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

Honouring of obligations and commitments by Albania¹

Information note by the co-rapporteurs on their fact-finding visit to Tirana and Vlora (15-18 September 2008)

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¹ This information note has been made public by decision of the Monitoring Committee dated 19 November 2008.

I. Introduction

1. We visited Tirana and Vlora from 15 to 18 September 2008 (some eight months before the next general election). The purpose of the mission was to assess the progress towards the full implementation of Resolution 1538 (2007).
2. We met with the authorities at the highest level (including the President, Prime Minister, Vice-Prime Minister, Speaker of the National Assembly, several Ministers and Prosecutor General), as well as with NGOs, media representatives, leaders of parliamentary groups from the governing and opposition parties, representatives of the international and diplomatic community and representatives of the Greek and Bosniak minorities.
3. We extend our thanks to the Albanian parliamentary delegation and its secretariat for the excellent organisation of the programme for our visit. We were able to have extremely frank discussions and obtain information at all levels.
4. The absence of a Council of Europe representative in Tirana makes monitoring more difficult and was regretted by the representatives of the international community that we met.
5. We focused on five issues: the 2008 constitutional reforms, the electoral reform and preparation of 2009 parliamentary elections, the reform of the judiciary, the fight against corruption and organised crime and local self-government.
6. There were two major political achievements in Albania in 2008: the political consensus between the two major political parties - the Democratic Party leading the ruling majority and the Socialist Party in opposition - which led to the constitutional reform in Spring 2008, and economic growth - along with Montenegro, at 6% (according to the IMF) the highest in the Balkans.

II. The 2008 constitutional reform

7. In 2007, the two largest parties continued to dominate Albanian politics. However, early in 2008, a large consensus was reached to adopt important constitutional and legislative reforms, concerning, *inter alia*, the electoral system, the mandate of the General Prosecutor and the election of the President of the Republic.
8. Most interlocutors welcomed this agreement, reached in the run-up to the NATO Summit in Bucharest in April, when Albania had to achieve concrete results to secure its accession to the Organisation.
9. On 21 April 2008, the Albanian National Assembly approved a package of amendments to the Constitution by a large majority. The small political groups voted against the changes, accusing the two big parties of excluding them from the discussions and claiming that the amendments were unconstitutional.
10. Regrettably, the constitutional changes were not referred to the Venice Commission for an opinion before their adoption. However, following a decision by the Monitoring Committee during the June part-session of the Assembly, the views of the Venice Commission were requested. Its opinion should be adopted at its next meeting in December 2008.
11. The amendments provided for:
 - the change of the electoral system from a mixed one to a regional proportional system;
 - changes in the mandate of the members of the National Assembly and of the President of the Republic;
 - the introduction of the principle that the President is elected for a non-renewable term;
 - changes of procedure in the election of the President of the Republic, introducing an absolute majority vote at the fourth and fifth voting rounds;
 - changes to the rules regulating a motion of confidence in the Council of Ministers;
 - a time limit on the mandate of the General Prosecutor.

III. Electoral reform and preparation of 2009 parliamentary elections

12. The 2008 constitutional reform changed the electoral system from a mixed one² to a proportional regional one. The new system eliminates the so-called "Dushk" strategy³, condemned by several international reports.

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

14. The Ad Hoc Parliamentary Committee for Electoral Reform, created by the Parliament on 30 June 2008 (after the failure of the previous committees to reach a consensus), is working on the preparation of the amendments to the Electoral Code. Contrary to the previous committees on the same subject, the right of veto of the two main political parties has been removed. This should hopefully facilitate progress. The Committee is composed of one representative from each parliamentary group and has nine members in total. The independent members of parliament are not represented on the committee. Every member of this Ad Hoc Committee represents all the members of his/her political group and he/she has as many votes as the total number of the MPs belonging to that parliamentary group⁴.

15. According to the Constitution, the general elections are to take place by the end of June or early July 2009 at the latest. The main outstanding issue is whether the civil status registry and the production and distribution of new identity cards will be finalised in time.

16. A project between the Government and the EU Presence in Albania for technical and financial assistance for the modernisation of the civil registration and the address book system is ongoing. The Ministry of the Interior has started the production of the new identity cards.

17. Government officials confirmed their strong determination and confidence that they could fulfil their commitment and organise free and fair elections. Opposition leaders, as well as the representatives of the international community, expressed serious doubts that the printing and distribution of over 3 million identity cards could be completed in time.

IV. Reform of the judiciary and the fight against corruption

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

19. The reform of the judiciary is progressing and the authorities reiterated their commitment to fighting corruption and reinforcing the rule of law in the country. Opposition leaders, international observers and NGO representatives we met regretted that this was being done in an unstructured manner, with no comprehensive approach, most of the time without consultation and often in a hasty manner.

20. In February 2008, the Parliament voted a new law on the organisation of the judiciary with a consensus between the majority and the opposition.

21. The Parliament set up a sub-committee for the reform of the judiciary. The purpose of this sub-committee is the definition of a National Pact on Justice which will need to be voted on by the Albanian Parliament.

22. The changes introduced in the Constitution on 21 April 2008 modified the mandate of the General Prosecutor from an unlimited to a 5-year term, bringing it in line with all the other constitutional institutions. The current General Prosecutor, Mr Ina Rama, was appointed in November 2007, after the dismissal by the President of the Republic of the previous General Prosecutor for serious breaches of the law during the exercise of his duties. The dismissal decree was issued on the basis of the results of the inquiry committee established by the parliament to look into the work of the General Prosecutor in the period 2006-2007. The

² 100 members were elected directly in single-member constituencies and 40 members were elected proportionally on the basis of the national lists of the political parties.

³ The use of voting strategies (so-called "Dushk" from the name of the city where this practice was used for the first time) was considered to run counter to constitutional provisions for proportionality and to be disproportionately rewarded, potentially skewing the outcome of elections.

⁴ For example the representative of the Democratic Party has 42 votes, that of the Socialist Party has 33 votes, etc.

opposition boycotted the inquiry committee whose meetings were open to the media. The ex-General Prosecutor considered the inquiry committee anti-constitutional and initiated a procedure before the Constitutional Court. The decision on 20 May 2008 of the Constitutional Court focused on the conflict of competences between the parliament and the General Public Prosecutor, declared that the parliament does not have competence to control and evaluate decisions of the prosecutors in individual cases, but did not explicitly decide on the constitutionality of the inquiry committee.

23. The work of the High Court of Justice was hampered in May 2008 due to the expiry of the mandate of six of its fifteen members. According to the constitution, the members of the High Court of Justice are appointed by a decree of the President of the Republic and are subsequently confirmed by a vote in Parliament. Because of a dispute on another matter between the President of the Republic, the majority and the opposition in parliament, the process of appointment has been delayed. An ad hoc committee has been created by the President to facilitate reaching a consensus.

24. There are currently 143 cases pending against Albania before the European Court of Human Rights. In the course of 2007, six judgments were published, in five the court found a violation. Most of the cases relate to the right to a fair trial due to the failure to enforce a final judicial decision (Article 6 § 1)⁵. Following the judgment of the Court in the case *Beshiri and others v. Albania*⁶, many cases concerning restitution of property and violation of the applicant's right to receive compensation for unlawful nationalisation of land⁷ (Article 1 of Protocol No. 1) were brought before the Court.

25. Despite efforts by the Government, corruption remains widespread and continues to be a very serious problem in Albania. From a survey conducted by IDRA (Institute for Development, Research and Alternatives) and made public at the beginning of May 2008, it appears that almost 92% of the general public believes that corruption is widespread and 47% that it was on the increase in 2008⁸.

26. The Government has drafted a new anti-corruption strategy for 2007-2013, in co-operation with the Council of Europe.

V. Local self-government

27. Decentralisation has only just started. Adopted legislation is not yet supported with necessary financial resources. This makes implementation very difficult.

28. The local elections held on 18 February 2007 (originally scheduled on 20 January 2007) had to be postponed because of delays in reaching political agreements. The Democratic Party won the local elections by a very small margin over the Socialist Party. The Socialist Party won in all the main municipalities of the country, except Shkoder, while the Democratic Party won most of the rural areas.

29. According to the conclusions of the OSCE/ODHIR monitoring mission, "although the 18 February local elections provided for a competitive contest, they were another missed opportunity for Albania to conduct elections fully in line with OSCE commitments, Council of Europe commitments and other international standards for democratic elections. Political parties fell short of respecting the considerable responsibilities granted to them by the law. While election day was calm overall, voting was marred by procedural shortcomings and in some places by tension"⁹.

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

⁵ See for example *Driza v. Albania* (33771/02) and *Ramadhi and Others v. Albania* (38222/02), judgments of 13 November 2007.

⁶ See *Beshiri and Others v. Albania* (7352/03) judgment of 22 August 2006.

⁷ In its judgments, the Court has called on Albania, as a matter of urgency, to take all necessary statutory, administrative and budgetary measures to ensure that claimants "speedily" receive the compensation or land awarded to them under the Property Restitution and Compensation Act of 1993 (Property Act). Those measures are to include the creation of an adequate fund to pay those applicants entitled to financial compensation.

⁸ For checking the results of IDRA survey see http://www.idra-al.org/pdf/en/IDRA-CPE-2008-Survey_Summary-of-Findings_EN.pdf

⁹ See OSCE/ODIHR Election Observation Mission Report, on the 18 February 2007 Local Elections in Albania.

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

32. A new legal framework was approved in February 2008 regarding local borrowing. The law seeks to increase local government powers in this respect and ensure a transparent process of macroeconomic stability.

33. During our meeting with Mr Edi Rama, Mayor of Tirana, he claimed that neither the decentralisation process, nor the implementation of the adopted laws on local government had started. Unfortunately, the meeting with Mr Shpëtim Gjika, Mayor of Vlora, was cancelled by him at the last minute.

VI. Preliminary conclusions

34. The authorities remain committed to co-operation with the Council of Europe.

35. The opinion of the Venice Commission on the constitutional changes should have been sought before they were adopted.

36. The Media Law and the Electoral Code which are both being prepared must be drafted in co-operation with the Council of Europe and its Venice Commission.

37. The forthcoming parliamentary elections represent a major challenge for Albania.

38. Adopted legislation needs to be implemented promptly and in line with European standards.

39. All the political parties need to commit themselves to maintaining the current momentum for political change.

VII. The next steps

40. We plan to present a preliminary draft report to the committee at its next meeting. Hopefully this will facilitate an Assembly debate in April 2009.

APPENDIX

Programme of the fact-finding visit to Tirana and Vlora (15-18 September 2008)

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

Monday, 15 September 2008

Meetings with representatives of the civil society, as well as with the diplomatic corps (organised by the Information Office of the Council of Europe in Tirana)

Tuesday, 16 September 2008

- 07.30 Departure to the City of Vlora
- 10.00 Meeting with the Mayor of Vlora, Mr Shpëtim GJIKA, as well as with the Chairman of the Municipal Council
- 10.30 Meeting with the Chairman of the District of Vlora, Mr Agron SHARRA
- 11.00 Meeting with the representative of the Greek minority in Vlora, Mr Jorgo TALO
- 11.30 Meeting with the Prefect of Vlora, Mr Hasan HALILI
- 12.00 Visit of the Independence Museum in Vlora
- 13.00 Lunch for the delegation hosted by the Mayor, Mr Shpëtim GJIKA
- 16.00 Departure to Shijak
- 18.00 Meeting with the representative of the Bosnian minority in Shijak, Mr Fiqiri KLARI
- 19.00 Official dinner hosted by Mr Ilir RUSMALI, Chairman of the Parliamentary Standing Committee for Legal Issues, Public Administration and Human Rights

Wednesday, 17 September 2008

- 09.00 Meeting with the Speaker of the Parliament of Albania, Mrs Jozefina ÇOBA TOPALLI
- 09.30 Meeting with the President of the Republic of Albania, Mr Bamir TOPI
- 10.00 Meeting with the Prime Minister of the Republic of Albania, Mr Sali BERISHA
- 10.45 Meeting with the Deputy Minister for the Local Government, Mr Ferdinand PONE
- 13.00 Official lunch hosted by the Speaker of the Albanian Parliament, Mrs Jozefina ÇOBA TOPALLI
- 15.00 Meeting with the Minister of Justice, Mr Enkelejd ALIBEAJ
- 15.45 Meeting with the Chairman of the Constitutional Court, Mr Vladimir KRISTO
- 16.30 Meeting with the Chairman of Serious Crime Court, Mr Dritan HALLUNAJ
- 17.15 Meeting with the Chairman of the High Council of Justice, Mr Kreshnik SPAHIU
- 18.00 Meeting with the Ombudsman, Mr Emir DOBJANI
- 18.45 Meeting with the Prosecutor General, Mrs Ina RAMA

19.30 Dinner hosted by the Chairman of the Parliamentary delegation to the PACE,
Mr Aleksandër BIBERAJ

Thursday, 18 September 2008

09.00 Meeting with the Mayor of Tirana, Mr Edi RAMA

09.45 Meeting with the Head of the Albanian delegation to the PACE, Mr Aleksandër BIBERAJ

10.15 Meeting with the Chairman of the Parliamentary Standing Committee for Legal Issues, Public Administration and Human Rights, Mr Ilir RUSMALI

10.45 Meeting with the Chairman of the Parliamentary Standing Committee for the European Integration, Mr Ilir META

11.30 Meeting with the Chairman of the Parliamentary Group of the Democratic Party, as well as with the Chairmen of other majority coalition parties, Mr Astrit PATOZI, Mr Arjan MADHI, Mr Ndue SHPANI, Mr Tritan SHEHU, Mr Vangjel DULE and Mr Petrit GJONI

12.00 Meeting with the Chairman of the Socialist Parliamentary Group, as well as with the Chairmen of other opposition coalition parties, Mrs Valentina LESKAJ, Mr Skënder GJINUSHI, Mr Pëllumb XHUPI

13.00 Meeting with the Vice Prime Minister, Mr Genc POLLO

14.00 Lunch hosted by the Vice Prime Minister, Mr Genc POLLO

15.30 Meeting with the Minister of Interior, Mr Bujar NISHANI