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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 (2-4 April 2012)¹

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¹ This information note has been made public by decision of the Monitoring Committee dated 31 May 2012.

I. Introduction

1. We visited Tirana from 2 to 4 April 2012. This visit took place in a very different political environment compared to our previous visit in June 2011. Despite ongoing antagonism, the opposition has ended its boycott of the work of the parliament. This will facilitate the implementation of the reforms needed to obtain EU candidate status. The main objective of our visit was to familiarise ourselves with: the ongoing electoral and parliamentary reforms; developments with regard to the fight against corruption and especially the reform of the current system of immunity for parliamentarians, judges and other State officials; developments in relation to the upcoming presidential elections; as well as the investigation into the 21 January 2011 events in Tirana.

2. During the visit, we met, inter alia, the President of Albania, the Prime Minister of Albania, the Minister of Justice, the Prosecutor General, the Chairperson and members of the parliamentary Committees for electoral reform, for parliamentary reform and for the investigation of the events of 21 January 2011, the Chairman of the Central Election Commission, the Chairman of the Socialist Party (SP), the Chairman of the Socialist Movement for Integration (SMI), the Chairman of the Red and Black Alliance Party, representatives of the Vlach Community in Albania, 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. As mentioned, this visit took place in a vastly different political climate from the previous visit. On 23 June 2011, Mr Basha from the DP (Democratic Party) was officially declared the winner of the 2011 mayoral election for Tirana with an advance of 93 votes over his rival, incumbent mayor Rama from the Socialist Party. On 1 August 2011, Mr Basha was installed as the new Mayor of Tirana.

4. On 5 September 2011, the Socialist Party (SP) ended its boycott of the parliament and returned to work. We heartily welcome this decision, which Mr Rama announced he would make during our previous visit, as the return of the SP to the parliament is crucial for the normalisation of the political environment in the country. In return reaction, the Democratic Party (DP), agreed to a reform of the electoral legislation – on the basis of the ODIHR observation reports of the 2009 and 2011 elections and provided such reform would be in line with Venice Commission recommendations and standards – and to a reform of the parliamentary working methods.

5. On 12 October 2011, as expected, the European Commission refused, for the second year running, to give a formal candidate status to Albania. In its conclusion², the Commission cited the political stalemate and ongoing confrontational political climate as the main reason for the lack of progress in implementing the reforms and policies necessary for Albania to obtain EU candidate status. Both the SP and the DP blamed each other for the Commission's refusal to grant candidate status to Albania.

6. The confrontational policies of the main parties are not unanimously supported by all members of the DP and SP. A number of faction members in both parties have openly questioned and challenged the line taken by the leadership of their parties. In the SP, this has led to a decision to expel Mr Kastriot Islami, a member of our Assembly, from their faction. This is to be regretted, especially in the light of our repeated statements in the past that differences of opinion regarding party policies should be encouraged and not punished in any party. Within the DP, President Topi and Prime Minister Berisha have displayed publicly their differences over the party line. The animosity and antagonistic relationship between the Prime Minister and the President have contributed to the continuing political polarisation in the country.

7. On 16 January 2012, Mr Meta, leader of the Social Movement for Integration (SMI), was acquitted by the High Court of the corruption charges that were brought against him and which had resulted in his resignation as Deputy Prime Minister. His acquittal was denounced by the opposition as proof of the – in their view – political control over the judiciary by the ruling coalition.

8. Politics in Albania continue to be dominated by the two main parties – the SP and DP, as well as, to a lesser extent, by the SMI. Recently, there have been three initiatives to establish new parties, mostly to the

² Communication from the Commission to the European Parliament and the Council "Enlargement Strategy and main Challenges 2011-2012", COM(2011)666 final.

right of the political spectrum. These initiatives are the Red and Black Alliance, the Vlach Party and Shqipëria e Re³. President Topi is rumoured to be considering joining the latter after leaving office.

9. Many interlocutors, including leading members of the diplomatic community, commented on the constructive contribution of Albania towards regional co-operation and stability. This was exemplified by the joint call for calm and restraint by the Presidents of “the former Yugoslav Republic of Macedonia” and Albania in response to increased ethnic tensions in “the former Yugoslav Republic of Macedonia” following the murder of five ethnic Macedonian men by unknown assailants.

10. The international community, co-ordinated by the Ambassadors of the European Union, the United States and the OSCE, continues to play a crucial role in the creation of a normalised political climate and fostering co-operation between the opposing political camps. These continuing efforts are bearing fruit.

11. Co-operation between the opposition and the ruling majority centres on the reforms needed to obtain EU candidate status as well as on electoral and parliamentary reform. It is hoped that the co-operation on these issues will form a basis for a more constructive co-operation between the opposition and the ruling majority on the governance of the country. The focus on co-operation to meet EU candidate status criteria should be strongly supported by the Council of Europe. It should be noted in this regard that the 12 priority areas for reform identified in the European Commission’s Opinion on Albania’s application for EU membership⁴ cover a considerable number of outstanding accession commitments of Albania to the Council of Europe.

III. Parliamentary and electoral reform

12. Following the local elections, the SP and DP agreed on the need for, but not necessarily the direction of, parliamentary and electoral reforms. Two special parliamentary committees were established by the parliament for that purpose.

13. After the stand-off during the 2011 local elections, the Secretary General of the Council of Europe requested an opinion of the European Commission for Democracy through Law (Venice Commission) on the improvements to electoral legislation and practice necessary in Albania in the light of the recent parliamentary and local elections in the country. This opinion⁵ was prepared jointly with the OSCE/ODIHR and was adopted by the Venice Commission in December 2011.

14. In the opinion of the Venice Commission (VC), the electoral code, which was adopted in 2008, provides a thorough technical foundation for elections, if implemented fully, properly and with the commensurate political will to uphold both the letter and the spirit of the law. The opinion equally notes that the election code contains a number of ambiguities that, inter alia, allow for the politicisation of the election administration and conduct of the elections. These ambiguities were the main cause of the problems witnessed during the 2009 and 2011 elections and ought to be addressed before the next elections take place.

15. The parliament established a special ad-hoc Committee for Electoral Reform. This committee is tasked with implementing the recommendations made by the ODIHR 2009 and 2011 election observation reports, taking into account the above-mentioned VC opinion on improvements to electoral legislation and practice. The committee is co-chaired by the SP and DP. Technically, this means that the election system itself is not part of the mandate of the ad hoc committee. However, in practice a number of key discussions on correction mechanisms for the outcome of the elections touch upon the election system itself.

16. The ad hoc committee managed to conduct most of its work on the basis of general consensus. The main issues that were politically charged are the composition, and, to a lesser extent, the functioning, of the Central Election Commission (CEC), as well as possible correction mechanisms to ensure that the combined results of the regional proportional system reflect the support obtained by a party on the national level.

17. With regard to the composition of the CEC, the electoral law privileges the two largest parties in Albania. It foresees a sophisticated partisan system of election administration that aims to increase the confidence of the two largest parties in the conduct of the elections. However, experience during the last elections has shown that the election administration has remained divided along party lines. In addition, the election administration is vulnerable to blockage of its work by one of the main political parties. As a result,

³ New Democratic Spirit

⁴ Commission Opinion on Albania’s application for membership of the European Union, COM(2010)680

⁵ CDL-AD(2011)042

there is an overall lack of trust in the impartiality of the election administration. The VC therefore recommends changing the current formation mechanism for election commissions in order to “*narrow the scope for possible partisanship and politicisation of the election administration*”. In the view of the VC, this could be done by exploring the possibility of appointing members that represent neutral institutions. However, the VC acknowledges that, in the current polarised political atmosphere, it will be difficult to find such neutral members in Albania.

18. Despite the fact that the partisan composition of the CEC had been criticised by a number of political partners, this composition formula was maintained by the SP and DP in the ad hoc committee. The role of the Chairman of the CEC, and possibly of lower level election commissions, is still under discussion.

19. The ad hoc Committee, on the initiative of the SP, has proposed to introduce electronic vote counting and electronic voter identification technologies for future elections, starting with the next parliamentary elections. In Albania, the vote count takes place in centralised counting centres which could facilitate the introduction of electronic vote counting technologies. However, for electronic voter identification, such technologies would need to be introduced in all the precinct polling stations, including those where conditions may be unfavourable to the introduction of such, relatively untested, advanced technologies. In general, given the complexity of such technologies, and the already low level of public trust in the election system, we would counsel care with the introduction of such systems and would recommend that they only be introduced as a pilot scheme, in a few polling stations, during the next elections.

20. The current election system favours the two larger parties in Albania. Smaller parties in both the governing coalition and the opposition have therefore been calling for the introduction of a correction mechanism to ensure that the outcome of the regional proportional elections reflects the support received by the parties at the national level. The proposal to introduce such a correction mechanism, drafted by 25 smaller parties, was signed by both the SP and DP. The practical implementation of such a mechanism should now be worked out by the ad hoc Committee on Parliamentary Reform. The 30 April deadline for the committee to finalise its work was extended to 15 May upon the request of the two co-chairs of the SP and DP.

21. The original rules of procedure of the Albanian parliament, drafted in co-operation with our Assembly, were adopted by consensus among all parties. However, subsequent amendments to the rules of procedure were not consensual. It was therefore agreed between the main parties to make a package of changes to the rules of procedure to ensure that they are based on consensus. An ad hoc Committee on Parliamentary Reform was set up with the task of drafting new rules of procedure. It had been agreed that the basis for their work should be the rules of procedure of the European Parliament.

22. The main controversial issue of the parliamentary reform is the voting procedure used for the appointments of high State officials. The parliamentary procedures foresee that decisions on persons are made by secret vote. However, the rules of procedure also stipulate that any vote on a presidential decree should be public. The Constitution gives the President the prerogative of proposing candidates for high State offices, such as for the High Council of Justice. He transmits his proposals to the parliament in the form of a decree. The ruling majority has therefore decided that votes on his proposals should take place publicly and not in secret. The opposition alleges that this is done to enforce control over the votes of the members of the ruling coalition faction and infringes on democratic decision-making principles.

23. Another point of contention is the right, or not, of the opposition leader to speak after the Prime Minister (and majority leader) when the latter addresses the parliament. Both the SP and DP informed us that, in their view, the work of the ad hoc Committee on Parliamentary Reform has been successful overall. However, no agreement had been reached, at the time of our visit, on the two contentious issues mentioned above.

IV. Election of the President of Albania

24. The President of Albania is elected by the Albanian parliament. The term of the current President ends in July 2012. During the last Constitutional reform, on the suggestion of the SP, the majority needed to elect a President was changed from an absolute to a simple majority in the fourth and fifth rounds of voting. This could potentially mean that a President will be elected who would not have the required bi-partisan support to fulfil his or her constitutional role of mediator and unifying figure.

25. The next presidential election is of great importance, especially in the context of the current tense political climate. This importance is twofold. Firstly, it is important that these elections do not become a source of new political friction and crisis, as was the case with the parliamentary and local elections.

Secondly, a President should be elected who will have the support of both the ruling majority and the opposition, in order to be able to fulfil the mediating and unifying role that the Constitution foresees.

26. The most frequently mentioned candidates for the presidency are the current Speaker of Parliament, Josephina Topali, and former Prime Minister, Fatos Nano. Ms Topali is a close and outspoken ally of Mr Berisha. It is unlikely that her candidature would be supported by the SP and most probably it would be seen as a provocation by the SP. Mr Nano is a former SP Prime Minister. He resigned from his post following a leadership challenge by Mr Rama, after the SP's defeat in the 2005 parliamentary elections. He has lived in Vienna since his resignation. The SP has stated that they do not object in principle to his candidature, but that they would not propose him as a SP candidate. For their part, Mr Berisha declared, after meeting with Mr Nano, that the ruling coalition would come up with a candidate from its own ranks.

27. In line with other international actors, we have stressed, on all occasions, that the two largest parties should try to aim for a consensual, or at least mutually acceptable, candidate for the presidency.

V. Fight against corruption

28. Corruption continues to be a very serious problem in Albania. The Council of Europe, in co-operation with the European Union, runs the Project Against Corruption in Albania (PACA). This projects aims to assist the authorities in their fight against corruption. A key component of this project is the reform of the system of criminal immunity of judges and members of parliament, as well as other State officials such as, inter alia, the People's Advocate and members of the Central Election Commission. The excessively wide scope of criminal immunity of State officials in Albania is an important factor conducive to corruption.

29. On 19 December 2005, the then Deputy Prime Minister Rusmali, current leader of the Albanian delegation to PACE, requested an opinion of the Venice Commission on a draft decision to limit parliamentary immunity. In its opinion, the Venice Commission noted that, in order to reform the system of immunity in line with European standards, a Constitutional Amendment would be necessary. The last amendments to the constitution, in 2008, focused on provisions dealing with the election of the parliament and the President and the issue of immunity was not covered. Soon after, the country witnessed a political standoff⁶ that was only recently resolved and during which time any changes to the Constitution were impossible.

30. This issue has recently gained new impetus, especially because the European Commission has made the overhaul of the immunity system one of the 12 requirements that Albania has to fulfil before it can be given EU candidate status. Both the ruling majority and the opposition support amending the Constitution in line with Council of Europe recommendations. However, the ruling majority has made it clear that it is only willing to change the Constitution in this respect if these changes are not linked to other disputed issues that would require Constitutional amendments⁷.

VI. Investigation into the events of 21 January 2011

31. On 21 January 2011, during a protest march organised by the opposition that had turned violent, four demonstrators were fatally shot by police officers guarding the office of the Prime Minister. These four fatalities raise questions with regard to the possible use of disproportionate force by the police officers. Equally, questions have been raised about the apparent lack of the organisers to maintain control over the participants in the demonstration. In the tense political climate in Albania, these questions have led to allegations of malicious intent by the ruling majority and the opposition. The follow-up to, and investigation into, these events are heavily politicised. Contributing to this is the fact that the then Minister of the Interior, Mr Basha, was the DP candidate, and ultimate winner, in the elections for the Mayor of Tirana.

32. This politicisation negatively affected the institutional independence of the judiciary and prosecution. The Prosecutor General was accused of being partisan when she initiated a criminal investigation into the January events and the Prime Minister called upon the police not to co-operate with her investigation. A special parliamentary committee to investigate these events has not been able to come to any conclusion due to the continuing political battles between the SP and DP factions on these issues. The politicisation of the investigation was condemned by the international community, which has asked all parties to refrain from undermining the independence of the judiciary and institutions of law and order.

⁶ See Resolution 1709 (2010), as well as our previous information note AS/Mon(2011)21rev.

⁷ Most notably changes to the appointment procedure of high officials by the parliament that are sought by the opposition

33. In order to ensure the independence of the investigation, the United States Government has provided aid and expertise to the Prosecutor's Office and investigators. In our meeting with the Prosecutor General, the latter complained that her efforts were being obstructed and evidence from CCTV cameras had been illegally deleted.

34. The parliamentary ad hoc committee, for its part, is investigating the functioning and co-operation of the different State institutions on 21 January 2011 and not the individual responsibility of the actors involved, which it considers to be the prerogative of the Prosecutor General.

VII. Conclusions

35. The political climate in Albania has changed considerably over the last months. While still tense and antagonistic, a more constructive attitude among all political forces was clearly present during our visit. This new sense of co-operation was clearly guided by the overarching wish of all parties that Albania receive EU candidate status by the end of the year.

36. The upcoming presidential elections can play an important role with regard to normalising the political climate in Albania. In this respect, it is important that these elections do not become a new source of tension and political standoff. The main political forces should try to come to an agreement on a consensual, or at least mutually acceptable, candidate for the post of President.

37. The overall constructive working atmosphere – at least when no cameras are present – in the ad hoc Committees on Parliamentary and Electoral Reform should be welcomed. The correction mechanism for the regional proportional election results, that is now supported by all political forces in Albania, could indeed increase pluralism in the parliament and should therefore be supported by the Assembly.

38. A number of new parties have been established or are in the process of being established. During our visit, we met with two of them, the Vlach Party and the Red and Black Alliance. The Vlach party aims to represent the interests of the ethnic Vlach community in Albania. The Red and Black Alliance is a new party on the right side of the political spectrum that runs mostly on a strongly patriotic, anti-corruption platform.

39. We welcome that the main parties now agree to amend the Constitution to change the excessive system of criminal immunity in Albania. The change of a system of immunities that is fully inline with European standards is long overdue and further delays would not be acceptable. In that respect, we welcome the priority given by the European Commission to this issue.

40. We expect that the improved political climate will mean that the remaining accession commitments of the country will now soon be honoured. The Committee had originally intended to table its report on the honouring of obligations and commitments by Albania in January 2010. However, this timetable was revised as a result of the outbreak of the political crises after the 2009 parliamentary elections. Given the improved political climate, we now plan to present our report to the Committee early in 2013. We intend to visit Albania again in the autumn of this year for a follow up visit, also to familiarise ourselves with the outcome of the presidential election process.

APPENDIX

Programme of the fact-finding visit to Tirana (2-4 April 2012)

Mr Tomáš JIRSA, Senator
 Mr Grigore PETRENCO, member of Parliament
 Mr Bas KLEIN, Secretary of the Monitoring Committee of the Parliamentary Assembly

Monday 2 April 2012

- 10:00 Meeting with EUD political department
- 11:30 Meeting with OSCE
- 14:00 Working lunch with Mr Marco LEIDEKKER, Head of the Council of Europe Office in Tirana
- 15:30 Meeting with the Vlach Community representatives
- 16:00 NGO roundtable (*)
- 17:30 Meeting with Ambassador Ettore SEQUI, Head of the European Union delegation in Tirana
- 19:00 Working dinner with the OSCE Ambassador in Tirana (*)

Tuesday 3 April 2012

- 09:00 Meeting with Mr Ilir RUSMALI, Chairman, and members of the Albanian delegation to the PACE
- 10:00 Meeting with the Committee on Parliamentary Reform
(Messrs Jemin GJANA, Viktor GUMI, Namik DOKLE and Ditmir BUSHATI)
- 11:00 Meeting with the Committee on Electoral Reform
(Mr Damian GJIKNURI and Mr Oerd BYLYKBASHI)
- 12:00 Meeting with the Ad-hoc Committee on the events of January 2011
- 15:00 Meeting with the Central Electoral Commission (CEC)
- 16:00 Meeting with the Chairman of the Socialist Party, Mr Edi RAMA
- 17:00 Meeting with representatives of the diplomatic community in Tirana (*)

Wednesday 4 April 2012

- 09:00 Meeting with the Chairman of the Socialist Movement for Integration (SMI), Mr Ilir META
- 10:00 Meeting with the Minister of Justice, Mr Eduard HALIMI
- 11:00 Meeting at the General Prosecution Office
- 12:00 Meeting with the President of the Republic H.E. Mr Bamir TOPI
- 13:30 Lunch with the Albanian Delegation to the PACE
- 16:00 Meeting with Mr Kreshnik SPAHIU, Red and Black Alliance Party
- 18:00 Meeting with the Prime Minister H.E. Mr Sali BERISHA
- 18:45 Press conference (*)

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