

DECLASSIFIED¹
AS/Mon(2017) 01
18 January 2017
amondoc01_2017

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 (26-28 October 2016)

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1. Introduction

1. The main aim of this visit was to take stock of recent developments since the last co-rapporteurs' visit (from 29 to 30 June 2015) and assess progress in the implementation of the Assembly's Resolution 2019 (2014), adopted on 2 October 2014.

2. In its resolution of 2 October 2014, the Assembly noted that despite the progress achieved in the honouring of Albania's membership obligations and accession commitments, serious concerns remained, in particular with regard to the politicisation of democratic institutions and the civil service, the independence of the judiciary and the fight against endemic corruption. The Assembly also regretted that many important reforms had been delayed or otherwise negatively affected by the deep political crisis in the country following the 2009 parliamentary elections, which had led to a de facto two-year boycott of the work of the parliament by the opposition. The Assembly emphasised as a key issue that the many reforms and legislative packages that had been adopted must also be actually implemented in practice in order to effectively address these concerns.

3. Since our visit the European Commission recommended, on 9 November 2016, that member States consider opening accession negotiations with Albania, subject to credible and tangible progress in the implementation of the judicial reform, in particular the re-evaluation of judges and prosecutors ("vetting"). On 13 December 2016, the Council of the European Union took note of the Commission's recommendation and reiterated that a sustained, comprehensive and inclusive implementation of all five key priorities that were identified when Albania was given Candidate Status had to be ensured before the opening of accession negotiations.²

4. During our visit, we met the President of the Republic, the Prime Minister, the Speaker of Parliament, the Minister of Justice and the Minister for Innovation and Public Administration. In parliament, we had discussions with the Albanian delegation to PACE, the co-chairs of the ad hoc Parliamentary Committees on Justice Reform and on Electoral Reform and with the Chair and Vice-Chair of the Parliamentary Committee on Education and Means of Information. We also met with the Chairman of the Democratic Party, the President of the Constitutional Court, the Ombudsman, the Chair and Vice-Chair of the Steering Board of the

¹ Document declassified by the Monitoring Committee at its meeting on 24 January 2017.

² Albania was granted candidate status in June 2014, when the EU encouraged it to step up efforts for reforms in five key priority areas: 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 EU then also urged for a constructive dialogue between majority and opposition.

public broadcaster. We had meetings with representatives of NGOs, associations of former owners of land appropriated under communism as well as with the international community.

5. During the visit, we looked into the recent political developments in the country. We focused discussions on the ongoing reform of the judiciary, which is a key issue for the country and also has far reaching consequences for the fight against corruption. We also discussed election-related issues in view of the forthcoming general election in June 2017. The issue of media freedom was also extensively discussed. We looked into the recent developments in the framework of the execution of the ECtHR pilot judgment concerning non-enforcement of administrative decisions awarding compensation for confiscated property.

6. We would like to acknowledge the key role Albania plays in the Western Balkans, where it has a constructive and proactive role in regional cooperation and contributes actively to several regional initiatives and projects.

2. Political climate

7. The political climate has been marked by continuing political polarisation between the two major political blocks, Albania's ruling Socialists and the opposition Democratic Party. Insults and accusations are common practice in political speeches in the Albanian parliament. There is deep distrust and a lack of political cooperation. Temporarily overcoming this polarisation, the parliament unanimously adopted a package of constitutional amendments facilitating wide-reaching judicial reforms in July 2016 in a rare moment of unity, following heavy pressure from the EU and other international actors. This should not be interpreted as a major shift in the adversarial relationship between Albania's two main parties as shown by the renewed political tension since then and the prospect of the June 2017 elections.

8. Political developments since July 2016 and our discussions with representatives of the majority and the opposition during the visit have shown a restored tension and lack of cooperation. Our interlocutors from the majority expressed a strong political will to progress with the reforms, accusing the opposition of obstructing them. On the other hand, our interlocutors from the opposition accused the ruling majority of a lack of inclusiveness and of adopting reforms that are contrary to the Constitution. During the difficult negotiations on the justice reforms, the opposition repeatedly abandoned and boycotted the work of the ad hoc Parliamentary Committee on Justice Reform and refused to participate in the vote of a number of laws.

9. Another source of concern for the opposition was the alleged non-implementation of the law on the integrity of elected and appointed officials, banning criminal offenders from holding and running for public office that was adopted by consensus. According to our interlocutors from the opposition, some governing politicians had criminal records and were closely linked with criminal organisations. According to the representatives of the majority we met, the law had been implemented, and the opposition's allegations were groundless.

10. With the prospect of the forthcoming June 2017 election, the opposition has further radicalised its approach. According to Democratic Party leader Lulzim Basha, democracy and stability in Albania were at risk because of the proceeds arising from unhindered cultivation of drugs in the country, which, according to him would spoil and capture the next elections.

11. We noted during our fact-finding visit that in certain areas, such as property compensation and vetting of the judiciary, there had been attempts at interference by vested interests to hamper the ongoing reform processes.

12. During our visit we underlined the need to continue with the reforms in compliance with European standards including Venice Commission recommendations, and to prepare the elections in line with OSCE/ODIHR recommendations.

3. Justice reform

13. During our visit we focused on the ongoing reform of the judiciary, which has far-reaching implications for the country, notably with regard to the independence and efficiency of the justice system, the fight against political influence and the fight against corruption and organised crime in the country.

14. During our meeting with the Ombudsman, we were informed of the high number of complaints that had been lodged in relation to corruption within the judiciary.

15. In its last resolution, the Assembly expressed concern about the lack of independence and impartiality of the judiciary and in particular political pressure on, and interference in it. It stated that further comprehensive consensual reforms, including changes to the Constitution, to ensure the independence of the judiciary and an efficient administration of justice were urgently needed and should be a priority for the authorities. The Assembly expressed its concern about the widespread and systemic corruption at all levels of the judiciary, and encouraged the authorities to reform the Supreme Court and High Council of Justice in line with the recommendations of the Venice Commission, especially with regard to disciplinary and appointment procedures. It also urged the authorities to revise appointment and disciplinary procedures with a view to reducing their vulnerability to politicisation and political interference.

16. On 21 July 2016, the parliament unanimously adopted the judicial package paving the way for the long-awaited judicial reform. This vote followed 18 months of technical and political work and negotiations between the three main political leaders, with the strong involvement of the EU and US Ambassadors in Albania. The reform includes changes to 46 articles of the Constitution (nearly a third of its articles). These constitutional amendments were the result of a long and laborious process, to which the Venice Commission contributed by preparing two opinions and participating in the development of the concept of the reform. The formal approval of the amendments was only the first step. The constitutional amendments needed to be complemented by primary and secondary legislation – around 40 laws needed to be adopted amongst which 7 key laws had already been prepared

17. This reform aims to improve the independence, accountability and efficiency of the judiciary. It foresees major changes regarding the judiciary and the prosecution systems aimed in particular at eradicating corruption in the judiciary, preventing political interference in the work of judges and prosecutors and eliminating links with organised crime. In addition to the reform of the justice institutions the re-evaluation process (known as vetting process) of all judges, prosecutors and legal advisors is foreseen. A Supreme Judicial Council and a Supreme Prosecution Council are established, as well a court and a special prosecutor for the fight against corruption and organised crime. The constitutional amendments also provide for the reorganisation of the High Judicial Council, the Constitutional Court and several other supreme State institutions related to the judiciary and sets new appointment mechanisms for high judicial functions.

18. In its Opinion on the Revised Draft Constitutional Amendments on the Judiciary, the Venice Commission considered that the vetting process was not only justified but necessary for Albania to protect itself from the scourge of corruption.

19. The temporary agreement between political forces for the adoption of the constitutional amendments on the justice reform was broken at the beginning of the discussions for the adoption of the main implementing laws. The seven³ most important laws for the reform implementation have nevertheless been adopted. The opposition only participated in the adoption of the law on the organisation and functioning of bodies in charge of fighting corruption and organised crime establishing the Special Prosecutor's Office, the National Bureau of Investigation (NBI), and the Special Courts against corruption and organised crime.

20. In our meeting with the Prime Minister, he expressed a strong political will to fully complete the justice reform. According to him, the country has achieved an outstanding reform process of which vetting is the milestone. He stressed that the process had been very inclusive and transparent, and conducted in co-operation with international experts. He accused the opposition of trying to obstruct and delay the reform.

21. The Speaker of Parliament insisted on the importance of having a consensus on the judicial reform and welcomed the unanimous adoption of the constitutional amendments which gave full legitimacy to the reform.

22. The Chairman of the Democratic Party acknowledged that the justice reform was needed, and recalled that the opposition had voted in favour of the constitutional amendments. However, he expressed concern regarding the follow-up and notably the ongoing legislative processes. According to the opposition, the judicial process reform was not inclusive and the laws on implementation of the constitutional amendments perpetuate systemic problems and include constitutional breaches, which is why they had not voted in favour of these laws.

³ Law on the Governing Bodies of the Judicial System; Law on evaluation of judges and prosecutors; Law on the Constitutional Court; Law on the organisation of the judiciary; Law on the organisation of Prosecutor Office; Law on the status of judges and prosecutors; Law on the organisation and functioning of bodies in charge of fighting corruption and organised crime.

23. The President of the Republic insisted on the importance of the judicial reform. According to him, new checks and balances between institutions had been put in place and there was an attempt to depoliticise the process of appointment of high judicial functions. He raised concerns regarding the risk of overlapping due to the various agencies involved in the appointment, control and evaluation of high judicial functions. There was a need to protect the system against attempts by politicians and interest groups to interfere in it. According to him, the vetting process should not be dependent upon decisions of international experts but should be under the responsibility of domestic actors. He also criticised the deadlines set in the law which were not realistic. According to him, the role set for the President in the vetting process was not adequate as it was purely administrative.

24. One of the key laws for the justice reform is the law on “Transitional reassessment of the judges and prosecutors of the Republic of Albania” (the “vetting law”) which foresees an evaluation process for judges and prosecutors, members of the Constitutional Court and the High Court, legal advisors in the Constitutional and High Court, legal assistants in the administrative courts and legal assistants in the General Prosecution Office. The evaluation process is based on an assets check, background check (connections with crime and criminals) and professionalism (proficiency). Four new institutions are established for implementing the vetting process: the Independent Qualification Commission, the College of Appeals, the Public Commissioners, and the International Monitoring Operation.

25. On 7 October 2016, the Democratic Party appealed to the Constitutional Court regarding the incompatibility of the Vetting Law with the constitution and the ECHR. It requested the suspension of the Law and its implementation until the final decision of the Constitutional Court. On 8 October 2016, the law on the vetting of judges and prosecutors entered into force.

26. By decision of 25 October 2016, the Constitutional Court decided to suspend the implementation of the Vetting Law and to request an *amicus curiae* brief from the Venice Commission regarding the compatibility of the Law with the ECHR and the Constitution of Albania. The Constitutional Court put four questions to the Venice Commission, relating to the compatibility of certain aspects of the Vetting Law with the Constitution and Articles 6 and 8 ECHR as well as on whether the participation of the judges of the Constitutional Court, who are themselves subject to the vetting procedure, in the examination of the constitutionality of the Vetting Law may be considered as a conflict of interest which requires their disqualification. On 22 November 2016, the Constitutional Court rejected the request of the parliament to cease the suspension of the Vetting Law.

27. In its *amicus curiae* brief, adopted on 9-10 December 2016, the Venice Commission considered that the fact that the disqualification of the constitutional judges (because of a conflict of interest) would result in the exclusion of any possibility of judicial review of the law could constitute an extraordinary circumstance allowing them not to disqualify. Concerning the alleged involvement of the executive power in the process of re-evaluation of judges and prosecutors, the Venice Commission noted that as the evaluation and assessment of all information gathered by executive bodies rests with the independent commission and the appeal chamber, the system does not amount to an interference with judicial powers. Concerning the alleged lack of possibility for judges and prosecutors to challenge the decisions of the re-evaluation institutions before domestic courts, the Venice Commission considered that the Appeal Chamber may be considered as a specialised jurisdiction. The Venice Commission considered that the background assessment, although obtrusive, has a legitimate aim and may thus not be seen as an unjustifiable interference in the private or family lives of judges and prosecutors, under Article 8 of the ECHR.

28. On 22 December 2016, the Constitutional Court ruled that the Vetting Law was in accordance with the Constitution. The Constitutional Court’s written reasoning is still awaited.

29. On 2 December 2016, the National Association of Judges and the Union of Albanian Judges filed a request in the Constitutional Court to repeal as unconstitutional the law on the status of judges and prosecutors. On 21 December, the Democratic Party filed a request with the Constitutional Court seeking the repeal of the law on the justice system’s governing bodies (High Council of Judiciary and the High Council of Prosecution) as unconstitutional.

30. Referring to the Assembly’s previous resolution on the monitoring of Albania concerning the state of the justice system in the country, we wish to stress the importance of the ongoing judicial reform for restoring trust in the judicial system in Albania. The manner in which the reform package is implemented is essential for the sustainability and the success of the reform process.

31. We also discussed with the Minister of Justice the issue of the length of procedures. In the case *Luli and others v. Albania*, the ECtHR noted that the excessive length of proceedings was becoming a serious deficiency in domestic legal proceedings in Albania and that general measures at national level were explicitly called for in the execution of the judgment, in particular, introducing a domestic remedy as regards the undue length of proceedings. In its decision of December 2016⁴ in the framework of the supervision of the execution of the case, the Committee of Ministers strongly encouraged the authorities to rapidly finalise the adoption of an effective remedy for excessive length of proceedings.

4. Elections

32. The next parliamentary elections will be held on 18 June 2017. There are still some outstanding OSCE/ODIHR recommendations from the general and local elections, held respectively in 2015 and 2013. Shortcomings include in particular: the lack of impartiality and politicisation of the electoral administration, transparency of campaign finances and electoral dispute resolution. A parliamentary ad hoc Committee on Electoral Reform was established in February 2016 to address key outstanding OSCE/ODIHR recommendations. Little has happened so far within this ad hoc committee. A number of our interlocutors explained this lack of progress by the current focus on the constitutional reform agenda.

33. The Prime Minister insisted that there was a need for consensus to proceed with the electoral reform and that the Democratic Party was obstructing the process, in particular concerning the depoliticisation of the election administration. Majority representatives insisted that overall the electoral code is sound, and only a few amendments were needed. According to the Prime Minister, the most important problem remains its actual implementation. He insisted on the need for the depoliticisation of the election administration, notably concerning commissioners in polling stations. He stressed that the law on political parties financing was good but that the Central Election Commission was not implementing it. The ruling majority advocates for a mixed funding system (public and private funding), with control of private funding. In June 2016, the Socialist Party created a platform on the right to vote for Albanian citizens living abroad, as part of the efforts to create legal and administrative mechanisms that would guarantee to Albanians living abroad the opportunity to become part of the political process.

34. The opposition Democratic Party (DP) representatives referred to a 12-point platform submitted by the opposition on the electoral reform. Major issues still needed to be solved, but there was little time left before the elections. The 12-point platform reportedly included: the decriminalisation of the electoral process; biometric identification of voters as well as electronic voting and counting; party and campaign financing; no use of government resources and pressure on the administration; equal media coverage during the electoral campaign; voter list and civil registry; voting by emigrants; redistribution of parliamentary seats by region; review of the role of the State Police during elections; stricter penalties for electoral corruption, including vote buying and selling, corrupting an election official and making/taking a promise to vote in a certain way in exchange for material goods; guaranteeing the right of citizens to hold referenda; and optimisation of the electoral system. One of the issues raised by our interlocutors from the opposition was the legislative framework regulating political party and election campaign financing and they insisted on the need for a transition to full State funding. They also denounced the lack of proper maintenance of the voters' register. The recent territorial administrative reform would, according to them, allow for gerrymandering in the forthcoming elections. After our visit, a Memorandum was signed by 23 opposition political parties, making their participation in elections conditional on inter alia the establishment of biometric identification of voters, electronic voting and counting, amendments to the law on the financing of political parties and campaign financing, amendments to the criminal law in relation to vote buying, as well as the full implementation of the law on decriminalisation.

35. As already recommended by the Assembly in its previous resolutions on the monitoring of Albania, there is a crucial need for the political forces to work jointly towards the implementation of the outstanding Venice Commission and OSCE/ODIHR recommendations. The division of the election administration along party lines hinders the effective and impartial conduct of the elections, and further reforms need to be implemented to ensure a genuine non-partisan election administration. The rules on campaign finance reporting should be strengthened to provide greater transparency. We reiterate that the main issue regarding elections in Albania is the lack of political will among the main political stakeholders to implement the Electoral Code in good faith and their desire to politicise the electoral process. Changes to the Election Code alone are not sufficient to resolve the recurrent shortcomings and ensure the conduct of democratic elections in line with international standards. Equally important are changes in the attitude and practices of the main political stakeholders. Such a political will by all political stakeholders is essential for the consolidation of a robust and genuinely democratic electoral process in Albania.

⁴ https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016806c3f04.

5. Property rights / execution of the ECtHR pilot judgment concerning non-enforcement of administrative decisions awarding compensation for confiscated property

36. The restitution of property issue is a longstanding one in Albania. During the communist regime (1944-1992), the Albanian Government expropriated thousands of owners by seizing their plots of land and buildings. Official compensation plans started in the early 1990s, shortly after the collapse of the communist regime. Several successive laws tried to address the restitution of property issue, creating confusion about the applicable legal provisions and this was combined with inefficient systems and a lack of funds. This situation led to the failure to enforce final, domestic, judicial and administrative decisions on the rights of applicants to restitution or compensation for property seized under the communist regime.

37. The ECtHR judgements in the group of cases *Manushaqe Puto and others v. Albania* (judgement of 31 December 2012) are pending execution in front of the Committee of Ministers. These cases concern the structural problem of failure to enforce final, domestic judicial and administrative decisions relating to the right of the applicants to restitution or compensation (whether pecuniary or in kind) for property nationalised under the communist regime (violations of Article 6 § 1 and Article 1 of Protocol No. 1 of the ECHR) and the lack of an effective remedy in this respect (violations of Article 13).

38. In the framework of the supervision of this group of cases, the Committee of Ministers has, on many occasions, called on the Albanian authorities to take all necessary measures to execute the numerous final domestic decisions concerning rights over property nationalised during the communist regime, but in the early years there was a lack of substantial progress. Things started to move forward with the adoption on 24 April 2014 of an action plan setting out a comprehensive list of measures aimed at introducing an effective compensation mechanism. The Albanian authorities requested the Council of Europe's support for the drafting of the law on compensation and of restitution of property, and they worked in close consultation with the Council of Europe experts. According to the Committee of Ministers, the authorities conducted a careful review of all the legal and financial implications and estimated the overall cost of compensation in order to have a concrete basis for considering the necessary legislative changes. Comprehensive information on the solutions chosen was provided, underlining the authorities' attempts to find a fair balance between the interests of individuals and society as a whole, as well as to treat all former owners equally.

39. The Law on the treatment of property and finalisation of the process of compensation of property was adopted by the parliament on 5 December 2015. It established a Compensation Fund (a Financial Fund and a Land Fund) to ensure the necessary resources to compensate former owners. Furthermore, the Law set requirements concerning annual allocations from the State budget to that fund, calculated to finalise the process of payments within 10 years. Binding deadlines have been fixed for the various stages of the procedure.

40. In December 2015 the Committee of Ministers noted with satisfaction the adoption of the Law, considering it as a very positive step towards putting an end to the longstanding failure to respect the obligation to compensate or restore property to former owners. The Law entered into force on 24 February 2016 and the first three by-laws were adopted on 23 March 2016. In its Decision of June 2016, the Committee of Ministers welcomed the adoption of three important by-laws, as well as the establishment of a mechanism of periodic monitoring. Given the importance of bringing a definitive solution to the longstanding problem revealed in the judgments in this group, it encouraged the authorities to continue to deploy all efforts necessary for the effective functioning of the mechanism in practice.

41. The ruling majority representatives stated that for the first time in 25 years, a solution had been found to the problem. The authorities had conducted a careful review of all the legal and financial implications and had estimated the overall cost of compensation. They stated that there were different layers of property titles which would amount to seven times the territory of Albania. There had been a need to find a fair balance between the interests of individuals and society as a whole. They informed us that 500 million dollars have been committed over 10 years for the compensation process.

42. During our visit, we noted that the issue of property compensation and property restitution was very passionate and that many vested interests were involved. We were even approached by a number of officials in their personal capacities who expressed concern regarding the new law. We also had a meeting with the associations of former owners.

43. A constitutional complaint was lodged by the President of the Republic, a group of Members of Parliament, the Ombudsman, the Republican Party of Albania, and associations of ex-owners against the Law, which was pending at the time of our visit.

44. Opponents to the law considered that: it violates the principle of equality before the law and non-discrimination as it orders the re-evaluation of final administrative and judicial decisions on compensation; that the scheme provided by this Law to resolve the systemic problem of non-enforcement of decisions on compensation does not guarantee effectiveness, clarity and predictability; and that the law violates the right to property in the context of Article 1, Protocol No. 1 to the ECHR as it has not provided for the real evaluation of property pursuant to final administrative and judicial decisions on compensation. Opponents to the law contest the main element of the evaluation of financial compensation that is the value of the property under the cadastral index it had at the time of expropriation, which may lead to a lower amount of compensation paid to the former owners of lands formerly located in the rural and agricultural areas that are currently prime real-estate (urban centres and coastal areas). The opponents to the law also complained about the lack of consultation in the preparation of the law and the fact that the law does not foresee restitution while some of the properties are currently available. They questioned the figures given by the government. They complained that the new mechanism is a source of corruption as the calculation of the price of the property is based on the quality of the land at the time of expropriation, but the same land is then sold by the State at the 2016 market price. They also questioned the ongoing legalisation process in which lands are given away at very low prices.

45. On 21 April 2016 the Constitutional Court decided not to suspend the application of the new Law pending its decision. On 7 July 2016, the President of the Constitutional Court of Albania requested an *amicus curiae* brief from the Venice Commission on the conformity of the Law "On the treatment of property and finalisation of the process of compensation of property" with the requirements of Article 1, Protocol No. 1 to the European Convention on Human Rights.

46. On 14 October 2016, the Venice Commission adopted an *amicus curiae* brief for the Constitutional Court of Albania on the restitution of property, which assesses positively the new legal scheme put in place by the new law.⁵

47. On 9 November 2016, the Constitutional Court examined the requests for the abrogation as incompatible with the Constitution of Law No. 133/2015 "On the treatment of the property and the completion of property compensation process". It decided to accept a part of the application; to repeal as unconstitutional Article 6, paragraphs 3 and 5 of the law; to reject the request for the repeal of Article 6, paragraph 1, letter "b", and Article 7, paragraph 2, letter "a" and "b" of the above-mentioned law; to reject the rest of the application. The implications of the decision are not yet clear as the written reasoning has not yet been issued by the Constitutional Court.

48. In our meeting with the President of the Republic, he referred to crimes during the communist regime, and mentioned the PACE resolution of 2006 on the "Need for international condemnation of crimes of totalitarian communist regimes". According to him, nothing had been done to implement this resolution.

6. Integrity of person holding public functions

49. In its last report, the Assembly urged the authorities to swiftly adopt all further implementing legislation needed to efficiently enforce the constitutional amendments that limit the immunity of members of the government, MPs, judges and high-level State officials. The issue of the decriminalisation of the National Assembly has been high on the political discussions over recent years in Albania. On 17 December 2015, following several months of debate amongst political parties, Members of the Parliament adopted by consensus the constitutional amendments and legislative framework necessary to introduce a clear mechanism for the exclusion of criminal offenders from public offices (Law no. 138/2015 "On guaranteeing the integrity of the persons elected and/or appointed to, or exercising public duty" – the so called "decriminalisation" law). On 4 March 2016, the National Assembly approved, with 114 votes in favour, no abstentions, and no votes against, the by-laws needed for enforcing the so-called Decriminalisation Law. The vote in the plenary sitting took place after lengthy negotiations between the majority and opposition representatives over the technical details pertaining to the self-declaration forms.

⁵ According to the Venice Commission, the law's new compensation scheme changed the evaluation method, which could lead to lower compensation. Even if lower compensation cannot be qualified as formal expropriation, it may well qualify as an "other interference" under Article 1 of Protocol No.1 to the ECHR. Yet, there appears to be a sufficiently clear and detailed legal basis for the interference at issue. The interference also appears to pursue a legitimate aim, and to be in the public interest within the meaning of Article 1 of Protocol No. 1 to the ECHR. In Albania's specific situation, it can well be argued that a new and effective legal framework provided by the new Law, which may lead to a lower amount of compensation paid to the former owners, nevertheless meets the requirement of proportionality as set out in Article 1 of Protocol No.1 to the ECHR.

50. On 31 May 2016, the Central Election Commission (CEC) decided to strip of their mandates 18 municipal councillors who had not submitted their self-declaration forms in the framework of the Decriminalisation Law. On 29 July 2016, the CEC started verification of the decriminalisation self-declaration forms submitted by MPs, mayors, and municipal councillors. Since our visit, on 29 December 2016 and 6 January 2017, the CEC voted to dismiss from office two MPs and a mayor who had hid their criminal convictions after submitting forms about their past.⁶

51. The representatives of the opposition we met stated that the law has not been implemented and that people that had been convicted were still in place. The Chairman of the opposition party denounced the influence of organised crime and drug trafficking on elected officials at central and local levels. He insisted that the law should be implemented in particular ahead of the forthcoming 2017 elections.

52. According to the Prime Minister, there are no convicted criminals in parliament, as shown by the implementation of the law.

53. In its Resolution 2019 (2014),⁷ the Assembly regretted the politicisation at all levels of the civil service, and called on all parties to refrain from action that undermines the effective functioning of government institutions and public trust in their impartiality and insisted that a non-partisan and impartial civil service is crucial for the functioning of democratic institutions in Albania.

54. The law on civil service establishes procedures for merit-based recruitment and promotion which needs to be further implemented to ensure a more efficient, depoliticised, and professional public administration in practice. A new law on the integrity of persons exercising public functions was adopted in December 2015. We were informed by the Minister for Innovation and Public Administration that the Department of Public Administration collected 24 000 self-declarations in April 2016 and that their verification led to the dismissal of 24 public employees. While taking note of the ongoing process, we consider that the situation in practice still needs significant change. The perception of corruption remains high and more efforts are needed in this regard.⁸

7. Media freedom/media pluralism

55. The situation of media in Albania has been a longstanding concern of the Assembly. In its resolution 2019 (2014), the Assembly regretted the heavy polarisation of the media environment. The situation has not improved since then with a lack of transparency on the media market leading to the media's growing dependence on political parties and business interests. The media continued to be used as a tool to promote political and private interests. The role of media as watchdog is thus hampered by this media clientelism.

56. In its last resolution, the Assembly urged the authorities to ensure that government advertising is not awarded to media outlets on the basis of political affiliation. It transpired from our discussions that government funds channelled to the media for advertising or other purposes still lack transparency. State advertising needs to be further regulated and implemented in line with European standards.

57. The situation of the public broadcaster has not improved since the last resolution in which the Assembly called on all political forces to further reform of the public broadcaster with a view to ensuring its independence and impartiality. The public perception of RTSH's popularity remains negative, and its composition and functioning remain very much embodied in politics. On 10 March 2016 the parliament approved with 73 votes the amendments to the Media Law supported by the government, related to the procedures of election of the General Director of the Public Broadcasting Service: the new method for electing the general director foresees a simple majority vote after three rounds. While representatives of the ruling majority explained to us that a solution needed to be found to overcome the blockage in the appointment process in the absence of a consensus, the opposition representatives claimed that the ruling majority had appointed a party hack as the General Director of RTSH⁹ which would allegedly weaken the

⁶ <http://www.balkaninsight.com/en/article/two-albanian-mps-and-a-mayor-dismissed-from-office-12-29-2016#sthash.pjlfqD79.dpuf>.

⁷ <http://semantic.pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmQvbnvveG1sL1hSZWYvWDJlURXLWV4dHluYXNwP2ZpbGVpZD0yMTI5NCZsYW5nPUVO&xsl=aHR0cDovL3NlbnVudGlicGFjZS5uZXQvWHRNsdC9QZGYvWFJIZi1XR C1BVC1YTUwyUERGLnhzbA==&xslparams=ZmlsZWlkPTIxMjk0>.

⁸ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_albania.pdf.

⁹ The existing election formula had been requested in 2012 by the Socialist Party (then in opposition) as a condition for their support to the Media law in parliament.

institution. We were told in the meeting with the Chair and the Co-Chair of the RTSH steering board that the new management has embarked in a transformation process for the public broadcaster, concerning its structure and programming; the internal rules still needed to be approved by parliament; the law should be changed to repeal certain provisions preventing the public broadcaster from working independently. We reiterate that it is essential that RTSH be a professional, independent public service media.

58. There is a need to further strengthen the independence of the Audiovisual Media Authority (AMA) The method of electing AMA members is not free from political influence and does not ensure the regulator's independence. Politicised appointments can lastingly damage the perception of AMA as an impartial arbitrator in pursuit of the public interest. AMA can be subject to external influence and for the time being did not fully succeed to assert itself in the sector it regulates as an impartial and effective independent regulatory body.¹⁰

59. On 19 April 2016, the Albanian Constitutional Court examined the request filed by the Albanian Association of Electronic Media, claiming the unconstitutionality of the Article 62, point 3 of the law on Audio-Visual Media. This provision stipulates that no person can have more than 40% of the total shares in a company which owns a national license for audio or audiovisual broadcasting. This restriction, according to the Albanian Association of Electronic Media, violates the freedom of property and equality before the law. The Constitutional Court decided to repeal this Article. It is essential to bring ownership limitations for national operators in line with the relevant international standards.

60. We noted that defamation has not been fully decriminalised despite the Assembly's recommendation to do so. Ahead of our visit, a draft proposal concerning online defamation, introduced in June 2015 by opposition MP Ms Bregu, was re-inserted on the parliamentary agenda by the Legal Affairs Committee. This pending legislative proposal reportedly seeks to introduce liability for online publication of comments that infringe upon a person's honour, personality or reputation on providers of "electronic portals". If enacted, this legislation would reportedly retrograde the advancements made with the 2012 reforms to the Albanian civil and criminal defamation laws and introduce unbalanced measures directed against all content and hosting providers that would excessively restrain online freedom of expression. The Chairman of the Democratic Party told us that this was an individual initiative that was not supported by his party. In November 2015, Andrej Hunko issued a statement expressing his surprise at the draft amendments to the criminal code regarding "Defamation towards senior officials or elected officials." and called on the Albanian parliament not to adopt these proposals and instead to move towards full decriminalisation of defamation as called for in Resolution 2019 (2014).

61. We were told by the Chairman of the Media Parliamentary Commission that there were two cases of censorship over investigative journalism in Albania (concerning the journalists Alida Tota and the investigative show Publicus). We note that the cases are currently pending before the Albanian courts.

8. Other issues

62. In our meeting with the Ombudsperson, we were told that the problem he had raised during the co-rapporteurs' previous visit regarding the appointment process for the Ombudsman's commissioners had further aggravated since then: one year after the adoption of the amendments to the law on the Ombudsperson, the vacancies for the commissioners had not been filled, which according to him is due to the wrong formula set in the law. The Ombudsman informed us that he has sent a letter to the parliament asking for a change in the law.

9. Conclusion

63. The insufficient independence and impartiality of the judiciary in Albania and the political pressure and interference on it have been longstanding concerns of the Assembly. We applaud the adoption of the constitutional amendments paving the way for a thorough and comprehensive reform of the judiciary. The swift adoption of the reform and its consequent implementation are now key factors. The justice reform addresses a longstanding desire by the majority of the Albanian people for justice that is accountable, independent and transparent. It is also a major contribution to the fight against corruption and organised crime.

64. We witnessed a tense political climate during our visit. Political tensions ahead of the 2017 general election could hinder the implementation of structural reforms. It is important for political forces to cooperate

¹⁰ <http://mediaobservatory.net/sites/default/files/Indireg-AMA-Report-Nov14.pdf>.

towards reforms in the interests of the people of Albania. The spirit of cooperation that led to the adoption of the constitutional amendments in July should continue in order to progress further with the reforms.

65. The preparation of the 2017 general elections is now a key issue for the country and it is essential that the political forces work jointly towards the implementation of the outstanding OSCE/ODIHR recommendations without delay.

66. In this context, we reiterate the concerns previously expressed by the Assembly with regard to the heavily politicised media environment, the widespread self-censorship among journalists and political influence hampering editorial independence.

APPENDIX – Programme of the fact-finding visit to Albania (26-28 October 2016)

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

Wednesday 26 October 2016

- 17:35-18:35 Meeting with the Minister for Innovation and Public Administration, Mrs Milena HARITO
18:45-19:20 Meeting with the Ombudsman, Mr Igli TOTOZANI
19:30-21:00 Official dinner hosted by the Chairperson of the Albanian Delegation to PACE

Thursday 27 October 2016

- 09:00-10:30 Meeting with selected Ambassadors (*)
10:45-11:30 Meeting with the President of the Republic of Albania, H.E. Mr Bujar NISHANI
11:40-12:30 Meeting with the Delegation of the Albanian Parliament to PACE, headed by Mrs LESKAJ
12:30-13:30 Meeting with the Chairman of the Constitutional Court, Mr Bashkim DEDJA
13:35-15:00 Lunch meeting with NGOs (*)
16:15 Meeting with the Prime Minister, H.E. Mr Edi RAMA

Friday 28 October 2016

- 09:00-09:45 Meeting with the Minister of Justice, Mr Ylli MANJANI
09:50-10:45 Meeting with the Chair and Deputy Chair of the Steering Board of the Albanian Public Broadcaster
10:50-11:20 Meeting with the Speaker of Parliament, H.E. Mr Ilir META
11:30-12:00 Meeting with the Chair and Deputy Chair of the Parliamentary Committee on Education and Means of Public Information, Mr POLLO and Mr PEZA
12:10-12:50 Meeting with the Co-chairs of the Ad Hoc Committee on Justice Reform, Mr XHAFAJ and Mr BYLYKBASHI
13:00-13:40 Meeting with the Co-chairs of the Ad Hoc Committee on Electoral Reform, Mr BALLA and Mr BYLYKBASHI
15:30-16:45 Meetings with NGOs on property issues (*)
17:00-18:00 Meeting with the Chairperson of the Democratic Party, Mr Lulzim BASHA

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