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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
(28-30 October 2019)**

Co-rapporteurs: Co-rapporteurs: Mr Andrej HUNKO, Germany, Group of the Unified European Left, and Mr Joseph O'REILLY, Ireland, Group of the European People's Party

¹ Document declassified by the Monitoring Committee at its meeting on 16 January 2020.

1. Introduction

1. The visit took place in the context of the rapidly escalating political crisis in the country. The contested local elections on 30 June 2019 and the start of impeachment proceedings against the President of Albania have raised the spectre of this systemic political crisis now evolving into a constitutional crisis as well.

2. Despite the ongoing political crisis, many of the reforms in the country, and in particular the reform of the judiciary, have continued unabated, as has the vetting process of judges and prosecutors, which is at the heart of both the reform of the judiciary and the fight against the entrenched corruption in the country. The judicial reform and vetting process, as well as the impact these processes have on the justice system in the country, were therefore also important items of attention during our visit, as were recent developments with regards to freedom of the media in Albania.

3. On 29 May 2019, the European Commission published its 2019 report on Albania in the context of its "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions". On the basis of this report, the Commission announced in its communication that "*In light of the significant progress achieved and the conditions set unanimously by the Council in June 2018 having been met, the Commission recommends that the Council now opens accession negotiations with Albania.*"² Nevertheless, on 18 October 2019, following objections by France, the Netherlands and Denmark, the European Council did not agree to open membership negotiations with Albania. The failure to open the accession negotiations with Albania and North Macedonia² was widely criticised by the European Commission, as well as by government officials from a number of EU countries. However, it should be noted that scepticism in the political establishments of other EU countries about the actual opening of accession negotiations with Albania was reportedly wider than only the three countries that blocked the agreement. The German position, which was widely seen as the compromise position on the opening of accession talks with Albania, was to formally decide to open the negotiations, while actually only starting them after a series of strict criteria and conditions would have been fulfilled. The implementations of these conditions were, at the same time, meant to be a concrete roadmap for the resolution of the systemic political crisis in the country, which is regrettably hindering the Country's European aspirations.

4. During our visit we met with, inter alia: the Prime Minister; the Speaker of the National Assembly; the Minister of Justice; the Chairpersons of the High Council of Justice and the High Prosecutorial Council; the Chairman and members of the Central Election Commission; the Chairpersons and members of the Parliamentary Inquiry Committee to check the legality of the actions of the President of the Republic regarding the holding of elections for local government bodies, the Parliamentary Ad Hoc Committee on Electoral Reform and the Committee on Education and Public Information Media; the cabinet of the President of Albania; the Independent Qualification Commission; the leadership of the Socialist Party, the Democratic Party and the Socialist Movement for Integration; members of the parliamentary opposition, the Chairman of the Albanian Local Authority Association (AAM); as well as representatives of civil society organisations and of the diplomatic community in Tirana. The programme of our visit is attached to this note in Appendix 1.

5. We would like to thank the Albanian delegation and Albanian Parliament for the excellent programme and hospitality, and the Head of the Council of Europe Office in Tirana and her staff for the support given to our delegation. The statement issued at the end of our visit is attached in Appendix 2.

2. Recent political developments and political climate

6. In our previous information note,³ we already expressed our concern about the contentious and polarised political climate in Albania. Regrettably, this situation has deteriorated significantly and has evolved into a full-blown political crisis since then. Initially, the opposition continued with its boycott of the work of the parliament, especially its plenary sessions. This has seriously affected the reform process in the country, with only 8 pieces of legislation being adopted by consensus since our previous visit. We have maintained our principled stance against parliamentary boycotts, which hinder any meaningful parliamentary dialogue, but also regret to note that the ruling majority often seems to lack the commensurate political will to genuinely engage and consult with the opposition.

² In the case of North Macedonia, France was not joined by the Netherlands and Denmark in its objection to the opening of accession negotiations.

³ [AS/Mon \(2018\) 15 REV 2](#).

Regrettably, the main political parties continue to deploy zero sum political strategies, often to the detriment of the democratic development of the country.

7. The political crisis sharply escalated in February 2019, when the Democratic Party (DP) and the Socialist Movement for Integration (LSI) decided to call upon their MPs to rescind their parliamentary mandates. All except two opposition MPs heeded this call and gave up their mandates. Albania has a proportional election system with regional constituencies. According to Albanian law, when a mandate becomes vacant, it will be automatically offered by the CEC 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 can no longer be seen as representatives of the main opposition parties DP and LSI. At the same time, these members have not joined the ruling majority and have become a third political grouping in the Country. This has, to some extent, changed the dynamics of the political crisis and a key challenge will be to ensure that all three political vectors, extra-parliamentary opposition, parliamentary opposition and ruling majority, will be engaged into seeking, and ultimately agree on, a solution for the, what has become a systemic, political crisis in the country. While the main, now extra parliamentary, opposition parties naturally will need to be involved in these processes, in our view the parliamentary opposition could also play an important role in bridging the entrenched positions of the ruling majority and opposition parties and ensuring that diverging views are heard in the parliamentary process.

8. Some interlocutors we met argued that the rescinding of the mandates by the opposition MPs, and thus their substitution, had taken place in violation of legal and constitutional provisions. Without wishing to comment on the merits of these arguments, it underlines the urgent need for a properly established and functioning Constitutional Court. During our visit, we were informed that the Constitutional Court would be established and functioning before the end of 2019. However, following our visit, we understood that the appointment process has become the subject of a difference of interpretation about constitutional requirements between the President and the Government, which could further delay the establishment of the Constitutional Court. On 30 December 2019, the Speaker of the Albanian parliament requested an opinion of the Venice Commission on the appointment of judges to the Constitutional Court.

9. As a result of the political crisis, the oversight function of the parliament has suffered and mechanisms available to the parliament, such as Committees of Inquiry, are reportedly underutilised, and the appointment of representatives on independent regulatory bodies often delayed. Moreover, while Albania has legal provisions for public consultation and civil society involvement in the legislative process and policy making, in practice these provisions are rarely implemented, and its results are seldom taken into account⁴. The shortcomings in the public consultation process compound the already mentioned lack of dialogue and co-operation between opposition and ruling majority. This has contributed to complaints and allegations that the ruling majority would want to monopolise the legislative and governance processes in the country.

3. Local Elections

10. On 5 November 2018, regular local elections were called for on 30 June 2019 by Presidential Decree. After renouncing their parliamentary mandates, the main opposition parties announced that they would not participate in the local elections, unless a number of conditions were met. These conditions included, inter alia, the resignation of Prime Minister Rama, the announcement of new parliamentary elections and the formation of a technical transitional unity government until the next elections had taken place. These demands were firmly rejected by the ruling majority, following which the main opposition parties refused to register for the local elections and started a new wave of protests and demonstrations.

11. On 24 May 2019, in the context of the refusal of the opposition parties to participate in the local elections, President Meta made an offer to the political parties of postponing the elections in order for them to come to a negotiated solution to the crisis. There have been precedents with regards to postponing elections in order to resolve political crises in Albania, the most recent one being in 2017, when the parliamentary elections were postponed as part of a compromise to resolve the political standoff at that time. However, this was rejected by the

⁴ The authorities, for their part, have argued that, in their view, numerous amendments proposed by NGOs have been passed by the Parliament and that in 2019, 395 interest groups and civil society organisations have participated in activities organised by the parliamentary committees.

ruling majority, which argued that it would be irresponsible, and start a dangerous trend, if elections were postponed each time the opposition boycotted the political process. Regular opposition demonstrations continued, marred by, albeit isolated, violent incidents. On 10 June 2019, citing concerns for public safety and his constitutional responsibility to protect the pluralist nature of the election process, President Meta issued a decree cancelling the elections for 30 June 2019. However, this decree was rejected by the ruling majority as illegal and, on 13 June 2019, albeit without the participation of the representatives of the main opposition parties, the CEC declared that the President had exceeded his constitutional powers by cancelling the elections and declared his decree invalid.⁵ The Albanian parliament supported the CEC decision and the 30 June 2019 date for the local elections was therefore maintained by the authorities. Following an appeal to the electoral college, the latter confirmed the CEC decision that the president's decree was invalid. It should be noted that, in a dissenting opinion, one of the judges argued that the electoral commission could not rule on the Presidential decree, as no formal lawsuits against it had been filed. Again, the fact that the country is without a functioning Constitutional Court meant that there was no independent and impartial arbiter in this conflict, which seriously affected the process. On 27 June 2019, the President issued a decree in which he announced 13 October 2019 as the new date for the local elections. However, this decree was not implemented by the authorities and was not published by the Ministry of Justice, which was not the case for his decree on 10 June.

12. Local elections took place in Albania on 30 June 2019 without the participation of the opposition. In a number of towns and villages, especially where the opposition has considerable support, this led to considerable tensions and confusion, as some local administrations took the position that the local elections had been cancelled.

13. During these elections, the SP ran unopposed in 31 out of the 61 Municipalities, while in the other municipalities, it only faced candidates proposed by small opposition parties and groups or independent candidates. As a result, all except one of the mayoral races were won by the SP, and the latter gained the majority in all but 2 of the 61 municipality councils in the country. Total turnout announced by the CEC was 21.6%. It should be noted that, by comparison, the turnout for the 2015 local elections was around 45% and turnout for the 2017 parliamentary elections 48%. These turnout figures indicate that the supporters of the main opposition parties indeed headed the call to boycott these elections.

14. The local elections were observed by an election observation mission of the OSCE/ODIHR. The Congress of Local and Regional Authorities decided to cancel its election observation mission citing security concerns. According to the OSCE/ODIHR *"The 30 June local elections were held with little regard for the interests of the electorate. The opposition decided not to participate, and the government determined to hold the elections without it. In the climate of a political standoff and polarisation, voters did not have a meaningful choice between political options. In 31 of the 61 municipalities mayoral candidates ran unopposed. There were credible allegations of citizens being pressured by both sides. Political confrontation led to legal uncertainty, and many decisions of the election administration were taken with the political objective of ensuring the conduct of elections. Voting was conducted in a generally peaceful and orderly manner and counting was assessed positively overall, although several procedures were not always followed correctly."* In addition, *"voters did not have a full choice from among political alternatives as major opposition parties abstained from the elections."*⁶

15. While we question the decision by the opposition to boycott these elections, it is clear from the figures quoted above that these elections lacked the required pluralism, which raises questions about their democratic legitimacy. This is an issue that needs to be addressed. In this regard, we note that some of our interlocutors argued that the Albanian constitution contains pluralism requirements that may not have been met by these elections. Without wishing to comment on the merits of these arguments, it again reinforces the need for a fully established and functioning Constitutional Court.

4. Impeachment

16. The political crisis has evolved into a constitutional crisis between the Parliament and the President of the Republic. On 17 June 2019, following his decree to cancel the local elections, a motion to impeach the President was tabled by 55 members of Parliament. On 8 July 2019, on proposal of its Legal Affairs Committee, the Parliament of Albania decided to setup a Special Inquiry Commission on the powers of the President. The inquiry commission was formally established on 11 July and is composed of 4 members of the ruling majority and 4

⁵ The Presidential and his supporters have argued that the CEC does not have the powers to review Presidential decrees, as that is solely the competence of the Constitutional Court, See also the section on impeachment below.

⁶ OSCE/ODIHR Election Observation Mission for the Local Elections in Albania on 30 June 2019, [Final Report](#).

members of the parliamentary opposition. It should be noted that, if the Parliament would decide to impeach the President, the next step would be a trial by the Constitutional Court, which would have to decide if the President is guilty or not of the violations contained in the impeachment decision. However, as noted above, the Constitutional Court is currently non-functional. As noted by the Venice Commission, the establishment of a Constitutional Court in the middle of a sensitive constitutional standoff, which an impeachment procedure by nature is, even if it does not affect the legitimacy of the Court, is not beneficial for the appointment procedure and individual independence of the judges.⁷

17. To assist the Special Inquiry Commission in its work, the Speaker of the Albanian Parliament asked for an opinion of the Venice Commission on “the scope of the power of the President to set dates of elections.” This opinion⁸ was adopted by the Venice Commission at its plenary on 11 and 12 October 2019.

18. In its opinion, the Venice Commission concluded that, under the Albanian Constitution, the right of the President to cancel or postpone elections without specific legal basis is questionable, unless there is a state of emergency as narrowly defined in the Constitution, which had not been declared⁹. It should be noted that, by so concluding, the Venice commissions also implicitly concluded that the continuation of the conduct of local elections on 30 June had been legally correct. The Venice Commission therefore found that *“even if the President pursued a legitimate aim, neither the Constitution nor the Electoral Code establishes any general power for the President to cancel elections and to set a new date”*.¹⁰ It concluded that *“the postponement of local elections exceeded the competence of the President. It will be for the Assembly and its investigation commission and finally the Constitutional Court to establish whether this was a violation of the Constitution and, if so, whether it was also “serious” enough in the sense of Article 90 of the Constitution to warrant impeachment proceedings.”*¹¹

19. With regards to impeachment, the Venice Commission noted that the President, when postponing the elections, had pursued the legitimate aim of seeking a compromise solution in an evolving political crisis. In addition, he had made regular calls for dialogue and his decisions had not been challenged before a Court. The Venice Commission therefore suggested that *“this may provide elements to the Assembly tending towards a view that – although the President may have exceeded his constitutional competences by cancelling and postponing the local elections beyond the electoral mandate of the local authorities without a specific legal basis – these acts might not meet the requisite criteria of sufficient seriousness in the circumstances to warrant an impeachment of the President.”*¹²

20. As we emphasised during our visit, we fully support the Venice Commission in its conclusions. A decision by the parliament to impeach the President will only serve to increase the tensions in the already very polarised climate. At this moment, it is of key importance that all political forces work to de-escalate and reduce polarisation, something we have repeatedly urged them to do. In addition, the possibility of the impeachment process tainting the appointment process of the Constitutional Court judges is concerning, as this could have lasting consequences for its functioning. Additionally, it is important to note that the President of Albania is elected by the parliament. A successor would therefore in all likelihood be representative of, or close to, the current ruling majority. In the current political context, this could negatively affect the balance of powers and pluralism in the political system. We therefore urge all political forces to take fully into account the conclusions and recommendations of the Venice Commission as expressed in its opinion.

5. Electoral Reform

21. In our view, which was shared by many interlocutors, electoral reform followed by elections, will be key to overcoming the political crisis. In furtherance of this objective, all political forces, including both parliamentary and extra-parliamentary opposition, should be engaged in the electoral reform process, with the objective of ensuring as broad a consensus as possible between all stakeholders.

22. The electoral reforms should focus foremost on implementing the recommendations of the Venice Commission and OSCE/ODIHR, which aimed at addressing shortcomings noted during previous elections. A

⁷ [CDL-AD\(2019\)019](#), § 80.

⁸ [CDL-AD\(2019\)019](#).

⁹ [CDL-AD\(2019\)019](#), § 50 and 62.

¹⁰ *Ibid* §73.

¹¹ *Ibid* § 76.

¹² *Ibid* § 101.

number of interlocutors and stakeholders, in particular from the parliamentary position, have also called for the reform of the electoral system itself. In this context, the parliamentary opposition has suggested the 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 current system. 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 legal framework for elections in Albania is adequate for the conduct of democratic elections if implemented fully and in good faith. A broad agreement on the election system for the country could be an important factor contributing to resolving the systematic political crisis. At the same time, however, it is important that the political forces agree once and for all, on a framework for democratic elections that has the agreement and trust of all political stakeholders. It is clear that repeated changes to the electoral system in the long term do not provide the required stability of the electoral framework that is essential for a genuinely democratic election process.

23. As we have reported previously, there had been a joint agreement about the need for electoral reform between ruling majority and opposition¹³. An ad hoc Committee for electoral reform was established by the parliament, which is co-chaired by the ruling majority and opposition. Regrettably, as a result of the absence of a cross-party consensus, no concrete results could be achieved and, following the withdrawal of the opposition members from parliament, it initially all but ceased to function. Recently, however, following the replacement of the members that had given up their parliamentary mandates, the work of the ad hoc Committee has been reinitiated. Following the local elections, Prime Minister Rama asked the ad hoc Committee to prepare proposals to address the OSCE/ODIHR election observation recommendations. For its part, the parliamentary opposition has insisted that the election system be changed to a fully proportional system. Based on our findings during the previous elections, we strongly recommend that the ad hoc Committee also focusses on the interlinked issues of political party and campaign financing.

24. The extra parliamentary opposition is not (yet) part of the ad hoc Committee. However, in a welcome development, the ruling majority has offered the DP and LSI to appoint their representatives in the ad hoc committee and has offered the extra parliamentary opposition the position of a third co-chair. In addition, the ruling majority has reportedly offered the extra parliamentary opposition a veto right over the final proposals of the ad hoc committee. Regrettably, the extra-parliamentary opposition has not yet taken up this offer, instead suggesting the establishment of a new committee outside the parliamentary framework to prepare a new electoral code. This seems to be mostly aimed at excluding the extra parliamentary opposition from participating in the reform process. We have urged all stakeholders to come to a compromise that will include the participation of, and supported by, both extra- parliamentary and parliamentary opposition in the electoral reform process.

6. Reform of the Judiciary and vetting process

25. In a welcome development, despite the political crisis, the vetting of judges and prosecutors has been going on unabated. This is to be welcomed, even if the vetting process is still far from completion, a situation which is affecting the overall functioning of the justice system.

26. According to the data we received from the Independent Qualification Commission (IGC)¹⁴, by 29 October 2019, it had reached decisions in 198 cases. Of these, in only 85 cases, or 42%, were the candidates confirmed in their post. In 73 cases, i.e. 36% of the cases processed, the candidates were dismissed, while in other cases the vetting process was discontinued or terminated due to voluntary resignation or withdrawal of the candidate from the vetting process after the vetting was started. In the overwhelming majority of cases, the IQC reached these decisions unanimously. By the time of our visit, the Appeals Chamber reached a decision with regards to 32 appeals. It upheld the IQC in 20 (62%) of the cases and overruled the IQC decision to appoint a candidate in 8 (25%) of the cases.

27. The very high level of dismissals and resignations underscores the necessity of the vetting process. However, it is important to explore the possibilities of stepping up the speed of the vetting process, given the impact

¹³ Although not necessarily about the extent of it.

¹⁴ As we outlined in the previous information note the Independent Qualification Commission is tasked with the vetting of all prosecutors and judges in Albania. It is a constitutional body with a five-year mandate. Its decisions can be appealed with the special appeals chamber. The members on these two bodies were appointed in agreement with an international monitoring mission under the aegis of the European Union that is also monitoring the vetting process.

of the vetting process on the justice system. In addition, as we mentioned, only in 198 cases, has a decision been reached out of the more than 800 judges and prosecutors that need to be vetted in Albania. We are concerned by the fact that the mandate of the IQC is limited to five years and, based on the current number of decisions reached in until now, we have some questions about whether the vetting process can be finalised in the remaining period of the mandate. We therefore urge the authorities to be pro-active and to take timely steps to extend the mandate of the vetting bodies in case needed.

28. In a welcome development, after a sufficient number of their members passed the vetting process, the High Council of Justice, the High Prosecutorial Council and the Justice Appointments Council started functioning in January 2019. Neither the Supreme Court nor the Constitutional Court, has sufficient members appointed to have the required quorum for them to start functioning, which is of concern. It should be noted that 8 out of 9 Constitutional Court members, and 15 out of 18 Supreme Court Judges have been dismissed or have resigned as a result of the vetting process. This again underscores both the scope of the problems faced by the judiciary as a result of the vetting process, as well as the need for this vetting process to take place

29. In the previous information note, we argued that the very high number of dismissals in the vetting process as a result of undeclared and unexplained assets of candidate judges and prosecutors, shows that the High Inspectorate of Audit of Assets and Conflicts of Interest (HIDAACI) needs to be both strengthened and redesigned. The fact that a former Chief Inspector of HIDAACI was reportedly one of the candidates that withdrew himself from the vetting process after it was started, seems to be a case in point in this respect. In this context, the relatively low rate of high-level referrals to the prosecution by HIDAACI should be noted, 22 cases in 2017 and 27 cases in 2018, leading to 8 convictions in 2018. The figures slightly better for mid-level officials, with 53 referrals to the prosecution in 2018, 17 of which leading to a conviction. However, these figures are still very low. The newly established anti-corruption task force, headed by the Minister of Justice, which aims to foster co-operation between the different bodies and agencies fighting corruption in Albania, has now fully started its work, which is to be welcomed.

30. Regrettably, the establishment of the Special Anti-Corruption Prosecutors Office (SPAK), which is a key component in the fight against corruption in Albania, has been considerably delayed as a result of the vetting process. The High Prosecutorial Council (HPC) has started the selection process for this body. At the time of our visit, none of the SPAK prosecutors had yet been appointed but, on 25 November 2019, the HPC appointed the first 8 SPAK prosecutors. On 19 December 2019, these eight members of the Special Prosecution Office against Corruption and Organized Crime (SPAK) were sworn-by the President of Albania. However, it is not clear if SPAK can now start its work as, according to Constitutional provisions, SPAK needs 10 Prosecutors to function. The HPC informed us that only after SPAK is formally established, can the work start on the establishment of the National Bureau of Investigation (NBI), which is another key body in the fight against corruption and organised crime. According to the HPC, the process to establish the NBI, whose members also need to be vetted, will take at least six months.

31. In a welcome development, on 22 November 2019, the HPC sent its ranked list of candidates for the post of Prosecutor General to the Albanian parliament. In line with constitutional provisions, the Parliament will appoint the Prosecutor General from the HPC list with a 3/5 majority. According to legal provisions, if the parliament fails to appoint a candidate from the list within 30 days after receiving it, the highest-ranking candidate on the HPC list will be considered appointed. On 5 December 2019, the parliament elected Mr. Olsi Cela as the General prosecutor with 101 votes¹⁵.

32. The new High Council of Justice (HJC), like the HPC, was finally established on 20 December 2018. The HJC consists of 6 judge members and 5 lay members, who are appointed for a 5-year term. A key priority of the HJC is filling the vacancies in the Supreme Court, which, since the reform of the justice system, has fully become a career court. A number of supreme court judges have resigned or were dismissed as a result of the vetting procedure, which has impaired the functioning of this court. In a welcome development, on 18 December 2019, the High Council of Justice formally established the Special Courts against Corruption and Organised Crime, which are an important element of the institutional structure to fight corruption and organised crime. In order to ensure its functioning, the HJC appointed 5 judges from the former Serious Crimes Court of Appeal, that had passed the vetting process for the Special Court of Appeal against Corruption and Organised Crime.

33. After our visit, we welcomed the clear commitment of the authorities to continue and further the important reforms of the justice system and judiciary. During our meetings, the HJC and Minister of Justice informed us that

¹⁵ Mr Cela had been the candidate ranking first on the list sent to the parliament by the High Prosecutorial Council.

they expected all judicial bodies, especially the Constitutional Court, Supreme Court and SPAK to be fully functional by the end of 2019. However, since our return, we have been informed about new delays in the establishment of these bodies and the appointment of its members. As a result of this, the deadline seems increasingly unsure, which is of great concern. A number of the delays have also been the result of differences in interpretation of constitutional provisions between different political actors that would normally have been resolved by a Constitutional Court. This, coupled with the spectre of impeachment proceedings, make the establishment of a Constitutional Court that can function as a genuinely independent and impartial arbitrator a key priority.

34. As we have outlined above, the declaration of assets by elected officials, judges and prosecutors, as well as high level civil servants has been an area of particular attention and concern. A system for electronic asset declarations and audit, which could dramatically improve the effectiveness of the work of HIDAACI has been developed with the assistance of the Council of Europe, the EU and USAID. However, in a recent development, HIDAACI unexpectedly cancelled the implementation of this system over what, to our mind, seems to be secondary issues. We have called upon the authorities to resolve these issues promptly and to ensure that the system will be functioning without further undue delays.

7. Media environment

35. Regrettably, the media environment in Albania, which has always been challenging, has deteriorated since our last visit. Threats and harsh rhetoric against journalists have increased over the last year, including by Prime Minister Rama, who has reportedly called journalist rubbish bins or garbage in public speeches and meetings. As noted during previous visits, defamation remains criminalised, although it does not carry a prison sentence. However, the law allows for high fines in cases of a conviction, which has a chilling effect on journalists. The media environment remains split along party-political party lines, with many of the private media being supportive of one or the other of the main political parties. We do not question the authorities' assertion that fake news is rife in the region, and that certain media outlets sometimes publish unsubstantiated allegations. However, such harsh rhetoric by leading members of the government and threats of defamation lawsuits are unfortunate and infringes on press freedom, as remarked by several international press organisations such as Reporters Without Borders¹⁶.

36. In December 2018, a package of amendments to the Law on Audio visual Media and the Law on Electronic Communications were drafted by the authorities. In order to address criticism and concerns expressed by stakeholders and the international community, the draft law containing the amendments was revised. However, when the revised draft law was published in June 2019, it was again strongly criticised by media representatives and the international community, as many recommendations and concerns on the original law were left unaddressed. For many media representatives, this confirmed their fears that the law as an attempt to bring online media outlets under the control of the authorities.

37. The OSCE Representative for Freedom of Media prepared a legal opinion on the proposed amendments. This opinion expressed serious concern about the very vague and overly broad definition of "respect of privacy and dignity of citizens". In cases of violations of this very vague norm, online media outlets can face fines of up to 1.000.000 LEK and be compelled to publish an apology. According to the opinion, this could allow the regulator to adopt very restrictive and discretionary decisions with regards to online content regulation. It should be noted that, if a media outlet refuses to comply, it could be face considerably higher fines. These fines seem disproportional and excessive. Furthermore, online media platforms, which are considered to be abetting criminal offences such as child pornography or terrorist acts, or breach national security, could be taken offline reportedly via an unclear procedure, which does not seem to provide sufficient safeguards against possible infringements on the right of freedom of expression. Following the continued criticism on the revised law, the authorities withdrew it from consideration in order to make further revisions.

38. During our meetings in Tirana, Prime Minister Rama informed us that the main objective of the Law was to address the, in his view, rampant defamation of the authorities by anonymous persons or groups on the internet. He assured us at that time, that all OSCE recommendations would be reflected in the law. However, although the latest revision of the draft law reportedly had been finalised, no consultations with media stakeholders had taken place and the new draft had not been published, which gave rise to fears that the main concerns of the previous draft were not addressed in the revised draft law. We therefore called upon the authorities to publish this draft law as soon as possible, in order to dispel any concerns that it would limit freedom of expression in the country.

¹⁶ [Press release](#), by Reporters Without Borders.

39. On 13 November 2019, the authorities published the latest revision of the draft law. Regrettably, this law is reportedly nearly identical to the previous draft and leaves many of the concerns and shortcomings unaddressed. Despite assurances to the contrary, OSCE recommendations appear not to have been included. The latest draft was widely criticised by media organisations and other stakeholders, including the Albanian Media Authority (AMA), for stifling media freedom in the country. Under the draft law, AMA would be the main body implementing its provisions. AMA called upon the Albanian parliament not to adopt this draft law in its current format¹⁷. Given the concerns raised about the latest draft, we would strongly recommend that the Albanian Parliament considers drafting a completely new version of the law in close consultations with the relevant stakeholders and international institutions.

40. Fake news aiming to influence political and electoral processes in the country and the wider region are increasingly becoming a concern for Albania. In the view of the ruling majority “*there is a need to raise awareness of disinformation campaigns from Russia, as this country is a major source of disinformation in the region, Europe and beyond*”. A resolution was therefore tabled by leading members of the ruling majority with the objective of developing a comprehensive strategy for the Albanian institutions to tackle this phenomenon. We strongly recommend that the authorities develop any initiatives in this field in close consultation with civil society and relevant stakeholders, especially as one of the stated aims of this initiative is to strengthen the transparency and auditing procedures of the funding of the political parties and civil society organisations. The development and implementation of clear guidelines and mechanisms with regards to political party funding, and the need to ensure full transparency in this regard, have been long standing demands of the Assembly. At the same time, given the sensitivity of this topic in any democratic society, it is important that European norms and standards are strictly adhered to when developing legislation to regulate this area.

¹⁷ Balkans Insight, [Albanian Parliament Urged to Reject Online Media Regulation](#).

Honouring of obligations and commitments by Albania

Programme of the fact-finding visit to Tirana (28-30 October 2019)

Co-rapporteurs: Mr Andrej HUNKO, Germany, Group of the Unified European Left
Mr Joseph O'REILLY, Ireland, Group of the European People's Party

Secretariat: Mr Bas KLEIN, Deputy Head of Secretariat, Monitoring Committee

Main topics:

- Political environment and political crisis
- Follow up to local elections
- State of affairs with regards to the vetting process and reform of the Judiciary
- Fight against corruption
- Media environment and freedom of the Media

Monday, 28 October 2019

- 09:00 Briefing on recent developments by Head of the Council Office in Tirana (*)
- 09:30 Roundtable with civil society organisations on recent political developments (*)
Mr Afrim KRASNIQI, Albanian Institute of Political Studies
Mr Remzi LANI, Albania Media Institute
Mr Erion TASE, Academy of Political Studies
- 10:30-11:15 Roundtable with media representatives and civil society on the media environment and freedom of the media (*):
Mr Lutfi DERVISHI, Journalist (Public Broadcaster)
Ms Kristina VOKO, Executive Director of Balkan Investigative Reporting Network (BIRN)
Mr Koloreto CUKALI, Executive Director of Albanian Media Council
Mr Aleksander ÇIPA, Union of Albanian Journalists
- 11:30-12:45 Meeting with H.E. Mr Gramoz RUÇI, Speaker of the Albanian Parliament
- 12:50- 13:40 Meeting with the Members of the Inquiry Committee: To check the legality of the actions of the President of the Republic regarding the holding of elections for local government bodies
- 15:15 –16:00 Meeting with Ms. Fatjona DHIMITRI, Chairperson of the Committee on Education and Public Information Media
- 16:10 –17:00 Meeting with Ad hoc Committee on Electoral Reform
- 17:05 –17:45 Meeting with Ms Rudina HAJDARI, Head, and members of the parliamentary opposition
- 18:00 –18:45 Meeting with Central Election Commission
- 19:45 Dinner hosted by the Albanian Assembly

Tuesday, 29 October 2019

- 09:00-10:20 Meeting with International Community (*)
Mr Luigi SORECA, Head of European Union Delegation
Ms Leyla MOSES ONE, US Charge d’Affaires
Mr Peter ZINGRAF, German Ambassador
Ms Christina VASAK, French Ambassador
Mr Alberto CUTILLO, Italian Ambassador
Ms Guusje KORSALS ALTES, Dutch Ambassador
Mr Duncan NORMAN, UK Ambassador
Mr Bernd BORCHARDT, OSCE Presence
- 10:30–11:15 Meeting with Ms Etilda GJONAJ, Minister of Justice
- 11:30 –12:15 Meeting with the adviser of the President
- 12:30–13:15 Meeting with the High Council of Justice
- 15:10-16:00 Meeting with the High Prosecutorial Council
- 16:15-17:00 Meeting with High Qualification Commission
- 17:15-18:00 Meeting with Local authority associations (AAM)

Wednesday, 30 October 2019

- 08:45-09:30 Meeting with H.E. Mr Edi RAMA, Prime Minister of the Republic of Albania
- 09:35–10:15 Meeting with Mr Lulzim BASHA, leadership of the Democratic Party
- 10:30–11:15 Meeting with Ms Monika KRYEMADHI, leadership of the Socialist Movement for Integration

(*) Meetings organised by Council of Europe Office in Tirana

Albania: monitors call on all political forces to overcome political crisis and commit to electoral reform

- 07/11/2019

- MONITORING



Following a visit to Tirana, the co-rapporteurs of the Parliamentary Assembly of the Council of Europe (PACE) for the monitoring of Albania, Andrej Hunko (Germany, UEL) and Joseph O'Reilly (Ireland, EPP/CD), have called on all political forces in Albania to show the political will to resolve the systemic political crisis that has plagued the country.

“We reiterate our position that parliament is the forum for political dialogue and discussion, and that therefore boycotts and the burning of political mandates should have no place in a democratic society. At the same time the ruling majority should pay more than just lip-service to the role of the opposition in a pluralist democracy, and engage in genuine dialogue and consultation with the opposition on important reforms and the political challenges that the country is facing,” emphasised the two co-rapporteurs.

In addition, they urged all political forces to refrain from any actions that could increase tension and further undermine political pluralism in the country. They welcomed the recent [Venice Commission opinion](#) on the scope of the President's power to set the dates of elections, which noted that, although the President might have exceeded his constitutional competences by cancelling and postponing the local elections without a specific legal basis this would in its view not warrant the impeachment of the President. The co-rapporteurs expressed the hope that all political forces would take this opinion, and its conclusions, into account.

In the view of the co-rapporteurs, electoral reform followed by elections could be key to overcoming the political crisis. All political forces, including the parliamentary and extra-parliamentary opposition, should be fully engaged in the electoral reform process in order to address shortcomings noted during previous elections, and – once and for all – to decide on a framework for genuinely democratic elections that has the agreement and trust of all political stakeholders.

The co-rapporteurs welcomed the repeatedly-expressed commitment of the authorities to reform the judiciary and the justice system in Albania. With regard to the ongoing vetting of judges and prosecutors, the co-rapporteurs noted the high number of dismissals and resignations a result of this process. While, in their view, this underscored the necessity for the vetting process, they expressed concern that, more than a year after the process has started, key judicial institutions such as the High and Constitutional Courts, as well as the Special Anti-Corruption Prosecutors and Courts, had still not been appointed or established due to a lack of vetted candidates. They therefore welcomed assurances that these institutions will be functioning before the end of the year.

“This is especially relevant with regard to the establishment of the Constitutional Court, which could play an important role in defusing political tension, as there is currently no independent arbiter to decide on the constitutionality of decisions and their outcome by the different authorities,” the co-rapporteurs underlined.

The co-rapporteurs were concerned by suggestions from several journalists and NGOs that the media environment is deteriorating. They called on the authorities to take into account all recommendations made by the OSCE Representative on the Freedom of the Media concerning the draft law on media and services, and to publish this draft law as soon as possible, in order to dispel any concerns that it would limit freedom of expression in the country.

The co-rapporteurs said they intend to present an information note on their visit during the December meeting of PACE’s Monitoring Committee.