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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 (5 to 7 September 2018)

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

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I. Introduction

1. This was our first visit to the country since the recent parliamentary elections that took place on 25 June 2017. These elections took place following a tense political standoff between the ruling majority and the opposition on the organisation of the elections and took place only after an agreement was brokered between the main political parties by the European Commission and the European Parliament (see also below). The political environment and co-operation between ruling majority and opposition forces was therefore an important item on our agenda. Our visit focussed foremost on the on-going legal reforms and particularly on the vetting process for judges and prosecutors that had begun after the elections. These processes are closely related with the other subject area we focussed on, the fight against the widespread corruption in the country and the fight against organised crime.

2. Our visit took place against the backdrop of the recent decision of the European Council with regard to the opening of the formal membership negotiations between Albania and the European Union. Albania was granted candidate status to the EU in June 2014 with the understanding that accession negotiations would only be started after marked progress was achieved by Albania in five priority areas.² Up until now, the European Council has not agreed to start the membership negotiations. There had been strong hopes among the Albanian authorities that negotiations would be started after the most recent annual meeting on the enlargement and stabilisation and association process. However, on 26 June 2018, the European Council did not change its previous position much when it decided that it “... sets out the path towards opening the accession negotiations in June 2019.” pending “... further consolidated progress made on the judicial reform in particular through vetting” and “further tangible results in the fight against corruption at all levels and in the fight against organised crime...”. This delay in the start of the negotiations was seen as a setback for the Albanian authorities who recognise that the continued and strict conditionality for the start of the accession negotiations is an important challenge they must overcome.

3. During our visit we met with, *inter alia*, the Prime Minister; the Speaker of the National Assembly; the Minister of Foreign Affairs; the Minister of Justice; the General Prosecutor; the Ombudsperson; the General Inspector of the High Inspectorate for Declaration and Audit of Assets and Conflicts of Interest; the General Chief of the National Police and heads of the departments for the Fight Against Organised Crime and Cannabis Cultivation; members of the High Council of Justice; the Independent Qualification Commission and the International Monitoring Operation; the Co-Chairs for the parliamentary ad hoc Committee on Electoral reform; the Chair and Vice Chair of the Parliamentary Committee on Legal Affairs Public Administration and Human Rights; the Chairperson of the Democratic Party; the Chairperson of the Socialist Movement for Integration, 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.

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

II. Recent political developments and political climate

5. As we outlined in our previous information note, on 7 February 2017, the Chairman of the Democratic Party of Albania (DP), Mr Lulzim Basha, announced that the DP would boycott the work of the parliament and started a permanent demonstration in front of the Prime Minister’s office, alleging that the ruling majority would manipulate the upcoming elections. When the DP’s demands that, *inter alia*, Prime Minister Rama resign and a technical government of national accord be formed were not met, Mr Basha announced that the DP led opposition would boycott the parliamentary elections that were foreseen for 18 June 2017.

6. Following intensive international mediation, spearheaded by the European Parliament and the European Commission, an agreement between the DP and the Socialist Party (SP) was reached on 18 May 2017 that ensured the participation of the DP and its coalition parties in the elections. In return, the DP received a Deputy Prime Minister as well as 5 ministerial posts in the government until the election, in addition to the Chairperson of the CEC and several other key public positions, including the Ombudsperson. In addition, a special intergovernmental taskforce was established, headed by the Deputy Prime Minister (who hailed from the opposition), in order to monitor the conduct of the public agencies and to prevent the use of administrative resources in the elections. While this agreement allowed the elections to take place and considerably lowered

² Public administration reform; the independence, efficiency and accountability of judicial institutions; fight against corruption; fight against organised crime; protection of human rights (including of Roma, anti-discrimination policies, as well as implementation of property rights).

the tension in the political environment, the agreement and its implementation was at times at variance with the principle of the rule of law as parts of the agreement, or their implementation, reportedly violated existing legislation.³ In addition a number of amendments to the Law on Political Parties and other laws to implement the agreement seemed to contradict provisions in the Electoral Code and other pieces of legislation.⁴

7. In line with the 18 May agreement between the SP and the DP, the Parliamentary elections finally took place on 25 June 2017, a week later than they were originally called for. These elections were observed by the Parliamentary Assembly as part of the International Election Observation Mission (IEOM) that also included the OSCE/ODIHR long term election observation mission as well as delegations from the OSCE-PA and the EP. The IEOM highlighted the overall calm election campaign in which all contestants could campaign freely and which respected fundamental human rights. At the same time, the IEOM also noted, inter alia, the continued politicisation of the electoral administration and the widespread allegations of vote buying and pressure on voters which undermined public trust in the electoral process.

8. In our view, it is important that the shortcomings and concerns noted by the election observers are addressed promptly by the current parliament. This is especially important given that the next local elections will take place in 2019. We therefore welcome that the parliament set up a special parliamentary ad hoc Committee on electoral reform that is co-chaired between the SP and DP, and which is, inter alia, tasked with addressing concerns and recommendations of the international election observers. Regrettably, we met the co-chairs on separate occasions due to scheduling difficulties. The committee has organised a series of roundtables with all stakeholders, in order to ensure an inclusive process. The committee intends to present its first draft for a new electoral code in autumn 2018.⁵ Two experts who will be recruited in consultation with, and financed by, two German political foundations that are close to the SP and DP respectively to assist in the preparation of the draft electoral code. Reportedly, there is an overall consensus on the main direction of the electoral reforms, with the manner and mechanisms to counter vote buying and the use of administrative resources being the main points of contention between the ruling majority and opposition.

9. The politicisation of the election administration by both main political parties has been a recurrent problem in Albanian elections and one of the main shortcomings highlighted by successive election observation missions. In the context of the highly politicised civil service in Albania, most interlocutors questioned the possibility to introduce a purely professional election administration at this moment. However, we urge all parties to agree on an election administration that, even if based on party representation, can work impartially and independently, and to refrain from any attempts to politicise the administration of the elections, in order to ensure that all stakeholders can have full trust in the election process.

10. In addition to addressing the Venice Commission and OSCE/ODIHR recommendations, the parliamentary ad hoc Committee on Electoral reforms agreed on the following priority areas for the electoral reform: the introduction of new voting technologies (electronic voting and vote count); the introduction of out of country voting by the Albanian diaspora; as well as combating vote buying. While there is agreement between authorities and opposition about the introduction of out of country voting, the issue is potentially sensitive, and can have a profound impact on the election results, given the context that 30% of Albania's population is living outside the country. With regard to the introduction of new voting technologies, the main point of contention between the opposition and the ruling majority seems to be the scale of their introduction, with the government favouring piloting these new technologies in a select number of districts while the opposition would opt to introduce it nationwide. As noted by election observers, widespread allegations of vote buying by all contestants during previous elections undermine public trust in the conduct of elections in Albania. This is an important issue that needs to be addressed in the electoral reform.

11. Political corruption and influence peddling by political parties, party officials and elected representatives in Albania, both perceived and real, is of serious concern and a key challenge for the country. Many interlocutors pointed to the fact that the current laws governing political party and campaign financing are inadequate to ensure the transparency of party finances and to limit the financial contributions by individuals and economic interests. Full transference of political party and campaign financing is an important tool to fight political corruption and influence peddling. We therefore call upon all political forces to adopt, in consolation

³ As per agreement the post of the ombudsperson was given to the DP. On 22 May 2017, the parliament dismissed the sitting ombudsperson and appointed a new ombudsperson proposed by the DP in disregard of the appointment and dismissal processes described by law.

⁴ See also the statement of preliminary findings and conclusions of the International Election Observation Mission for these elections of which the Assembly was a part.

⁵ The authorities informed us that the draft election code was tabled in September 2018 after our visit had taken place.

with the Venice Commission, a completely revised law on political party and campaign financing that is in line with European standards.

12. The 2017 parliamentary elections were won by the SP which obtained an absolute majority of 74 of the 140 mandates in the new parliament. The DP won 43 seats and the Socialist Movement for Integration (SMI) of President Ilir Meta won 19 seats. Two independent small parties, the Party for Justice, Integration and Unity and the Social Democratic Party of Albania won respectively 3 and 1 seats in the new parliament.

13. Its election victory allows the ruling SP to govern and adopt ordinary legislation without the support of other parties. In its 2018 "Nations in Transit" report⁶, Freedom House noted that this allows the SP to govern without consultation and co-operation with the opposition. In addition, in the context of the tight control of Prime Minister Rama over the SP, Freedom House raised concerns about the possibility that this could result in an autocratic manner of governance by the ruling party. This seems to be corroborated by some controversial decisions by the new government including the unilateral appointment of an interim General Prosecutor⁷ and the amendments to the tax laws of 13 September 2017 that gave the government very broad discretion in deciding tax levels for different businesses.⁸ At the same time, the new government lacks a qualified majority and would need the votes of the opposition for decisions that need more than a simple majority.

14. While doing well in the last elections, the SMI lost the kingmaker role it had been able to play in the previous two governments, first with the DP and then with the SP. In these elections, the SMI ran alone and not as part of a coalition with either the DP or the SP as it had been doing previously. The founder and long-time leader of the SMI, former Prime Minister Ilir Meta was, on 28 April 2017, elected by the parliament as the new President of Albania.⁹ As a result, he had to formally resign from the party and his party functions. However, the new leader of the SMI is Monika Kryemadhi, who is the wife of Mr Meta.¹⁰ Ms Kryemadhi is a former member of the Parliamentary Assembly.

15. The DP lost 7 seats in these elections and obtained one of its worst results in recent history. This seems to be the result of a rebuke by the Albanian voters of its confrontational style and policy of boycotting the work of the parliament, which are blamed for hindering the implementation of the reforms needed by the country to open up accession talks with the European Union. Despite these election results, Mr Basha was re-elected, on 23 July 2017, as party leader.

16. Regrettably, the political environment remains polarised, contentious and acrimonious.¹¹ As already mentioned, its majority allows the ruling majority to govern without the need for consultation and dialogue with the opposition and to push through its political agenda. At the same time, the opposition parties have returned to the practice of boycotting key votes and obstructing the work of the parliament. In all our meetings with the opposition and the ruling majority representatives, we have stressed that the only proper platform for political interaction, debate and deliberation is the Albanian parliament. We have therefore called upon the opposition to fully participate in the work of the parliament and to refrain from boycotting important debates and votes. At the same time we have urged the ruling majority to give the proper space for the opposition to function and to engage in a genuine and meaningful dialogue with the opposition on key reforms and the governance of the country. This is also essential for any prospect of opening EU accession negotiations in 2019.

IV. Reform of the Judiciary and vetting process

17. The judicial reform process in Albania is at this moment dominated by the on-going vetting process of judges and prosecutors. We described the institutional set-up for this vetting process in detail in our previous information note. To recall, the vetting of judges and prosecutors is conducted by the Independent Qualification Commission, which consists of 12 members, appointed by the parliament based on recommendations by the International Monitoring Operation which is led by the European Commission in close co-operation with the United States. In addition to the Independent Qualification Commission (IQC) there is one Specialised Qualification Chamber (SQC), consisting of 7 judges appointed in the same manner as the IQC, to which decisions of the IQC can be appealed. There are two Public Commissioners who represent the public in these proceedings and who can appeal IQC decisions to the SQC. The International Monitoring Operation monitors the proceedings in the IQC and can recommend the Public Commissioners to appeal IQC decisions.

⁶ <https://freedomhouse.org/report/nations-transit/2018/albania>

⁷ Although in all fairness this was also necessitated by the refusal of the DP to propose in a timely manner its candidates for the vetting bodies.

⁸ See also Freedom House 2017 report for Albania.

⁹ He took office on 24 July 2017.

¹⁰ Ms Kryemadhi has formally refused the position of first lady of Albania.

¹¹ Both opposition and ruling majority accuse each other of corruption and being captured by organised crime interests.

18. The Independent Qualification Commission works in 4 panels of 3 members. All judges and prosecutors are assessed on the basis of three criteria: justification of assets, background check and legal proficiency. If a candidate does not pass the analysis of his or her assets, he or she will not be assessed for proficiency or subjected to a background check. Similarly, a candidate that fails the background check will not be assessed for legal proficiency. At the time of our visit, all but one of the candidates that had failed the vetting process had failed on the basis of incorrect assets declarations. Only one was dismissed on the basis of failing a background check. No-one has yet been dismissed on the basis of failing the legal proficiency assessment.

19. The start of the vetting process had been delayed by the political stand-off before the elections, during which the DP refused to nominate its candidates for the vetting bodies. This was resolved as part of the agreement between SP and DP on the holding of the parliamentary elections. As a result, on 16 June 2017, the parliament appointed all members of the IQC, the SQC and Public Commissioners.

20. The vetting process started, on 26 October 2017, with the 9 so-called priority cases: the 7 members of the Constitutional Court, the President of the High Court and the Prosecutor General. These cases were distributed to the panels on 6 November 2017. This was followed, on 30 November 2017, by the distribution of 48 cases that form the second priority list, consisting of the 4 other members of the High Court, as well as the prosecutors and judges that are candidates for the High Judicial Council, the High Prosecutorial Council and the Council of Appointments at Justice. After these two priority lists, more than 800 judges and prosecutors at all levels will have to be vetted by the ICQ.

21. According to the data¹² provided to us by the ICQ, by the end of August the commission had issued 54 decisions. In 27 cases it confirmed the position of in total 17 judges and 10 prosecutors, including 9 candidates to the High Council of Justice, 9 candidates to the High Prosecutorial Council and 3 candidates for the Council of Appointments at Justice. In 21 cases it dismissed in total 13 judges and 8 prosecutors from their functions. Among these dismissals were 6 candidates to the High Council of Justice, 6 candidates to the High Prosecutorial Council and 4 candidates for the Council of Appointments at Justice. In 13 other cases, the process against in total 5 judges, 3 prosecutors and 5 legal advisors to the High Court of Justice were terminated or halted due the resignation or withdrawal of candidatures, including that for the Prosecutor General of Albania¹³. It should be noted that in addition to the persons dismissed, at least 7 other high level judges and prosecutors resigned in order to avoid the vetting process.

22. The high level of dismissals, 40% of the total number of officials vetted,¹⁴ underscores both the importance and pertinence of the vetting process to establish an independent judiciary in Albania that is free from corruption. It should be noted that among the officials dismissed by the IQC are, inter alia, 3 Constitutional Court judges. During our meeting with the IGC we were informed that the percentage of dismissals is expected to remain more or less the same during all of the vetting process and even could go up slightly. The pace of the vetting process has been relatively slow until now. Many interlocutors, including representatives of the IQC itself, informed us that they expected the pace to increase now that the vetting bodies and process have been well established.

23. The high number of dismissals and the slow pace of the vetting process are having a marked impact on the functioning of the judiciary and the administration of justice. The Constitutional Court and the High Court are currently not functioning as they do not have enough members to form a quorum and no new candidates for empty posts in the judiciary or prosecution service, including for the highest positions, can be proposed until the Justice Appointment Council,¹⁵ the High Council of Justice and High Prosecutorial Councils are operational. The establishment of the HCJ and HPC, which are self-governing bodies of the judiciary, is a key

¹² Independent Qualification Commission: Statistical report for the progress of the re-evaluation process at the Independent Qualification Commission for the period June-December 2017 and January – August 2018.

¹³ The developments with regard to former Prosecutor General created some controversy. In December 2017, Prosecutor Adriatik Llalla, whose term in office had expired on 7 December, announced that he would not seek reappointment in order to halt his vetting process in the IQC. The initial decision to suspend the vetting process by the IQC was appealed by the Public Commissioner, who considered that Mr Llalla had not properly resigned, also in the light of the fact that, according to Albanian Law, a Prosecutor General has the right to be appointed as an appeals court judge after leaving office. On 11 June 2018, the College of Appeals decided to interrupt the vetting process of Mr Llalla, and at the same time prohibited him from appointment as judge, prosecutor or member of the High Judicial Council for a period of 15 years. On 23 July several properties of Mr Llalla were seized by Tirana's Serious Crimes Court in the framework of an criminal investigation into alleged money laundering and corruption

¹⁴ This goes up to 50% if one includes the cases that were terminated or halted.

¹⁵ The Justice Appointment Council (JAC) ranks the candidates for vacant positions in the Constitutional Court to be appointed by the President, The National Assembly, or the High Court. Judges to the High Court and all other Courts are done by the High Council of Justice.

component for the establishment of an independent judiciary. These two bodies have been formally established by law and the parliament has appointed its five lay members. However, the majority of the members are judges elected by their peers and need to have passed the vetting process. At the time of our visit, insufficient candidates for the HCJ and HPC had passed the vetting process for these bodies to start operating. In a welcome development, the establishment of HPC was completed on 11 December 2018 and the establishment of the HCJ on 12 December 2018.

24. The fact that the HPC and HCJ were not yet operational at the time of our visit has created some controversy with regard to the Prosecutor General who cannot be appointed as long as the HPC is not operational. Arguing that the justice system cannot function without a functioning Prosecutor General, especially in the context of the - at that moment - on-going discussions about the possible opening of the EU accession negotiations, the ruling majority appointed, on 18 December 2017, a temporary Prosecutor General.¹⁶ This was decried by the opposition who felt that it went against the spirit of the agreement on judicial reform. They subsequently boycotted the vote on the appointment of a temporary PG. In addition, a number of legal experts have publicly raised questions with regard to the exact functions and powers of the temporary prosecutor general which added to the controversy.

25. The fact that the vetting process would lead to the dismissal of a large number of judges and prosecutors was widely expected and the possibility that this would have an impact on the justice system, including on the establishment of the HCJ and HPC, could therefore have been expected. However, to our surprise, during our meetings it became clear that the authorities had not vectored this possibility in when adopting the vetting process and the overall justice reform and that no contingency plans were made for the situation that has developed. Nor does it seem that this possibility has been a prominent point for the opposition when the legal reforms and vetting process were adopted. This is regrettable as it has allowed representatives from all political factions to question the credibility of the vetting process, especially when it is perceived as encroaching on vested interests. In July 2018, the ruling majority proposed amendments to the Law on the Status of Judges that would have allowed the High Council of Justice in its previous format and the (temporary) Prosecutor General to appoint judges and prosecutors until the High Prosecutorial Council and High Judicial Council started functioning. This proposal would have undermined the vetting process and was withdrawn from the agenda following strong opposition by the opposition parties who boycotted the vote, thereby depriving the parliament of the required quorum to adopt the amendments.

26. In addition to those judges and prosecutors having been dismissed as a result of the vetting process, a number of judges have been dismissed or suspended as the result of court decisions or criminal investigations against them in the framework of the overall fight against corruption (see also below).

27. The vetting process and related reforms have considerably improved the possibilities for a genuinely independent judiciary in Albania. However, external and internal interference in the judiciary has not yet been eradicated. Additional steps beyond the vetting system will be needed. The random case assignment system is reportedly still not functioning correctly which is an issue that needs to be addressed. Moreover, as also evident from the judgments by the ECtHR against Albania, the adjudication of cases is still too slow, the length of court proceedings too long, and the execution of court decisions too slow, which needs to be addressed as a priority. Many interlocutors mentioned the situation with regard to the adjudication of property cases as a concern, which is an issue we intend to investigate during our next visit.

V. Fight against corruption and organised crime

28. The widespread corruption in Albania and the powerful presence and influence of organised crime, including persistent allegations of the intertwinement of organised crime with economic and political interests in the country, remain important points of concern, with some interlocutors expressing the fear that these phenomena have captured the state.¹⁷ Marked progress in the fight against corruption and organised crime is also one of the key criteria for the formal start of the accession negotiations with the European Union. Both ruling majority and opposition have repeatedly stated that the fight against corruption and organised crime is one of the priorities for the country but accuse each other of abetting organised crime groups and lacking the commensurate political will to do what is needed to fight corruption. It is clear that such mutual recriminations and accusations are not necessarily contributing to a political environment that is conducive for an effective implementation of the policies needed to fight organised crime and corruption.

¹⁶ The authorities argue that, according to article 19 of law 97/2016 "On the Organisation and Function of the Prosecution in the Republic of Albania" a temporary Prosecutor General can be appointed by the parliament with a simple majority. However, the exact powers and scope of authority of a temporary prosecutor are not clear and are causing some controversy.

¹⁷ Freedom House Report on Albania 2018, p. 10.

29. The endemic corruption in the judiciary has been a long-standing point of concern and a main factor behind the vetting process that we outlined in the previous section. As we mentioned above, more than 40% of all prosecutors and judges that have been vetted until now were dismissed, all but one because of unexplainable discrepancies in their assets declarations. However, it should be noted that since 2003 all judges, prosecutors, elected officials and high level civil servants have been obliged, by law,¹⁸ to make a yearly declaration of assets and financial interests, which are audited by the High Inspectorate of Declaration and Audit of Assets and Conflicts of Interest (HIDAACI). The fact that such a high number of judges and prosecutors are dismissed on the basis of discrepancies in their asset declarations, which have been or should have been audited by HIDAACI, raises serious questions about, and demonstrates the weakness of, the current asset declaration and audit regime spearheaded by HIDAACI, which was intended as a cornerstone for the fight against high level corruption in Albania. This is of serious concern. The fact that the discredited former Prosecutor General, , was the Chief Inspector of HIDAACI until his appointment as Prosecutor General is a point in case in this respect. The effectiveness of the assets declaration and audit regime in Albania should be assessed on the basis of the outcome and lessons learned from the vetting process and any shortcomings identified should be addressed as a matter of urgency. This is all the more important as HIDAACI is also responsible for the control of assets and conflict of interest of elected officials and high level civil servants, who are widely perceived by the Albanian public as vulnerable to corruption.

30. In the framework of reforms and policies adopted to fight high level corruption, three specialised bodies to investigate and prosecute corruption cases have been established: The National Bureau of Investigation, the Special Prosecutor against Corruption (SPAK) and the Specialised Tribunal. However, these bodies are not yet functional as their members cannot be appointed until the High Judicial Council and the High Prosecutorial Council have been formed, which, as mentioned above, is pending the finalisation of the vetting process for its members. In addition, any candidates for these three important bodies will be subjected to the vetting process themselves. As a result, the coming into operation of these three bodies has been considerably delayed. We were not able to obtain any clear information regarding the expected dates that these bodies will become operational, although a number of interlocutors estimated that this could be the case before the end of 2018. The Albanian government has a National Coordinator against Corruption (NCAC) who is responsible for the coordination of the work of the different ministries active in this field. In September 2017, the Ministry of Justice took on the role of NCAC, but reportedly its capacities are limited and would need to be strengthened.

31. As mentioned in the 2018 report of the European Commission on Albania, the fight against corruption seems to focus mostly on administrative corruption and less on political corruption and state capture. While the track record of convictions for low and middle level corruption has improved (331 convictions in 2017), convictions for high level corruption are still lagging (1 in the first instance and 4 in the second instance in 2017) and remain very low.

32. The success and outcome of the vetting process for the judiciary has led to calls for the vetting of other important segments of the Albanian society, in particular members of the law enforcement agencies, as well as elected officials and politicians. In March 2018, the parliament of Albania adopted the Law on the vetting of the state police. According to this law, more than 12,300 police officers at all levels will be vetted on the basis of their assets as well as on ethical and professionals standards as set out in the law. While a proper re-evaluation of the police and security forces would be an important step forward, this law was passed with a simple majority of the SP only and lacks the international oversight mechanisms that were put in place for the vetting of the judiciary. Moreover, the manner in which the evaluation commissions reformed and their members appointed reportedly have insufficient safeguards to ensure their impartiality and objectivity as well as the transparency of the vetting process¹⁹. The law has been decried by the opposition as an instrument for the ruling authorities to extend their control over the law enforcement sector.

33. The fight against corruption among members of parliament, regional councils, municipality councils as well as of other elected officials is one of the main responsibilities of the NBI, SPAK and the specialised court. However, given the delay in the establishment of these bodies and the results of the vetting process for the judiciary, there have been increased calls to establish a vetting process for politicians and elected officials. The Democratic Party has proposed that all elected officials be vetted in the same manner as the judges and prosecutors. This is a sensitive issue and can easily become politicised and instrumentalised in the context of the 2019 local election campaign. The reactions of the ruling majority have been mixed, but the proposal has not been rejected in principle. A number of SP deputies have stated that they would like to have a Venice

¹⁸ Law no 9049 of 2003, as amended, on “the declaration and audit of assets, financial obligations of elected persons and certain public officials”.

¹⁹ We were informed that, according to the law, the members of the evaluation commissions are appointed on the basis of recommendations by the selection board, of which five members are appointed directly by the Minister of the Interior.

Commission opinion on any draft law on the vetting of elected officials before it is discussed in parliament. Venice Commission experts visited Tirana in November 2018 in the framework of the preparation of an opinion on the draft constitutional amendments enabling the vetting of politicians that was requested by the Speaker of the Albanian parliament. The opinion is foreseen to be adopted in the December 2018 plenary of the Venice Commission.

34. We intend to explore the vetting process for law enforcement personnel as well as for elected officials during our next visit to the country.

35. In a development that underscores the importance of a clear position by the authorities with regard to the fight against corruption and organised crime, in October 2017, during an operation against Albanian organised crime, the Italian police uncovered information that seemed to implicate ex-Interior Minister Saimir Tahiri.²⁰ However, on 8 November 2017, a request by the Albanian Prosecutor General's office for the parliament to lift his parliamentary immunity was rejected by the ruling majority, which raises some questions regarding the commitment of the authorities to the fight against high level corruption. However, on 5 May 2018, under pressure from the international community, Mr Tahiri resigned from parliament. On 12 May 2018, he was placed under house arrest by the Serious Crimes Court after he was charged with narcotics smuggling, corruption and being a member of a criminal gang. His house arrest was subsequently overturned on appeal although he remains under investigation.²¹

36. Cannabis cultivation is reportedly one of the main sources of income of organised crime organisations in Albania. Cannabis used to be openly grown in some of the more remote areas of Albania, especially around Lazarati and Dukagjini, as evident from the data collected at that time by the regular surveillance flights operated by the Italian Guardia di Finanza in agreement with the Albanian Authorities. In 2015, the authorities started a crackdown on cannabis cultivation, resulting in the destruction of several hundreds of thousands of cannabis plants. As a result, open cannabis cultivation is no longer detected during the surveillance flights by the Guardia di Finanza. However we were informed that the quantity of cannabis and cannabis products originating from Albania discovered at the Italian and Greek borders has not diminished over recent years indicating that cannabis cultivation has not disappeared but for a large part has gone (literally) underground.²² At the same time, considerable quantities of hard drugs confiscated at the borders with Albania seem to indicate that Albania has become a transit country for heroin and cocaine originating from Asia and Latin America. Members of the international community informed us that several high-level members of Albanian organised crime organisations have been arrested in other European countries, including on the basis of tip-offs provided by the Albanian authorities. However, the number of members of criminal organisations arrested in Albania itself, even when their whereabouts are reportedly publicly known, remains very low. It is clear that continuing political will and resolute action are needed to effectively and efficiently counter the influence of organised crime in Albania.

37. The fight against organised crime is an important priority for the start of the EU accession negotiations. Amendments to the Criminal Procedure Code and Anti-Mafia law have been made with a view to strengthening the legal framework and Albania has considerably stepped up its police actions in this respect. However, the 2018 report of the European Commission on Albania notes that the convictions for organised crime cases still remain very low.

38. On 12 July 2018, GRECO published its Second Compliance Report on Albania in the framework of the fourth evaluation round which deals with corruption prevention in respect of members of parliament, judges and prosecutors. In this report GRECO welcomes the increased transparency of the legislative process and the adoption, on 5 April 2018, of a Code of Ethics for MPs that, inter alia, regulates their contacts with lobbyists and other third parties in their activities. However, GRECO regrets that this code does not contain any sanctions in cases of breach of the code of ethics, which undermines its effectiveness. It also welcomed that the period for performing a full control of asset declarations of MPs has now been reduced to two years. In this context we wish to reiterate what we said in the previous section on the need to re-evaluate the functioning

²⁰ Mr Tahiri left his post of Interior Minister following the May 2017 agreement between the DP and the SP in which the MoI post was allocated to the DP.

²¹ On 3 November 2018, the Italian investigation was closed without charges being filed. However, he reportedly remains under investigation by the Albanian prosecution services.

²² Some officials have expressed the view that the cannabis confiscated after the crackdown on cultivation was in effect surplus stock from previous years. While that could potentially explain why the quantities of cannabis confiscated in 2016 did not go down this cannot plausibly explain why the quantities remained the same in 2017 and are expected to be similar, if not more, in 2018.

of HIDAACI in the light of the high number of dismissals as a result of the vetting process for judges and prosecutors.

39. With regard to corruption prevention in respect of judges, GRECO notes that a vast judicial reform, including a vetting process of judges, is on-going that aims to address a number of GRECO recommendations. As a result, GRECO could at the moment of publication of its report only conclude that Albania has satisfactorily implemented 4 out of 10 of its recommendations while the other 6 have only partially been implemented.

40. In general, the combination of these reforms, the vetting process as well as the preparations for the upcoming local elections show that Albania is entering a crucial period in the process of its democratic consolidation that we intend to follow closely.

Appendix 1

**Programme of the fact-finding visit to Tirana
(5-7 September 2018)**

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 electoral reform
- Overall state of reforms and priorities of the new Government
- Reform of the Judiciary and vetting process
- Fight against corruption and organised crime including cannabis production

Wednesday, 5 September 2018

- 09:00 Briefing on recent developments by Head of the Council Office in Tirana (*)
- 10:00 NGO Roundtable on Judiciary (*)
- 11:30 NGO Roundtable on fight against corruption and organised crime (*)
- 14:30 Meeting with Ambassadors (*)
- 16:00 Meeting with the International Monitoring Operation for the vetting process of judges and prosecutors (*)
- 17:15-18:00 Meeting with the Ombudsperson, Ms Erinda BALLANCA
- 18:15-19:00 Meeting with the General Director, Mr Ardi VELIU, and the Heads of the Departments for the Fight against organized crime and cannabis cultivation
- 20:00-21:30 Dinner hosted by Albanian Delegation to PACE headed by Mr Ervin BUSHATI

Thursday, 6 September 2018

- 09:00-09:30 Meeting with the Prime Minister of the Republic of Albania, H.E. Mr Edi RAMA
- 09:35-09:55 Meeting with Mr Ulsi MANJA, Chair of the Parliamentary Committee on Legal Affairs, Public Administration and Human Rights
- 09:55-10:15 Meeting with Mr Enkelejd ALIBEAJ, Deputy Chair of the Parliamentary Committee on Legal Affairs, Public Administration and Human Rights
- 10:20-11:15 Meeting with the Co-chair of the ad hoc Committee on Electoral Reform, Mr Bledar ÇUÇI
- 11:15-12:00 Meeting with the Minister of European and Foreign Affairs, Mr Ditmir BUSHATI
- 12:00 Meeting with the Speaker of the Parliament of Albania, H.E. Mr Gramoz RUÇI
- 14:45-15:30 Meeting with the Chairman of the Democratic Party, Mr Lulzim BASHA
- 15:30-16:15 Meeting with the Minister of Justice, Ms Etilda GJONAJ
- 16:20-17:00 Meeting with the High Council of Justice

17:15-18:00 Meeting with the General Inspector of High Inspectorate for Declaration and Audit of Assets and Conflict of Interests, Mr Shkëlqim GANAJ

18:15-19:00 Meeting with the Independent Qualification Commission

Friday, 7 September 2018

09:00-09:45 Meeting with the General Prosecutor, Ms Arta MARKU

11:00-11:45 Meeting with the Chairperson of Socialist Movement for Integration, Ms Monika KRYEMADHI

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

Appendix 2:

Statement made by the co-rapporteurs for the monitoring of Albania

11 September 2018

Albania: satisfaction with vetting of judges and prosecutors; further steps needed to fight high-level corruption

Following a visit to Tirana, the co-rapporteurs of the Parliamentary Assembly of the Council of Europe (PACE) for the monitoring of obligations and commitments by Albania, Andrej Hunko (Germany, UEL) and Joseph O'Reilly (Ireland, EPP/CD), have expressed their satisfaction with the on-going vetting process of judges and prosecutors in the country. "Regrettably the very high number of candidates rejected due to questions regarding their ethical standards and the origin of their assets shows how necessary this process is for the creation of an independent judiciary that is free from corruption and influence peddling," said the co-rapporteurs.

At the same time, they emphasised that "the fact that nearly all rejected candidates were rejected on the basis of questionable assets shows that the current system of inspections and audits of asset declarations for high-level officials, including members of parliament, judges and prosecutors – which is a key instrument to detect corrupt practices – does not function adequately and needs to be improved."

The co-rapporteurs expressed concern at the fact that, as a result of the on-going vetting process, the country is currently without a functioning High Court and Constitutional Court, while a number of important judicial bodies such as the High Judicial Council and the High Prosecutorial Council, as well as the Specialised Prosecutor for High Level Corruption and Organised Crime (SPAK) and related specialised Court, have not yet been established. They welcomed the assurances from many of the relevant partners that progress in the number of candidates vetted would soon allow these bodies to be established and become operational.

The rapporteurs highlighted the importance of the vetting process in the fight against corruption but emphasised that more steps need to be taken and that marked progress and concrete results, especially in the fight against high-level corruption and organised crime, are needed. "In that respect, our expectations with regard to SPAK are very high," they said. The need for renewed impetus was also clear from the information they received that, despite the fact that police flights over the country have detected hardly any new cannabis fields, the quantities of cannabis from Albania intercepted at the Greek and Italian borders still remain very high, while there are indications that Albania has become a transit country for hard drugs coming from Latin America and Asia.

The political environment, the co-operation between ruling majority and opposition, as well as electoral reform in line with OSCE/ODIHR and Venice Commission recommendations, were main topics during the discussions with all political forces. The co-rapporteurs regretted that the political environment remained polarised and confrontational. They stressed that the proper platform for political interaction and debate is the Albanian parliament and therefore called on the opposition parties not to obstruct the work of the parliament or to boycott important debates and votes.

At the same time, they urged the ruling majority to give the proper space for the opposition to function and to engage in a genuine and meaningful dialogue with the opposition on key reforms and the governance of the country. "This is especially important for electoral reform, which should be based on an as wide a consensus as possible, in order to ensure that the local elections in 2019 are accepted by all stakeholders as democratic and fair," said the co-rapporteurs.