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

Honouring of obligations and commitments by Albania

Information note by the co-rapporteurs on their fact-finding visit to Tirana (30 June - 1 July 2011)¹

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¹ This information note has been made public by decision of the Monitoring Committee dated 8 September 2011.

I. Introduction

1. We visited Tirana from 30 June to 1 July 2011. Our visit took place during the very crucial and tense period that followed the 8 May local elections in the country. As a result, our visit focused on the political developments in relation to the outcome of the mayoral election for Tirana and the discussions on possibilities for resolving the ensuing political stand-off.

2. During the visit, we met, inter alia, the Prime Minister of Albania², the Deputy Speaker of the Albanian Parliament, the Chairman of the Socialist Party (SP), the Chairman of the Socialist Movement for Integration (SMI), the Chairman of the Constitutional Court, the Chairman of the Central Election Commission, as well as representatives of civil society and members of the diplomatic community in Tirana. We would like to thank the Parliament of Albania, and the Head of the Council of Europe Office in Tirana and his staff, for the excellent programme and the assistance extended to our delegation. The programme is attached as an appendix.

II. Background

3. The political crisis over the outcome of the Tirana mayoral election is rooted in the political crisis that ensued after the June 2009 parliamentary elections. The 2009 developments are outlined in detail in the report on the "Functioning of democratic institutions" (Doc. 12113 (2010)), that was debated in the Parliamentary Assembly during the January 2010 part-session.

4. The parliamentary elections in 2009 were conducted on the basis of a new electoral code that was drafted and adopted on the basis of a consensus between the main political parties. It introduced a variant of a regional proportional election system.

5. In the 2009 elections, the coalition led by the Democratic Party (DP) won 70 of the 140 parliamentary seats, the coalition led by the Socialist Party (SP) won 66 seats and the Socialist Movement for Integration (SMI) the remaining 4 seats. A ruling coalition was formed between DP and SMI and Mr Berisha was appointed for a second time Prime Minister of Albania. It should be underscored that Albanian politics are still very much personality based and that the political leaders maintain strong control over their respective parties and party officials. As a result, the political environment in Albania is largely dominated -and controlled- by the leaders of the three largest parties, Prime Minister Sali Berisha of the Democratic Party, former mayor of Tirana, Edi Rama of the Socialist party, and former Prime Minister Ilir Meta of the Socialist Movement for Integration. In addition, the sometimes tense, personal relationships between these party leaders strongly influence inter-party relationships and strategies.

6. Alleging that fraud had taken place in a number of districts, the SP appealed against the results of the 2009 parliamentary elections to the Central Election Commission (CEC), and later to the Electoral College.³ In both instances, the appeals of the SP were dismissed. In protest against the outcome of the elections, the SP therefore decided to boycott the work of the parliament, as well as of a number of state institutions. Given that the governing majority lacks the three fifth qualified majority to implement constitutional and organic changes, this boycott has negatively affected the implementation of a number of important reforms needed for possible accession to the European Union, which is one of the main political priorities for the country.

7. The SP subsequently announced that it would return to the parliament if a number of conditions were met. The most important were the establishment of a special inquiry committee into the alleged election shortcomings and the opening of the ballot boxes in order to establish proof of possible electoral fraud. In subsequent meetings with the rapporteurs at that time, the SP leadership clarified that, while they formally accepted the results of the elections, they wished to open the ballot boxes in order to investigate, and collect evidence of, the electoral fraud they alleged had taken place. While the authorities were willing to establish a special inquiry commission, they resolutely refused, with the backing of the courts, to allow the re-opening of the ballot boxes on the grounds that the final results had been announced in line with the existing legislation and had been certified by the courts. The election process had therefore legally ended and consequently the boxes legally could not be opened.

8. Most observers are of the opinion that internal politics and power relations inside the SP played a significant role in the 2009 stand-off. According to the SP bylaws, introduced by Mr Rama, a party leader must resign if the party loses an election under his or her leadership. However, on the proposal of Mr Rama, the SP adopted a resolution in which it stated that the party had not lost the election, but that instead the

² who is also the leader of the Democratic Party

³ The Electoral College is the highest election related court in the country.

election had been stolen from it. As a consequence, Mr Rama was not obliged to resign from his post as party leader. It should be noted that this decision, as well as the boycott strategy, was not unanimously supported among the party membership. This was highlighted by the decision of a number of SP MPs who entered the parliament despite their party's boycott of its work. However, in general, Mr Rama maintained overall control over the party and its strategy.

9. Eventually, the SP ended its boycott of the parliament and replaced it by a "conditional relation with the parliament". This decision was partly guided by the wish not to lose its parliamentary mandates, which it would have if its members had not been sworn in within 6 months after the elections. While the SP formally returned to the parliament, we were informed that in reality the stagnation and political stand-off continued. This in turn affected the preparations for the local elections that were held on 8 May 2011.

10. A main feature of the political stand-off in 2009 was the fact that the different parties tried to enlist international support to strengthen their positions. To an extent, the international community unwittingly allowed this to take place, which complicated the possibilities for mediation and the resolution of the stand-off.

III. 2011 local elections

11. On 8 May 2011, local elections took place in Albania for city councils, mayors and heads of communes. A number of observers hoped that the local elections would help bring an end to the ongoing political stand-off. In their view, either a victory by Mr Rama would legitimise his continued leadership of the SP, or in case of defeat, his position would be substantially weakened inasmuch as it would confirm his party's defeat in 2009. However, other observers predicted that, whatever the outcome, the election results would only lead to further radicalisation of the situation, due to the strong personal animosity between the party leaders and their control over their respective party line and activists.

12. The 2011 local elections in Albania were observed by international observers from, inter alia, the OSCE/ODIHR and the Congress of Local and Regional Authorities of the Council of Europe. The Congress and the OSCE/ODIHR concluded that these elections, despite the polarised and antagonistic political environment, were overall conducted in a democratic manner, although a number of procedural shortcomings were noted.

13. When preliminary results were announced, incumbent Mayor of Tirana Edi Rama of the SP appeared to have won the elections with a 10 vote difference over his rival Mr Basha of the DP. However, several complaints were filed with the CEC from a number of polling stations in Tirana.

14. For each different race⁴ (mayor, city council, head of commune), ballots were to be placed in separate ballot boxes. The complaints that were filed alleged that a considerable number of votes were declared invalid simply because they had been "miscalc" in the wrong ballot box. In one voting district in Tirana, this problem resulted in the district commission not being able to agree on the results. The CEC could not therefore finalise the tabulation of the results for the election of the mayor of Tirana.

15. In its decision on these complaints, the CEC ruled that miscalc, but otherwise valid ballots, should be considered as valid votes. The CEC therefore ordered these votes to be counted in the polling stations where complaints had been filed. After these votes were counted, the winner of the elections turned out to be Mr Basha with a difference of 80 votes over Mr Rama. As the CEC members were divided along party lines, all CEC decisions on the outcome of the elections were made with a simple majority, as a qualified majority was impossible to reach.

16. Not unexpectedly, the CEC decisions were strongly disputed. The SP appealed against the results, first with the CEC and then with the Electoral College. The Electoral College ruled that miscalc votes indeed should be considered valid and that, in the case of Tirana, the CEC is a second level election commission and therefore was competent to order the recount of votes. However, it also ruled that the CEC had been wrong in ordering the recount only in those polling stations where complaints had been filed. It therefore ordered the CEC to open all ballot boxes in Tirana and to count the miscalc votes in all polling stations.

17. On 23 June 2011, Mr Basha was officially declared the winner of the 2011 mayoral election for Tirana with a difference of 93 votes over his rival, incumbent mayor Rama. Several appeals were filed against the results and a re-run of the elections was demanded from the Electoral College by the SP. However, these

⁴ Legally, these distinct races are part of the same election.

appeals and demands were rejected by the Electoral College on legal grounds. On 1 August 2011, Mr Basha was installed as new mayor of Tirana.

IV. Election complaints process

18. The main controversy regarding the Tirana mayoral election was related to the issue of the validity of miscast ballots and the question whether the CEC was competent to order these votes to be counted. In addition, we received a number of reports that allege that the CEC changed its position regarding the validity of miscast ballots during the counting of the votes. Some electoral contestants alleged that the decisions of the CEC were politicised and strongly biased in favour of the DP candidate.

19. With regard to the validity of the votes, the Albanian election code gives a detailed list of criteria for the invalidation of a ballot. Given the detail and length of this list, it seemed to us that the legislator had intended this list to be exhaustive. This was confirmed by a number of interlocutors who informed us that the cross-party committee that drafted the election code wanted to set a clear list of criteria for the invalidation of votes in order not to give any discretion on this issue to the election commissions, as this had been a source of dispute in the past. In addition, according to European standards, maximum restraint should be exercised with regard to invalidating votes. It would seem to us that disenfranchising a voter for strictly administrative errors would run counter to this principle. Similar arguments were expressed by the Electoral College when it ruled on the issue of miscast ballots. This issue was not further pursued by the SP after the decision of the Electoral College.

20. Irrespective of the issue of the validity of the ballots, the allegation that the CEC changed its position regarding the validity of miscast ballots when the count was taking place is of concern. Several interlocutors reported that, before the elections, the CEC had allegedly instructed the election commissions to consider miscast ballots as invalid, but changed its position when the count was taking place. We are not in a position to confirm this claim, but we underscore that a representative of the European Commission for Democracy through Law (Venice Commission) reportedly had warned the CEC about the lack of clarity in the election code with regard to the issue of miscast ballots. None of the parties represented on the CEC (SP and DP) apparently deemed this issue serious enough to take immediate action or to appreciate the possible consequences of such a lack of clarity.

21. While the validity of the ballots seems relatively straightforward, the procedure that allowed them to be counted is more controversial, as the law is basically silent on this issue.

22. In order to address this lacuna in the law, the Electoral College considered that, in general, the district level commissions act as second level election administration and tabulate the result of the polling stations under their jurisdiction. The results are then confirmed by the CEC. However, this procedure is different for Tirana, which itself is divided into several election districts. The Electoral College therefore upheld the CEC decision that, in respect of Tirana, the CEC should be considered as the second level election commission. In support of this view, the Electoral College also noted that the CEC, in agreement with all election contestants, had been the body responsible for the registration of the candidates for the office of mayor of Tirana, which is a prerogative of a second level election commission. In the view of the Electoral College, this also confirmed the role of the CEC as second level election commission in respect of Tirana.

23. Closely related to the question whether the CEC could be considered as a second level election administration, is the question whether the CEC needed a 2/3 majority, or just a simple majority, to order the recount of invalidated votes. A qualified majority is needed for normative acts of the CEC. However, the Electoral College ruled that the decision to order the recount of the miscast ballots was taken by the CEC as a second level election commission and was thus not a normative act. It therefore ruled that the decision to order a recount in Tirana could be taken by a simple majority.

24. The SP also appealed the fact that the CEC had only ordered a recount of the miscast votes in those polling stations where official complaints against the invalidation of miscast votes had been registered. The Electoral College sided with the SP on this issue and ordered a recount of all miscast ballots in Tirana.

25. Both the CEC and Electoral College have been accused of being biased and politicised. The CEC is composed of party representatives who often split along party lines when deciding on crucial issues affecting their party's interest. While regrettable, this is in our view inherent in a party-based election administration. With regard to the Electoral College, the members are sitting supreme court judges, who are appointed on the basis of a consensus between SP and DP. In general, most independent observers consider that the decisions of the Electoral College during these elections and its preparation have demonstrated its impartiality vis-à-vis political interests.

V. Concluding remarks and future developments

26. The 2011 local elections in Albania are now formally concluded and their outcome seems to have been accepted by the Albanian population, if not by all its political leaders. It is very important that the political stand-off does not continue to paralyse the legislative process and the adoption of the reforms that are needed for the country, including for it to start the accession negotiations with the European Union.

27. We therefore welcome the explicit promise by the leader of the SP, Mr Rama, that his party will not again boycott the parliament and will return to work after the summer break. It is now important that all parties work towards normalising the political situation and start a political dialogue in the framework of the national parliament on the priorities for the country.

28. From the 2011 local elections, it is clear that further reforms of the election code are needed and that several principles and procedures in the current code need to be clarified. In addition, the current election code was drawn up taking into account the election strategies and perceived electoral advantages of the major parties in Albania. As a result, the electoral process is biased in favour of the main political forces at the cost of smaller parties and the possibility for new parties to enter the political arena are limited, which is a problem that needs to be addressed. We urge the Albanian authorities to seek close co-operation with the Venice Commission in this reform of the election code.

29. The political stand-off during these elections has underscored, yet again, the need to improve the democratic decision-making processes within the parties themselves. The internal party democracy has been criticised by members within both the Socialist and Democratic parties. It is of paramount importance that parties accept alternative and dissident views and do not portray them as betrayal of the party's cause. We intend to follow the issue of internal party democracy within the framework of the ongoing monitoring procedure.

30. In a welcome development, the international community has acted in unison under the co-ordination of the Ambassadors of the European Union, the United States and the OSCE. This has been instrumental in avoiding the escalation and internationalisation of the conflict and has contributed to the final acceptance of the outcome of these elections by the electoral stakeholders, including, most importantly, the Albanian voters.

31. It was and is of crucial importance to maintain the legitimacy of the domestic institutions and respect for their decisions to resolve the electoral dispute. Therefore, on all occasions, we stressed the need for all parties to accept and abide by the decisions of the courts and to refrain from statements that could be perceived as undermining the legitimacy of the domestic court system.

32. In this respect, the letter of Secretary General of the Council of Europe to the Albanian authorities, informing them of his intention to ask the Venice Commission for an opinion on how the shortcomings noted during the local elections can be avoided in the future, was seen by some interlocutors as possible interference in the domestic court proceedings. However, in our view, the Secretary General's intentions have been misunderstood. We fully support his proposal which seeks to improve and clarify the election code for future elections. In our understanding, such an opinion will fully take into account, and respect, the legal decisions taken during the 2011 mayoral elections in Tirana.

33. We intend to return to the country in the third trimester of 2011 to assess the progress made in honouring the full spectrum of accession obligations and commitments of Albania to the Council of Europe.

APPENDIX

Programme of the fact-finding visit to Tirana (30 June – 1 July 2011)

Mr Tomáš JIRSA, Senator

Mr Grigore PETRENCO, member of Parliament

Mr Bas KLEIN, Secretary of the Monitoring Committee of the Parliamentary Assembly

Thursday, 30 June 2011

- 08:30 Briefing by Mr Marco LEIDEKKER, Council of Europe Head of Office in Tirana (breakfast meeting) (*)
- 09:30 Meeting with diplomatic corp representatives:
- UK Ambassador
 - Netherlands Ambassador
 - German Ambassador
 - Turkish Ambassador
 - Italian Ambassador
 - Swiss Ambassador
 - French Ambassador
 - Russian Ambassador
 - Czech Ambassador
- 10:30 NGO Round Table:
- Mr Premto GOGO, Coalition of Domestic Observers
 - Ms Gerta META, Coalition of Domestic Observers
 - Mr Artan HOXHA, Institute of Contemporary Studies
 - Mr Skender MINXHOZI, Journalist MAPO
- 11:30 Meeting with the Albanian delegation to the PACE
- 12:30 Meeting with the Head of Central Election Commission
- 13:30 Lunch hosted by the Albanian Parliament
- 17:00 Meeting with members of the Electoral College
- 18:00 Meeting with members of the Constitutional Court
- Evening Working dinner with the Deputy Speaker, Mr Ardian TURKU, the Chairman of the Foreign Affairs Committee, Mr Fatos BEJA, and the Chairman of the Albanian delegation to the PACE, Mr Ilir RUSMALI

Friday, 1 July 2011

- 09:00 Meeting with the Chairman of the Socialist Movement for Integration (SMI), Mr Ilir META
- 10:00 Meeting with the Head of the Socialist Party, Mr Edi RAMA
- 11:00 Meeting with the Prime Minister of Albania, H.E. Mr Sali BERISHA
- 12:00 Working lunch with Ambassadors of the United States, European Union and OSCE

(*) organised by the Council of Europe Head of Office in Tirana