



Opinion 189 (1995)¹

Application by Albania for membership of the Council of Europe

Parliamentary Assembly

1. Albania applied to join the Council of Europe on 4 May 1992. By Resolution (92) 9 of 21 May 1992, the Committee of Ministers asked the Parliamentary Assembly to give an opinion, in accordance with Statutory Resolution (51) 30 A.
2. Albania has been functioning as a multi-party parliamentary democracy since the elections of 31 March and 7 and 14 April 1991. The Assembly sent observers to these elections. In the light of their observations and of subsequent political developments, "special guest" status was given to the Albanian Parliament on 25 November 1991. Since then, both government and opposition have been able to make their positions known in Strasbourg.
3. Further elections were held on 22 and 29 March 1992. Assembly observers concluded that they opened the way for closer relations between Albania and the Council of Europe, with a view to subsequent membership - subject to review of the position of the ethnic Greek minority (notably in the south).
4. Since May 1992, following Albania's application for membership, Assembly committees and their rapporteurs have paid repeated visits to the country - most recently, on the occasion of the constitutional referendum of 6 November 1994.
5. In January 1993 a joint Commission of the European Communities/Council of Europe programme of co-operation in the fields of human rights and the rule of law was set in train. The programme addressed inter alia the training of judges, lawyers and the police; reform of the prosecution, of the judiciary, of the ministry of justice, and of prisons; the drafting of civil and penal codes and the corresponding codes of procedure.
6. A report confirming progress on the conformity of legislation in Albania with general principles of the Council of Europe and the European Convention on Human Rights was delivered by two eminent jurists to the Bureau of the Assembly on 15 October 1993.
7. Although the draft constitution submitted to referendum in November 1994 was rejected, this left Albania neither in a constitutional vacuum, nor with the communist constitution of 1976. From April 1991 to September 1993 a framework for democracy was built through eight laws of a constitutional character. These laws establish a parliamentary republic. They provide for the separation of powers. They embody a list of human rights and fundamental freedoms, following consultation of international and European experts.
8. Despite current political difficulties impeding a fresh initiative, a new constitutional commission is expected to be established with representatives of the parliamentary parties and with international consultants - inter alia from the Council of Europe and the European Commission for Democracy through Law (Venice Commission).

1. Assembly debate on 29 June 1995 (22nd Sitting) (see [Doc. 7304](#), report of the Political Affairs Committee, rapporteur: Mr Kelchtermans; [Doc. 7338](#), opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Columberg; and [Doc. 7339](#), opinion of the Committee on Relations with European Non-Member Countries, rapporteur: Mr Ruffy). Text adopted by the Assembly on 29 June 1995 (22nd Sitting).



9. Criticism will persist in regard to Albania's judicial and penal systems and the administration of justice. Clearly, the elements of a judicial and legal culture necessary for the "rule of law" - as compared with the elements of a market economy and of "civil society" - need more time to become implanted and to make felt their effects. Progress must be assessed in the context of immense material difficulties, following the collapse of an isolationist totalitarian dictatorship.

10. By March 1992, oppression, fear and hunger had driven Albania to near-anarchy, with mass efforts to flee the country and total reliance on humanitarian aid. Today, however, the physical appearance of Albania is transformed. A market economy is emerging. From being completely closed to outside influence, the society is both outward-looking and animated. This transformation suggests that the right policies and legislative priorities have been chosen.

11. The situation is nonetheless precarious. For the most part, water is only available for a few hours a day. Leaks are causing contamination. Sewage is being discharged without treatment. Electricity networks are badly overloaded. These are causes of great hardship. Also, they are a risk to health and safety.

12. Albania thus continues to need international aid and massive infrastructural rehabilitation. It is tragic that the transition to democracy and a market economy should have coincided with a heightening of tensions on Albania's northern and southern borders - substantially due to the break-up of the former Yugoslavia. Such tensions have been a radical disincentive to investment.

13. A welcome relaxation of tension on Albania's southern border has been matched by a re-affirmation of the legal and constitutional bases of Albania's policy towards minorities - notably to the effect that no religious community will be deprived in practice of an opportunity to flourish (letter of 13 February 1995 from the Speaker of the Albanian Parliament to the Chairman of the Political Affairs Committee). The fact that this commitment will be monitored by the Council of Europe should provide continuing reassurance to ethnic minorities and communities in Albania.

14. In regard to minorities and communities of Albanian ethnic origin in the Federal Republic of Yugoslavia (Serbia and Montenegro), notably in the neighbouring and formerly autonomous province of Kosovo (where ethnic Albanians are said to account for virtually 90% of the population) and in the former Yugoslav Republic of Macedonia (where ethnic Albanians account for 23% of the population), the restraint of Albanian foreign policy in the face of rising tensions has served to maintain stability in the region.

15. Albania's new civil code has been in force since November 1994. A code of civil procedure is being drafted with the help of Council of Europe experts. A new penal code and a code of criminal procedure were adopted, respectively, on 27 January and 21 March 1995 - to enter into force, respectively, on 1 June and 1 August 1995. On 23 March 1995, agreement was reached on a second joint Commission of the European Communities/Council of Europe programme for reform of the legal system.

16. On the basis of:

16.1. Albania's commitment in relation to minorities and continuing developments in the field of legislation;

16.2. Albania's existing constitutional provisions;

16.3. the participation of a "special guest" delegation of the Albanian Parliament in its proceedings since 25 November 1991;

16.4. the establishment of political dialogue between the Albanian Government and the Committee of Ministers, the Assembly considers that Albania, in the sense of Article 4 of the Statute, is able and willing to fulfil the provisions for membership of the Council of Europe as set forth in Article 3: "Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of [its] aims."

17. Therefore, the Parliamentary Assembly, on the understanding that Albania shares its interpretation of commitments entered into as spelt out in paragraphs 13 and 16, and now intends:

17.1. to sign the European Convention on Human Rights at the moment of accession; to ratify the Convention and Protocols Nos. 1, 2, 4, 7 and 11 within a year; to recognise, pending the entry into force of Protocol No. 11, the right of individual application to the European Commission of Human Rights and the compulsory jurisdiction of the European Court of Human Rights (Articles 25 and 46 of the Convention);

17.2. to sign, ratify and apply Protocol No. 6 of the European Convention on Human Rights on the abolition of the death penalty in time of peace within three years of accession, and to put into place a moratorium on executions until total abolition of capital punishment;

17.3. to sign and ratify within a year from the time of accession the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

17.4. to sign and ratify within a year from the time of accession the Framework Convention for the Protection of National Minorities, and to conduct policy towards minorities on the principles set forth in Assembly [Recommendation 1201 \(1993\)](#);

17.5. to recognise the vital importance of freedom of expression to a properly functioning democracy, as recorded in Article 19 of the Universal Declaration of Human Rights, and to move swiftly to encourage and protect independence in broadcasting and in printed media - allowing complete editorial freedom, even-handed tax treatment, free availability of newsprint and equal access to broadcasting and printing facilities and to distribution outlets;

17.6. to change the role and functions of the Prosecutor's Office, transforming this institution into a body which is in accordance with the rule of law and Council of Europe standards;

17.7. to ensure the independence of the judiciary, in particular by protecting judges from unjustified or arbitrary dismissals, and by keeping the operating budgets of the courts under their direct and full control and by having them approved by Parliament;

17.8. to establish, within a reasonable length of time, a constitutional commission as indicated in paragraph 8;

17.9. to seek settlement of international disputes by peaceful means (an obligation incumbent upon all member states of the Council of Europe);

17.10. to co-operate fully in the monitoring process for implementation of Assembly Order No. 508 (1995) on the honouring of obligations and commitments by member states of the Council of Europe, as well as in monitoring processes established by virtue of the Committee of Ministers' Declaration of 10 November 1994 (95th session);

17.11. to study, with a view to ratification, the Council of Europe's Social Charter and the European Charters of Local Self Government and for Regional or Minority Languages, and meanwhile to conduct its policy in accordance with their principles;

17.12. to study, with a view to ratification, and meanwhile to apply the basic principles of other Council of Europe conventions, notably those on extradition, on mutual assistance in criminal matters, on the transfer of sentenced persons, and on laundering, search, seizure and confiscation of proceeds from crime;

17.13. to sign and ratify within a year from the time of accession the General Agreement on Privileges and Immunities of the Council of Europe, and its Protocol,

Recommends that the Committee of Ministers:

1. invite Albania to become a member of the Council of Europe;
2. allocate four seats to Albania in the Parliamentary Assembly.