Strasbourg, 8 March 1999

ELEMENTS FOR THE DRAFT REPORT ON ALBANIA

(to be elaborated, checked and completed)

Acknowledgement

1. *The co-rapporteurs express their gratitude to the Albanian parliamentary delegation and its secretariat for the perfect organisation of their visit to Albania on 24 – 26 February 1999 and the excellent co-operation. They are also grateful to the Albanian authorities for the frank and sincere information which was supplied in the course of the various meetings and which is an essential condition for the success of the monitoring exercise.*

2. *The co-rapporteurs wish to thank the representatives of the diplomatic community in Tirana and of the OSCE Mission for their briefing and in particular the Chargé d'Affaires of Hungary who organised it in his capacity as representative of the Chairman-in-Office of the Committee of Ministers.*

INTRODUCTION

3. Albania acceded to the Council of Europe on 29 June 1995, following Opinion N° 189 (1995) of the Parliamentary Assembly and Resolution (95) 8 of the Committee of Ministers.

4. The Committee on Legal Affairs and Human Rights opened the monitoring procedure under Order N° 508 (1995) on 6 November 1995. The Monitoring Committee continued this procedure under Resolution 1115 (1997).

5. Since Albania's accession, a great number of visits have been made, either by rapporteurs or by other members of the Assembly:

   3 – 5 January 1996: rapporteurs of the Political Affairs, Legal Affairs and Non - Member States Committees;
   27-30 August 1996: ad hoc Committee of the Bureau and rapporteurs;
   17-22 October 1996: ad hoc Committee to observe local elections
   25-28 October 1996: idem;
   6 – 7 March 1997: rapporteur of the Political Affairs Committee;
   4 – 5 April 1997: rapporteurs of the Political Affairs and Monitoring Committees;
   4 - 5 May 1997: chairmen of the political groups
   11-12 September 1997: rapporteurs of the Political Affairs and Monitoring Committees;

22-23 January 1998:Tri-Parliamentary Mission (PACE, OSCE-PA, EP) including the co-rapporteurs of the Monitoring Committee;
12-15 March 1998: co-rapporteurs of the Monitoring Committee;
29-30 June 1998: Second Tri-Parliamentary Mission including the co-rapporteurs of the Monitoring Committee;
21-23 November 1998: ad hoc Committee of the Bureau to observe the referendum;
24-26 February 1999: co-rapporteurs of the Monitoring Committee.

6. A list of the texts adopted by the Parliamentary Assembly on the subject of Albania appears in Appendix ..

7. The first fact finding visit under the new monitoring procedure ex Resolution 1115 (1997) was made on 12 – 15 March 1998 by the co-rapporteurs Mr Jordi Sole Tura (Spain, SOC) and Mr René van der Linden (Netherlands, EPP/CD). Provisional notes on this visit were presented to the Monitoring Committee in Doc AS/Mon (1998) 24 rev. 1. The Committee examined these notes, but did not transmit them to the Albanian authorities for their comments.

8. On 28 January 1999, the Committee designated Mr Jerzy Smorawinski (Poland, EPP/CD) to replace co-rapporteur Mr van der Linden who had left the Assembly.

9. On 24 – 26 February 1999, the co-rapporteurs Sole Tura and Smorawinski visited Tirana. They agreed to bear in mind the provisional notes on the March 1998 visit, when drawing up an information report on this second visit under the new monitoring procedure.

INFORMATION REPORT

General political context

10. As could have been expected, the discussions which the rapporteurs had with the various politicians were overshadowed by the then ongoing negotiations in Rambouillet on the situation in Kosovo.

11. On the one hand, the risk of disagreement in Rambouillet and the ensuing violence in Kosovo, which would result in new waves of refugees and a total change in political priorities, was more on the mind of the various interlocutors than the internal obstacles on the way towards full implementation of Albania's commitments.

12. On the other hand, however, this national threat seems to be bringing together the political forces; although the political dialogue is still far from being a reality, the fact that the Prime Minister and the leader of the opposition have met twice may be interpreted as a first token of growing awareness that in the present circumstances unity is called for. Symbolic for the milder political climate is the football match

which took place recently between members of the Government and the opposition – with the Head of the OSCE Mission as referee[1]

13. The prevailing opinion of the Albanian political forces is that the draft Agreement presented in Rambouillet should be signed and implemented under supervision of the NATO. Although Mr Berisha said that he shared the views of the government, the co-rapporteurs were informed later that he would be supporting the claim for independence and had pronounced himself against signing the Rambouillet draft.

Political dialogue

14. Now that the Constitution has been approved in the referendum of 22 November 1998[2], the co-rapporteurs have heavily insisted that the political dialogue between the political forces be resumed – ideally in the form of a big coalition - , particularly in the light of developments in Kosovo.

15. The ruling coalition has said to be waiting for the Democratic Party to return to Parliament. Most coalition parties welcome the two meetings which the Prime Minister has had in December and January last with the President of the Democratic Party, although they agree that such meetings should not substitute for dialogue within the Parliament. There is also some criticism on the fact that these meetings had been arranged without informing all coalition partners.

16. Mr Berisha told the co-rapporteurs that "fair partnership" with the ruling coalition was impossible as long as the government did not more to solve the problems of corruption and insecurity. Since the coalition did not govern the country, the presence of the opposition in Parliament was not necessary. According to Mr Berisha, the Prime Minister was in favour of concluding agreements with the opposition but was not backed by his own party.

Death penalty

17. The co-rapporteurs insisted also on the *de jure* abolishment of the death penalty; they said that the Council of Europe and in particular the Parliamentary Assembly were not prepared to make any exception on the honouring of the commitments of any member State to abolish this penalty; on the contrary, any country which would not abide by this principle would have to face the ultimate consequence of such attitude: expulsion.

18. The co-rapporteurs were informed that the drafters of the Constitution had deliberately not provided for abolishment of the death penalty in the Constitution, since any such explicit provision might have prevented approval of the whole of the text. The general view of the coalition – which is shared by the President of the

[1] According to the Prime Minister, the opposition lost.
[2] See Information Report on the referendum in Albania, Doc.8292, Addendum III.

Republic - is therefore that the moratorium should be prolonged and that at its expiration the opportunity of *de jure* abolishment should be reconsidered.

19. Arguments put forward for reopening the death penalty debate included, on the one hand, the need for preventive methods to curb the rising insecurity and the decreasing respect for the public forces. On the other hand, because of the great number of killings in Albania, the value attached by the public to human life seems to have gone below the threshold of justification of abolishment of the death penalty. In these circumstances, no political party seems to be ready to take any initiative in this respect.

Independence of the judiciary

20. In December 1998, a Law on the organisation of the judiciary was adopted, which aims at reinforcing the independence of the judiciary. There is some doubt whether certain provisions in this Law, eg regarding the appointment of judges by the President of the Republic on proposal of the High Council of Justice, are in full conformity with the new Constitution.

21. The new law provides, among other issues, for about 240 out of the 300 sitting judges to be tested on their qualifications. Although not in line with the principle of an independent judiciary, this measure is considered to be necessary in order to identify those judges who were appointed after a 6 month training course and clearly do not have the required knowledge or experience to hold their office. Such judges would be dismissed; the testing procedure has understandably raised considerable concern amongst the judges concerned.

22. This testing has been entrusted to the High Council of Justice; the law provides for the judges who would not have passed the test to be heard, with the assistance of a legal counsel, and, as the case may be, to appeal to the Supreme Court. The precise procedures for implementing the related provisions are not yet clear; the visit of the co-rapporteurs coincided with an expert meeting organised by the Council of Europe's Legal Affairs Directorate on this very subject.[*to be completed]*

23. A law on the Prosecutor General's Office is being prepared. In its present form, this Office is the subject of much criticism. On the one hand, reproaches are made that the Prosecutor General has not made sufficient progress in prosecuting crimes and other violations of the law, notably in the Hajdari Case (see paragraph 34 hereafter). On the other hand, it is argued that no political control is exercised over this Office, which enabled it to start politically suspect investigations on the wrong times, such as the arrest of six DP leaders [and the mandate to arrest Mr Berisha]. The Council of Europe is envisaging to organise in March 1999 a meeting in Tirana to provide expertise.

24. A Law on the Supreme Court (on the revision of judgements?) has been adopted, which ..[*to be completed*].

25. The Constitutional Court is functioning well, notwithstanding a general lack of means and equipment. A further handicap is that it is not recognised by the opposition, partly because the removal of the Court's former president has not been accepted, partly because the opposition contests the approval of the Constitution itself during the referendum of 22 November last.

26. Since on certain conditions individuals can have access to the Constitutional Court to appeal against alleged violations of their human rights, there might be a risk of overlap or misunderstanding in respect of the jurisdiction of the Constitutional and Supreme Courts.

Public order

27. Although the rapporteurs saw some improvement in the security conditions in Tirana, information received in particular from the opposition would seem to indicate that outside Tirana and particularly in the north-eastern part of Albania public order is not maintained.

28. Notwithstanding the efforts undertaken by the government, including the adoption of a special law and, on a regional basis, by the UN in the "Weapons for Development Programme", to collect arms from the population, violence is still frequent and armed gangs are terrorising certain regions.

29. Pending approval of a draft law on the State police, the Ministry of the Interior, with the assistance of the MAPE and Italian Police Forces, is restructuring the police forces, recruitment procedures are being improved and 95% of the police stations are now headed by graduates from the Police Academy. In every prefecture, a special unit has been set up to improve the relations between the police and the public.

30. Notwithstanding these efforts, the Chairman of the Democratic Party has proposed an Anti-Crime National Pact, in which he calls for an agreement of all national and local political powers, the total reconstruction of the Ministry of Public Order and of the Prosecutor General's Office and new legislation. According to Mr Berisha, this Pact has been rejected by the Minister of the Interior.

31. The general point of view of the coalition is that the Pact should be examined in the Parliament, including the compatibility with the Constitution of proposals such as the appointment of crime investigators by the political parties

32. Corruption is said to be increasing (the Head of Police at Rinas airport has been replaced recently) which, according to the opposition, has led to a decrease of 40% of foreign investments.

33. Illegal trafficking of persons and goods is equally increasing. The government is calling on Albania's neighbouring states to join forces in combating such trafficking.

The Hajdari case

34. Investigations into the killing of the senior DP member Mr.Hajdari continue without much apparent progress. The Prosecutor General explained that the investigations immediately after the attack were hampered by the lack of co-operation of the principal witnesses, whilst interrogation of certain key persons residing in the north-eastern part of the country appears to be difficult.

35. On the initiative of the OSCE and with the agreement of the Albanian authorities a Norwegian prosecutor, Mr Wangberg, is assisting the Prosecutors Office. Mr Wangberg has submitted a recommendation for the enhancement of the Hajdari investigation effort and has also developed a more general assistance plan involving technical and some material assistance for Albania's prosecutors.

36. In these circumstances, the DP has prepared a draft law to establish an independent prosecutorial group, headed by a DP nominated director, to investigate the Hajdari murder. Although this proposal has not been rejected by the Prime Minister, some coalition members have indicated that any investigation must be conducted under the exclusive responsibility of the Prosecutor General's Office and that anyway draft laws must be discussed in Parliament.

37. Both the OSCE and the Council of Europe have studied the draft law proposed by the DP, and have come to the conclusion that .. *[to be completed]*.

Media

38. A new law on electronic media was passed on 30 September 1998. This law was drafted with the assistance of the Council of Europe and according to the OSCE Representative for freedom of the media, Mr Freimut Duve, it should create good conditions for the editorial independence of the electronic media and lead to a fair system of public broadcasting.

39. The representatives of the media welcomed this legislation - on the condition that it be implemented efficiently and the [Supervisory] Board be set up - which will transform the State TV into a public TV and regulate the granting of licenses.

40. The media are satisfied that journalists are no longer imprisoned or physically attacked because of their professional activities; they say, however, that like all other citizens in Albania, journalists are hampered by the general insecurity in Albania. They also complain about the very high taxes imposed on them, notwithstanding an agreement signed with the assistance of the Council of Europe.

People's Advocate

41. The co-rapporteurs welcome the approval of the Law on the Ombudsman, which .. *[to be completed]*.

Local and regional autonomy

42. According to the new Constitution, municipal councils will be elected directly, whilst regional councils will be elected indirectly by the municipal councils. *[to be completed with assistance of the CLRAE*]