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FOR YOUR INFORMATION

cc. E Aucoin

16.06

OSCE

Organisation for Security and Co-operation in Europe
OSCE Presence in Albania

VIA FAX - 9 pages total

DATE: 15 June 1998

TO:
OSCE Vienna - SG & CPC
Chairman of the PC

Secretary General
OSCE Parl. Assembly

Secretary General
CoE ParliamentaryAssembly

Political Director
Council of Europe

Inter-Parliamentary Relations Dept.
European Parliament

FROM: Daan Everts, Ambassador
Head of Presence

SUBJ: **BACKGROUND REPORT – TRI-PARLIAMENTARY MISSION TO ALBANIA / IMPLEMENTATION OF THE 23 JANUARY DECLARATION**

SUMMARY – Following the OSCE/CoE/EP parliamentary mission's declaration, the OSCE Presence has monitored and facilitated its follow-up. ***Drafting of a new constitution*** has proceeded in earnest, despite the ongoing Union for Democracy boycott. A continued boycott of the process and the scheduled 22 November referendum could damage needed public debate and support for the new constitution. There have been several positive developments with respect to the ***independence of the judiciary***, including amendments to the Law on the Organisation of Justice. On a negative note, the conflict between the Constitutional Court and the Parliament resulted in the removal of the Constitutional Court President through procedures not in full conformity with existing legal provisions. The ***draft of a new media law*** has been subjected to a transparent process of public consultation and sets high democratic and legal standards. Concern exists as to whether it might be over ambitious / too sophisticated for the prevailing situation in Albania. A durable solution to the

practice of ***dismissal and replacement on political grounds of officials in the civil service, armed forces and police,*** may come from recent changes to the Civil Service law. By getting objective criteria for recruitment and dismissal, this offers a promise of job security. It remains to be seen whether the law will put an end to politically motivated dismissals, such as the removal of the chairpersons of several of the district councils. The results of ***the observation of parliamentary practice*** indicate increased respect for democratic standards of parliamentary practice, although room for improvement remains. – **END SUMMARY**

REPORT

Over the past few months, the OSCE Presence has monitored and, where requested, facilitated follow-up on the recommendations and proposals specified in the 23 January declaration of the OSCE/CoE/EP parliamentary mission ("the Tri-Parliamentary Mission" or TPM) to Albania.

With a view to the upcoming, second TPM, 29-30 June 1998, this paper intends to assess the progress made in the implementation of the declaration. It should be stressed that this paper does not judge the government's overall performance, but only addresses the recommendations set out in the TPM's declaration regarding:

1) drafting of the Albanian constitution;
2) independence of the judiciary;
3) access to public media;
4) recruitment and appointments to the civil service, armed forces and police; and
5) parliamentary practice.

ad 1) DRAFTING OF THE ALBANIAN CONSTITUTION

Union for Democracy Participation

The TPM emphasised the importance of the participation of the Union for Democracy - the Right of the Center Political Group - in the constitution drafting process. Directly following the mission there were a number of positive developments. Consistent with the 23 January Declaration, the Union for Democracy dropped the call for a Constitutional Assembly based on new nation-wide elections, tacitly acknowledging the legitimacy of the Constitutional Commission of Parliament. Subsequently, members of the smaller Union for Democracy parties nominated official representatives to the Commission, and on several occasions these representatives attended Commission meetings (see appendix with revised list of members). Furthermore, on several occasions Union for Democracy representatives participated in public activities relating to the constitution drafting process.

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The Democratic Party (DP), however, has continued to boycott the Constitutional Commission, and has insisted on structural changes as a condition of participation. Referring to the TPM's Declaration, the Union for Democracy issued a formal list of conditions on 17 March 1998:

- to change the composition of the Constitutional Commission in order to allow the Union for Democracy, representing approx. 32% of the votes, the right to act as a blocking minority;
- to adjust the Chairmanship of the Commission;
- to exclude cabinet members from the leadership of the Commission.

Efforts have been made to develop a dialogue between the Union for Democracy and the other parties. As yet, these efforts have failed to produce consensus. A major point of disagreement concerns the question of a "blocking minority." Members of the Government Coalition and the United Right consider a blocking minority to be detrimental to the drafting process which is based on compromise texts. In this connection, they point out the option for any minority to propose alternative texts for submission to Parliament and, ultimately, the Referendum.

On the other issues, such as changes in the chairmanship, the members of the Government Coalition and the United Right have expressed flexibility and a willingness to compromise (e.g. expanding the Chairmanship). However, the continued boycott of the DP and the other members of the Union for Democracy, with the exception of the Legality Party, have effectively blocked face-to-face discussions on a compromise formula, as well as on substantive constitutional issues.

Despite the ongoing boycott, drafting of a new constitution has proceeded in earnest. Commission meetings have been open, with NGO and religious leaders taking part. Debates have been vigorous. Input has been accepted from NGOs, local and international experts, and private citizens. The Commission has continued to cooperate fully with the CoE's Venice Commission and ACCAPP, OSCE's Administrative Center for the Coordination of Assistance and Public Participation. A final draft will be completed by the summer, possibly in July. After an intensive public information campaign, Parliamentary debates will occur in the autumn, with the concluding referendum scheduled for 22 November.

Given its ongoing non-participation, it is unclear what position the Union for Democracy will take on the referendum. A boycott would not only represent a rejection of the TPM Declaration's support of the referendum process, but could also damage needed public debate and support for the new constitution. The OSCE Presence therefore suggests the TPM to focus on this issue and look for possible solutions. One option might be a special session of the Commission with

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representatives from the Union for Democracy to jointly review the draft texts and explore possibilities for consensus.

International Advisory Group

The TPM's Declaration contained the following language:

"*Proposed* that an international advisory group, representing European parliamentary institutions, be established to complement existing consultative groups working with the Constitutional Commission, such as the Venice Commission of the Council of Europe, the Administrative Center for the Coordination of Assistance and Public Participation (ACCAPP), and domestic civil society organisations."

This group has not been formally established, but in view of the political stalemate over participation, it may be appropriate to call on this group to advise and/or to issue a "Solomon's verdict." The TPM itself may wish to speak out on this issue and could consider the above mentioned suggestion for a special meeting of the Commission with the Union for Democracy - perhaps under the auspices of the Venice Commission?

ad 2) **INDEPENDENCE OF THE JUDICIARY**

There have been several positive developments and at least one negative development with respect to the independence of the judiciary.

Positive

Positive developments include the preparation of new laws and amendments of prior laws regarding the judiciary. The Ministry of Justice has agreed to propose amendments to the Law on the Organization of Justice. The amendments, based upon CoE expert recommendations and OSCE mediation, address concerns raised by "six-month judges" who fear removal under the original (December 1997) version of the law. The new amendments - still to be approved by Parliament - go far in ensuring that sitting judges will be evaluated and new judges will be appointed on objective merit-based criteria.

The government has proposed a law on the administrative budget of the courts. The law provides for the establishment of a new office within the Court of Cassation for the administration of the budget of the court system. The law thereby provides greater independence to the judiciary in the administration of its budget.

The government has also proposed a law on "The Organisation and Functioning of the Court of Cassation and the Administration of the Judicial Services." As the name suggests, the law provides a legal basis for the organisation and administration of the Court. While recent press reports criticise the law as a

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weakening of the powers of the President of the Court, the OSCE's initial informal look at the law suggests that it is supportive of the development of sound judicial administration. The law is currently under formal evaluation by CoE experts.

Taken together, it seems that the package of legislation constitutes an important step towards the establishment of a depolitisised, professional judiciary, something Albania has greatly lacked in both the far and recent past.

Negative

On a negative note, the conflict between the Constitutional Court and the Parliament resulted in the removal of Constitutional Court President, Mr Rustem Gjata, on March 14, through procedures not in full conformity with the law. Gjata was removed by Parliament upon the decision of the Commission for the Verification of Figures established under Albania's lustration laws. The Commission determined that Gjata was not eligible for his position on the basis of his alleged collaboration with former Albanian secret service or foreign intelligence agencies.

Without opining on whether the underlying allegations are correct, it appears that the removal was not done in conformity with existing legal provisions in at least two respects. First, Gjata's immunity was not lifted before his removal. The interim Constitutional Provisions provide that judges of the Constitutional Court may not be "prosecuted, arrested, detained, or condemned without the authorisation of the Constitutional Court." Gjata was removed from his post by Parliament without prior authorisation from the Court. Second, Gjata was not properly notified of the decision of the Verification Commission holding him ineligible for his position. Proper formal notice under the law initiates the time within which one recommended for removal can seek review by the courts. Informal notice does not. Gjata has appealed his case to the courts - where best it may be addressed by the Albanian legal system. (The OSCE Presence's statement regarding the removal is attached hereto as Attachment II). Contrary to OSCE advice, Parliament decided not to wait for the legal outcome and has appointed a replacement for Gjata. It should be added, however, that the Parliamentary approach to the Constitutional Court members' rotation (which Gjata strongly opposed) was supported by CoE expert analysis.

Other rule of law developments

The Ministry of Institutional Reform is to be praised for its development of a draft Ombudsman law. With assistance from the Presence and ODIHR, the law will establish an Ombudsman to protect against the violation of human rights. The latest draft of the law will expand the Ombudsman's function to also include

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protecting individuals against failures in the state administration. The law will likely be submitted to Parliament in the late summer or autumn.

In another positive development, Government Ministries and the Parliament have begun seeking public input into the law-making process. The Ministry of Legislative Reform organised a NGO round table on the draft Ombudsman law and included changes to the law suggested by round table participants. The Ministry of Labour created the first ever official NGO-Government working group to develop the new NGO law. The Parliament's Commission on Agriculture & Food, and Commission on Economy & Finance, called a public hearing on agricultural land tax reform issues. Moreover, as detailed below, Parliament's Media Commission has hosted a series of round tables on the draft Electronic Media Law. We view these developments as a positive step towards a more transparent, participatory society.

ad 3) **ACCESS TO PUBLIC MEDIA**

The TPM's Declaration calls for "fair implementation of agreements regarding the public media."

The first law on Private and Public Radio and Television was approved on May 14, 1997. The law was approved in a rush and without public debate, just one day after the visit of an expert group from the Council of Europe, and despite the latter's objections. In terms of substance, the functioning and organisation of the public media was left untouched.

The present government, after taking power, promised that the state media would be transformed into a genuine public service system, independent from Government. In September 1997, the former Speaker of Parliament, Arbnori, went on a hunger strike in protest at the government's dominance of the State TV news, and the lack of adequate access by opposition parties. As a final decision it was agreed to allot political coverage on the basis of the percentage of votes won by parties in the June 1997 election.

The Government probably did not realise the impact of this compromise. The State TV management (even though politically appointed) stated that on journalistic principles it had no intention of adopting a straight-jacket formula of co-operating with the notion of proportional political coverage. A stalemate resulted which made some SP politicians initiate a re-writing of the original media law. Their aim was to establish a legal framework for the electronic media that would ensure the independence of the media from political influence, and thus make the Arbnori amendment redundant.

In December 1997, the Parliamentary media commission, headed by Mr Musa Ulqini (SP), created a working group composed of legislators and legal and media experts to rewrite the electronic media law. The draft law is based on existing

German and US Embassies, and the OSCE representative in Tirana, joined the OSCE Presence in its observation effort from 23 March onwards. The UK Embassy provided financial support for the purchase of equipment to facilitate observation.

The new rules and procedures of Parliament, drafted with assistance of the CoE and the OSCE Presence, were adopted in April and have been in force since 4 May. (Awaiting the end of the Union for Democracy's return to Parliament, their formal adoption was held up for some time to allow the Democratic Party to participate in parliamentary discussion of these rules.)

The results of the observation effort indicate a basic respect for democratic standards of parliamentary practice. Room for improvement, however, clearly exists. The Parliament's schedule changes frequently, and is only know shortly in advance. The transcription of parliamentary debate and the subsequent distribution of transcripts showed serious shortcomings. Debates, also on substantive issues such as laws, are often rather superficial and lack detailed discussion. Moreover, debates are regularly highly charged, with personal insults being exchanged. It was also noted several times that members vote electronically on behalf of their colleagues. Finally, it was observed that the time between announcing a vote and actual voting was often very short, with the announcement not always discernible. The bi-weekly observation reports contained recommendations to address these problems.

The Speaker of Parliament has responded to several of these recommendations. For example, following receipt of our reports that double voting had taken place, the recommendations to the Speaker of Parliament resulted in his taking action to address this problem. A further recommendation has been implemented which called for an increase in the time available between calling a vote and actually voting.

The observations concerning technical and organisational shortcomings in notetaking and disseminating transcripts were responded to by the Italian special delegation and the Norwegian government. They provided funds for purchasing equipment for transcribing debates in Parliament and its commissions, and for making the transcripts available for public/press distribution. The German "Friedrich Ebert Foundation" will provide training to parliamentary staff.

Obviously, being under observation is not to the liking of all Members of Parliament. It is our impression, however, that the fact of observation has by itself been conducive to improvement of parliamentary practice. The behaviour of Speaker and Members seems to have changed favourably. Given this development, we are hopeful that parliamentary practice will more consistently meet acceptable standards.

ad 4) **RECRUITMENT AND APPOINTMENTS TO THE CIVIL SERVICE, ARMED FORCES AND POLICE**

In the period following the establishment of the Nano government, numerous officials in the civil service, armed forces and police were dismissed and replaced with persons affiliated to the government. Considering that objective criteria for qualifications and performance are generally lacking, it is difficult to judge whether these replacements can be justified on objective grounds. There are strong indications, however, that many replacements are outright contentious. Given the number of people affected, and the strong feelings of resentment this policy has instilled in them, this issue is a source of serious tension.

While most replacements in the central government have taken place directly following the establishment of the Nano government, on the local level - where there is often an opposition majority - replacements have been effected more slowly and are often still taking place. Socialists and other party representatives - perhaps with initial support from the central government - attempted to remove the chairs of several of the district councils in a manner not foreseen in the law. OSCE efforts have led to a halt of these attempts and have sent the strong message that in a system based upon rule of law, proper legal procedures must be adhered to.

A durable solution should come from changes to the Civil Service law. This gives objective criteria for recruitment and appointment to the civil service, armed forces and police. On 12 May 1998, Parliament passed amendments to its Civil Service Law, and these amendments, among other things, define what are "politically assigned functions" under the law. The prior law lacked such a definition, and left open the possibility that lower level employees could be removed under a claim that they held politically-appointed positions.

ad 5) **DEMOCRATIC STANDARDS OF PARLIAMENTARY PROCEDURE**

In reaction to appeals from the opposition parties, the TPM called for respect for democratic standards of parliamentary practice. In this context, the 23 January declaration proposed "that parliamentary practice be monitored by international observers on a systematic basis." The OSCE Presence commenced observation on 16 February, with the first of the bi-weekly reports being published one month later. Observation occurs on the basis of the Terms of Reference for Observing Parliamentary Practice, drafted by the OSCE Presence in consultation with representatives of the CoE and the EP.

On 23 February, OSCE members' diplomatic missions and selected international organisations in Tirana were invited to contribute to the observation effort, either in personnel or financially. Responding to this request, representatives of the

electronic media laws from different European countries. It includes the Council of Europe experts' recommendations, and is claimed to be in accordance with the Universal Declaration on Human Rights (Article 19), the European Convention on Human Rights (Article 10), as well as fundamental documents of the International Federation of Journalists.

The Commission also organised a broad public discussion of the law. The draft law was published in the newspapers, and all representatives of the private and public electronic media were invited to discuss the draft during two seminars. A third seminar served to review comments and suggestions sent in written form to the Media Commission by various organisations, e.g. the Albanian Helsinki Committee, Article 19, Soros Foundation, etc.

The draft foresees the protection of public TV and radio from political influence through a supervisory Steering Council (Article 96). Its 15 members will be elected by the parliament by majority ballot from among 20 candidates nominated by the Parliamentary Media Commission. The mandate of the Steering Council will be for 5 years, one year longer than that of legislators.

While the Arbnori amendment should be seen as a stop-gap measure at the time, the new law is to provide the long-term solution for the problems of political influence and media manipulation. In accordance with the fundamental principle of editorial independence, the law allows both public and private broadcasters to freely determine whether any political development or official announcement deserves coverage in their news and current affairs programmes. The draft basically denies the government control of the media.

Not all the Socialists support Ulqini's efforts, and Ulqini himself has expressed concerns at being under strong pressure from all political sides. The DP claims that the draft law does not respect the pluralism of radio and television information. According to spokesman Minarolli, the draft law does not reflect the CoE expertise, nor the right of the opposition to have access to radio and TV. He insists that the law should include the Arbnori amendment, and fears that under the new law radio and TV would continue to be controlled by the government.

Various observers suggest that the law is indeed an effort to set high democratic and legal standards, to be followed by further legislation. The attempt to set professional, instead of political, standards, seems to be a more progressive line of action, rather than formalising the dubious Arbnori amendment. The latter is not only difficult to implement, but is somewhat incompatible with a truly free media environment. The downside of this standard-setting effort is, however, that the law might be too ambitious or sophisticated for the prevailing situation in Albania. The preconditions for applying some provisions of the law are currently unable to be met in the absence of a legal framework.

NB The draft law is to be presented to the Parliament on June 30, 1998

Organisation for Security and Cooperation in Europe
OSCE Presence in Albania
DAILY ALBANIAN PRESS REVIEW
30 June 1998

Due to a power failure all newspapers except "Koha Jone" have not come out today.

International Organisation Activities

The DP and the Union for Democracy coalition have not kept their promises to the tri-parliamentary mission, that visited Albania in January. Yesterday, DP leader Berisha said the meeting with the visiting tri-parliamentary mission was organised in a friendly atmosphere. He said government officials had not submitted to the mission all documents that indicated the DP's activity and efforts to meet the mission's recommendations made in January. He did not respond to the question about whether Ms. Pack had asked the DP to explain its absence in participating actively in the constitutional drafting process. (KJ)

DP deputy leader Pollo said that the DP had been committed to keeping its promises, regardless of the parliamentary majority's will to cooperate with the opposition. "To participate in the drafting process we have demanded that the Constitution Commission composition should be reviewed," he said. Following the January visit of the tri-parliamentary mission to Albania, the DP demanded that one of the commission co-chairmen should be elected by the opposition. "We have demanded in a written form that the Union for Democracy participate in the commission, and not be a décor of PM Nano's volition for consensual decisions. For this we have asked to maintain the blocking minority," continued Pollo. According to him the Democrats should not be blamed for not participating in the constitutional drafting process, but the government for not reviewing the commission composition. (KJ)

In a meeting with President Meidani, the tri-parliamentary mission focused mainly on the constitutional drafting process. Meidani said that he had been taking care of broad based public participation and considered this process as the fruit of compromise of all political forces. The tri-parliamentary mission members agreed saying the compromise is a necessary step for a constitution acceptable to all. (KJ)

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In a meeting with PM Nano, he said that the constitution should be approved by consensus. "We are open to cooperate in conformity with all democratic rules and principles, in order to give the opposition the opportunity to present its alternative for those articles that cannot be approved by consensus in the constitution commission," Nano said. (KJ)

Domestic Politics

Yesterday, the Central Electoral Commission (CEC) announced the results of the second round of by-elections. It declared that the Alliance for the State had won 57% in Vora and the Union for Democracy 56% in Shijak. CEC Chairman Çano said the public participation in Vora and Shijak was 39.68% and 62.73% respectively. The Union for Democracy complained that there were irregularities in Vora during the second round and that the elections were held under the pressure of Special Police Force. However, the CEC said that no note of protest had yet been submitted to the commission. (KJ)

Foreign Policy

NATO Secretary General Solana will visit Albania from July 2-3 and will discuss with the Albanian leadership the situation in Kosovo. (KJ)

KJ – Koha Jone (independent, center left);
GS – Gazeta Shqiptare (independent, center);
AL – Albania (independent, center-right);
ZiP – Zeri i Popullit (Socialist Party);
RD – Rilindja Demokratike (Democratic Party);
Rep – Republika (Republican Party)

Compiled and translated by: Evis Vasili

- Evolution of the Republic School
- Competency
- The so-called six-months judges
- Independence
- Organization of the courts: There is an organization on sectors (penal, civil, administrative law, etc.)
- Removal from the Executive power.