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## Honouring of obligations and commitments by Albania

### Report

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

Co-rapporteurs: Mr Leo PLATVOET, Netherlands, Group of the Unified European Left and Mr David WILSHIRE, United Kingdom, European Democrat Group

### *Summary*

The report welcomes the progress made by Albania and in particular the measures already taken : establish and enforce a zero tolerance policy in the fight against organised crime, trafficking and corruption; improve the execution of final court decisions and increase the transparency of the government's work. It also praises the open and constructive policy which Albania has maintained towards Kosovo.

However, the Monitoring Committee regrets that Albanian political life has continued to be dominated by confrontation and obstructionism. The poor political climate has again delayed major and urgently required reforms, in particular in the field of election legislation and the media. The Monitoring Committee attaches great importance to the forthcoming local elections which it considers a major test for the capacity of the Albanian authorities to organise free and fair elections.

The report proposes a number of concrete measures which the Albanian authorities should take to pursue further reform in the following areas: election legislation, local and regional government, the fight against corruption, domestic violence and trafficking in human beings, the judiciary and electronic media, the prevention of torture and respect of minority and children's rights. The report recommends to the Assembly to pursue its monitoring until measures taken or planned in these fields have produced tangible results.

**A. Draft resolution**

1. Albania joined the Council of Europe on 29 June 1995. Upon accession, Albania accepted the statutory obligations incumbent on all member states of the Council of Europe. Albania also entered into a number of specific commitments which it agreed to honour within specified deadlines listed in Assembly Opinion No. 189 (1995).

2. The last monitoring report examined by the Assembly and Resolution 1377 (2004) adopted in April 2004 welcomed the progress made since 2001 towards a functioning pluralist democracy and a state governed by the rule of law and respect for human rights. The Assembly concluded that "the monitoring procedure should remain open until the Albanian authorities achieve further progress in the compliance with general obligations and specific commitments resulting from Council of Europe membership, notably to demonstrate tangible achievements in preventing and fighting corruption and organised crime, to improve their record in the implementation of legislation and to carry out elections in full compliance with international standards".

3. The Assembly welcomes the fact that the July 2005 elections marked the first peaceful and smooth transfer of power in Albania since the fall of communism and the first parliamentary elections in 1991: a new government formed by the Democratic Party and smaller parties took over from the previous Socialist Party government and was sworn into office on 11 September 2005.

4. However, Albanian political life is plagued by confrontation and obstructionism. The poor political climate is delaying reforms, in particular in the field of election legislation and the media, which are urgently required in view of the forthcoming local elections scheduled for January 2007. A bi-partisan agreement reached on 30 August 2006 with international assistance was warmly welcomed but has yet to be implemented.

5. Albania has good and improving relations with its neighbours and has maintained its open and constructive policy towards Kosovo supporting settlement of its final status within the framework of its integration with the European Union. Albania has also maintained stable economic growth and a progressive decrease of poverty.

6. The Assembly congratulates Albania on the signing of the Stabilisation and Association Agreement with the EU in June 2006 and notes that the political requirements for EU accession largely coincide with Albania's commitments and obligations towards the Council of Europe in the field of democracy, the rule of law and human rights.

7. With regard to Albania's obligations in respect of democracy:

7.1. The Assembly recalls that the International Election Observation Mission, including the ad hoc Committee of the Bureau, has concluded that the parliamentary elections in Albania on 3 July 2005, although conducted on the basis of an improved Electoral Code, "complied only partially with international commitments and standards for democratic elections." ;

7.1.1. the Assembly believes that the Albanian authorities should in particular continue to improve the accuracy of civil registers and voters' lists and develop a uniform system of addresses for buildings; new identity documents should be introduced; the excessive role of political parties in electoral procedures should be limited and the election administration should be reviewed;

7.1.2. the Assembly welcomes the fact that all political parties have agreed to address the controversy that has arisen from the scope for tactical voting in the current election laws, asks them to resolve this dispute through the current electoral reform process with the assistance of international experts including the Council of Europe's Venice Commission, and show serious commitment to accelerate electoral reform on other issues in order to implement their own agreement of 30 August 2006 and the remaining recommendations made by international observers;

7.2. the Assembly welcomes the fact that the Parliament has continued to increase its influence and role and, despite disagreements about voting procedures, has made steady improvements in its technical operation;

7.3. the Assembly regrets that relations between the political parties have remained polarised and fraught, thus slowing parliamentary work on reform. All the political parties share responsibility for

strengthening the powers and role of the Parliament. Major reforms require broad political consensus which should be reached in Parliament;

7.4. the Assembly notes that, according to the Congress of Local and Regional Authorities, "despite the expressed intention of an ambitious reform progress announced by the current government, measured by reference to legislation actually passed, little has happened so far to reform the system of local and regional government in Albania." ;

7.4.1. the Assembly welcomes the measures already taken by the government : increase the unconditional grants for local government; transfer to local government responsibility for the collection and administration of taxes for small businesses as well as for the administration of sewage systems and water supply; and transfer to local government state owned property;

7.4.2. the Assembly urges the Albanian authorities to implement the recommendations made by the Congress, in particular as regards the current state of local and regional self-government and their compliance with the European Charter of Local Self-government; regional self-government; financial autonomy of local and regional authorities; administrative supervision of local authorities; the electoral system and forthcoming local elections;

7.4.3. the Assembly attaches great importance to the forthcoming local elections which it considers a major test for the capacity of the Albanian authorities to organise free and fair elections. Given the failure to adopt a comprehensive electoral reform in line with recommendations made previously by international observers, some priority issues must be addressed in time for the local elections, such as recommendations regarding the voters' lists, election administration, vote counting, tabulation and appeals procedures.

8. With regard to Albania's obligation to ensure respect for the rule of law,

8.1. the Assembly welcomes the measures already taken to establish and enforce a zero tolerance policy in the fight against organised crime, trafficking and corruption. The Assembly notes in particular that:

8.1.1. in compliance with its Resolution 1377 (2004), the law on the Court of Serious Crime was amended to limit the Court's jurisdiction to cases of organised crime and trafficking. The Court and the Prosecutor's Office of Serious Crimes have proved to be a strong weapon in the fight against organised crime;

8.1.2. the government has achieved significant results in the fight against organized crime with charges having been brought against more than 33 criminal groups involving hundreds of persons;

8.1.3. a high number of public officials are being investigated, prosecuted and convicted on corruption charges. The auditing and controlling authorities have intensified their activity with respect to the use of public funds in the public administration;

8.2. while reforms in the public administration to fight corruption and reduce costs are to be welcomed, the Assembly urges the Albanian authorities fully to respect the law on civil service when hiring and dismissing staff. The effectiveness of the public administration should be further strengthened and this cannot be achieved by simply reducing or replacing staff. It is also necessary to increase the professionalism of senior civil servants and to put an end to political appointments;

8.3. the Assembly regrets that efforts to make rapid progress in the fight against corruption have sometimes resulted in some poorly drafted laws, a number of which have been subsequently declared unconstitutional. Legislation should be carefully prepared in full respect of the principles of the rule of law and better use should be made of both domestic and international, including Council of Europe, expert advice. In the context of its fight against corruption, government and Parliament should also ensure full respect for independent and constitutionally guaranteed institutions, such as the Prosecutor General and the High Council of Justice;

8.4. the Assembly notes that efforts to improve implementation of legislation are on-going but tangible results have yet to be achieved. Effective implementation could be further strengthened by ensuring an increased transparency of the law drafting process;

8.5. the Assembly welcomes progress in the execution of final court decisions as a result of a reorganisation of the bailiff service and improvements in the functioning of the judiciary and welcomes the fact that new judges are appointed only if they are graduated from the Magistrates' School;

8.6. the Assembly urges the Albanian authorities to further pursue judicial reform. In particular the Albanian authorities should:

8.6.1. take into account Council of Europe expert advice on amendments prepared to the law on the organisation of the judiciary, in order to strengthen the independence and professionalism of judges;

8.6.2. address the problem of remuneration of judges and increase the budget for the judiciary;

8.6.3. adopt legislation on the status, recruitment, competencies and remuneration of courts administrative staff;

8.6.4. continue training of judges and prosecutors through the Magistrates' School and provide for competitive examinations for new appointments;

8.6.5. take into account Council of Europe expert advice on the law on the organisation of the Prosecutor's Office and introduce a system for the evaluation of prosecutors as was recently done for the judges.

9. With regard to Albania's obligation to ensure respect for human rights and fundamental freedoms,

9.1. the Assembly welcomes the fact that the Albanian government has, in July 2006, authorised the publication of two reports by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and urges the Albanian authorities :

9.1.1. to speedily enforce the recommendations contained in these and previous reports and take resolute measures to put an end to ill-treatment whilst in police custody by increasing the effectiveness of relevant investigations, bringing to justice and punishing those responsible;

9.1.2. to effectively complete the transfer of responsibility over pre-trial detention centres to the Ministry of Justice, improve prison conditions and build new detention centres;

9.2. the Assembly welcomes measures taken to increase the transparency of the government's work and supports the on-going efforts to improve the implementation of laws on access to information and raise citizens' awareness of their rights. It welcomes the adoption of a new Code of Ethics for journalists and the establishment of a Council on Media Ethics as well as the adoption of a government policy not to use the existing libel law as a means of intimidating journalists;

9.3. the Assembly asks the Albanian authorities :

9.3.1. to adopt without further delay amendments to the Criminal and Civil Codes to de-criminalise libel and reform civil defamation provisions with Council of Europe assistance;

9.3.2. to improve the regulations on the ownership and financing of media outlets;

9.4. the Assembly welcomes the fact that, following a confrontation over legislative amendments with respect to the composition of the two regulatory and supervisory bodies of the electronic media, a consensus was reached between the majority and the opposition in early August 2006 to request Council of Europe expert assistance regarding the development of legislative reform in the field of media;

9.5. the Assembly asks the Albanian authorities to:

9.5.1. adopt the necessary amendments to implement the bi-partisan agreement of 30 August 2006 providing for an enlargement of the composition of the two media regulatory bodies;

9.5.2. review media legislation in accordance with the comments to be made by Council of Europe experts;

9.5.3. ensure that any future draft legislation regarding media reform be thoroughly prepared in a transparent manner following consultation with media representatives;

9.5.4. complete the change of the Albanian television channel from a state-controlled service into a public-broadcaster service;

9.6. the Assembly asks the Albanian authorities to speed up the process of registration and restitution of property confiscated during the communist regime, as well as the granting of compensation in compliance with the constitutional guarantee of the right to property and Article 1 of Protocol No 1 to the European Convention of Human Rights;

9.7. the Assembly welcomes the recent signing of Memoranda of Understanding between central and local authorities in regions where minorities are concentrated;

9.8. the Assembly asks the Albanian authorities :

9.8.1. to work for a nationwide census on minority affiliation without further delay;

9.8.2. to strengthen the role of the newly established State Committee on Minorities by establishing clear rules and guidelines for its work;

9.8.3. to ensure effective implementation of the Framework Convention for the Protection of National Minorities by improving existing legislation and adopting specific by-laws to ensure education in and the use of minority languages in dealings with the authorities and the display of traditional local names;

9.8.4. to continue their efforts to implement the recommendations made in the 2004 report of the European Commission against Racism and Intolerance, especially as regards the situation of Roma and Egyptians;

9.9. noting that domestic violence against women and protection of children's rights remain of serious concern, the Assembly asks the Albanian authorities :

9.9.1. to adopt without further delay and effectively implement a law on the prevention of domestic violence;

9.9.2. to promote active participation of women in the political life of the country;

9.9.3. to rapidly implement measures to effectively tackle the problems of school attendance, child labour and unregistered children;

9.10. the Assembly encourages the Albanian authorities to counter all forms of discrimination;

9.11. the Assembly welcomes the significant decrease in trafficking in human beings over recent years as well as agreements recently signed or planned with neighbouring countries on the re-admission of trafficked children;

9.12. the Assembly asks the Albanian authorities to further improve effective prosecution of traffickers and assistance to the victims of trafficking.

10. With regard to the formal commitments entered upon Albania's accession to the Council of Europe, the Assembly reiterates its request that the European Charter for Regional or Minority Languages (ETS No. 148) be signed and ratified as soon as possible.

11. Recognising the progress achieved so far, the Assembly resolves to pursue its monitoring on the honouring of obligations and commitments by Albania until measures taken or planned in the fields mentioned in this Resolution have produced tangible results.

**B. Explanatory memorandum by Mr Platvoet and Mr Wilshire, co-rapporteurs**

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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 and the rule of law and with the principle of 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 Committee on Legal Affairs and Human Rights opened the monitoring procedure under Order No. 508 (1995) on 6 November 1995 and presented the first report on the honouring of obligations and commitments by Albania in January 1997.
3. Since 1997 the Monitoring Committee continues the monitoring procedure under Resolution 1115 (1997). A report on the honouring of obligations and commitments by the co-rapporteurs, Mr Jerzy Smorawiński (Poland, EPP/CD) and Mr Jordi Solé Tura (Spain, SOC), was presented to the Assembly in June 2000.
4. Mr Søren Søndergaard (Denmark, UEL) replaced Mr Solé Tura as rapporteur on 7 March 2001. Mr Smorawiński and Mr Søndergaard presented a new report on the honouring of obligations and commitments by Albania in March 2004 (Doc. 10116). Following a debate on 29 April 2004, the Assembly adopted Resolution 1377 (2004).
5. Mr Smorawiński and Mr Søndergaard made a fact-finding visit to Tirana in March 2005 following which they presented to the Monitoring Committee an Information Note on 16 March 2005 (doc. AS/Mon (2005) 13).
6. On 25 April 2005, Mr Leo Platvoet (Netherlands, UEL) was appointed co-rapporteur to replace Mr Søndergaard. From 29 May to 2 June 2005, the co-rapporteurs, Mr Leo Platvoet and Mr Jerzy Smorawiński, made a fact-finding visit to Albania as part of the pre-electoral mission of the ad hoc Committee of the Bureau to observe the parliamentary elections. They returned the following month to observe the elections on 3 July 2005.
7. On 25 January 2006, the Monitoring Committee appointed a new co-rapporteur, Mr David Wilshire (United Kingdom, EDG), to replace Mr Smorawiński.
8. From 3 to 6 April 2006, the co-rapporteurs, Mr Platvoet and Mr Wilshire, made a fact-finding visit to Albania.
9. The co-rapporteurs are grateful to the Parliamentary Delegation of Albania to the Parliamentary Assembly and, in particular its Chairman, Mr Aleksander Biberaj, as well as to the Secretary of the Delegation, Mr Vangjel Mita, for the excellent organisation of their visit which allowed them to meet the country's governing majority, and in particular the Prime Minister, Speaker of Parliament and various Ministers, as well as the leader of the opposition and representatives of all political parties, the judiciary, the Prosecutor General's office, the Constitutional Court and the Ombudsman.
10. The co-rapporteurs are also grateful to the Council of Europe's Special Advisor in Albania, Ms Delphine Freymann, who organised their meetings with representatives of pressure groups and NGOs and international organisations.
11. The preliminary draft report prepared by the co-rapporteurs in June 2006 was based on information gathered during their visit to the country and on reports by international governmental and non-governmental organisations.
12. On 29 June 2006, following its presentation to the Monitoring Committee, it was submitted to the Albanian parliamentary delegation for comments within a maximum of three months. The Albanian parliamentary delegation submitted its comments on 29 September 2006. Comments were prepared separately by the ruling and the opposition parties and are reproduced in document AS/Mon (2006) 29.
13. On the basis of the comments of the Albanian parliamentary delegation as well as developments which have occurred since their preliminary draft report was written, the co-rapporteurs revised it and agreed this draft report, including a preliminary draft resolution. Its main purpose is to provide updated information on the progress made by Albania in the honouring of its obligations and commitments since the last 2004



monitoring report. The co-rapporteurs have taken into account developments until the date of 2 December 2006.

14. Assembly Opinion 189 (1995) on Albania's request for Council of Europe membership contains, apart from formal requests to sign and ratify key Council of Europe instruments, a number of commitments on freedom of expression, the role of the prosecutor's office, the independence of the judiciary, constitutional reform and the settlement of international disputes by peaceful means.

15. Meeting these commitments as well as general obligations arising from membership of the Council of Europe (especially democracy, the rule of law and human rights) remains essential if the monitoring process for Albania is to be ended.

## **2. Political and economic developments since April 2004**

### **2.1. Political developments**

16. Political developments between April 2004 and July 2005 have been described in the 2005 Information Note, prepared by the former co-rapporteurs (doc. AS/MON(2005)13) and in the Report of the *ad hoc* Committee of the Bureau on the observation of the parliamentary elections in Albania of 3 July 2005 (doc. 10664). This report therefore focuses on political developments since the parliamentary elections.

17. Following the July 2005 elections, the Democratic Party (DP), together with its traditional allies as well as two parties which were previously part of the Socialist government<sup>1</sup> and independent MPs, formed a comfortable working majority (80 seats compared to 60 won by the Socialist Party (SP) and other parties). The new government, led by the former President of the Republic, Mr Sali Berisha, was sworn into office on 11 September 2005.

18. Since the fall of communism and the first parliamentary elections in 1991, this was the first time that the change of political power in Albania had taken place peacefully and smoothly (despite the new government having to wait for two months for all election complaints to be considered). This peaceful change is a great achievement.

19. As is only to be expected in an emerging democracy, attempts to make many major changes as quickly as possible have not been without difficulties and tensions within the governing party<sup>2</sup>. Similarly, passing from a governing party to opposition is a challenging task and has led to difficulties and tensions within the SP. Maintaining unity, carrying out necessary party reform, developing new policies and working with other opposition parties is proving difficult<sup>3</sup>.

20. Despite the peaceful change of government, the political life of Albania has continued to be plagued by confrontation between: the ruling majority and the opposition; the government and other constitutionally guaranteed state institutions, such as the President of the Republic, the Prosecutor General or the High Council of Justice; the opposition and the Speaker of Parliament; the central and local self-government authorities. The parliamentary sittings have been suspended several times and the opposition has occasionally boycotted the plenary sessions.

21. The current political climate has delayed reforms such as the electoral and media reforms which are urgently required, in particular in view of the forthcoming municipal elections due to take place, according to the law, between 22 December 2006 and 21 January 2007.

22. A 12-point agreement on the resolution of several outstanding issues in the field of media and electoral reform, signed between representatives of the ruling and opposition parties, with the assistance of the international community, on 30 August 2006, gave rise to hopes and expectations that improvement of

<sup>1</sup> Namely, the Ambientalist-Agrarian Party and the Human Rights Union Party with a total of 6 MPs.

<sup>2</sup> Recently, the DP has been finalising co-operation agreements with other parties in view of the forthcoming local elections.

<sup>3</sup> The decision of former Prime Minister and former leader of the SP, Mr Fatos Nano, to return to politics and contest the role of Mr Edi Rama as the SP leader, announced early September after an one-year silence, may be seen as an additional cause of frictions. However, it could also be argued that it has for the moment provoked the unification of the opposition parties which during the last months have been working together on an action plan with a view to winning the local elections and provoking early parliamentary elections. In their comments to our preliminary draft report, the opposition parties recall that the Constitution requires the election of the President of the Republic by 84 votes which the ruling majority does not have and argue that early parliamentary elections should be held for this reason in 2007 (see doc. AS/Mon (2006) 29, p. 20).

the political climate would allow the early resumption and completion of electoral reform as well as progress in other areas.

23. Little progress has been made in implementing the agreement, and the date for the next local elections has since been in dispute between the majority and the opposition. The ruling parties wanted local elections to take place within the constitutional and legal timeframe (i.e. between 22 December 2006 and 21 January 2007); the opposition parties wanted a postponement to spring 2007 arguing that weather conditions in winter would seriously affect the level of participation. The President of the Republic, who has the right to announce the date of the local elections, has held two roundtables with political parties in the search of a consensus with no result. He announced that, unless such a consensus was reached, he would decree a date within the legal timeframe. On 2 December 2006, he decreed Saturday 20 January as the date for the next local elections.

## 2.2. Economic situation

24. In 2005, GDP growth was 5.5%. In 2006, it is expected to be at about 6%. GDP per capita was 2,673 USD in 2005 and is expected to be 2,883 USD in 2006. Inflation in 2005 was 2.4% and is expected to be 2.5% in 2006<sup>4</sup>. The prudent monetary policy remained unchallenged and contributed to keeping inflation under control<sup>5</sup>.

25. In 2006, the Albanian government has reduced its borrowings from banks, other financial institutions and Albanian citizens. Co-operation with international financial institutions continued to be an important anchor for economic policies. The previous IMF programme was successfully completed in November 2005 and a new three-year programme started in February 2006.

26. At the end of September 2006, the government announced that total revenue from customs, tax offices and social insurance amounted to 141 billion Lek compared to 125 billion Lek for the same period in 2005<sup>6</sup>. According to the EC 2006 Progress Report, the fundamentals of fiscal policies aimed at fiscal consolidation were further pursued. Consensus on the fundamentals and directions of economic policy was broadly maintained.

27. The number of people living in poverty decreased from around 25% in 2002 to around 18% in 2005. This means that more than 220,000 people were lifted out of poverty during these three years. This represents considerable progress<sup>7</sup>.

28. As part of the government's drive to support small and medium sized enterprises, measures have been taken to cut the bureaucracy, in particular the time and money required to register new businesses<sup>8</sup>. In order to encourage foreign investment in Albania, the government launched an initiative dubbed "Albania 1 Euro" allowing investors from abroad to enter Albania paying only 1 Euro at the border, 1 Euro to register their business or 1 Euro to rent land for 99 years, including mines, hydropower stations or railways. A full range of other services will also be offered for 1 Euro<sup>9</sup>.

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<sup>4</sup> For figures regarding 2005, see Annual Report, Bank of Albania in [www.bankofalbania.org](http://www.bankofalbania.org). Estimation for 2006 was provided by the Albanian ruling parties (doc. AS/Mon (2006) 29).

<sup>5</sup> See Albania 2006 Progress Report, Commission of the European Communities, doc. SEC (2006) 1383 of 8 November 2006, hereinafter referred to as EC 2006 Progress Report.

<sup>6</sup> According to the Albanian ruling parties, the improved performance of customs and tax offices is mainly due to the fight against corruption and the grey economy. For the opposition parties, this improved performance is not due to a better fiscal administration but to "some other factors such as the increase of gasoline price on the international market; abusive use of reference prices by the customs offices; increase of excise level for some products (coffee, alcoholic products, cigarettes); etc." (see doc. AS/Mon (2006) 29, p. 2 and p. 21).

<sup>7</sup> See EC Progress Report, section 3.2.

<sup>8</sup> Thus, the registration period for businesses was reduced from 48 days to 8 days and should be reduced to one day through the project "One Stop Shop". Taxes for small business were decreased by 50%. Social insurance contribution was decreased by 33%. Income tax was reduced by 13%. The electrical price for the businesses was decreased (33-45%); see comments by the Albanian ruling parties, doc. AS/Mon (2006) 29, p. 3.

<sup>9</sup> See comments by the Albanian ruling parties, doc. AS/Mon (2006) 29, p. 3. See also the speech made by Mr Sali Berisha, Prime Minister of Albania, on the occasion of the Fourth Part-Session of the Assembly on 3 October 2006, doc. AS (2006) CR 25.

## 2.3. International relations

### 2.3.1. European Union (EU)

29. Membership of the EU is a key objective for all Albanian political parties. On 12 June 2006, Albania signed a Stabilisation and Association Agreement (SAA) with the EU. This historic event opens a new and critical phase in Albania's progress towards integration with the remainder of Europe.

30. The Council of Ministers of the EU Council has requested Albania to continue with its agenda of reforms and to implement them effectively. It called on political parties to work together to accelerate change. It also called on Albanian authorities to strengthen efforts on a number of priorities including freedom of the media, compensation and restitution of property, respect for independent institutions, and full compliance with international standards in the forthcoming local elections.

31. The Albanian Parliament unanimously approved the SAA on 27 July 2006. The European Parliament ratified the SAA on 6 September 2006. The subsequent ratification procedure by each of the EU member states may last up to 3 years. Pending the ratification procedure, trade-related parts of the SAA are implemented through an Interim Agreement which enters into force on 1 December 2006.

32. The signing of the SAA has been received with great public enthusiasm in Albania. Further enlargement of the EU has, however, been subject to a growing public and political debate within the EU. It would thus not be realistic to expect a medium-term integration for Albania<sup>10</sup>. Also, the political requirements for EU accession largely coincide with Albania's commitments and obligations towards the Council of Europe in the field of democracy, rule of law and human rights. Therefore, accession to the EU presupposes compliance with Council of Europe membership commitments and obligations.

33. The EU, which is Albania's principal trading partner, provides guidance on reform priorities and financial assistance through the European Partnership, established with Albania through the Stabilisation and Association Process (SAP) in June 2004 and followed up through regular Consultative Task Force meetings.

34. The revised European Partnership, setting out priorities that Albania should address, was adopted on 30 January 2006<sup>11</sup>. Both short-term and medium-term EU political priorities largely duplicate Council of Europe priorities for Albania. Albania adopted a plan to implement the European Partnership priorities in July 2006.

35. On 9 November 2006, the European Commission (EC) published its 2006 Progress Report on Albania's preparations for further integration with the EU, covering the period from 1 October 2005 to 30 September 2006<sup>12</sup>.

36. In 2006, the EC allocated a total of 45.5 million Euros in pre-accession financial assistance to Albania. Albania also benefits from loans from the European Investment Bank (EIB) and 25 million Euros of EC macro-financial assistance.

### 2.3.2. Countries in the region

37. Albania has good and improving relations with neighbouring countries and has pursued its policy of non-interference in domestic issues concerning Albanian minorities in neighbouring countries.

38. Free Trade Agreements (FTAs) are being implemented with all countries in South-East Europe. A FTA is also being implemented with Kosovo.

39. Relations with the *State Union of Serbia and Montenegro (SCG)* have been reasonable and stable. The FTA offers a route for further improvements with the *Republic of Serbia* as the continuing state. Following the Declaration of Independence of 3 June 2006, the Albanian government officially recognised the *Republic of Montenegro* on 9 June.

<sup>10</sup> For the Albanian ruling parties, EU's "own horizontal problems" do not affect the European future of Albania; see doc. AS/Mon (2006) 29, p. 3.

<sup>11</sup> See Council Decision of 30 January 2006 on the principles, priorities and conditions contained in the European Partnership with Albania and repealing Decision 2004/519/EC, OJ L 35, 7.2.2006.

<sup>12</sup> See above footnote 5.

40. Albania has maintained its open and constructive policy towards Kosovo. This policy was developed by the previous SP government and has been pursued by the current DP government. Despite polarised relations with respect to internal politics, the two main political parties have in fact maintained a common policy as regards Kosovo: Albania supports a settlement on Kosovo's final status within the framework of its integration into the EU and calls for full respect for individual and minority human rights, no partition, no change in the territory of Kosovo, full and effective implementation of the decentralisation process in compliance with the European Charter on Local Self-Government, full respect for cultural and religious heritage; and a status that reflects the free will of the people of Kosovo for independence<sup>13</sup>.

41. Relations between Albania and "*the former Yugoslav Republic of Macedonia*" are good. The FTA between the countries has led to increased bilateral trade.

42. *Italy* is Albania's main commercial partner as well as its largest bilateral donor and has conducted major bilateral co-operation activities with Albania. *Greece* remains Albania's second largest trade partner. Relations with Greece are good. More than 600,000 Albanians currently live and work in Greece and the number of short-term Schengen visas issued by Greece has been continuously increased.

### **2.3.3. NATO**

43. Albania was one of the first countries to join NATO's Partnership for Peace initiative (in February 1994). NATO's membership is one of the strategic objectives of both the foreign and defence policies of Albania.

44. In May 2003, Albania together with "*the former Yugoslav Republic of Macedonia*" and Croatia signed with the United States an "Adriatic Charter", aimed at facilitating their integration into NATO. In a joint statement issued on 28 February 2006 in Durrës, the Prime Ministers of the three countries expressed their wish to integrate NATO at the latest in 2008.

45. During the ceremony of the change of command of NATO troops in Albania, on 28 March 2005, Prime Minister Berisha declared that the government was more determined than ever to help its army achieve NATO standards through deep and comprehensive reform.

46. Albanian troops are stationed in Iraq and participate in peacekeeping in Bosnia and Herzegovina. Albania has also sent 22 peace keeping soldiers to Afghanistan. In July 2006, their six-month participation in the SEEBRIG Commando to Afghanistan came to an end.

## **3. Honouring of obligations and commitments**

### **3.1. Council of Europe Conventions**

47. Albania has honoured almost all formal commitments undertaken upon its accession to the Council of Europe, regarding the signature and ratification of conventions, within the set deadlines. 64 Council of Europe Conventions have thus been ratified to date by Albania.

48. Three judgments have to date been issued by the European Court of Human Rights concerning Albania. One concluded there was no violation and two that there were violations of the European Convention of Human Rights (ECHR). The first of these judgments in the case *Qufaj Co. Sh.P.K. v. Albania*<sup>14</sup> concerns a violation of the applicant company's right to a fair trial due to the failure to enforce a final judicial decision (violation of Article 6 § 1). Its execution is pending before the Committee of Ministers<sup>15</sup>. The second judgment where a violation was found in the case *Beshirli v. Albania*<sup>16</sup> concerns restitution of property and a violation of the applicant's right to receive compensation for unlawful nationalisation of land (Article 1 of Protocol No. 1) and its right to a fair trial due to the failure to enforce a final judicial decision (Article 6 § 1).

49. Protocol No. 13 to the ECHR (abolition of the death penalty in all circumstances) was signed on 26 May 2003 but has not yet been ratified. The Parliament approved the ratification of Protocol No. 13 on 9 November 2006.

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<sup>13</sup> See doc. AS (2006) CR 25.

<sup>14</sup> Judgment of 18 November 2004, final on 30 March 2005.

<sup>15</sup> See doc. CM/Del/OJ/DH(2006)976 of October 2006. The execution of this judgment will again be considered at the 982<sup>nd</sup> meeting of the Ministers' Deputies on 5-6 December 2006. The 2006 EC Progress Report, p. 10, wrongly presents this judgment as having been executed.

<sup>16</sup> The judgment was issued on 22 August 2006 and is not final yet.

50. Three new 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) opened for signature at the Warsaw Summit on 16 May 2005 were signed by Albania on 12 December 2005. Their ratification was approved by the Parliament in November 2006.

51. 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>17</sup>. The Deputy Minister of Foreign Affairs told the co-rapporteurs that this issue is on the government's agenda, together with other issues related to the protection of national minorities. According to information provided by the authorities, a consultation and evaluation process has started on the feasibility of signing the Charter for Regional and Minority Languages. Central and local bodies with competence over the issue of minority rights protection and the State Committee of Minorities are involved. Two representatives of these institutions have participated in an information seminar organised on the Charter in Vienna on 5-6 October 2006. No precise information has been provided on the timetable envisaged for ratification of the Charter.

52. Whilst signature and ratification are important steps, effective implementation is essential. Implementation is something Albania sometimes finds difficult – partly because of the need to change so much so quickly, lack of experience and a shortage of suitably qualified staff.

## 3.2. Democracy

### 3.2.1. Elections

53. According to the International Election Observation Mission, including the *ad hoc* Committee of the Bureau of the Council of Europe Parliamentary Assembly, the parliamentary elections in Albania of 3 July 2005, conducted on the basis of an improved Electoral Code *"complied only partially with international commitments and standards for democratic elections. The elections were competitive and voters were provided with a diversity of information. While the Central Election Commission has [...] administered the elections professionally, state and local authorities and major political parties have yet to demonstrate political will that corresponds with their responsibilities for the electoral process"*<sup>18</sup>.

54. Recommendations by the international observers for further electoral reform, in time for the next local elections, include improving the accuracy of voters' lists. This requires improving the accuracy of civil registries. Achieving this requires the development of a uniform system of addresses for buildings. New personal identity documents are also needed. There have been calls to limit the excessive role of political parties in electoral procedures and for a review of current electoral administration.

55. Current electoral law enables voters to use their two votes to vote tactically. This was widely used in 2005. Whilst entirely legal, it is very controversial. Most politicians the co-rapporteurs spoke to, including the Prime Minister, want to change the current electoral system to a proportional or single member constituency system. In their comments on our preliminary draft report, the Albanian delegation confirmed that all parties agreed to a change and welcomed assistance of international experts in drafting the necessary amendments to the Electoral Code and other laws.

56. At the beginning of May 2006, the Parliament approved the Central Electoral Commission (CEC)'s annual report for 2005. The report stressed the need for the Parliament to immediately start work to improve the electoral legal framework so that required standards are achieved in the upcoming local elections.

57. It was agreed to set up an *Ad Hoc* Parliamentary Committee on Electoral Reform in January 2006. Parliament took until 18 May to approve this. The committee is composed of 18 members (9 from the majority and 9 from the opposition). Its decisions are taken by a simple majority of votes (10), when they are favoured by the two largest parties. The committee was initially given three months to do its work. Its

<sup>17</sup> See Opinion No. 189(1995), sub-para. 17 (xi) and Resolution 1377 (2004), para. 17.

<sup>18</sup> See the Report of the *ad hoc* Committee, Doc. 10664 of 12 September 2005, Rapporteur: Mr Jerzy Smorawiński. See also for a detailed account of these elections and a list of recommendations the final Report of the OSCE/ODIHR Observation Mission, doc. ODIHR.GAL/78/05 dated 8 November 2005. In its executive summary the OSCE/ODIHR Report states: *"The 3 July 2005 parliamentary election complied, only in part, with OSCE commitments and other international standards for democratic elections, and marked some progress in the conduct of elections in Albania. It was a competitive contest and voters were offered a wide electoral choice from a range of political parties. Yet, the process was again protracted and at times uncertain."* See also Human Rights in the OSCE Region: Central Asia and North America, Report 2006 (Events of 2005), International Helsinki Federation of Human Rights.

mandate has been extended three times<sup>19</sup>. The first item on the agenda of the *ad hoc* Committee and its main priority was the voters' list.

58. During the summer months the proceedings of the *ad hoc* Committee on electoral reform, were stopped due to a controversy between the ruling majority and the opposition over planned legislative reforms in the media field, the composition of the CEC and the use of the temporary voters' registers as a source for voter lists in the forthcoming municipal elections.

59. The bi-partisan agreement signed on 30 August 2006<sup>20</sup> provided for the enlargement of the two national regulatory and supervisory media bodies, the enlargement of the CEC, discontinuing the use of temporary voters' registers as a source for voter lists in the next municipal elections, the extension in future of local government term of office from three to four years and immediate resumption and completion of the work of the *Ad Hoc* Committee. As part of the agreement, the Council of Europe was asked to offer expert assistance regarding the development of legislative reforms in the media field.

60. Little progress has been made since. Disagreement on the date for the next municipal elections<sup>21</sup> has affected the debate on electoral reform. Following a compromise reached on the role of the Prefects in monitoring the voters' list<sup>22</sup>, the ruling majority have requested separate approval of amendments to the voters' lists; whilst the opposition wants these amendments coupled with constitutional amendments regarding the CEC's composition, the enlargement of other commissions and safeguards against the use of tactical voting. The majority endorses the need to increase the membership of the CEC and to remove the use of tactical voting but says that the latter issue is a matter for parliamentary elections only and should not delay preparations for the local elections. Different packages of amendments, including to the Constitution, have been prepared by the majority and the opposition on relevant issues. Discussion in parliamentary committees on opposition-proposed amendments started during the third week of November and a vote in Parliament is expected in early December 2006<sup>23</sup>.

61. Recently the opposition has also demanded the issuing of special election certificates for use during the local elections for identification purposes. They claim that defective birth certificates will be used to distort the elections. The government, for their part, see this condition as an attempt to further delay electoral reform and the preparations for the local elections.

62. The issue of identification documents is linked to the need to modernise the civil registry system. The Ministry of the Interior is actively working (with OSCE help) on improving the accuracy of civil registries<sup>24</sup>. The observation of previous elections has shown that it is the system of handling the documents rather than the certificates as such that require improved safeguards against abuse.

63. In October 2006, the CEC signed a Memorandum of Understanding with the Government for the preparation of the local elections and an inter-institutional co-operation agreement with the National Council of Radio and Television on campaign monitoring for these elections. The CEC has also approved a budget and action plan for the local elections, as well as procedures for the Local Government Elections Commissions and forms for the filing of complaints. It has, however, repeatedly been unable to complete the selection of the seventh member of the Local Government Elections Commissions which prevents the latter from launching the preparation of the elections, following the SP's refusal to send a representative to the lottery procedure until the bi-partisan agreement of 30 August is fully implemented.

64. The failure of the main political parties to implement their own political agreement signed a few months ago is delaying electoral reform. Since the local elections are due to be held very shortly (on

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<sup>19</sup> The last extension ended on 14 November 2006 with no result.

<sup>20</sup> See above, para. 22.

<sup>21</sup> See above, para. 23.

<sup>22</sup> See for more details the comments by the ruling parties in doc. AS/Mon (2006) 29, p. 5.

<sup>23</sup> The SP submitted 40 amendments to the Electoral Code to the Assembly on issues raised by the OSCE/ODIHR recommendations, such as voter's lists, composition of the CEC and local election committees, identification documents used during the voting process, marking of voters with visible ink and definition of the complaint and appeal procedures. Other amendments in line with the 30 August bi-partisan agreement were also presented. They concern the enlargement of the electronic media regulatory bodies, as well as the definition of the issues that should be decided by qualified majority in these bodies. Amendments also include changes to the Constitution providing that local elections take place in May and parliamentary ones in October. On 24 November 2006, the SP declared its readiness to withdraw some of its proposed amendments to the Electoral Code for the sake of reaching a consensus on electoral reform.

<sup>24</sup> On 8 September 2006, the Ministry of the Interior and the OSCE/ODIHR signed a Memorandum of Understanding providing for expert assistance to the General Directorate of Civil Status to help modernize the country's civil registration and address systems.

20 January 2007), it is essential that all political parties make compromises and agree on those issues which are essential for the organisation of free and fair local elections. They must also accelerate the other changes needed to implement the agreement and comply with recommendations made by international observers<sup>25</sup>.

### 3.2.2. Parliament

65. The Parliament of Albania has 140 members: 100 are elected directly in single member constituencies and 40 nationally by proportional representation. The main political parties remain the ruling Democratic Party of Albania (DP) and the opposition Socialist Party of Albania (SP). A number of small parties have formed alliances with these parties.

66. The increasing influence of the Albanian Parliament in the country's political life, which was welcomed by the Assembly in its Resolution 1377 (2004), has been consolidated over the reporting period. The Parliament is making steady improvements in its technical operation despite some technical and administrative shortcomings<sup>26</sup>.

67. Unsurprisingly in a young democracy, relations between parties are polarised and fraught. This has slowed the process of reform.

68. The clearest example of these difficulties is the six week boycott of Parliament by the SP between end of February and beginning of April 2006. This has prevented the DP obtaining parliamentary approval for any business requiring a 2/3 majority. It was triggered by the DP's refusal to allow a secret ballot-box vote on an SP motion to remove the Speaker. The boycott led to skirmishes and threats of expulsion.

69. When the co-rapporteurs visited Albania the boycott was on-going. They urged compromise on all concerned. The Prime Minister told them he was willing to compromise. This was finally achieved shortly after their visit (dismissals and appointments will now be put to a secret ballot-box vote when requested by at least seven MPs until a new electronic voting system is in place). The Parliament has since resumed normal functioning.

70. However, confrontation between the opposition and the Speaker of Parliament has culminated with a second request for her dismissal being presented by a group of 38-left wing MPs on 24 October 2006. The request was rejected on 14 November 2006.

71. Another example of difficulties with co-operation is the suspension of the activities of the Parliament's *ad hoc* Committee on Electoral Reform during the summer months<sup>27</sup>.

72. Parliamentary immunity is also proving confrontational. In December the government submitted a proposal ("Draft Decision on the limitation of parliamentary immunity and the conditions for the authorisation to initiate investigation in relation with corruption offences and abuse of duty") to the Council of Europe's Venice Commission for comment.

73. In its Opinion, adopted on 18 March 2006, the Venice Commission considered that the adoption of such a "decision", containing general provisions limiting parliamentary immunity, required the qualified 3/5 majority of all the members of the Assembly (i.e. 84 out of 140 MPs) provided by Art. 81.2 of the Constitution for the approval of laws for the organisation and operation of the institutions provided for in the Constitution. The Venice Commission also stated that much also depends on "*whether the procedures and rules which are designed to protect against arbitrary and politically motivated decisions actually work in practice. It is the responsibility of the Albanian state, in particular of the Constitutional Court, to ensure that this is the case*"<sup>28</sup>.

74. The ruling parties have confirmed agreement with the comments and proposals made by the Venice Commission and express their readiness to proceed with the required qualified (2/3<sup>rd</sup>) majority vote.

75. Because the ruling parties do not command a 2/3<sup>rd</sup> majority, a decision on limiting parliamentary immunity depends on the opposition - which has not made its position clear.

<sup>25</sup> See also below, para. 96 and footnote 38.

<sup>26</sup> Procedures and equipment for voting do not yet ensure transparent and undisputed results. However, the work of the Parliament is becoming more transparent as specialised staff and equipment are now used to transcribe all plenary sessions.

<sup>27</sup> See above, sections 2.1. and 3.2.1.

<sup>28</sup> See doc. CDL-AD (2006) 005, dated 20 March 2006.

76. The Prime Minister told the co-rapporteurs that he had also proposed to the DP parliamentary group that restriction of the immunity should be extended to judges and prosecutors. However, the opposition challenge the constitutionality of the proposal. A ruling from the Constitutional Court is awaited.

77. Amendments to the law on the funding of political parties were adopted at the beginning of February 2006. These amendments need to be discussed with the Council of Europe as agreed earlier this year.

78. A number of *ad hoc* Parliamentary Inquiry Committees have been established, sometimes with an unclear mandate: one to inquire into the General Prosecutor's performance<sup>29</sup>; a second one (approved on 5 May 2006) to inquire into dismissals in the public administration that have occurred since the parliamentary elections of 3 July 2005 and until 30 April 2006<sup>30</sup>; and a third one (established on 18 September 2006) to inquire into the verification of assets, nepotism and conflicts of interest of high state officials and persons related to them over the period 1992-2006<sup>31</sup>.

79. The political parties share responsibility for strengthening Parliament's democratic oversight of the government. Major reforms will require broad political consensus.

### **3.2.3. Government**

80. The 2004 report gives credit to the former SP government for sending to Parliament a very substantial number of draft laws (including electoral reform, property restitution and compensation and the fight against organised crime and terrorism). However some of these draft laws were ill prepared and/or not well implemented. The previous report also expressed concern over "*widespread accusations of corruption and links with organised crime*" and the lack of a comprehensive legislative framework and administrative structures which would protect Albanians from these scourges.

81. The current DP government has made the fight against corruption and organised crime its key priority and has declared zero tolerance on crime. The government has already achieved some significant successes in the fight against organised crime.

82. The new government has also undertaken a total reform of public administration to reduce costs. The number of ministries has been reduced from 17 to 14. The governmental structure has been reduced by 20%, the number of Directorates by 15%, the number of Heads of Sectors by 18% and the number of employees by 20%. According to the ruling majority, as a result of this reform, the operational expenses of the government have been reduced by 40%, resulting in 46 million Euros savings from the State budget<sup>32</sup>.

83. Reforms in the public administration to fight corruption and reduce costs are to be welcomed. It is essential that the law on civil service is fully respected when hiring and dismissing staff. The effectiveness of the public administration should be further strengthened. It is also necessary to increase the professionalism of senior civil servants.

84. Changes in the government's structure have led to some international and local observers claiming the new government is centralising power and the Prime Minister becoming too involved in micro-management<sup>33</sup>. They point to his new responsibilities for European integration, the anti-corruption fight and minority rights protection.

85. The new government's laudable efforts to make rapid progress in the fight against corruption, (including in the judiciary) have sometimes resulted in some poorly drafted legislation. The opposition, local and international observers and (occasionally) the Ombudsman have protested that some proposed changes are unconstitutional, undermine human rights and could result in placing government supporters in key positions<sup>34</sup>. For its part, the government explains that firm and sometimes controversial action is inevitable to curb the phenomena of corruption and organised crime, including in the judiciary.

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<sup>29</sup> See below, section 3.3.1.

<sup>30</sup> See below, section 3.2.3.

<sup>31</sup> See below, section 3.3.1.

<sup>32</sup> This affirmation is contested by the opposition parties which further argue that cost reduction in the public administration has been used as a pretext for massive dismissals and hiring of persons politically close to the DP (see doc. AS/Mon (2006) 29, p.21; see also below).

<sup>33</sup> See for example the recent 2006 EC Progress Report, p. 6.

<sup>34</sup> The 2006 EC Progress Report notes that "hiring and dismissal of staff has in some cases occurred without due attention to the Civil Service Law". Also, the prevailing political appointment of higher civil servants impedes the



86. The co-rapporteurs inquired into the drafting of legislation procedure used by the government. They were informed that each ministry was responsible for drafting laws falling within its competence. Draft laws are then normally (but not without exceptions in practice<sup>35</sup>) sent to the Codification Department of the Ministry of Justice for review of their constitutionality and to the Minister of Finances with respect to their budgetary implications.

87. The co-rapporteurs suggest that better use of both domestic and international expert advice, be made in order to improve legal drafting and avoid complaints of unconstitutionality. The government should consider improving existing legislation rather than replacing it. In this respect, the co-rapporteurs welcome the fact that, in July 2006, the Minister of Justice submitted for legal expertise to the Council of Europe three key documents of the criminal law system in Albania: the Criminal Code, the Code of Criminal Procedure and the law on the organisation and functioning of the Prosecutor's Office". The expertise should be ready before the end of 2006.

88. Despite improvements, implementation of legislation remains weak. Responsibility for this is shared by the government and Parliament. To reduce delays in the implementation of laws due to the absence of the necessary by-laws, the government is currently considering the introduction of a rule according to which all draft laws sent to Parliament should be accompanied by the relevant by-laws.

### **3.2.4. Local Self-Government**

89. The approach of local elections and the Mayor of Tirana being the leader of the SP have increased the all too familiar tension between central and local government since the end of last year.

90. This has led to at least one confrontation between the government and the Tirana Municipality. In 2005 the Municipality of Tirana decided to fund and build a flyover in the capital. In October 2005 the Construction Police suspended work on the grounds that its construction was carried out without the necessary permits. Subsequently, the Territorial Adjustment Council decided to demolish it.

91. The Municipality took the matter to court but lost both at first and second instance. However, the Ombudsman has recommended that the Construction Police should stop obstructing the work and refrain from repeating their action and that the Municipality of Tirana should seek amendments to the relevant legislation. The Ombudsman's conclusions have not been acted upon.

92. Subsequently, Parliament approved a government proposal giving prefects the right to summon meetings of the Territorial Adjustment Council to end the impasse. On 22 September 2006 the Constitutional Court ruled this unconstitutional and a violation of the independence of local government.

93. In the meantime, in July 2006, the flyover was demolished by the Construction Police. According to the ruling majority, the demolition was due to legal, technical and procedural violations discovered by the Ministry of Public Works, Transport and Telecommunication.

94. In its Recommendation on the local and regional democracy in Albania, adopted at its plenary session of 11-13 November 2006<sup>36</sup>, the Congress of Local and Regional Authorities of the Council of Europe deals with the issue of the flyover as part of the general question of administrative supervision of local authorities by the central government. The Congress' Recommendation covers a whole range of issues regarding the current state of local and regional self-government in Albania and their compliance with the European Charter of Local Self-government and asks the Albanian authorities to take a number of concrete measures.

95. It is worth noting that on 18 October 2006, i.e. two days after the report on the local and regional democracy in Albania was adopted and made public by the Institutional Committee of the Congress, the government announced that a draft law which transforms the current Construction Police into an inspectorate

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development of a strong professional senior civil service level. For information on the work carried out by the Parliamentary Ad Hoc Inquiry Committee into dismissals in the public administration, see the comments submitted by the ruling parties in doc. AS/Mon (2006) 29, p. 6. According to the minority report prepared by the SP, 14,000 out of a total of more than 100,000 state employees have been dismissed for unjustified reasons under the current government. These figures are contested by the ruling majority which has submitted to the Parliament its own report. By the end of October neither the minority nor the majority reports had been considered by the Parliament since, according to the Speaker, they had both been submitted after the deadline.

<sup>35</sup> See comments by the opposition parties in doc. AS/Mon (2006) 29, p. 21.

<sup>36</sup> See CG(13)29REC and explanatory memorandum.

was being prepared, in line with one of the recommendations made by the Congress, and would subsequently be discussed with representatives of communes and municipalities at a roundtable. In compliance with another recommendation made by the Congress, the Government also decided that the water supply and sewage system should be administered by the local authorities.

96. The Albanian authorities must implement the recommendations made by the Congress. The Assembly attaches a great importance to the forthcoming local elections which it considers a major test for the capacity of the Albanian authorities to organise free and fair elections, including a fair and pluralist electoral campaign. Given the failure to adopt a comprehensive electoral reform in line with recommendations made previously by international observers, some priority issues must be addressed in time for the local elections, such as recommendations regarding the voter's lists, election administration, vote counting, tabulation and appeals procedures<sup>37</sup>.

### 3.3. Rule of law

#### 3.3.1. *Fight against corruption and organised crime*

97. In its Resolution 1377 (2004) the Parliamentary Assembly considered corruption and organised crime as "*the single biggest threat to the functioning of democratic institutions and the rule of law in Albania*" and asked for "*tangible achievements in preventing and fighting corruption and organised crime*".

98. The previous government had taken a number of measures in the right direction such as the adoption of a Law on the Prevention of Conflicts of Interests and the setting up of specialised bodies, namely the Anti-Corruption Monitoring Group (ACMG) and the Anti-Corruption Unit, with Council of Europe assistance. Also the High Inspectorate for the Declaration and Control of Assets of elected and public officials was set up. In its Second Evaluation Round Report on Albania, dated 18 March 2005, the Group of States against Corruption (GRECO) took note of these and other positive measures recommending a number of further changes to the law which, coupled with stricter enforcement, education and training should help achieve the intended results<sup>38</sup>.

99. An "anti-mafia" package was adopted in 2004, consisting of a law on fighting organised crime, providing inter alia for special investigative means, a law against the financing of terrorism and a law on the protection of witnesses and those who co-operate with the authorities. Guidelines were approved in June 2005 by the Ministries of Justice, Interior and Finances and the General Prosecutor's Office for the application of the 2004 law on the protection of witnesses and collaborators of justice. A Court for Serious Crimes started functioning in 2004. In November 2004, Albania ratified a co-operation agreement with "the former Yugoslav Republic of Macedonia" on the fight against terrorism, organised crime, drug trafficking and illegal migration. An agreement was also signed with UNMIK with respect to Kosovo. Trafficking of human beings across the Adriatic and Ionian seas was significantly reduced in 2005.

100. The fight against organised crime and corruption was a key issue in DP's election campaign and is now the key priority for the government. The latter has taken a number of measures against organised crime and achieved significant results.

101. According to information provided by the Ministry of Justice on 17 April 2006, the Ministry (with international experts' help) has prepared amendments to the 2004 law on the prevention and fight against organised crime which will result in all assets confiscated by virtue of article 36 of the Criminal Code being subject to the management of the Agency for the Administration of the Confiscated and Sequestered Assets. Criminal sanctions have been introduced for persons purchasing or using stolen goods in draft amendments to the Criminal Code. However these amendments have so far not been submitted and approved by Parliament.

102. In 2005, 924 cases on charges of organised crime were initiated (an increase of 25% over 2004) and 343 individuals were charged.

103. The Court of Serious Crimes and the Prosecutor's Office of Serious Crimes (set up in 2004 with Council of Europe assistance), using special investigative powers, proved to be a strong weapon in the fight against organised crime. As the co-rapporteurs recommended in 2004, the law was amended and the

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<sup>37</sup> See in this respect the OSCE/ODIHR Needs Assessment Mission Report for the Local Elections in Albania, which was published on 24 November 2006, doc. ODIHR.GAL/86/06.

<sup>38</sup> The GRECO addressed 13 concrete recommendations to the Albanian authorities. See doc. Greco Eval II Rep (2004) 8.

Court's jurisdiction was limited to cases of organised crime and trafficking. In 2004, the Court of Serious Crimes has heard 139 cases of which 53 cases have so far been concluded (3 of which resulted in not guilty verdicts). It has also ordered the taking of 209 security measures. In 2005, the court has opened 141 cases involving 271 accused persons. 74 of these cases (53%) have been concluded (including 3 acquittals). It has also ordered the taking of 257 security measures. 22 persons have signed an agreement of collaboration with the court.

104. By the end of September 2006, charges have been brought against more than 33 criminal groups in the whole territory of the country, involving hundreds of members and their bosses. The total value of the confiscated crime proceeds until September 2006 amounts to 15 million Euros. More than 30 parcels comprising tens of thousand of narcotic plants were destroyed.

105. Controversy has arisen over one of the security measures – the three-year total ban on the use of locally registered speed boats in Albanian waters. The opposition parties, some pressure groups and some NGOs consider this unconstitutional and contrary to the European Convention of Human Rights<sup>39</sup>.

106. The new government has introduced a number of measures against corruption, in particular in the tax and customs service. They have received international assistance. In April 2006, following negotiations initiated by the previous government, they signed a 13.85 million US dollars Millennium Challenge Corporation (MCC) programme with the United States Agency of International Development (USAID) aimed at reducing corruption in tax administration, public procurement and business registration.

107. Government programmes on combating corruption have been developed as part of overall government programmes for a set period of time. At the end of the period, the Prime Minister reports to Parliament on the progress of implementation and achievements.

108. The new government has abolished the Anti-Corruption Monitoring Group and the Anti-Corruption Unit and replaced them with a new anti-corruption body – the Anti-Corruption Task Force (a political body chaired by the Prime Minister and composed of line ministers and heads of sensitive government agencies) and the Directorate of Internal Administrative Control and Anti-Corruption (a technical body under the responsibility of the Deputy Prime Minister).

109. Council of Europe experts, while welcoming the commitment of the new government to tackle corruption through short-term measures, stressed the need to create a sustainable and efficient longer term anti-corruption system, with adequate resources and suitable terms of reference. They also raised a number of specific concerns and made recommendations about both newly-established bodies. Their comments, discussed during an expert meeting in Strasbourg, were officially transmitted to the Albanian government in March 2006.

110. The authorities consider that the recommendations of the Council of Europe's experts have been sufficiently reflected in the law regulating the newly established Directorate of Internal Administrative Control and Anti-Corruption (DIAC)<sup>40</sup>.

111. On 14 August 2006, the Prime Minister issued Order No. 196 "on establishing an Inter-ministerial Working Group for Drafting and Following up the Strategy 'on Fight against Corruption and Transparent Governance'". The main responsibility of this expert working group is to follow-up closely the issue of implementation of the obligations arising from Albania's international commitments in the field of corruption (in particular the GRECO reports).

112. Concrete measures taken or initiated to fight corruption, partly in response to GRECO recommendations<sup>41</sup>, include: adoption of amendments to the law on conflict of interests and to the law on public procurement (providing also for the establishment of a public procurement Ombudsman to involve civil society and financed by the Millennium Challenge Corporation); adoption of the law on co-operation of the public in combating corruption, providing for witness' protection; elaboration of a draft law on the criminal

<sup>39</sup> See for more details on the position of the ruling parties, on the one hand, and the opposition parties, on the other, doc. AS/Mon (2006) 29, p. 8 and p. 23 respectively.

<sup>40</sup> This refers in particular to: i) the combination by the latter of two main functions, administrative investigation, on the one hand, and assistance in drafting the government's programmes for preventing corruption; ii) compliance of control procedures (administrative auditing) to international standards and best practices; and iii) issues of internal organisation of the DIAC and coordination with other agencies. The DIAC has also received technical support by EU experts.

<sup>41</sup> Implementation of GRECO recommendations has so far been limited. According to the authorities, other measures in compliance with GRECO recommendations, including elaboration of necessary laws and by-laws, are being prepared and should have been communicated to the GRECO by the end of September 2006. This has not yet been done.

liability of legal entities; creation of a task force of selected prosecutors and judicial police officers set up within the Prosecutor's Office and District Court in Tirana to deal with corruption cases and financial crimes; training provided by international experts to the police, prosecutors and judges in the fields of seizure and confiscation of proceeds of corruption crimes, conflicts of interest, financial investigation, recent legal developments in the fight against corruption, etc; increased transparency of the government's work (publication of decisions and public acts on website, public information units in ministries etc.), of public administration and of public procurement (especially as regards construction permits); installation of telephone hotlines in the Prime Minister's office, the Ministry of the Interior and the General Prosecutor's Office which people can use to report instances of corruption.

113. The High Inspectorate for the Declaration and Control of Assets of Elected and Public Officials, created back in 2003, has intensified its activities and its officials have been authorised to investigate bank accounts of officials outside the country. Until March 2006, 4,800 people had had to declare their assets. Verification with banks, commercial registries, custom offices is on-going. Until April 2006, 5 cases have been reported to the prosecuting authorities (involving a mayor, a director of a tax office, a prosecutor, an internal audit director and a judge) and investigations are on-going.

114. By the end of 2005, 28 officials had been dismissed for non co-operation with the High Inspectorate for the Declaration and Control of Assets.

115. In September 2006 the ruling majority approved with 72 votes in favour and 11 against the establishment of an *ad hoc* Parliamentary Committee to inquire into the verification of assets, nepotism and conflict of interests of high state officials and persons related to them over the period 1992-2006. 42 opposition members of the Parliament boycotted the vote and have so far boycotted the work of the committee<sup>42</sup>.

116. According to information provided by the authorities, during the period July 2005 – March 2006, the internal and external auditing and controlling authorities have intensified considerably their activity with respect to the use of public funds in the institutions of public administration. During this period, 54 persons and 9 entities have been reported for criminal offences connected to corruption by the High State Control; 15 cases have been reported by structures of internal auditing; 95 persons (of whom more than 60 are high ranking officials) were reported by the Directorate of Internal Administrative Control and Anti-Corruption within the Council of Ministers.

117. Between September to December 2005, 40 police officers (22 of whom were from the traffic police) were prosecuted (mainly on corruption charges).

118. In 2005, investigation into alleged corruption was initiated against 237 public officials. 140 were subsequently charged. In the first quarter of 2006, 75 more public officials were prosecuted. To date 84 have been convicted, including mid-and high level officials<sup>43</sup>.

119. According to the Prime Minister, these new measures have resulted in the public's perception of corruption within the government decreasing from 77% to 23%. According to the Transparency International Corruption Perception Index 2006, Albania occupies the 111<sup>th</sup> place out of 163 countries with a total note of 2.6 (compared to the 126<sup>th</sup> place out of 158 countries it occupied in 2005 with a total note of 2.4).

120. Some of the measures taken by the new government to combat corruption proved to be controversial and have been criticised by the opposition, the Ombudsman, civil society and the international community<sup>44</sup>.

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<sup>42</sup> Persons who held or are holding the following positions come under the mandate of the committee: President of the Republic; Speaker and Deputy Speaker of Parliament; Prime Minister, Deputy Prime Minister, Minister and Deputy Minister; Chairman and Deputy Chairman of the State Supreme Audit; Chairman of a parliamentary political party; Member of the Central Election Commission; Member of the High Council of Justice; judge in the Constitutional Court or in the Supreme Court; Head of a public independent central and constitutional institution.

<sup>43</sup> For instance: in May 2005, the Chairman of the Durres property restitution commission was sentenced to 20 years in prison for abuse of duty and corruption; in March 2006, the General Prosecutor's Office initiated investigations against three former government officials on charges of misappropriation of government funds; in May 2006, the Chief of Police in Tepelene and three other senior officials were arrested by the Internal Control Service in the Ministry of the Interior for providing false passports to criminals involved in drug trafficking, extortion and kidnapping; in June 2006, the Director of the Tax Office in Flora was arrested for corruption.

<sup>44</sup> See for instance the Statement by the International Helsinki Federation for Human Rights and the Albanian Helsinki Committee of 17 March 2006.

121. Particular concern has been expressed about the government decrees on curbing corruption and nepotism in public procurements and tax and customs offices which banned employing relatives of government officials in these services. Approached by the Ombudsman and some NGOs, the Constitutional Court suspended the implementation of these decrees pending its decision on the merits. On 11 July 2006, the Constitutional Court declared these decrees unconstitutional and thus abrogated them.

122. The law on the public's co-operation in the fight against corruption, although adopted following one of the GRECO recommendations on whistle-blowing, has also been controversial, especially to the extent that it risks leading to abuses for score-settling<sup>45</sup>.

123. A confrontation has arisen between the government and the General Prosecutor following public allegations by the Prime Minister that the prosecutor had not taken effective action against crime and corruption and had connections with organised crime. Other members of the ruling party, including the Speaker of the Parliament, have also made public allegations about the inaction of the General Prosecutor. The controversy has also involved the President of the Republic who, whilst accepting that more needed to be done by the relevant institutions in the fight against corruption and organised crime, has maintained that reform could only be pursued using due legal process. The Prime Minister has made it clear that he was not concerned about the prosecutors within the General Prosecutor's Office but solely about its head, Mr Theodori Sollaku<sup>46</sup>.

124. The General Prosecutor declared, for his part, on 27 April 2006 that the institution he led had issued arrest warrants for some 2,000 people who were believed to be involved in corruption affairs or criminal activities but the police had so far failed to execute them. The General Prosecutor's Office task was to investigate cases and it was then for the police to execute the relevant decisions. At the same time, the General Prosecutor dismissed any political interference in the work of his institution. In May 2006 Parliament approved the ruling DP's request for the establishment of an *ad hoc* Parliamentary Inquiry Committee on the performance of the General Prosecutor. Opposition MPs boycotted the vote to signal their opposition to what they considered politically motivated action and an attempt by the government to interfere with the functioning of independent institutions.

125. Following a two-month controversial parliamentary enquiry process on the matter, the final report of the committee was approved by the Parliament on 24 July 2006. The report concluded that the General Prosecutor had violated, through his direct actions or omissions, the Constitution, the Code of Criminal Procedure and a number of other laws. His dismissal was therefore proposed to the President of the Republic.

126. The President of the Republic refused to sign the decree dismissing the General Prosecutor announcing that he had found no legal reason to do so. He informed the Parliament of his decision on 13 October 2006. The reaction from senior representatives within the ruling majority was vigorous.

127. Although formally acknowledging the President's decision, the representatives of the ruling majority have signalled their intention to further pursue alternative ways to dismiss the Prosecutor General, for example through a group of "independent prosecutors" to investigate alleged ties of the prosecution with organised crime. On 7 November 2006 the Minister of Justice said that such inquiries would be based on the model of impeachment used in the United States against former President Bill Clinton. The Ministry would prepare the necessary amendments to the law.

128. Effective measures are needed to deal with widespread corruption and organised crime, but it is essential that they are proportional to the threat and compatible with international standards for human rights and the rule of law. Government and Parliament should respect the constitutional guarantee of independence of institutions, such as the Prosecutor General and the High Council of Justice.

### **3.3.2. Functioning of the judiciary**

129. A weak, poorly remunerated and partly corrupted judiciary has been one of the major concerns with respect to the rule of law in Albania<sup>47</sup>. The 2006 EC Progress Report reiterates that judicial proceedings in

<sup>45</sup> For the government's proposal to lift parliamentary immunity to initiate investigation in relation with corruption offences and abuse of duty, see above, para. 72-75.

<sup>46</sup> It is worth noting that according to the Constitution of Albania, the Prosecutor General is an independent institution elected by Parliament and can only be dismissed by decision of the President of the Republic. Mr Sollaku was elected by the previous Parliament with the agreement of the Democratic Party which was then in opposition.

<sup>47</sup> See Resolution 1377(2004), paras. 6 and 14.v.

Albania remain "lengthy, poorly organised and lack transparency"<sup>48</sup>. A trial monitoring report, presented by the OSCE in November 2006 that focuses on Albania's judicial system, shows that while significant progress has been achieved, there is great need for further improvement in order to create a stable and transparent justice system based on the rule of law<sup>49</sup>.

130. There has been progress in the execution of final judicial decisions as a result of the reorganisation of the Bailiff Service.

131. The Ministry of Justice has prepared amendments to the law on the organisation of the judiciary in Albania. The amendments relate to the judges' status, remuneration, career, independence and professionalism. They deal *inter alia* with: the reorganisation of first instance courts, including the creation of administrative courts; access to the judiciary; appointment and re-definition of tasks for the Presidents of courts; appointment of judges to the Serious Crimes Court and the Appeals Court; criteria for the assignment of cases by lottery; disciplinary infringements and sanctions; as well as the division of tasks between the High Council of Justice and the Ministry of Justice. These amendments will be accompanied by necessary changes to other laws, such as those on the organisation and functioning of the High Council of Justice and of the Ministry of Justice.

132. The co-rapporteurs welcomed the fact that the Ministry of Justice had sought the help of the Council of Europe on these amendments and urged the Albanian authorities to take into account the comments made by the Council of Europe experts before presenting them to Parliament. The authorities have not informed us of whether this has been done<sup>50</sup>.

133. The government has so far failed to take any measures to address the problem of remuneration of the judges. The proposals of the judiciary and prosecutors for the 2006 budget were not taken into consideration and, instead, a drastic reduction has been proposed despite the fact that many district courts still lack adequate space for courtrooms, judges' offices, archives and equipment<sup>51</sup>.

134. The authorities must prepare a legal framework for the status, recruitment and competencies of court administrative staff. They currently do not have civil servant status and receive lower salaries than those of equivalent grades in government ministries. The authorities say that a special law is being prepared by the Ministry of Justice on the administration of the judiciary but no draft has so far been sent to the Council of Europe. The Council of Europe contributes to the training of court administrators through a Joint Programme with the EC. An Action Plan for this purpose has been finalised.

135. The Magistrates' School has expanded its training programmes. The draft amendments to the law on the judiciary provide that all judges will have to be graduates of the Magistrates' School. However, no steps have been taken to provide for competitive examinations with a view to appointing judges and prosecutors.

136. Council of Europe experts have reviewed the draft of the professional and ethical evaluation system for judges worked out by the High Council of Justice. This new system came into effect in May 2006 and took account of the experts' views.

137. Amendments to the Law on the High Council of Justice (HCJ), drafted and adopted hastily at the beginning of 2006, without consultation with the Codification Department of the Ministry of Justice, the Council of Europe or any other international organisation, have been declared unconstitutional by the Constitutional Court in May 2006. The HCJ is now working on new amendments. Council of Europe expertise could usefully be sought.

138. Following the Constitutional Court's ruling, the Parliament (on 13 July 2006) approved a ruling majority proposal to dismiss the two members of the HCJ appointed by the previous Parliament and appoint two new ones. The government said the situation was unconstitutional because the original appointees were serving members of the judiciary – a violation of the Constitution. By 7 votes to 6 the HCJ rejected this decision arguing that the Constitutional Court's ruling was not retrospective because the Parliament had elected these members for a constitutionally mandated term of 5 years.

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<sup>48</sup> See the 2006 EC Progress Report, p. 7.

<sup>49</sup> The 250-page report examines the extent to which the procedural and human rights of persons detained on remand are respected by the Albanian courts and prosecutors. It also focuses on the effectiveness of the defense, the corruption in the judiciary, ways domestic violence cases are handled, as well as access to information.

<sup>50</sup> No comment has been made on this point by the ruling parties. The opposition parties, for their part, argue that some of the amendments are controversial and possibly unconstitutional (see doc. AS/Mon (2006) 29, p. 26).

<sup>51</sup> See the comments by the opposition parties in Doc. AS/Mon (2006) 29, p. 26 and 2006 EC Progress Report, p. 7.

139. The existence of two parallel inspection services for the judiciary (one in the High Council of Justice and the other in the Ministry of Justice) has repeatedly been criticised by the judiciary and local and international observers<sup>52</sup>. However, the Minister of Justice argues that the work of the two inspectorates is well harmonised and their parallel existence is maintained.

140. The Minister of Justice initiates disciplinary proceedings against judges but the High Council of Justice takes the decisions. Investigations of the first instance courts of Tirana, Durres, Kvae, Diber, Mlirdite, Mat and Lushnje and the Appeal Court of Tirana during the period 2004-2005 have revealed breaches of criminal and civil procedural law. Subsequently, the Ministry of Justice proposed the dismissal of four judges and the transfer of four others. The High Council of Justice finally approved only one dismissal. Other investigations are currently underway.

141. Between 2002 and 2005 investigations by the General Prosecutor have led to the disciplining of 65 prosecutors (of whom 22 were dismissed and 20 were warned that they might be dismissed). One prosecutor has been prosecuted for not having declared his assets to the High Inspectorate for the Declaration and Control of Assets. A system for the evaluation of prosecutors is not yet in place. Council of Europe expert assistance (requested in July 2006) with drafting a new law on the organisation of the Prosecutor's Office should be completed by the end of 2006.

142. The Albanian authorities must pursue the reforms of the judiciary – something that appears to have widespread public support. New transparent legislation will need to be carefully prepared. The authorities should take account of Council of Europe expert advice on amendments to the law on the organisation of the judiciary. The new legislation must strengthen the independence and professionalism of judges; increase the budget and judges' remuneration; improve the status and recruitment of administrative staff; further develop the training of judges and prosecutors; and, provide for competitive examinations for new appointments. Steps must also be taken to reform the organisation of the Prosecutor's Office and introduce a system for evaluating prosecutors (as was recently done for judges).

### **3.3.3. Constitutional Court**

143. The Constitutional Court is an independent institution separate from the judiciary. It interprets the Constitution and reviews the constitutionality of adopted legislation. Should the Court find a law unconstitutional, the latter is null and void as of the date that the Court's decision is published.

144. Recently more and more laws have been referred to the Constitutional Court and a number of them have been declared unconstitutional.

145. The fact that the rulings of the Constitutional Court are accepted by all is of the utmost importance.

146. Although the Constitutional Court is not part of the judicial system, it has also competence to receive individual complaints by citizens, after exhaustion of all other legal remedies for violation of fair trial principles (Article 42 of the Albanian Constitution; cf. Article 6 ECHR). Lack of public trust in the judiciary has also increased the number of individual complaints which reach the Constitutional Court (indicating that the court has the full confidence of the people of Albania).

### **3.4. Human Rights**

147. Albania's human rights record continues to improve in some areas. On-going problems include steps to fight poverty, an independent and efficient judicial system, police misconduct, the situation in prisons and pre-trial detention centres, and domestic violence<sup>53</sup>.

148. The "People's Advocate" (commonly called the Ombudsman) is playing an increasingly significant role in the protection of individual human rights. The institution was established six years ago with Council of Europe assistance. 90% of the Ombudsman's recommendations have been acted on. In 2005, the Ombudsman received 4,361 complaints. Of the 1,286 complaints which fell within his jurisdiction, 582 (45%) were decided in favour of the applicants. The Ombudsman now has unlimited access to prisons.

<sup>52</sup> See for instance the 2006 EC Progress Report, p. 7.

<sup>53</sup> International Helsinki Federation for Human Rights, Report 2006.

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

149. On 13 July 2006 the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published the reports on its July 2003 ad hoc visit and May/June 2005 periodic visit to Albania together with the responses of the Albanian authorities. The co-rapporteurs welcome the fact that the Albanian government authorised the publication of the CPT reports in accordance with assurances the Prime Minister gave them during their visit to Albania in April.

150. Many people interviewed by the CPT's delegation during the 2003 visit alleged that they had been ill-treated whilst in police custody. Most of these allegations related to ill-treatment during questioning by officers of the criminal police. Following examination of a number of individual cases the CPT concluded that the lack of an effective and appropriate response from the prosecuting/judicial and disciplinary authorities could only foster a climate of impunity. The Committee made specific recommendations regarding the effectiveness of investigations into possible ill-treatment by law enforcement officials<sup>54</sup>.

151. The 2005 CPT visit revealed that little progress had been made in the implementation of the recommendations previously made by the CPT. In the report on that visit, the Committee called upon the Albanian authorities to take urgent action to improve the situation. In response, the Albanian authorities provided detailed information about various measures taken to improve conditions of detention in pre-trial detention facilities. They also indicated that the 1996 Mental Health Act, which provides procedural safeguards for persons placed in psychiatric hospitals on an involuntary basis, was now being effectively implemented.

152. In March 2006, the CPT returned to Albania, in order to review the measures taken by the Albanian authorities in response to the recommendations made in previous visit reports. The report on that visit was adopted by the CPT in July 2006 and has been transmitted to the Albanian authorities<sup>55</sup>.

153. Reports of ill-treatment of detainees by the police continue to be made by Albanian and international organisations<sup>56</sup>. Amnesty International reported in February 2005 that it had received approximately 35 alleged cases of torture or ill-treatment annually since 2002 and estimated the real number to be much higher. Most abuses reportedly take place at the time of arrest or initial detention (despite extensive training in human rights matters being given to the police).

154. The definition of torture in the Albanian Criminal Code does not accord with international definitions and standards, and lacks provisions for reparation, including fair and adequate compensation, for victims of torture and ill-treatment. A draft law, prepared in July 2005 which would define torture in accordance with the UN convention, is currently pending before Parliament.

155. Local and international observers also report failures to investigate promptly, thoroughly and impartially complaints of torture and ill-treatment and then to bring to justice those responsible.

156. According to information provided by the Ministry of Justice, whilst "*de jure*" pre-trial detention centres have been the responsibility of the Ministry of Justice since 2003, "*de facto*" a number of them are still under the administration of the Ministry of the Interior due to lack of necessary funds and infrastructure<sup>57</sup>. They are all in poor condition (with the exception of the Tirana and Lezha pre-trial detention facilities which are under the administration of the Directorate General of Prisons). A Master Plan for the Pre-Trial Detention System (developed by the Ministry of Justice within the framework of the EU project entitled "Community Assistance for Reconstruction, Development and Stabilisation" – CARDS) provides for the construction of 12 new pre-detention centres. The sites have been found, purchases are underway and construction is expected to start soon. The EC reports that implementation of this Master Plan is behind schedule. The Ministry of Justice is also co-operating with the Council of Europe's Development Bank with a view to obtaining assistance for the establishment of new pre-trial detention centres.

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<sup>54</sup> In the pre-trial detention facilities at Elbasan and Shkodra, the CPT's delegation found extremely poor material conditions combined with a very restrictive regime. Inmates were locked up in their cells for more than 23 hours per day, frequently for prolonged periods (in some cases, up to 20 months).

<sup>55</sup> The CPT reports on the 2003 and 2005 visits and the responses of the Albanian authorities are available on the CPT's Website (<http://www.cpt.coe.int>).

<sup>56</sup> See the US State Department Report on Human Rights Practices-2005, released by the Bureau of Democracy, Human Rights and Labor on 8 March 2006 which lists a number of concrete incidents; the IHF Report 2006, p. 5; Amnesty International, *Albania: No to impunity for torture and ill-treatment*, EUR 11/0006/2005, 1 February 2005.

<sup>57</sup> See comments by the ruling parties in Doc. AS/Mon (2006)29, p. 11; see also information on measures taken during the period 2003-2005 provided by opposition parties in doc. AS/Mon (2006) 29, pp. 28 and 29.



157. When informing the members of the Council of Ministers about the contents of the CPT report in April 2006, the Prime Minister confirmed that violence in prisons is a serious problem. He declared that taking measures against violence in prisons and the prevention of torture was an urgent priority for the government. He confirmed that new pre-trial detention centres would be built in every region and that their internal regulations would be revised (in close cooperation with the CPT). He also confirmed that telephone hotlines will be established in all prosecutor's offices in districts where pre-trial detention centres and prisons are located, so that prisoners may report ill-treatment and illegal pressure.

158. A Commission on the Supervision of the Execution of Criminal Sentences, composed of representatives from different Ministries, Parliament and the Prosecutor's Office for the purpose of advising the Minister of Justice on enforcement issues and protection of the rights of prisoners and detainees, is not operational at present<sup>58</sup>.

159. Complaints of ill-treatment or torture must be properly investigated and perpetrators brought to justice. According to information provided by the authorities, in 2005 and in the first quarter of 2006, criminal proceedings were conducted against 19 police officers. Three of them were convicted. Criminal proceedings against the other 16 are pending. No information has been provided on the precise charges brought against these persons and the sentence that those convicted received.

160. Apart from the problem of detention conditions, excessive length of pre-trial detention also raises serious concerns. Although the law provides for a maximum of two years of pre-trial detention, delayed investigations result in lengthy pre-trial detentions beyond the time-limit fixed in the law.

161. The International Helsinki Federation of Human Rights<sup>59</sup> reports several positive measures taken in 2005. The authorities have started enforcing a law that requires finally convicted persons to be transferred from pre-trial detention facilities to prisons. Steps are being taken to open an institution for mentally unstable or ill prisoners. Poor physical conditions in prisons are being addressed. A prison and a new pre-trial detention facility have been opened in Lezha and a high security section has been opened in the Peqin prison. The Ministry of Justice says further improvements are expected soon.

162. Council of Europe expertise has been sought to develop alternative punishments to imprisonment which should also contribute to addressing the problem of overcrowding of Albanian prisons.

163. The authorities must continue to work on improvements in compliance with the CPT recommendations included in the recently published 2003 and 2005 CPT reports. The political commitment of the government to do so is mostly encouraging.

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

164. Public access to information is provided for in law but in reality it is claimed by some to often be hindered by the use of other laws to narrow its scope. It is also claimed by some that state officials do not really know how to apply this law.

165. The government says it has strengthened access to information by increasing the transparency of its work: publishing decisions and activity on a website, and setting up public information units in ministries.

166. Legislation on access to information is an important tool for ensuring transparency and parliamentary control of the government. The authorities must issue clear guidelines which will allow effective implementation of the relevant legislation. The co-rapporteurs welcome in this respect the project on access to information "*Know Your Rights*" launched in October 2006 by the OSCE Presence in Tirana and the People's Advocate (Ombudsman) which aims at increasing the transparency of state institutions, fostering the implementation of the laws in force, raising citizens' awareness of their rights to seek information (including access to official documents) and improving their ability to obtain it.

167. Recently, Parliament approved amendments to the relevant legislation adding a new category of classified information ("restricted") to the existing three categories ("top secret", "secret" and "confidential"). Although the introduction of the new category was apparently dictated by NATO requirements, its definition is claimed by some to be so broad that virtually anything could fall into its ambit. If this is the case, this could hamper access to information.

<sup>58</sup> See also Doc. AS/Mon (2006) 29, p. 29.

<sup>59</sup> *op.cit.*, p. 6.

168. The Albanian media remained active and largely unrestrained (although some commentators consider the editorial independence of some parts restrained by political or economic interests). There has been no progress in adopting regulations on the ownership and financing of the media outlets (which would improve transparency and prevent inappropriate influence as was recommended by the Assembly in Resolution 1377(2004), para. 16 (v)). No progress has been made towards the transformation of the state TV into a neutral public TV<sup>60</sup>.

169. In September 2006, leaders of the main media associations signed a new Code of Ethics and agreed on the establishment of a Council on Media Ethics, composed of academics, producers, writers and media experts. It is expected that the new Council will promote media self-regulation and enhance professionalism among journalists.

170. A draft law to de-criminalise libel (which can currently result in imprisonment of up to three years), drafted with international assistance, was presented to Parliament in 2005 under the previous government but was not adopted. New draft amendments to the Civil and Criminal Code were prepared this year but, despite efforts by the Parliamentary Committee of the Media and the Media Institute (an NGO), they had not been submitted to Parliament by the end of September 2006. In the meantime, the new government has adopted a policy of not using the existing libel law as a means of intimidating journalists. However, a government decree cannot take precedence over the law and cannot protect journalists against the use of libel provisions by other persons, not falling within the jurisdiction of the government. Therefore, although the fact that no civil or criminal cases have so far been brought against journalists by government officials is to be welcomed, this policy should be confirmed by the adoption of relevant legislation<sup>61</sup>.

171. In March this year, the Parliament rejected the Annual Report of the National Council of Radio and Television (NCRT), the regulatory and supervisory body for the electronic media, and instead approved a resolution calling for the dismissal of all seven members for having allowed "corruption and piracy" to prevail. A general consensus seemed to exist on the need of reform to tackle piracy in the electronic media, but opinions diverged on how this should be done.

172. In May, after several weeks of discussions, the Parliament approved amendments to the Law on Public and Private Radio and Television that dealt with the composition and functioning of the NCRT and of the Steering Council of the Public Radio and Television (SCART). After their proposals for a compromise on the government-proposed amendments were turned down, opposition MPs walked out before the vote in the Plenary criticising the lack of will of the governing coalition to look for consensus. The law as amended provides for a decrease of the number of the members on the two councils and eliminates the concept of political balance by empowering the professional associations and civil society to nominate candidates. The government consider this re-structuring will increase professionalism and impartiality. The opposition consider it will increase government control of two independent institutions<sup>62</sup>.

173. Following the amendments, on 28 July 2006, the ruling majority elected the members of the two media regulatory bodies from a list of candidates selected by the Parliamentary Committee on Media at a meeting held the previous day in the absence of opposition members<sup>63</sup>.

174. As part of the bi-partisan agreement signed on 30 August 2006, majority and opposition agreed that the composition of the NCRT would be enlarged from five to seven members and the two new nominees would be selected by the opposition; the composition of the SCART would be enlarged from seven to eleven members and the four additional candidates would be selected by the opposition, one of them being selected upon a prior agreement with the majority; a qualified majority would be required for decision-making in both institutions on major issues to be specified by the Parliamentary Committee on Media; the necessary amendments to the media law would be proposed by a joint group of MPs from both the majority and the opposition. However, by mid-November 2006, different packages of amendments have been prepared by the ruling majority and the opposition and have yet to be discussed at plenary session in Parliament. Therefore no change has so far been made to the composition of the two media regulatory bodies.

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<sup>60</sup> The 5<sup>th</sup> Annual Reporters without Borders Worldwide Press Freedom Index, issued on 24 October, ranks Albania 18 positions lower than last year. It states that the situation of media in Albania remains problematic. See also 2006 Progress Report, pp. 11 and 12.

<sup>61</sup> See also the comments by the ruling and the opposition parties in AS/Mon (2006) 29, p. 12 and p. 30 respectively.

<sup>62</sup> See AS/Mon (2006) 29, p. 30.

<sup>63</sup> The opposition parties called on the newly elected members to refuse the post arguing that the vote was illegitimate. The bodies held their first meeting on 1 August.

175. Difficulties have also arisen with an amendment to the law on the electronic media which seeks to prevent owners participating in public tenders and privatisation of public property. The President of the Republic sent the amendment back to the Parliament for re-examination as he considered it to be unconstitutional and noting that existing legislation on conflict of interests could suffice to achieve the objectives aimed at by the new law. On 13 June 2006, the Parliamentary Committee on Education and Media passed the amendment again unamended<sup>64</sup>.

176. Apart from disagreement on the contents and objectives of recent amendments to media legislation, opponents criticised the fact that they were hastily prepared by the government without sufficient consultation with media representatives and international experts (whereas the previous law had been prepared with Council of Europe assistance).

177. The co-rapporteurs therefore welcome the fact that a consensus was finally reached between the majority and the opposition in early August 2006 to request the assistance of the Council of Europe and the European Commission Delegation experts regarding the development of the legislative reform in Albania. An official request in this sense was sent on 11 August to the Council of Europe by the Speaker of Parliament. The precise scope of the technical assistance to be provided by the Council of Europe is being discussed.

178. They further ask the Albanian authorities to: adopt the necessary amendments to implement the bi-partisan agreement of 30 August 2006 providing for an enlargement of the composition of the two media regulatory bodies; review media legislation in accordance with the comments to be made by Council of Europe experts; ensure that any future draft legislation regarding media reform be thoroughly prepared and in a transparent manner following consultation with media representatives; complete the transformation of the Albanian television channel from a state television into a public-service broadcaster.

### **3.4.3. Freedom of religion**

179. According to the Constitution, there is no official religion and all religions are equal. The government respects the freedom of religion and relations among the predominant religious communities – Sunni Muslim, Bektashi Muslim, Orthodox and Roman Catholic – are generally amicable. The religious harmony that seems to prevail in Albania is a positive example to the region.

180. The government has, however, so far failed to return all the religious properties and objects that were confiscated under the communist regime. In cases where religious buildings were returned, the government often did not return the land surrounding the buildings or provide compensation. The Orthodox Autocephalous Church of Albania had also problems in retrieving religious icons.

181. Representatives of the civil society who work with religious communities told the co-rapporteurs that the problem of restitution of religious property was part of a more general one and not aimed at religious communities. The government was aware of the problem and would solve it.

182. Following the adoption of the new law on property on 17 July 2006, the National Agency for Property Compensation and Restitution has been advised to treat the restitution of religious properties as a priority. The government is currently drafting an investment plan for restitution of property to religious institutions<sup>65</sup>.

### **3.4.4. Property reform**

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

184. Since the initial deadlines provided for in the law on restitution and compensation of property had not been met, the Parliament extended the deadline for submission of property claims until 2006. In June 2006, the Parliamentary Committee of Legal Affairs, Public Administration and Human Rights decided to extend the deadline again – to the end of 2008.

185. Given the slow pace at which registration of real estate was proceeding, responsibility over the Office for the Registration of Real Estate has been transferred to the Ministry of Justice and its reform has started. One of the priorities is to complete the inventory of available state land so that the financial needs for

<sup>64</sup> According to the 2006 EC Progress Report, this amendment "could present problems from the *acquis* point of view in terms of business competition. It should be complemented by a more comprehensive approach to media ownership. Nevertheless it is a strong anti-corruption measure and should contribute to media freedom."

<sup>65</sup> See AS/Mon (2006) 29, p. 13.

compensation can be estimated. It seems that much of the property in urban and coastal areas, which has the greatest economic potential, remains unregistered. OSCE is assisting the Albanian authorities in their efforts to register property and develop a sustainable business plan as this is a precondition of the World Bank for future loans.

186. In March 2006, the government announced the dissolution of the State Committee on Restitution and Compensation of Property on the grounds that it had not performed its duties effectively.

187. Controversy has arisen over a government-proposed law on the legalisation, urbanisation and integration of illegal constructions. A first version of the law was returned by the President of the Republic back to the Parliament for further reflection as he feared that it contained unconstitutional provisions. In April 2006 the Parliament adopted the amendments to the initial version proposed by the Republican Party according to which the legalisation of illegal constructions will be completed after the legitimate owners are rewarded. The law was passed, but the opposition (considering that even the amended version is unconstitutional), boycotted the vote and plans to refer the matter to the Constitutional Court.

188. On 17 July 2006, a new law governing property restitution and compensation was adopted establishing the National Agency for Property Compensation and Restitution. The Law increases the land to be restituted, creates a compensation fund and provides for the dissolution of the State Committee for Restitution and Compensation of Property and the creation of the new Property Restitution and Compensation Agency.

189. Following approval of the law on legalisations, the government set up the Agency of Legalization, Urbanisation and Integration of Unauthorised Buildings. The Agency is responsible for publicising information about the development of the legalisation process and has prepared necessary materials for implementation of the law which are being distributed by the local government units. The latter have received necessary financial support and infrastructure.

190. The authorities claim that within 5 years, starting from 2007, 600,000 assets will be registered, mainly in the urban zones. Digitalisation of information and computerisation of services should increase their efficiency. In October 2006 the OSCE Presence in Albania signed a Memorandum of Understanding with the Office for the Registration of Real Estate to help implement a first pilot project which involves starting registration activity in the zones of illegal buildings prioritised by the Agency.

191. The Albanian authorities must speed up the process in order to complete registration and restitution of property confiscated during the communist regime, as well as the granting of compensation in compliance with the constitutional guarantee of the right to property and Article 1 of Protocol No 1 to the European Convention of Human Rights.

#### **3.4.5. Minorities**

192. National minorities in Albania (Greek, ethnic Macedonian and Serb-Montenegrin) and ethno-linguistic minorities (Vlach and Roma) have played a positive role in avoiding inter-ethnic tensions and conflicts – another good example to the region.

193. The co-rapporteurs met a representative of the Greek cultural association OMONIA (which represents the largest national minority in Albania). His main concern was the lack of accurate statistical information about the size of minorities. The Prime Minister has promised to carry out a census but no date has yet been fixed.

194. The Framework Convention for the Protection of National Minorities has been ratified but no specific laws have been introduced that would provide education in and the use of minority languages in dealings with the authorities and the display of traditional local names. The Charter for Regional or Minority Languages remains the only Council of Europe convention mentioned in the accession Opinion on Albania which has been neither signed nor ratified.

195. Responsibility for the protection of minorities has recently been placed directly with the Prime Minister. A State Committee on Minorities, attached to the Council of Ministers, is composed of representatives of all minorities and aims at promoting their participation in the public life of the country. However, lack of clear rules regarding its mandate has hampered its work

196. A Working Group, set up in 2003 to review the legislation on minorities, has recommended certain areas in which the legislative framework for minorities needed improvements and the provision of by-laws.

These recommendations have been included in the Action Plan for the implementation of the Stabilisation and Association Agreement (SAA) and are presently in the process of implementation by the competent authorities.

197. A Memorandum of Understanding was signed on 27 July 2006 between central and local government for co-operation with protecting and respecting minorities' rights in the regions of Gjirokaster and Vlora where the Greek minority mainly lives. A similar memorandum was signed in the Region of Shkodra, between the Prefect of this Region and the Chairman of the Gruemire municipality where the Serb-Montenegrin minority is concentrated. Similar memoranda will also be signed in other zones where minorities are living (for instance the ethnic Macedonian minority).

198. Following a decision by the Council of Ministers dated 5 May 2006 a private school was opened in Himara, the school "Omiros", which provides 9-year education in both Albanian and Greek.

199. In its 2004 report, the European Commission against Racism and Intolerance (ECRI) welcomed the adoption, in 2003, of a National Strategy for the Improvement of Living Conditions of the Roma Minority which provided also for a monitoring mechanism. However, ECRI noted that, despite the adoption of the Strategy, there had been few detectable improvements in the situation of Roma and Egyptians – the latter not being recognised as a minority at all – who suffered from a situation of particular marginalisation and neglect in the Albanian society. ECRI was also particularly concerned about the representation and participation of persons belonging to minority groups in public life, as well as the reportedly disproportionate number of Roma and Egyptian children who were victims of trafficking. A number of specific recommendations were made<sup>66</sup>.

200. On 18 September 2006, the Ministry of Labour, Social Issues and Equal Chances, in co-operation with the Council of Europe, organised a conference on the evaluation and monitoring of the implementation of the National Strategy for the Improvement of the Living Conditions of the Roma Minority. The participants welcomed the progress made so far and concluded that it was necessary to strengthen the monitoring provisions in the Strategy in order to reinforce implementation capacities. To achieve this, it was agreed that representatives of the Roma minority should participate in the monitoring sector of the Strategy<sup>67</sup>.

201. According to information provided by the State Committee of Minorities, the Roma associations have organised working groups and round tables at local and national level in order to raise awareness with a view to preventing trafficking. Human and children's rights organisations, both local and international, are assisting them.

202. Amendments to the Criminal Code were approved on 28 June 2006 by the Parliament's Commission on legal affairs, public administration and human rights to make discrimination an aggravating circumstance in the commission of a criminal offence.

203. Moreover, a draft law on state police has been prepared by the Ministry of the Interior, in co-operation with international partners. It seeks to increase the participation of minorities in law-enforcement structures.

204. According to information provided by the Albanian authorities, their second periodic report on the Framework Convention for the Protection of National Minorities has been completed and sent for comment to the associations of minorities and non-governmental organisations. It should be presented to the Advisory Committee as soon as these comments are received.

205. The Albanian authorities must organise a nationwide census including information on national, ethnic and religious belonging, without further delay. They must also: i) strengthen the role of the newly established State Committee on Minorities by establishing clear rules and guidelines for its work; (ii) ensure effective implementation of the Framework Convention for the Protection of National Minorities by improving existing legislation and adopting specific by-laws to ensure education in and the use of minority languages in dealings with the authorities; (iii) allow the display of traditional local names; and (iv) continue their efforts to implement the recommendations made in the 2004 report of the European Commission against Racism and Intolerance (especially as regards the situation of Roma and Egyptians).

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<sup>66</sup> See doc. CRI (2005) 23.

<sup>67</sup> The Roma associations should nominate their respective candidates by mid-October 2006.

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

206. Amendments to the law on gender equality, adopted in May 2006, abolished the State Committee on Equal Opportunities and placed responsibility for gender equality issues with a Directorate on Policies for Equal Opportunities within the Ministry of Labour, Social Affairs and Equal Opportunities. The Directorate is responsible for drafting and ensuring implementation of medium and long term policies for gender equality, child protection and disabled persons. The opposition, some pressure groups and some NGOs have criticised the abolition of the State Committee on Equal Opportunities.

207. Only 10 of the 140 members of parliament are women. Female parliamentarians with whom the co-rapporteurs spoke said that a proportional electoral system would increase the number of women in Parliament. In the Action Plan for 2008, the Directorate of Policies for Equal Opportunities has planned amendments to the Electoral Code to introduce gender based quotas.

208. Forced marriages and domestic violence against women remain a serious problem – according to reports by local and international observers. Some claim that the number of cases reported and prosecuted is significantly lower than the number of real cases<sup>68</sup>. In its 2006 Progress Report, the EC considers that these problems are not properly addressed by government strategy or by legislation.

209. The authorities, for their part, report that a National Strategy on Gender Equality and an Action Plan for its implementation are being drafted by the Ministry of Labour, Social Affairs and Equal Opportunities. Provisions will specifically be made regarding forced marriages (something which the authorities say is sporadic and only occurs in remote rural areas).

210. A draft law on the prevention of domestic violence has been prepared by an NGO coalition. It was presented on 23 January 2006 to the Legal Affairs Committee of the Parliament through a petition signed by 20,000 citizens. The draft law includes provisions for both the prevention of such violence and for measures to protect victims, who lack effective remedies under the current legislation. The draft is currently pending before Parliament and its adoption is expected before the end of the year. A Strategy is also being prepared to deal with domestic violence. At present, the Criminal Code does not provide for any specific provisions aimed at dealing with domestic violence.

211. The Albanian authorities must: adopt without further delay and effectively implement the law on the prevention of domestic violence, which has been prepared by the civil society; promote active participation of women in the political life of the country.

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

212. An Inter-Ministerial Committee on the Rights of the Child and a department for children's rights in the Ombudsman's Office have been established. Although their number has been reduced, 94 children are still reported to be hiding at home due to blood feuds and are thus prevented from attending school.

213. In the context of the National Strategy on Pre-University Education, the Ministry of Education and Science, in co-operation with UNICEF, have prepared a draft law on the protection of children who fear being killed as a result of family feuding. Questionnaires for parents and isolated children have been compiled and direct interviews with them have been organised. The Ministry is committed to ensure 100% education of the isolated children at home.

214. Following a decade of significant internal migration, many citizens have not been registered with the authorities in their actual place of residence. As a result, their children have no birth certificates or other legal documents. Thus, the country has a large number of vulnerable, unregistered children, in particular from the Roma community, who are at risk of trafficking or exploitation.

215. Albanian law provides for the right to 9 years of free education, but due to socio-economic problems and lack of proper documents not all children complete compulsory education. According to information

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<sup>68</sup> See in particular the recent report by Amnesty International: *"Albania: Violence against Women in the Family: 'It's not her shame'" – Amnesty International*, 30 March 2006, AI Index: 11/0002/2006. Statistics referred to in the report suggest that around 40% of Albanian women have experienced domestic violence in its physical or psychological forms. The co-rapporteurs were particularly shocked to read, as an illustration of the weakness of legal protection against domestic violence, that the killing in February 2004 of a 21-year old woman by her father for alleged tardiness was punished with less than two years imprisonment. Despite the attention the case received from the media and the NGOs, the prosecutor did not appeal the sentence.

provided by the ruling parties, steps have been taken to boost school attendance. The Ministry of Education has: intensified parent awareness campaigns and achieved co-operation with various foundations and associations for easing the poverty of children in need; and, built new schools and renovated many others. As a result, class sizes have reduced and the quality of teaching improved. At the request of the Prime Minister and the Minister of Education, the Council of Europe is providing expert assistance by advising and commenting on a draft Master Plan and a draft law on higher education<sup>69</sup>.

216. Child labour remains a major problem. The law sets the minimum age of employment at 14 and regulates the amount and type of labour that can be performed by children under the age of 18. However, legal provisions are not being respected in practice. According to the Children's Rights Centre of Albania (CRCA), approx. 50,000 children under the age of 18 work either full or part time, some as many as 16 hours a day.

217. According to information provided by the authorities, measures to tackle the problems of school attendance, child labour and unregistered children are being addressed by an Action Plan for implementing a National Strategy for Children by 2010. As part of this Strategy, in July 2006 an Inter-ministerial Committee for the Rights of Children has been set up and a supporting Secretariat has been provided within the Ministry of Labour, Social Affairs and Equal Opportunities. This Secretariat will co-ordinate the work with local and international stakeholders.

218. The Albanian authorities must rapidly implement measures to tackle the problems of school attendance, child labour and unregistered children.

#### **3.4.8. Homosexuality**

219. Discriminatory provisions in the Criminal Code which provided for a different age of consent for same-sex relations (18 years) and for opposite-sex relations (14 years) have been repealed.

220. There are claims that discrimination against homosexuals persists as do arbitrary arrest and abuse of homosexuals by the police<sup>70</sup>. Although discrimination based on race, ethnicity or language is prohibited by the Constitution, there is no constitutional guarantee against discrimination based on sexual orientation and the latter is not mentioned among the grounds for which discrimination is prohibited in the Labour Code.

221. The Albanian authorities say that any discrimination against homosexuals is simply due to a wrong implementation of the law. No such concern has been raised with the Ministry of Justice and no specific recommendation to introduce any legislative amendments has been made by any international organisation.

222. It is claimed that the greatest problem homosexuals face today is public disapproval. Homosexuals therefore say they are reluctant to take cases to courts because it would publicise their homosexuality.

223. At present, an NGO called GISH (Group for Social Integration), registered in 2004, tries to create the conditions for the members of the homosexual community to live in equality with others and achieve social acceptance and integration through the promotion of public awareness on homosexuality.

224. The Albanian authorities are invited to investigate the allegations and, if they are found to be justified, do all they can to oppose discrimination based on sexual orientation.

#### **3.4.9. Trafficking in human beings**

225. Trafficking in human beings has been significantly reduced during the last two years and this tendency has continued during 2006. According to international observers, the country remains a source country for trafficking of women and children for the purpose of sexual exploitation and forced labour, but is deemed to no longer be a significant country of transit. Most trafficked women and girls are transported to Italy, Greece and other Western European countries such as Belgium, France, the Netherlands, Norway and

<sup>69</sup> In their comments, the Albanian authorities argue that, according to statistics provided by the Ministry of Education and Science, compulsory education enrolment is estimated at 98.8%, high school at 77% and higher education at 90%. These figures vary significantly from those reported in the US State Department Report on Human Rights Practices in Albania – 2005, p. 9.

<sup>70</sup> See also a report on the arrest of homosexuals in Tirana on 15 August 2006, published by the Albanian Human Rights Group on 5 September 2006 in <http://www.ahrg.org>.

the United Kingdom. There has been a significant increase in the trafficking of children to Kosovo for begging or sexual exploitation<sup>71</sup>.

226. Prosecutions of traffickers, although improved, remain a problem. Despite progress in the implementation of the Law on witness' protection, with six implementing acts having been approved in June and July 2005, witnesses' fear of retaliation remains a strong deterrent to the effective prosecution of trafficking cases. According to information provided by the Prosecutor's Office, by the end of 2005, 341 trafficking in persons' cases involving 343 defendants were ongoing. By November 2005, 179 persons had been sentenced and, in four cases, 10 defendants were convicted of trafficking in persons and received at least the minimum sentence. The police detained 53 persons in connection with trafficking of women for sexual exploitation<sup>72</sup>. Although direct or indirect involvement of the police in trafficking has repeatedly been reported, in 2005 the authorities arrested one police officer for trafficking, who was tried and acquitted.

227. Victims of trafficking often face significant stigmatisation from their families and society. Very limited services are provided for them by the state. Lack of effective assistance can result in re-trafficking. The agreement recently signed between Albania and Greece on the re-admission of trafficked children (the first agreement of this type signed by the Albanian government) is a significant step forward. The agreement provides for services to allow reintegration of trafficked children and prevent re-trafficking, as well as financial assistance to the Albanian government for implementation. Similar agreements are expected to be signed soon with Italy and the United Kingdom.

228. In listing other positive measures taken to fight trafficking of human beings the ruling parties refer to the establishment in 2005 of the Office of the National Coordinator for Anti-trafficking under the Deputy Minister of Interior. At local level, in June 2006, Regional Committees against the trafficking of Human Beings, presided over by the respective Prefects, were established by an order of the Prime Minister.

229. The co-rapporteurs welcome the significant decrease in trafficking in human beings over the last years as well as agreements recently signed or planned with neighbouring countries on the re-admission of trafficked children. They ask the Albanian authorities to further improve effective prosecution of traffickers and assistance to the victims of trafficking.

#### 4. Conclusions

230. The last monitoring report examined by the Assembly and Resolution 1377(2004) adopted in April 2004 welcomed the progress made since 2001 towards a functioning pluralist democracy, and a state governed by the rule of law and respect for human rights. The Assembly concluded that "*the monitoring procedure should remain open until the Albanian authorities achieve further progress in the compliance with general obligations and specific commitments resulting from Council of Europe membership, notably to demonstrate tangible achievements in preventing and fighting corruption and organised crime, to improve their record in the implementation of legislation and to carry out elections in full compliance with international standards*".

231. The International Election Observation Mission, including the *ad hoc* Committee of the Bureau, has concluded that the parliamentary elections in Albania of 3 July 2005, although conducted on the basis of an improved Electoral Code, "*complied only partially with international commitments and standards for democratic elections*".

232. The co-rapporteurs welcome the fact that the July 2005 elections marked the first peaceful and smooth rotation of power in Albania since the fall of communism and the first parliamentary elections in 1991.

233. However, Albanian political life has continued to be dominated by confrontation and obstructionism. The poor political climate has again delayed major reforms, in particular in the field of election legislation and the media, which are urgently required in view also of the forthcoming local elections scheduled for 20 January 2007. A bi-partisan agreement reached on 30 August 2006 with international assistance was warmly welcomed but has yet to be implemented.

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<sup>71</sup> In this respect, the ruling parties note in their comments that as a consequence of the three-year ban on the use of speed boats in Albanian waters, there is now a deviation of illegal border crossing from the coast line to the land borders in the north and north-east of Albania. However, the majority of reported cases concern assistance to illegal crossing of border or smuggling of persons and not trafficking of human beings, including children.

<sup>72</sup> *Ibid.*



234. The co-rapporteurs congratulate Albania on the signing of the Stabilisation and Association Agreement with the EU in June 2006. They recall in this respect that the political requirements for EU accession largely coincide with Albania's commitments and obligations towards the Council of Europe in the field of democracy, the rule of law and human rights.

235. A number of concrete recommendations in these three fields are addressed to the Albanian authorities and the political parties in the preliminary draft resolution prepared by the co-rapporteurs.

236. In conclusion, the co-rapporteurs welcome the progress achieved so far by Albania in the honouring of its Council of Europe membership obligations and commitments. They recommend to the Assembly to pursue its monitoring until measures taken or planned in the fields mentioned in their preliminary draft resolution have produced tangible results.

## APPENDIX

### Programme of the fact-finding visit in ALBANIA from 3 to 6 April 2006

Members of the Delegation:

Co-rapporteurs: Mr Leo PLATVOET (Netherlands, UEL)  
Mr David WILSHIRE United Kingdom, EDG)

Secretariat: Mrs Despina CHATZIVASSILIOU, Secretary, Monitoring Committee of the PACE

#### Monday, 3 April 2006

- 17.15-20.00 Meetings with NGOs, namely:
- 17.15-17.45 members of the GISH association
- 18.00-19.00 Mr Erion VELIAJ, Executive Director of MJAFT  
Mr Remzi LANI, Executive Director of the Media Institute  
Mr Andrea STEFANI, IREX  
Mr Pjerin MARKU, Executive Director of the Albanian Coalition against Corruption
- 19.00-20.00 Ms Vasilika HYSI, Albanian Helsinki Committee  
Mr Genci TERPO, Albanian Human Rights Group  
Ms Delina FICO, Project Director/Chief of Party, Fostering Religious Harmony in Albania  
(USAID and World Learning for International Development)
- 20.30 Working dinner with:  
Mr Pavec VACEK, Ambassador, Head of the OSCE Presence in Albania  
Mr Sweder VAN VOORST TOT VOORST, Ambassador of the Netherlands

#### Tuesday, 4 April 2006

- 8.15-9.15 Working breakfast with:  
Mr Constantin EREMIA, Ambassador of Romania  
Mr Klaus DERKOWITSCH, Ambassador of Austria  
Mr Lutz SALZMANN, Head of the European Commission Delegation
- 9.20-10.00 Meeting with the Albanian Parliamentary Delegation to the Council of Europe Parliamentary Assembly:  
Mr Aleksander BIBERAJ, Chairperson, Democratic Party  
Mr Taulkat DEDJA, Socialist  
Mr Kastriot ISLAMI, Socialist  
Mr Bujar NISHANI, Democrat Party  
Mrs Lajla PERNASKA, Republican Party
- 10.00-11.00 Meeting with Mr Fatos BEJA, Deputy Speaker of the Parliament  
Mr Spartak NJELA, Chairman of the Legal Affairs, Public Administration and Human Rights Committee, and other members of this Committee
- 11.00-12.00 Meeting with Mr Ilir META, Chairman of the European Integration Committee, and other members of this committee
- 12.00-12.45 Meeting with Mr Sali BERISHA, Prime Minister
- 12.45-13.45 Meeting with Mr Pandeli MAJKO, Chairman of the Parliamentary Group of the Socialist Party, and leaders of other opposition parliamentary groups

- 14.00-15.00 Working lunch with Ms Fatmira LASKA, General Inspector, High Inspectorate for Declaration and Audit of Assets
- 17.00-18.00 Meeting with Mr Sokol OLLDASHI, Minister of the Interior  
Mr Ferdinand PONE, Deputy Minister in charge of local government issues
- 18.00-19.00 Meeting with Mr Aldo BUMCI, Minister of Justice
- 19.00-20.00 Meeting with leaders of the coalition parliamentary groups
- 20.30 Working dinner with Mr Richard JONES, HM Ambassador  
Ms Marcie Berman RIES, Ambassador of the United States of America

**Wednesday, 5 April 2006**

- 9.00-10.00 Meeting with Mr Gjergj SAULI, President of the Constitutional Court
- 10.00-11.00 Meeting with Mr Ilir PANDA, Deputy Chairman of the High Council of Justice
- 11.00-12.00 Meeting with Mr Sander SIMONI, President, and judges of the Court of Serious Crimes
- 12.00-13.00 Meeting with Mr Ermir DOBJANI, Ombudsman
- 17.00-18.00 Meeting with Mr Edi RAMA, Mayor of Tirana and Leader of the Socialist Party
- 18.00-19.00 Meeting with Ms Edith XARXHI, Deputy Minister of Foreign Affairs
- 19.00-20.00 Meeting with Mr Mihas NACO, Director of Press and Information Office of OMONIA
- 20.00 Working dinner hosted by: Mr Fatos BEJA, Deputy Speaker of the Parliament, with the participation of the Chairman and members of the Albanian Parliamentary Delegation to PACE

**Thursday, 6 April 2006**

- 9.00-10.00 Meeting with the Deputy Prosecutor General and the Heads of the Department of Organised Crime and of the Research Department
- 10.00-11.00 Meeting with Mr Jozefina TOPALLI, Speaker of the Parliament
- 11.00-12.00 Meeting with Mr Ilir RUSMAJLI, Deputy Prime Minister

*Reporting committee:* Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee).

*Reference to committee:* Resolution 1115 (1997).

*Draft resolution* adopted unanimously by the committee on 13 December 2006.

*Members of the committee:* Mr Eduard **Lintner** (Chairperson), Mrs Hanne **Severinsen** (1<sup>st</sup> Vice-Chairperson), Mr Mikko **Elo** (2<sup>nd</sup> Vice-Chairperson), Mr Tigran Torosyan (3<sup>rd</sup> Vice-Chairperson), Mr Aydin **Abbasov**, Mr Pedro Agramunt, Mr Birgir Ármannsson, Mr Jaume Bartumeu Cassany, Mrs Mertixell Batet, Mr Aleksander **Biberaj**, Mrs Gülsün **Bilgehan**, Mrs Mimount **Bousakla**, Mr Luc **Van den Brande**, Mr Patrick Breen, Mr Mevlüt **Çavuşoğlu**, Ms Lise Christoffersen, Mr Boriss Cilevičs, Mr Georges **Colombier**, Mrs Herta Däubler-Gmelin, Mr Joseph Debono Grech, Mr Juris Dobelis, Mrs Josette **Durrieu**, Mr Mátyás **Eörsi**, Mr Per-Kristian Foss, Mr György **Frunda**, Mrs Urszula Gacek, Mr Jean-Charles **Gardetto**, Mr József Gedei, Mr Marcel Glesener, Mr Charles Goerens, Mr Stef Goris, Mr Andreas **Gross**, Mr Alfred Gusenbauer, Mr Michael Hagberg, Ms Gultakin Hajiyeva, Mr Michael **Hancock**, Mr Andres **Herkel**, Mr Serhiy **Holovaty**, Mr Kastriot **Islami**, Mr Elmir Jahić, Mr Erik Jurgens, Mr Evgeni Kirilov, Mr Konstantin **Kosachev**, Mr Andros Kyprianou, Mrs Darja Lavtižar-Bebler, Mrs Sabine Leutheusser-Schnarrenberger, Mr Tony Lloyd, Mr Mikhail **Margelov**, Mr Bernard Marquet, Mr Frano Matušić, Mr Miloš Melčák, Mrs Nadezhda **Mikhailova**, Mr Neven Mimica, Mr Paschal Mooney, Mr João Bosco **Mota Amaral**, Mr Zsolt Németh, Mr İbrahim **Özal**, Mr Theodoros **Pangalos**, Mr Leo **Platvoet**, Ms Maria **Postoico**, Mr Christos Pourgourides, Mr Johannes Randegger, Mr Dario **Rivolta**, Mr Armen **Rustamyan**, Mrs Katrin Saks, Mr Kimmo **Sasi**, Mr Adrian Severin, Mr Samad Seyidov, Mr Vitaliy **Shybko**, Mrs Sabina Siniscalchi, Mr Leonid **Slutsky**, Mr Michael Spindelegger, Mrs Elene **Tevdoradze**, Mr Egidijus **Vareikis**, Mr Miltiadis **Varvitsiotis**, Mr José Vera Jardim, Mrs Biruté Vésaitė, Mr Oldřich Vojtíš, Mr David **Wilshire**, Mrs Renate Wohlwend, Mr Andrej **Zernovski**, Mr Emanuelis **Zingeris**.

N.B.: The names of the members who took part in the meeting are printed in **bold**.

*Secretariat of the committee:* Mrs Ravaud, Mrs Chatzivassiliou, Mrs Theophilova-Permaul, Mrs Odrats