



**DECLASSIFIED<sup>1</sup>**

**AS/Mon (2021) 03**

18 January 2021

amondoc03\_2021

or. Engl.

**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 on the recent electoral reform in Albania**

*Co-rapporteurs: Mr Joseph O'REILLY, Ireland, Group of the European People's Party and Mr Petter EIDE, Norway, Group of the Unified European Left,*

**1. Introduction**

1. Regrettably, due to the Covid-19 pandemic it has not been possible to make a country visit to Albania in the course of 2020 as we had originally foreseen. At the same time, important developments have taken place in Albania on a number of subjects that are being followed by the rapporteurs and Monitoring Committee, including with regard to electoral reform, which has been a priority area for the rapporteurs. We therefore felt it would be relevant to produce an information note on these developments with regard to electoral reform on the basis of a small number of exchanges of views organised remotely with the main stakeholders in this process.

2. Two remote exchanges of views between the rapporteurs and relevant counterparts were therefore organised. The first exchange of views took place on 19 October with several experts and civil society representatives. The second exchange of views, in the form of three individual remote meetings with representatives of respectively the ruling majority, the parliamentary opposition and the extra parliamentary opposition took place on 14 December 2020.

**2. Background**

3. Electoral reform and the systemic political crisis in Albania are interlinked. As highlighted by us in our previous information notes and statements, electoral reform followed by elections will be the key to resolving the political crisis in Albania. In our view this will allow the political forces to reach a consensus on an electoral framework that therefore can have the full trust of all stakeholders. Such an agreement will then allow for new elections, which – in turn – could lead to de-escalation and normalisation of the political environment. This view was shared by many of our international counterparts.

4. In order to set realistically achievable objectives, international partners, as well as the main political parties suggested that the electoral reform should focus foremost on implementing the recommendations of the Venice Commission and OSCE/ODIHR, which aimed to address the shortcomings noted during previous elections. Later, when the reform process was revived early 2020 (see below), a number of stakeholders, in particular from the parliamentary position, also called for the reform of the electoral system itself. The parliamentary opposition called for introduction of a fully proportional system which, in their view, would result in a composition of the parliament that would be more reflective of the will of the people than under the old system.

<sup>1</sup> Document declassified by the Monitoring Committee at its meeting on 3 February 2021.

5. In this context it should be noted that elections in Albania are often followed by calls for a change of the election system, in what several election observation reports have called a tendency by Albanian political forces to play with the rules as much as playing by the rules. Successive opinions of the Venice Commission on the legal framework for elections in Albania have observed that the existing legal framework was adequate for the conduct of democratic elections if indeed implemented fully and in good faith. Therefore, while we support the ongoing electoral reform process, especially as an important factor that can contribute to resolving the systemic political crisis in the country, it should be clear that repeated changes to the electoral system do not provide the required stability of the electoral framework that is essential for a genuinely democratic election process.

### **3. Format of the reform process**

6. For a good understanding of the reform process it is necessary to outline the rather unique format in which the negotiations on the electoral reform took place. In February 2019, the main opposition forces in Albania, the Democratic Party (DP) and the Socialist Movement for Integration (LSI) left the parliament and called upon their MPs to rescind their parliamentary mandates. This call was heeded by all but two opposition MPs. Albania has a proportional election system with regional constituencies. According to Albanian law, when a mandate becomes vacant, it will be automatically offered to the first non-elected person on the list of that party in that constituency during the last election. The opposition parties called upon their members on these lists not to accept these mandates. However, several persons ignored the position of their party leadership and entered parliament. The opposition members that refused to give up their mandates, and those that accepted the seats vacated by those members that did give up their mandates are de-facto disowned by their parties and cannot be seen as representatives of the main opposition parties DP and LSI and have become a separate political grouping in the country.

7. As a result of this rather unique situation a negotiation platform for electoral reform was needed that would bring together the ruling majority, the parliamentary opposition and the extra parliamentary opposition. A parliamentary ad hoc Committee for electoral reform, co-chaired by the ruling majority and parliamentary opposition, had been established by the parliament in 2018, but as a result of the ongoing political crisis in the country no concrete results had been achieved. Following the replacement of the members that had given up their parliamentary mandates, the work of the ad hoc Committee was reinitiated following the local elections, when Prime Minister Rama asked the ad hoc Committee to prepare proposals to address the OSCE/ODIHR election observation recommendations. However, it was clear that a strictly parliamentary ad hoc Committee, while necessary to ensure the adoption of any reforms by parliament, would lack the required representativity to ensure a consensual reform process. The ruling majority initially offered the extra-parliamentary opposition to appoint observers to participate in the parliamentary ad hoc Committee, but this was rejected by the extra parliamentary opposition that claimed that this would give an unequal status to the different participants in the reform process. In addition, they noted that participating in a parliamentary committee it would run counter to their decision to no longer participate in the current parliamentary convocation.

8. This issue was resolved on 14 January 2020, when – in a welcome development – the ruling majority as well as parliamentary and extra-parliamentary opposition agreed on the establishment of a Political Council for Electoral Reform which was composed of the co-chairs of the parliamentary ad-hoc Committee as well as a representatives of the two extra parliamentary opposition parties. For its side the ruling majority committed itself to adopt any consensual proposal developed by the Political Council. The Political Council continued to work during the COVID lockdown and managed, following lengthy negotiations and considerable pressure from the international community, to reach an agreement on electoral reform on 5 June 2020.

#### 4. 5 June agreement

9. The agreement on electoral reform agreed upon by the Political Council on 5 June 2020 consisted of the following parts:

- a. The CEC would be replaced<sup>2</sup> by a three-tiered structure consisting of a
  - **State Elections Commissioner** (7-year mandate) responsible for the running of the institutional and logistical functions of the election administration. A **Deputy Commissioner** (4-year mandate), to be nominated by the opposition, will be responsible for training of the election administration and the implementation of biometric voter identification;
  - **Regulatory Commission** (five members with a 5-year mandate) responsible for adopting and reviewing all normative and legal acts of the election administration;
  - **Complaints and Sanctions Commission**. (five members with a 9-year mandate) responsible for examining administrative complaints concerning the election administration and imposing sanctions in case of violations.
- b. **Lower level election commissions** will be de-politicised after the next parliamentary and local elections have taken place;
- c. **Biometric voter identification** will be implemented as from the 2021 parliamentary elections;
- d. **Out of Country voting** for the Albanian diaspora will be introduced as from 2020 (until now Albanians living abroad had to return to Albania to vote);
- e. Both active and passive corruption (**vote buying**) will be explicitly prohibited and criminally prosecuted. Video Cameras will be installed in all polling stations (accessible only to the police and central election administration in case of complaints)
- f. The **media monitoring** will be done by the Audio-visual Media Authority instead of a monitoring boards appointed by the CEC and no campaigning can take place in **public and state institutions**;
- g. **The Electoral College** will be composed only of judges that have passed the vetting process;
- h. **Elections** will take place in the **periods** 15 April – 15 May, or 15 October – 15 November.

10. No agreement could be reached within the Political Council on a change of the election system itself, as requested by the parliamentary opposition, or the establishment of a caretaker government before each parliamentary election which was requested by the extra-parliamentary opposition. Similarly the recommendation of a completely nonpartisan election administration could not be implemented also as a result of the fact that the civil service in Albania is highly politicised and therefore does not have the required trust of the opposition to be in charge of the administration of elections without partisan control.

11. As the mandate of the parliamentary ad-hoc Committee on Electoral Reform had not been renewed the necessary amendments to the electoral legislation implement the 5 June agreement were reviewed by the Judiciary Committee of the Albanian Parliament and adopted in line with the 5 June agreement on 23 July 2020.

#### 5. Constitutional Amendments and change of Election system

12. On 15 June a group of 28 individual MPs (mostly from the parliamentary opposition) tabled a set of amendments to the Albanian Constitution which aimed to:

- a. Replace the closed list system by an open list system<sup>3</sup>
- b. Raise the national threshold for parliamentary elections from 3% to 5%
- c. Abolish the possibility for pre-electoral coalitions

13. These amendments were decried by the extra-parliamentary opposition and criticised by several members of the international community which noted that these controversial changes had been rejected by the Political Council and therefore went against the 14 January and 5 June agreements between all political

<sup>2</sup> Actually, transformed into a three-tiered structure. As a result, there will still be valid references in the electoral legislation referring to the CEC, which is now made up of the three components/bodies mentioned.

<sup>3</sup> But maintaining a regional proportional system and not aiming to replace this with a single national list which the parliamentary opposition had called for during our last visit was their original objective.

stakeholders. The ruling majority informed us that they had to support these changes as the parliamentary opposition had informed them that otherwise it would not vote for the electoral reform agreed on 5 June 2020, which would leave it short of the 84 vote qualified majority to ensure its adoption. Fortunately, initial fears that these last-minute Constitutional changes would lead to a breakdown of the electoral reform and a rekindling of the political crisis did not materialise.

14. The constitutional amendments were adopted by the Albanian Parliament on 30 July 2020. They slightly changed the original proposals. An election system of open lists in regional constituencies was introduced but the previous constitutional link between these constituencies and the administrative regions was removed, leaving the demarcation of electoral constituencies to lower level electoral legislation. This was also the case for the threshold, which is no longer set in the Constitution but left to ordinary legislation. Lastly, electoral coalitions are no longer allowed and replaced a joint candidate list for the elections<sup>4</sup>. Of the lists, at least 2/3 of the candidate list will be open, but parties can go above this minimum.

15. On 6 September 2020, President Meta of Albania called for parliamentary elections on 25 April 2021.

16. As indicated above, the implementation of the constitutional amendments needed additional changes to the electoral legislation. These amendments lead to tense negotiations in the Political Council which could not reach an agreement. In the end they were adopted, without consensus, by the Albanian Parliament on 5 October 2020. At same session the parliament also appointed the State Election Commissioner and his Deputy, the Regulatory Commission and the Complaints and Sanctions Commission. In this context it is important to note that the election administration that was appointed consist of representatives proposed by the ruling majority, parliamentary oppositions, as well as extra-parliamentary opposition. This is a further indication that, despite the disagreement on the Constitutional amendments all political forces have continued to co-operate in the implementation of the electoral reform and organisation of the elections. In this context the ruling majority has also highlighted the consensual adoption of a series of decrees needed for the preparation of the elections by the election administration, including on sensitive subjects such as the number of mandates for each election district. This also highlights the importance of the electoral administration as a platform for cooperation between the different political stakeholders, including those not represented in parliament.

17. According to the amendments to the electoral legislation the threshold was finally set at 1%. In addition, preferential votes will only change the ranking of a list if the person on the non-elected part of the list got more preferential votes than the average number of votes by the party to obtain a mandate. Also, to ensure gender balance it was agreed that a person obtaining a mandate on preferential votes should only be able to replace a person of the same gender. Lastly it was agreed that the Chair of a party is allowed to run in up to 1/3 of the regional constituencies.

18. With regard to the new electoral it was agreed that for the 2021 elections the old demarcations (linking the constituencies to administrative districts) will be maintained, therefore ensuring that there will be no substantial changes in the electoral framework before the next elections (see Venice Commission opinion below). The preliminary voters' lists have been published in the beginning of October 2020. The demarcation of election districts for future elections has still to be agreed upon. We realise that this subject could easily become a vehicle for future political contention and controversy. We therefore call upon all political forces to commit themselves to a demarcation of the electoral district boundaries following the 2021 elections based on international standards and a broad consensus between all political stakeholders.

19. On 21 October 2020, President Meta requested a Venice Commission opinion on the Constitutional Amendments adopted on 21 July and on the changes to the electoral legislation to implement these constitutional amendments.

20. On 23 October 2020 the President vetoed the amendments to the electoral code of 5 October 2020, citing their unilateral adoption, without wide consensus. In addition, he expressed his concern that these amendments would create "unequal and discriminatory positions" for different stakeholders. Despite calls from the European Union to wait for the adoption of the Venice Commission's opinion, the parliament decide to override the Presidential veto on 27 October 2020.

---

<sup>4</sup> It is our understanding that, technically, coalitions can no longer propose candidates. Only parties and citizens can do. A coalition list would therefore either be proposed by a party or a group of citizens, in effect forcing a single list.

## 6. Venice Commission Opinion

21. The Venice Commission opinion, drafted jointly with the OSCE/ODIHR, was adopted at its meeting on 11 and 12 December 2020. In line with the request made by the President, the opinion limits itself to an assessment of the compliance of the constitutional amendments and implementing legislation of 5 October 2020, and their adoption process, with international standards. It does not assess the compliance of these amendments with the Albanian Constitution, which it rightfully notes are for the Constitutional Court of Albania to decide upon. Until 23 December 2020 the Constitutional Court was not functional for several years as it lacked a quorum due to the vetting process<sup>5</sup>. In a welcome development, on 23 December 2020, President Meta appointed the sixth judge to the Constitutional Court, as a result of which the Court regained its quorum and became functional.

22. The Venice Commission notes, and regrets, the extremely hasty adoption of the Constitutional amendments and changes to the electoral code of 5 October 2020. In this respect the Venice Commission underscores the principle of the stability of electoral legislation which stipulate that fundamental elements of the election system should not change in the year before the elections will take place.

23. The main aspects of the constitutional changes are the introduction of (partial) open lists, the abolition of election coalitions and the redrawing of electoral constituencies, as well as the lowering of the threshold.

24. With regard to the lowering of the already low threshold and the introduction of partially open lists the Venice Commission argued that their effect on the outcome of the elections and distribution of mandates will be limited and therefore cannot be considered fundamental changes.

25. It is clear that the rezoning of electoral districts would be a fundamental change of the electoral environment if implemented. However, as mentioned above, it has been agreed that the 2021 election will take place on the basis of the existing district boundaries. As long as this is the case this change to the electoral code would not violate international standards regarding the stability of electoral law in the year before elections.

26. Under Albanian law, an election coalition is considered a single list in the first allocation of mandates. This has now been replaced by the more common practice of "joint electoral lists" that remain valid for the purpose of distribution of mandates until the next elections. In 2017 there was an agreement among the parties not to make use of this possibility of electoral coalitions. Therefore, their formal abolishment and replacement by the more common joint candidate lists cannot be considered a fundamental change for these elections.

27. Despite the fact that these changes to the electoral code do not violate the principle of stability of electoral law, the Venice Commission expressed its serious concern about the manner and speed in which these amendments to the electoral legislation, and in particular the constitutional amendments, were adopted. As mentioned, the procedure was extremely hasty, with the formal process in parliament taking less than a week and the total time between the announcement of the initiative and the adoption of the amendments in parliament less than a month. For their side the ruling majority has argued that this fast procedure was needed to ensure stability of the electoral legislation in the period before the election, as required by international standards. However, we have to concur with the Venice Commission that such a hasty adoption process is not conducive for the public trust in the election framework.

28. In addition, the Venice Commission highlighted the importance of a wide consultations and broad consensus of all stakeholders on changes to the electoral code, neither of which had been the case for these amendments<sup>6</sup>. With regard to the adoption process the Venice Commission therefore concluded they "*cannot but regret once again that the constitutional amendments went against the most basic rules of democratic law-making, even assuming that the object of the amendments had been previously discussed with the extra parliamentary opposition. Democracy governed by the rule of law is not only about the formal adherence to procedures allowing the majority to govern, but also about deliberation and a meaningful exchange of views between the majority and the opposition*".<sup>7</sup>

---

<sup>5</sup> We refer to our previous information notes for more detailed information on this issue.

<sup>6</sup> In addition, according to international standards the conduct of proper public consultations is an essential requirement for Constitutional amendments.

<sup>7</sup> CDL(2020)044 (prov) §34.

29. The Venice Commission therefore urged the authorities to seek wide broad consultations and consensus with all political forces, including from the extra parliamentary opposition, for the implementation of the new legal framework for elections and to refrain from further amending the legislation before the next elections on 25 April 2021.

30. With regard to the substance of the changes to the electoral legislation itself, the Venice Commission noted that the changes are mostly in compliance with international standards, with the exception of the provision that allows the leader of a political party to be nominated as a candidate in up to four electoral constituencies. This violates the principle of equal suffrage for candidates, as all other candidates can only stand for election in one constituency. The Venice Commission therefore called upon parties not to nominate their party leaders in more than one constituency for the 2021 elections and to abrogate this provision as soon as the 2021 elections are over. We welcome that in our discussion with the different political factions we were informed that the Socialist Party has agreed not to nominate its leader in more than one electoral district. We call upon all political factions to make a similar commitment in order to ensure an election process that is fully in line with international norms and standards.

## **7. Concluding remarks**

31. The wide agreement on the electoral reform between all political stakeholders is an important positive development for Albania that could help resolve the political crisis and lower the contentious and polarised nature of its political environment. This is also important for the countries further European integration which we fully support. We regret the hasty adoption of the changes to the electoral system without political consensus but recognise that the subsequent changes of the electoral legislation to implement the constitutional amendments have minimised the impact on the upcoming parliamentary elections scheduled 25 April 2021.

32. All political stakeholders should now commit themselves to fully implementing the existing electoral framework in good faith and to ensure genuinely democratic elections that can have the trust of all stakeholders. In that context we recognise that, as was highlighted by the extra parliamentary opposition in our meeting with them, a number of issues that were of concern during previous elections, such as abuse of administrative resources and allegations of vote buying, are not addressed by these electoral reforms. We urge all stakeholders to continue their efforts to address these concerns in a consensual manner.

33. The electoral reform that was agreed upon also included the use, or piloting of, new technologies in the electoral process such as biometric voter identification and electronic voting. As noted by several of the stakeholders it may be difficult to satisfactorily deploy these new technologies before the new elections. It is of utmost importance that the deployment of these technologies is not allowed to become a new source of contention, or worse, being instrumentalised for political purposes. We therefore welcome that the legal framework contemplates to provide for the conduct of elections without the use of these technologies if their correct implementation cannot be ensured.

34. As we have mentioned, one of the objectives of a consensual electoral reform was to be a mechanism to resolve the political crisis in the country. The outcome of this reform and the current co-operation started between the different political forces on the preparation of the upcoming elections are cause for optimism in this regard. At the same time, while stating that the objective of their current participation is to return to the parliament, the extra-parliamentary opposition has until now not given firm guarantees that they will take up their irrespective of the outcome of the elections. This may be confusing for voters. We wish to reiterate our principled opposition to parliamentary boycotts and urge all political parties that compete in these elections to accept the mandates accorded to them by the Albanian electorate in a democratic election process.