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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 (17-19 April 2013)¹

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¹ This information note has been made public by decision of the Monitoring Committee dated 25 June 2013.

I. Introduction

1. We visited Tirana from 17 to 19 April 2013. Our visit took place during the run up to the parliamentary elections, which are scheduled to take place on 23 June 2013. As a result, the developments with regard to the preparations for the elections – and particularly with regard to the composition of the Central Election Commission (CEC) – dominated the discussions during our visit. In addition to the preparations for the parliamentary elections, the reforms and legislation necessary to fulfil accession commitments and to obtain EU candidate status were discussed.

2. During the visit, we met, inter alia, the President of Albania, the Prime Minister of Albania, the Speaker of the Albanian Parliament, the Minister of Justice, the Chair of the Central Election Commission, the Chairpersons and members of the Committees for Education and Public Information Media and for Parliamentary Reform, the Chairperson of the Socialist Party (SP), the Vice-Chairperson of the Socialist Movement for Integration (SMI), the Chairperson of the Red and Black Alliance Party, representatives of the New Democratic Spirit Party, 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 climate in Albania is dominated by two main parties, the Democratic Party (DP) of Prime Minister Sali Berisha and the Socialist Party (SP) of the former Mayor of Tirana, Edi Rama. As a result of the long-standing acrimony and strife between these parties, the political environment continues to be tense and polarised. The domination by these two parties of the political environment has resulted in an election system, and indeed a political system that, in the view of many interlocutors, has been designed to perpetuate their hold on power.

4. Until recently, other political parties, with the exception of the Socialist Party for Integration of former Prime Minister Ilir Meta, did not play any significant role in Albanian politics. Until now, support for the two main parties among the Albanian electorate has been relatively close. This has allowed the Socialist Movement for Integration (SMI) of Ilir Meta to play the role of kingmaker, when after the last elections it joined as junior partner the ruling coalition led by the DP.

5. Until recently, no other party was playing any significant role in Albania's political arena. However, the landscape has changed over the last year with the emergence of two new parties that seem to be attracting a serious following. These parties are the Red and Black Alliance of Kreshnik Spahiu, former Deputy Head of the High Council of Justice of Albania, and the New Democratic Spirit party (NDS) of former President Bamir Topi.

6. The Red and Black Alliance combines an anti-corruption agenda with strong patriotic, or nationalist, messages and is especially popular among young, well-educated urbanites, who until now were a key constituency for the SP. The Alliance reportedly considered the possibility of joining the SP led coalition but, in the end, decided to run on an individual ticket in the next elections. The New Democratic Spirit party positions itself right of centre in the political spectrum, but has a strained relationship with Prime Minister Berisha and will therefore run as an individual party in the next elections. Both the Red and Black Alliance and the New Democratic Initiative have publicly ruled out the possibility of forming a coalition with the DP after the next elections.

7. Until recently, the governing coalition of DP and SMI was considered very stable, with the SMI faction loyally supporting its senior coalition partner, the DP, on all important votes in the parliament. On 1 April 2013, the SMI and SP announced that they would form an election coalition for the next parliamentary elections. On 3 April, the SMI left the ruling coalition and formed, together with the SP, the coalition "Alliance for a European Albania". In addition to the SP and SMI, 35 smaller parties are also part of the Alliance but reportedly only have limited influence over its political course.

8. The surprise departure of the SMI from the ruling coalition did not result in the fall of the government, as the latter will be able to continue governing the country due to the support of a number of independent MPs. However, the switch by SMI from the governing coalition to the main opposition coalition did result in a political crisis with regard to the composition and functioning of the Central Election Commission. We will return to this later in this information note.

9. As we mentioned in our previous information note, the SP returned to parliament following an agreement with the DP in November 2011 on the modalities for their co-operation and priorities for the work of the parliament. Since then, their co-operation has improved although relations remained contentious. Their co-operation has continued since our last visit, although the discourse has become notably harder with the advent of the elections.

10. As a result of the agreement between the SP and DP, two ad hoc parliamentary working groups were set up, one for the reform of the parliamentary rules of procedure and one for electoral reform. The working group on electoral reform reached an agreement on a number of amendments to the Election Code, which were subsequently adopted by consensus. Regrettably, no agreement could be reached on the new rules of procedure for the parliament. The main stumbling blocks were reportedly the issues of secret voting on presidential decrees² and the granting of equal speaking rights for the opposition when speaking in reply to an address of the PM to the parliament.

11. The improved co-operation between SP and DP has allowed for a number of important laws and reforms that need a two-thirds majority to be passed in parliament. In addition, the parliament appointed the ombudsperson and a judge to fill a vacancy on the High Council of Justice in an overall consensual selection process.

12. Regrettably, no such consensus and co-operation could be achieved for the election of the President of Albania. Albania has indirect elections for the President, who is elected by the parliament. In order to be elected, a presidential candidate needs a 3/5 majority in the first three rounds of voting. If, after these three rounds, no candidate has been elected, a simple majority is sufficient from the 4th round onwards. No candidate received the required 3/5 majority in the first three rounds, as the SP was boycotting the vote. Subsequently, Mr Bujar Nishani, who was proposed by the DP, was elected President of Albania with 73 out of 76 votes in the 4th round of voting.

13. On 21 January 2011, four protesters were fatally shot by the police during a demonstration in front of the Prime Minister's office that had turned violent. In relation to these events, which caused great controversy in the political environment, the Prosecutor General initiated criminal proceedings against a policeman who allegedly shot the protesters, as well as against his commanding officer. These proceedings were decried as politically motivated by the DP. The politicisation of the events and subsequent investigations, has negatively affected the institutional independence of the judiciary and the prosecution. On 7 February 2013, the district court of Tirana acquitted both men of any wrong doing. This decision was widely condemned in Albanian society, as well as by some international actors, including by the Ambassador of the United States in Tirana.

III. Preparations for the parliamentary elections

14. Parliamentary elections are scheduled to take place in Albania on 23 June 2013. The conduct and outcome of previous elections have all been contested by one party or the other. In 2009, a political crisis ensued after the parliamentary elections when the SP decided to boycott the parliament in protest over alleged electoral fraud and misconduct during the elections. As the ruling coalition lacked a two-thirds majority in parliament, the SP boycott effectively stalled several important reforms and constitutional changes needed for the Albania's further European integration and democratic development. The crisis lasted until November 2011 and severely damaged the prospects for an early candidate status for the European Union. The upcoming parliamentary elections are therefore crucial for Albania's democratic development and further European integration. In addition, free and fair parliamentary elections that are conducted fully in line with international standards are one of the main criteria set by the European Commission for it to grant official candidate status to Albania.

15. On a proposal of the working group for electoral reform, set up by the parliament, several amendments to the Election Code were adopted by the parliament on 19 July 2012. These amendments address most of the concerns and recommendations of international observers, including from the Assembly, the Venice Commission and the OSCE/ODIHR. These amendments addressed such issues as voter and candidate registration; campaign funding; complaints and appeals procedures; composition of, and appointment

² This issue is important in relation to the appointment procedure for high-level state officials. All presidential nominations for important State positions are in the form of a decree. As a result, at this moment, none of the votes on presidential appointments are secret. The SP alleges that this allows the DP leadership excessive control over the appointment procedure as it has full oversight over voting by its members.

procedures for, the Central Election Commission and lower level election commissions; as well as measures to strengthen the independence of the Electoral College. In addition, during the upcoming elections, two pilot projects will be conducted to test electronic voter registration in the polling stations and electronic vote counting.

16. The amendments improved the legal framework for these elections. However, it should also be noted that the previous election legislation was already considered by the Venice Commission as adequate for the conduct of democratic elections if implemented fully and in good faith. Previous elections showed a lack of political will of both the DP and the SP to fully implement the Code according to both its letter and to its spirit. This resulted in clear shortcomings in the electoral process, as well as in the politicisation of the election administration. The conduct of the upcoming elections will therefore for a large part depend on the existence of the commensurate political will of the main political parties to hold democratic elections and to refrain from politicising the electoral process and election administration.

17. The pilot project to test electronic voter registration will take place in Tirana and the pilot project to test electronic vote counting will take place in Fier, which are the two largest election districts in the country. In previous reports, we expressed some hesitation with regard to the very short implementation and testing time for such technologies, especially in such a tense and contentious political environment as Albania. Moreover, even if these pilot projects are successful, due consideration should be given to the manner in which these technologies will be introduced into the rest of the country, given the uneven technical infrastructure in the different regions of Albania.

18. Regrettably, as mentioned, a political crisis erupted at the time of our visit over the composition of the election administration. This issue dominated our talks with the authorities and political stakeholders during our visit.

19. Elections in Albania are administered by a three-tiered election administration consisting of the Central Election Commission, 89 Commissions of Electoral Administration Zones (CEAZ) and 5,485 Voting Centre Commissions (VCC) at the precinct level. In each Electoral Administration Zone, the votes are counted centrally in a Ballot Counting Centre.

20. According to the amended election code, the CEC is a multi-partisan body composed of seven members. Two of these members are proposed by the largest party in the ruling majority and two by the largest opposition party. In addition, one member is proposed by the other parties that form the ruling coalition and one by the other opposition parties. The chairperson is elected by the parliament following an open application process. The chairperson is elected for four years, while the other members are elected for six year terms. While the CEC's composition is based on the proposals of the parliamentary parties, the CEC and its members should – and do – act institutionally independent and impartially. The possibility for parties to recall the members proposed by them has therefore been removed from the Election Code by the latest amendments.

21. The CEAZs are composed of seven members appointed by the CEC. Three members are nominated by the parties in the ruling majority and three by the opposition parties. In addition, half of the CEAZs' chairpersons are nominated by the majority and half by the opposition. VCCs are appointed by the CEAZ based on the same formula as used for the composition of the CEAZs.

22. The current CEC was established on 18 October 2012. The SMI obtained the seat reserved for other parties in the ruling coalition. The CEAZ were appointed at the end of March 2013. The SMI, in coordination with the DP, nominated its members for the CEAZs and VCCs as part of the ruling majority. As a result, when, on 3 April 2013, after the establishment of these election commissions, the SMI switched from the ruling majority to the opposition, the latter gained de facto control over the CEC and the vast majority of the CEAZs. This situation was considered unacceptable to the DP, which used its parliamentary majority to remove the SMI nominated member from the CEC and appoint a new member nominated by another party in the ruling coalition. However, the legal grounds for the removal of the SMI nominated member are reportedly questionable³. In response to the removal of the SMI nominated CEC member, the CEC members

³ Initially, the DP argued in the parliamentary debate that the SMI nominee should be replaced because the election code foresees a "balanced" election administration. However, while the election code outlines a multi-partisan appointment process, it also states that, after their appointment, CEC members are independent of any political force and should execute their tasks in a fully impartial manner. It is therefore not clear that a member can be removed from the CEC after their appointment on the ground that the CEC is not balanced. At the end of the debate, the DP argued that the person was replaced because he had been previously removed from a public post by court decision, which is incompatible with

nominated by the opposition parties – after consultation with the Chairperson of the Socialist Party – resigned from their posts. The opposition parties subsequently refused to nominate any replacements for them. As a result, the CEC is now functioning with only four members. It is clear that the replacement of a CEC member by the parliament and subsequent resignation and non-replacement of the opposition nominated members contradicts and severely undermines the notion of an impartial and institutionally independent election administration.

23. In order to ensure that these elections are accepted as democratic and fair by the Albanian population, it is essential that they are not only conducted in an independent and impartial manner by the election administration, but also that the election administration is seen as doing so by the Albanian public. It is clear that the current CEC, which is effectively boycotted by the opposition, will not be seen as impartial by a large part of the population. This endangers the democratic conduct of these elections, which we repeat is essential for EU candidate status or even considering a change of status in the monitoring procedure. Therefore, without wanting to adjudicate on any blame or responsibility, we called upon both the ruling majority and the opposition - and in that context especially on the DP and SP - to overcome the current crisis and to agree on a mutually acceptable composition of the election administration that has the trust of all political stakeholders in the country. For the same reasons, it is important not to allow this conflict to be internationalised and for the international community and friends of Albania to remain strictly neutral in this domestic conflict.

IV. Political reforms and accession commitments

24. A key priority that dominates the political agenda in Albania is its membership application to the European Union. The authorities have been implementing substantial and far-reaching reforms in order to obtain the coveted candidate status to the EU. These reforms, which have been by large consensual, have addressed a number of outstanding accession commitments to the Council of Europe. In our view, the implementation reforms needed for EU membership go hand in hand with the fulfilment of Council of Europe accession commitments and membership obligations. However, this does not imply that obtaining EU candidate status would mean that Albania has fully honoured all its accession commitments and membership obligations.

25. The key priority areas with regard to the political criteria for EU membership are, inter alia, the proper functioning of the parliament; the appointment procedures for, and appointment of, key officials; electoral reform and conduct of elections; public administration reform; judicial reforms and respect for the rule of law; the fight against corruption and organised crime; property issues; strengthening human rights; strengthening anti-discrimination policies.

26. In the last year, the parliament passed a number of pending laws that needed a two-thirds majority to be adopted. The adoption of these laws, which had been blocked when the SP boycotted the parliament between August 2009 and November 2011, was crucial for implementing a number of reforms that are required to gain formal candidate status with the EU. Importantly, a set of constitutional amendments limiting the immunity of government members, MPs, judges and high-level State officials, was adopted. These constitutional amendments, necessary to fight the endemic corruption in the country, were a long-standing demand of the Council of Europe, including our Assembly.

27. In October 2012, the European Commission announced that Albania had made considerable progress with regard to implementing the key reforms identified by the Commission as necessary to obtain candidate status. It therefore decided that candidate status could be conferred as soon as Albania has adopted the Law on Civil Service, the Law on the High Court, as well as the new rules of procedure of the parliament (these laws are often referred to as the three EU laws). In addition, the Commission stated that Albania needed to show that it is capable of organising the next parliamentary elections fully in line with international standards before accession negotiations could start.

28. However, at the time of our visit to Albania, no agreement existed between the main political forces about the adoption of these two laws and parliamentary rules of procedure. All parliamentary parties publicly expressed their willingness to adopt these three acts and blamed the other side for stalling the adoption process.

CEC membership. While the Election Code indeed specifies that nominees should not have been previously removed from a public post by court order, it is not clear if the Election Code allows that as a basis for the removal of CEC members after they have been duly appointed by the parliament.

29. During our meeting with the Committee on Parliamentary Reform, it was confirmed that the only two issues on which the opposition and ruling majority do not yet agree with regard to the rules of procedure are secret voting on presidential decrees and the right of the opposition to speak directly after the Prime Minister has addressed the parliament. Reportedly, the positions of the two sides were very close and agreement seems possible if all sides show the necessary political will.

30. A key issue is the reform of the judiciary, especially with a view to strengthening its independence. Important progress was made with the constitutional amendments limiting the immunity of, inter alia, judges. In addition, the laws on the administrative courts, the National Judicial Conference and the Bar were adopted, which is an important achievement. However, other important legislation and reforms, including the revision of the Law on the High Court, is still awaiting adoption. Questions are also raised by some interlocutors about the availability of the necessary resources to implement the reform strategy that was adopted in 2012 and which is crucial for reducing the backlog of cases and improving the overall efficiency of the judicial system.

31. Freedom of assembly, freedom of conscience and freedom of expression are generally well respected in Albania. With regard to freedom of expression, defamation is still in the Criminal Code in Albania although not punishable by a prison sentence. This may lead to a level of self-censorship among journalists. An agreement exists for government members not to file defamation suits against journalists, but MPs are not covered by this agreement. There are reportedly a number of lawsuits for defamation filed by MPs which are of concern. In addition, the government continues to interfere in the work of the public broadcaster, including with regard to its editorial policy and content of its news coverage. The recently adopted Law on Media Services reportedly does not sufficiently protect the public broadcaster and other media outlets from government interference. This undermines the independence of the public broadcaster, which is of concern.

32. The main point of contention between the ruling majority and the opposition with regard to the recently adopted Law on Media Services was the composition formula for the National Council of Radio and Televisions (the licensing authority) and Albanian Radio and Television Council (which oversees the public Broadcaster). The two sides reportedly agreed on most other issues covered by the law. Given the importance of a pluralist media environment, as well as an impartial public broadcaster for the democratic consolidation of the country, we hope that the relevant political forces in Albania will strive to reach consensus about the actual composition of these two bodies.

33. Corruption continues to be a systemic problem and a major issue of concern in Albania, despite the attention given to this issue by the authorities. Until now, a proactive approach is lacking and the lack of resources is undermining the implementation of important recommendations of GRECO.

34. Acceptance and integration of ethnic minorities in Albania is satisfactory, although discrimination against some ethnic minorities, such as Roma, remains a concern. The emergence of the Red and Black Alliance has strengthened nationalist discourse in the election campaign. This is raising some concerns in neighbouring States. One issue that has created some controversy, and that many interlocutors place in the context of the increased national rhetoric before the elections, is the draft Parliamentary Resolution on the Cham⁴ Issue, which is currently being discussed in the parliament. This resolution addresses several issues that are important for the Cham community in Albania, including the repeal of the 1940 law on war between Greece and Albania and restitution of property left behind when the Muslim Chams were forced to flee Greece. The value of the contested property is estimated to be around 10 billion Euros. Not unexpectedly, this resolution is negatively affecting relations with Greece, which has indicated that they find the text of the current draft resolution to be "unacceptable". We welcome, in this respect, that both the DP and the SP have stated that they do not wish that the discussions on this issue undermine the friendly relations with Greece.

35. In a welcome development, the Albanian Parliament, in an extraordinary session on 31 May 2013, passed the Law on Civil Service, the Law on the High Court, as well as the new rules of procedure of the parliament in a consorted effort of the ruling majority and opposition. This was welcomed by the international community. Following the adoption of these laws, the organisation of genuinely democratic elections that are in line with international standards is the last remaining condition to be fulfilled in order to obtain EU candidate status.

⁴ The Chams are ethnic Albanians who originally resided in the coastal region of Epirus in north-western Greece. After the second world war the Cham population was almost entirely deported from Greece as a result of the collaboration of (a large) part of the Cham population with the Italian and German occupiers of Greece.

V. Conclusions

36. We welcome the efforts made by the Albanian political spectrum to implement the reforms necessary to fulfil Albania's remaining accession commitments and to obtain EU candidate status. We call upon all political forces to continue the sustained efforts needed to meet the country's accession commitments and membership obligations to the Council of Europe, also after EU candidate status has been obtained.

37. The political standoff over the CEC composition underscores the systemic fragile character of the Albanian political environment, which is an issue of great concern. We call upon all political forces to ensure that the next elections are conducted fully in line with international standards and seen as such by the Albanian public. For that to happen, it is imperative that the election administration conduct its work in an independent and impartial manner. We therefore hope that the main parties will come to a mutually acceptable solution with regard to the composition of the Central Election Commission as well as lower level election commissions.

38. The impartial and independent administration of the elections is also important to ensure that the outcome of these elections is accepted by all electoral stakeholders as well as the Albanian public, as reflecting the will of the Albanian electorate. It is essential for the democratic consolidation of the country that all contestants accept the outcome of the elections and that there is no repetition of the boycott and paralysis of the work of the parliament, as in 2009. Such a scenario would undermine Albania's further European integration.

39. We intend to return to Albania during the second half of this year, after the parliamentary election process has been finalised.

APPENDIX

Programme of the fact-finding visit to Tirana (17-19 April 2013)

Mr Jonathan EVANS, member of Parliament
Mr Grigore PETRENCO, member of Parliament
Mr Bastiaan KLEIN, Secretary of the Monitoring Committee of the Parliamentary Assembly

Wednesday, 17 April 2013

- 09:00 Meeting with the Chairperson and members of the Central Election Commission
- 10:00 Meetings organised by the Council of Europe Office in Tirana:
- Briefing on the general political situation by Mr Marco LEIDEKKER, Head of the Council of Europe office in Tirana
 - Election preparations (Council of Europe expert detached to CEC)
 - Minority issues (Council of Europe office expert on minority issues)
 - Reform of the media regulatory authority
- 15:00 Meeting with Ms Josefina TOPALLI, Speaker of the Parliament
- 15:45 Meeting with the Chairperson and members of the national delegation of Albania to the Parliamentary Assembly of the Council of Europe
- 17:00 Meeting with the Chairperson and members of the Parliamentary Committee for Parliamentary Reform
- 18:00 Meeting with the Chairperson and members of the Parliamentary Committee on Education and Public Information Media
- 19:30 Dinner hosted by the Chairperson and members of the national delegation of Albania to the Parliamentary Assembly of the Council of Europe

Thursday, 18 April 2013

- 09:00 Meeting with Mr Sali BERISHA, Prime Minister
- 10:00 Meeting with civil society representatives on election (Coalition of Domestic Observers and NDI)
- 11:00 Meeting with civil society representatives on media and EU accession (Mr Remzi LANI, Mr Gent IBRAHIMI, Mr Albert RAKIPI, Mr Gledis GJIPALI and Mr Andi DOBRUSHA)
- 12:00 Meeting with Mr Edi RAMA, Chairperson of the Socialist Party
- 13:30 Meeting with Ambassador Ettore SEQUI, Head of the EU delegation
- 15:30 Meeting with representatives of the Red and Black Alliance Party
- 17:00 Meeting with Mr Ilir META, Chairperson of the Socialist Movement for Integration
- 18:00 Meeting with the representatives of the diplomatic community in Tirana

Friday, 19 April 2013

- 09:00 Meeting with representatives of the New Democratic Spirit Party
- 10:00 Meeting with Mr Bujar NISHANI, President of the Republic
- 11:00 Meeting with Mr Eduart HALIMI, Minister of Justice
- 12:00 Press conference