tempt the introduction of extraordinary measures.

#### *Article 3 amending Article 67*

11. The new provisions provide more clarity.

#### *Article 4 amending Article 68*

12. Sub-section 1 of this new Article provides that candidates for deputies can be “presented” (nominated) for the electoral zone by only one of the “proposing subjects”, which include political parties, coalitions of political parties and voters. The definition of a political party will have to be found in the legislation on political parties. The sub-section moreover rightly prohibits that the same candidate may be nominated by more than one proposing subject. It does not address the issue whether the same candidate may be proposed by the same proposing subject in more than one electoral zone but a prohibition on such a practice could (and should) be part of the new electoral law. Sub-section 1 in addition provides that the ranking of the candidates in the multi-name lists may not be changed after the submission of the list to the respective electoral commission. It is indeed welcome that the proposing subjects may no longer change the ranking once the list

has been submitted. The wording of this sentence does not seem to directly exclude that the voters may influence the ranking (open list system) but the intention of the Albanian legislator seems indeed to keep a closed list system. This issue has been clarified in the electoral legislation. A mandatory ranking of the candidates can favour the re-election of the sitting members of parliament making the renewal of the political class more difficult.

*Article 5 amending Article 87*

13. This article, together with Article 87, regulates the election of the President of the Republic. The most important change introduced is that, while hitherto a majority of three-fifths of the members of the Assembly was required in all five rounds, now the absolute majority of the members of the Assembly is sufficient in the fourth and fifth rounds of voting. On balance, this change is welcome. While the election of the President of the Republic should indeed preferably be based on a consensus of the main political forces, there comes a time when a decision has to be taken and the majority principles has to be allowed to prevail.

14. The new solution makes it also less likely that, due to the failure to elect the President, the Assembly has to be dissolved, with the election of the President becoming a main issue in the parliamentary elections. While the solution of dissolving the Assembly and holding new elections if the Assembly fails to elect the President is fully in line with democratic principles, there is a risk that it may have unintended consequences for the political system. Following such an election, the President will probably be elected on the basis of the choice of the voters. One may wonder whether the Albanian system of government is organised in a way enabling it to sustain the possible consequences of a cohabitation of a President and a Prime Minister of different (or, even, of the same) political orientation who are both supported by the popular vote. The Constitution does not give to the President important political powers, he or she is apparently a President with functions as guarantor and safeguard of the constitutional rules, but the President could find in the interstices of the system some space for an enlargement of his or her political influence if he or she is strengthened by an explicit popular preference. As a matter of fact, the position of the President above the parties may be endangered by a hot political debate during the election of a new Assembly. The Albanian legislator should balance the exigency to have a President elected and the compliance with the principles of the parliamentary system of government. Perhaps it could be advisable to further lower the level of the suffrage required at the fifth round of voting even if this solution could apparently conflict with the principle of majority.

15. As regards the details of the solution, the provision in sub-section 4 that lots should be drawn, if, at the fourth round, no one candidate has achieved more than half the total votes, and there are more than two candidates with the same votes, seems to introduce an unnecessary degree of arbitrariness into an otherwise rational process. Moreover, it should be clarified in sub-section 5 what happens if the newly elected Assembly fails to elect the President in the first round of voting by an absolute majority.

*Article 6 amending Article 88*

16. According to the redrafted sub-section 2, the mandate of the President is extended only in case of war. It may be clear in the Albanian original whether this extension is automatic. It also has to be taken into account that, by virtue of Article 170, sub-section 6, of the Constitution no presidential elections may take place during the implementation period of extraordinary measures. This means that, if the mandate of the President expires during such a period imposed for other reasons than war (such as natural disasters), the Speaker of the Assembly will have to take the place of the President. The merits of this distinction could be further discussed.

17. The newly introduced sub-section 2/1 provides important clarifications.

*Article 7 amending Article 104*

18. This Article deals with a motion of confidence (as opposed to a motion of no confidence under the next section) moved by the Prime Minister in his Council of Ministers. Previously, if such a motion were rejected, then another Prime Minister would be elected within 15 days. Here if fewer than half of all the members of the Assembly vote for the motion, the Prime Minister "requests" (does this mean may or must request?) the President to dissolve the Assembly. The amendment changes the balance between the Assembly and the Government as, although there may well be possibilities for the Assembly to elect a new Prime Minister, the no confidence vote towards the incumbent leads to extraordinary general elections. The amendment makes the opposition more eager to present a (pre-emptive) motion of no confidence and members of Assembly supporting the government become more subordinate to the will of the government. While the amendment might be justified as favouring stability by providing an incentive to MPs to support votes of confidence in the



Council of Ministers, it may also be regarded as an excessive strengthening of the position of the Prime Minister. The previous solution seemed more balanced or one could have given to the President the possibility to decide on whether to call new elections or propose a new government.

*Article 8 amending Article 105*

19. The new wording introduces the so-called constructive vote of no confidence: if the Assembly votes a motion of no confidence, it has at the same time to elect a new Prime Minister with the votes of more than half of the members of the Assembly. This solution, which exists in other European countries such as Germany, may indeed contribute to increased political stability.

*Article 9 amending Article 149*

20. The new wording provides that the General Prosecutor is appointed by the President with the consent of the Assembly for a five year mandate with the right to be reappointed. This amendment seems a step back and risks compromising the impartiality of the Prosecutor General, especially in the period when he or she is seeking re-election. A longer term without the possibility to be reappointed would be preferable. In an Opinion on draft amendments to the Constitution of Ukraine (CDL-AD(2008)029, paragraph 33) the Venice Commission stated: *“Under the proposed Section 3, the term of office of the Prosecutor General would be extended from 5 to 7 years. This longer term should diminish the politicisation of the office and could be a guarantee of the impartiality of the Prosecutor General. It seems, therefore, a step in the right direction. It would seem even better to provide that the Prosecutor General may stay in office until reaching the age of retirement or, if a limited term of office is preferred, to exclude the possibility of reappointment, as is the case for constitutional judges under Article 148 of the Constitution. Otherwise, the Prosecutor General may be unduly influenced in his or her decisions by the desire to be re-elected.”*

*Article 10 abrogating Part XII of the Constitution*

21. This amendment deletes the constitutional provisions on the Central Election Commission. While there is no need to regulate the Central Election Commission in the text of the Constitution, and such regulation may indeed prove too rigid, the need for an independent body responsible for the holding of elections seems indisputable in Albania. Such a body will have to be provided for in the electoral law and the Commission understands that this is indeed the intention of the Albanian authorities.

#### **IV. Conclusions**

22. The constitutional amendments adopted in April 2008 are generally in line with European standards. The majority of the amendments can be regarded as improvements and clarifications of the existing text. This does not apply to the amendments to Article 104 on the vote of confidence and Article 149 on the Prosecutor General. The latter amendment does indeed appear a regrettable step back making this institution less independent.

23. The amendments to the electoral provisions of the Constitution seem mostly welcome. The Constitution will henceforth contain less detail on electoral rules. This is welcome but only if the legislative rules which will be adopted are in line with European standards. In particular, it will be crucial to ensure in the electoral law that elections will continue to be organised by an independent and impartial body. The new electoral system based on a proportional system within regions follows the example of other European countries. This seems a good model, which strikes a balance between the need for proximity between the voters and those elected and the need for a representative system, provided the electoral districts are not too small. For these reasons the implementation of the constitutional amendments in the electoral law is of particular importance and the Venice Commission is available to assess the revised electoral legislation.

APPENDIX II

**Statement on the Albanian lustration law  
by Council of Europe Secretary General Terry Davis**

Strasbourg, 16.01. 2009 – For several decades, the Albanian people suffered under one of the hardest and most ruthless communist regimes in Europe, and I therefore understand the effort to establish the truth and sanction those who violated human rights during this period. But any such effort must comply with Council of Europe standards of democracy, human rights and the rule of law. Against this background, I have some concerns that the lustration law adopted on 22 December by the Albanian Parliament does not meet these criteria.

Analysis of the law by Council of Europe experts has revealed several issues of concern in relation to Council of Europe standards. These include:

- 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 limit.

I also note some important discrepancies with regard to the Resolution on measures to dismantle the heritage of former communist totalitarian systems as adopted by the Parliamentary Assembly of the Council of Europe in 1996. Our Assembly clearly stated that any individual lustration measures should not exceed five years, that the lustration process should end by 31 December 1999, and that lustration should not apply to candidates in elections. None of these guidelines have been taken into account by the Albanian lustration law.

The Council of Europe is ready to provide advice and assistance to the Albanian authorities in finding ways to achieve the legitimate objective of dealing with the past in full compliance with the Council of Europe standards.

## APPENDIX III

Exchange of correspondence between Mrs Jozefina Topalli, Speaker of the Parliament of Albania  
and Mr Terry Davis, Secretary General of the Council of Europe



**REPUBLIC OF ALBANIA**  
**THE PARLIAMENT**  
*Speaker*

Nr. of reg. \_\_\_\_\_

Tirana, 9 of January 2009

Honourable Secretary-General,

*Dear Mr. Davis*

The desire and good will to notify you in details regarding the process of discussion and approval of the law nr. 10034, dated 22 December 2008 "On the lustration of the figure of the high officials of the public administration and the elected ones", incites me to inform you that the Parliament of Albania, in the plenary sitting dated 22 December 2008, adopted with more than the half of all its members (74 votes pro, 2 votes against, and one abstention) the law "On the lustration of the figure of the high officials of the public administration and the elected ones"

Although Albania for more than half a century lived through the severest communist dictatorship of all Eastern Europe, the Albanian Parliament approved a law, which is a milder variant of the lustration law adopted by the Parliament of the Czech Republic. The Czech law constituted a fairly good model as it underwent twice the constitutional examination of the Constitutional Court of this country. The European Court of Human Rights in Strasburg in a series of its decisions has considered the Czech law to be in compliance with the highest standards of human rights and freedoms. The Albanian law in comparison with the Czech one represents a closer circle of individuals or categories of exponents of the communist regime that are subject to the process of verification.

The law approved by the Parliament of Albania aims at ensuring the lustration of the figure of every public official, elected or appointed, verifying his/her participation in the policy-making and violence implementing structures of the proletariat dictatorship in Albania, and in the structures of the former State Security Service for the period 29 November 1944 until 8 December 1990. The law specifies the subjects and high state offices incompatible with the public service of the official because of ones past as a member, director, or collaborator in the policy-making and violence implementing structures of the proletariat dictatorship, or in the structures of the former State Security Service for the period 29 November 1944 to 8 December 1991; the cases of incompatibility; the verification procedures; as well as the consequences of such procedures.

The law respects the principles of a normal legal process, providing the subjects with the possibility to present their claims to the verification authority, and at the same time enabling them to complain to all the levels of the judiciary of the Republic of Albania. Every Albanian citizen will have the right to be informed, on his demand, about personal data, regarding the content of the former State Security Service files, through a procedure which guarantees respecting the secretiveness of the personal data of other individuals.

The adoption of this law marks the end of a very long process of discussions which began with the bringing forward of the three draft-laws: the draft-law "On the lustration of the figure of the high officials of the public administration and the elected ones", deposited on 25 October 2006 by the Parliamentary Group of the Democratic Party; the draft-law "On the verification of the activity of high public officials as collaborators of the Albanian Secret Service before 31 December 1992", deposited on 26 October 2006 by the Parliamentary Group of the Socialist Party; and the draft-law "On the examination of the figure of the official elected or appointed in important state institutions, deposited on 27 October 2006 by the Parliamentary Group of the Christian-Democratic Party. These draft-laws were promptly included in the agenda of the respective committee of the Albanian Parliament.

I personally have considered extremely important the approval of a lustration law in Albania. For this reason I have, time after time, encouraged and asked the respective committee of the Albanian parliament for its discussion and adoption.

The Committee on Legal Issues, Public Administration and Human Rights examined these draft-laws very carefully. The Committee had five meetings with debate time lasting nine hours. On 30 June 2008, the committee appointed two spokesmen, the deputies Arben Isaraj (Socialist Party) and Aldo Bumçi (Democratic Party) with the aim of achieving wider compromise and attaining an integral variant of the law. The Committee examined these draft-laws on the regular meetings held on 7 July 2008, 18 July 2008, 3 September 2008, 10 December 2008, and 16 December 2008. In the meeting dating 7 July 2008 the representative of the Christian Democratic Party gave explanations for the draft-law presented by this party.

The Committee organized several hearing sessions with interest groups and representatives of NGO such as, Mr. Adrian Kati (National Centre of Trauma and Torture Rehabilitation), Mr. Simon Mirakaj (Institution of Politically Persecuted People), Ms. Elsa Ballauri (Albanian Caucus of Human Rights), and Mr. Tomorr Aliko (Albanian Anti-Communist Association). Concerning the content of this law, the committee took into consideration written opinions and views of several factors, including the Free Media Forum, representatives of the office of the Council of Europe in Tirana were invited to attend the committee's meetings.

In the framework of this draft-law, the members of the committee actively participated in the discussions of the conference "Overcoming the past – the settlement of the issue of the records of the former State Security in Albania and in Germany", organized in Tirana

in October 2008 by the German embassy and "Friedrich Ebert" foundation. The conference was attended by Ms Marianne Birtler, the Federal Commissioner for the records of the National Security Services of the Former Democratic Republic of Germany. The conclusions and recommendations of the conference were taken into consideration by the members of the committee while examining and adopting the draft-law.

During the two-year-period the parliamentary majority made maximal efforts to ratify this law with the wider possible consensus and the participation of the opposition, offering the latter its sincere will for compromise. Unfortunately, the opposition protracted the process. Its spokesman, the deputy Arben Isaraj, withdrew even from the project brought forward by the Socialist Party in 2006.

The determination of the majority to conclude the discussions and adopt the law was not supported by the opposition not even during June-July 2008. The examination and approval of this law were a priority for the Parliament during the autumn session 2008. The relevant committee pursued with the examination of this draft-law from the first days of September.

Realising with regret the opponent stance of the opposition towards this draft-law, and noticing that any further postponement, would not only be hopeless for a consensual solution, but would even be misunderstood, as we are approaching the end of this legislature, the relevant committee concluded the examination of the draft-law and, eventually, passed it over for ratification in the Plenary Sitting dated 16 December 2008.

*Mr. Secretary-General,*

Some time before the Parliament of Albania has approved the law nr. 8043, dated 30.11.1995 "On the control of the figure of officials and other people related to the protection of the democratic state". This law underwent the constitutional control of the Constitutional Court of the Republic of Albania. Unfortunately the law was amended by the socialist majority through law nr. 8232, dated 19 August 1997 and law nr. 8280, dated 15 January 1998, eliminating, therefore, all the positive effects it had brought about during its implementation. After these changes this law was practically abrogated.

Every delay in the adoption of this law was the result of the majority attempts to reach a consensual solution in co-operation with the opposition. Despite of the fact that this consensus did not come from the opposition, by adopting this law, the parliamentary majority accomplished the major obligation to detach from the past by de-legitimizing the macabre crimes and the ruthless ordeal the Albanian people went through for half a century under the communist dictatorship.

This law is not revengeful towards anybody. It is in complete conformity with our Constitution, the European Convention of Human Rights and all the other acts of the international law. It embodies perfectly the Council of Europe resolutions and the

jurisprudence of the European Court of Human Rights, according to which, no one can have a mandate on the crimes he has committed in the past, neither can he veil those crimes with his immunity.

In conclusion, allow me to express my firm view that we are committed to guarantee complete transparency in the implementation of this law, setting a recurring example of the ultimate detachment from the tragic past of our country as a meaningful indication of our aspiration to join the civilised and democratic countries of Europe and beyond.

With highest consideration,

*Best regards*

**Jozefina TOPALLI ÇOBA**

**Mr. Terry DAVIS**

**SECRETARY GENERAL  
COUNCIL OF EUROPE**

***Strasbourg***

*J. Davis*

*Council of Europe*  
*The Secretary General*

Strasbourg, 14 January 2009

Dear Mrs Topalli

Thank you very much for your letter of 9 January about Law n° 10034 dated 22 December 2008 "On the lustration of the figure of the high officials of the public administration and the elected ones".

I am grateful to you for having gone into detail in order to expand on the points which you made to me during our telephone conversation in December, and I have carefully examined the contents of your letter and noted, in particular, that you are committed to guarantee complete transparency in the implementation of this law.

I would however like to express some concern, notably about the very broad reach of the law in terms of the categories of officials who may be affected and the fact that it includes officials currently holding office; the fairness and proportionality of the lustration proceedings; the severity of the sanctions foreseen and the fact that they are not limited in time. These aspects of the legislation may be contrary to the European Convention on Human Rights.

I would also like to refer to the Resolution on measures to dismantle the heritage of former communist totalitarian systems, adopted by the Parliamentary Assembly by the Council of Europe in 1996. Our Assembly clearly stated that the duration of individual lustration measures should not exceed five years, that the lustration process should end by 31 December 1999, and that lustration should not apply to candidates in elections.

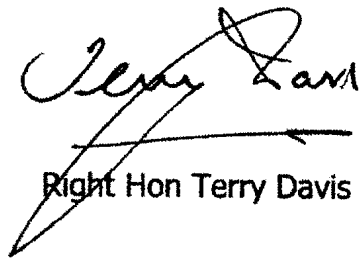
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Mrs Jozefina Topalli  
Speaker of the Parliament of Albania

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Finally, I should like to confirm that the Council of Europe is ready to provide advice and assistance to the Albanian authorities in order to find ways to achieve the legitimate objective of dealing with the past in full compliance with the Council of Europe standards.

Yours sincerely



Right Hon Terry Davis