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## The honouring of obligations and commitments by Albania

### Report<sup>1</sup>

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

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### Summary

The Monitoring Committee welcomes the marked progress made by the Albanian authorities in honouring its obligations and commitments to the Council of Europe, despite the delays in many reforms as a result of the deep political crisis that ensued in the country following the 2009 parliamentary elections.

However, despite the progress achieved, many serious concerns remain in Albania, in particular with regard to the impartiality of democratic institutions and the civil service, the independence of the judiciary and the fight against the endemic corruption.

Consistent concrete action by all stakeholders, the authorities and the opposition, is needed to ensure that all the membership obligations and accession commitments are fully honoured. In this respect, the committee emphasises that it is crucial that the many reforms and legislative packages that have been adopted also be actually implemented in order to effectively address the concerns noted by, *inter alia*, the Assembly.

Against this background, the committee recommends that the Assembly continue to monitor the honouring of obligations and commitments by Albania.

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1. Reference to committee: [Resolution 1115 \(1997\)](#).



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## A. Draft resolution<sup>2</sup>

1. Albania joined the Council of Europe on 29 June 1995. Upon its accession, Albania undertook to honour the obligations incumbent on all member States under Article 3 of the Statute of the Council of Europe (ETS No. 1) with regard to pluralist democracy, the rule of law and human rights. In addition, it undertook to honour a number of specific commitments listed in [Opinion 189 \(1995\)](#) on the application by Albania for membership of the Council of Europe, adopted by the Parliamentary Assembly on 29 June 1995. In conformity with the monitoring procedure, as established in [Resolution 1115 \(1997\)](#), the Assembly has regularly assessed Albania's progress with regard to the honouring of its obligations and commitments.

2. The Assembly welcomes the fact that Albania has recently made marked progress in honouring its obligations and commitments to the Council of Europe. It regrets in this context that many important reforms were delayed, or otherwise negatively affected, by the deep political crisis – including a *de facto* two-year boycott of the work of the parliament by the opposition – in the country following the 2009 parliamentary elections.

3. The parliamentary elections in 2009 and, to a lesser extent, 2013, as well as the local elections in 2011, have underscored the continuing tense and polarised political climate in Albania, especially between the two main parties that dominate the political environment. The Assembly therefore welcomes the electoral reforms that have been implemented, in a generally consensual manner, to strengthen the electoral process and to address shortcomings noted during previous elections. With regard to electoral reform, the Assembly:

3.1. calls on all political forces to agree on further electoral reform to address, in line with recommendations of the European Commission for Democracy through Law (Venice Commission), the remaining concerns and ambiguities that make the election process vulnerable to possible misuse and obstruction;

3.2. notes that the establishment of specialised centralised vote-counting centres has created long delays in the counting of votes, which can negatively affect public perception of the legitimacy of the outcome of the elections. The Assembly therefore recommends considerably increasing the number of centralised voting centres for future elections;

3.3. notes that the election administration in reality remains divided along party lines, which hinders the effective and impartial conduct of the elections. It recommends that further reforms be implemented to ensure a genuine non-partisan election administration;

3.4. emphasises that changes to the Election Code alone are not sufficient to resolve the recurrent shortcomings in the conduct of elections. This can only be achieved if the electoral reforms are accompanied by a change of attitude and practice of the main political stakeholders.

4. The Assembly takes note of the parliamentary reforms that were consensually agreed upon between the ruling majority and the opposition with a view to ensuring the proper functioning of the parliament and fostering political dialogue. However, the Assembly underscores that constructive co-operation between the majority and the opposition, based on mutual respect for each other's proper constitutional role and place in a democratic system, cannot be legislated via the rules of procedure alone. This also needs a change of attitude and the fostering of a culture of co-operation and democratic values by all concerned. In that respect, the Assembly regrets the continuing charged rhetoric and interaction between the opposition and governing parties. It urges the opposition not to resort to boycotting the work of the parliament or its committees and urges the ruling majority not to use its constitutional majority to bypass the opposition, and to seek consensus on important reforms whenever possible.

5. The Assembly welcomes the diverse and pluralist media environment in Albania. However, it regrets that the media environment is heavily politicised, including in respect of the public broadcaster. With regard to the media environment, the Assembly:

5.1. calls on all political forces to further reform of the public broadcaster with a view to ensuring its independence and impartiality and to adopt a new composition formula for the National Council of Radio and Television that will foster an independent and pluralist media environment;

5.2. urges the authorities to ensure that government advertising is not awarded to media outlets on the basis of political affiliation;

5.3. welcomes the increased transparency of media ownership in Albania as a result of the establishment of the National Business Registration Centre;

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2. Draft resolution unanimously adopted by the committee on 24 June 2014.

5.4. welcomes the abolition of prison sentences for defamation and the abolishment of special protection against defamation for specific categories of people. However, it regrets that defamation has not been decriminalised in its entirety, which can still have a chilling effect on journalists and lead them to practise self-censorship. It therefore calls on the parliament to fully decriminalise defamation in line with Council of Europe standards.

6. In the view of the Assembly, a non-partisan and impartial civil service is crucial for the functioning of democratic institutions in Albania. The Assembly takes note of the delay in the implementation of the Law on the Civil Service, which provides *inter alia* for strict merit-based rules for the hiring and dismissal of civil servants. This controversial delay, together with the large-scale personnel changes at all levels of the civil service that were initiated when the new government came into power, are an indication of the politicisation of the civil service and attempts to bring it under party control. The Assembly regrets the politicisation at all levels of the civil service, and calls on all parties to refrain from action that undermines the effective functioning of government institutions and public trust in their impartiality.

7. The Assembly welcomes the priority given by the new authorities to administrative–territorial reform and the strengthening of local self-government as a main pillar of the democratic consolidation of Albanian society. It welcomes the establishment of a parliamentary ad hoc committee, on the basis of equal participation of the ruling majority and the opposition, to prepare this reform. In the view of the Assembly, this should be seen as a signal that the authorities intend to draw up these important reforms on the basis of a wide consensus between the political forces in the country. In that respect, the Assembly regrets the decision of the opposition to boycott the work of this committee and urges them to reconsider their position. With regard to the planned administrative–territorial reform, the Assembly:

7.1. welcomes the proposal of the authorities to reduce the number of local government units, with a view to ensuring stronger and more efficient municipalities that are viable units of self-government;

7.2. encourages the authorities to further develop a comprehensive strategy for the effective functioning of local government units, including on the financing of the services they are expected to deliver, with a view to reducing their dependency on the central government;

7.3. recommends that the Law on the Organisation and Functioning of Local Government be amended to ensure the full accountability of mayors to their city councils;

7.4. welcomes, and encourages the authorities to continue, the initiatives to ensure that the administrative–territorial reform is inclusive and consensual, not only between the ruling majority and the opposition, but also between central government and the local authorities concerned. In this context, it calls on the opposition to fully participate in the work of the ad hoc committee of the parliament on administrative–territorial reform.

8. The Assembly is concerned that, despite numerous reforms, the independence and impartiality of the judiciary is not sufficiently ensured and that it continues to suffer from political pressure and interference. Further comprehensive reforms, including changes to the Constitution, to ensure the independence of the judiciary and an efficient administration of justice are urgently needed and should be a priority for the authorities. With regard to the reform of the justice system and the judiciary, the Assembly in particular:

8.1. expresses its concern about the widespread and systemic corruption, at all levels of the judiciary, which undermines the efficiency and impartiality of this institution;

8.2. encourages 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;

8.3. urges the authorities to revise the appointment and disciplinary procedures with a view to reducing their vulnerability to politicisation and political interference, which undermines the impartiality of the judiciary;

8.4. welcomes the close co-operation sought by the authorities with the Venice Commission in reforming the justice system and the judiciary and urges the authorities to quickly implement their recommendations.

9. The persistent and endemic corruption at all levels of Albanian society undermines the country's democratic and socio-economic development and is a major concern of the Assembly. In this respect, the Assembly regrets that, despite a recent increase in prosecutions, most indicators show that corruption has

actually been increasing instead of diminishing in recent years, which indicates that measures and strategies to fight corruption have until now achieved only limited results. With regard to the fight against corruption, the Assembly:

9.1. welcomes the adoption of constitutional amendments and changes to the Criminal Procedure Code that limit the immunity of members of government, MPs, judges and high-level State officials, and allow for their investigation and prosecution without prior authorisation. It urges the authorities to swiftly adopt all further implementing legislation needed to efficiently enforce the constitutional amendments;

9.2. calls on all political forces in Albania to show the commensurate political will to fully and effectively implement a coherent and effective anti-corruption strategy, and to make sufficient resources available for its implementation;

9.3. regrets the recent developments which call into question the independence of the High Inspectorate of Declaration and Audit of Assets. The Assembly calls on the authorities to ensure that sufficient resources are made available to this institution, which is an important instrument in the fight against corruption. In addition, it urges the authorities to ensure that all findings of violations of the Law on the Declaration of Assets are promptly followed up by the prosecution services;

9.4. welcomes the progress reported by the Group of States against Corruption (GRECO) with regard to the adoption of anti-corruption legislation and urges the authorities to ensure that this legislation is now fully and effectively implemented.

10. The Assembly takes note of the high number of cases pending against Albania with the European Court of Human Rights. They have revealed a persistent and structural deficiency with regard to the enforcement of domestic court decisions and a lack of effective remedy. In this respect, the Assembly welcomes the recent adoption of an action plan to implement the general measures demanded by the pilot judgement in the case of *Manushaqe Puto and Others v. Albania*. It urges the authorities to explore all possibilities to reduce as much as possible the delay in the implementation of this action plan, as also called for by the Committee of Ministers of the Council of Europe.

11. The Assembly welcomes the marked progress made with regard to strengthening human rights protection mechanisms in Albania, as well as the signing and ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210). It asks the competent authorities to take all appropriate measures to counter the recent increase in blood feuds and revenge killings, which are a cause for concern.

12. The Assembly welcomes the efforts of the authorities to improve prison conditions and reduce overcrowding. However, it is deeply concerned by reports of ill-treatment of detainees by the police during questioning and by the appalling conditions in detention facilities in police establishments. It calls on the Albanian authorities to urgently remedy this situation.

13. With regard to the protection of minority rights and combating discrimination, and recognising the overall improvements achieved in this respect, the Assembly:

13.1. recommends that the Albanian Parliament adopt a more flexible and adequate system for the recognition of national and ethnic minorities;

13.2. urges the parliament to adopt a comprehensive law on minorities;

13.3. welcomes the adoption of a comprehensive anti-discrimination law and encourages the authorities to consistently and coherently implement its provisions;

13.4. regrets that Albania has neither signed nor ratified the European Charter for Regional or Minority Languages (ETS No. 148), despite this being an explicit accession commitment. The Assembly calls on the authorities to honour this accession commitment without further delay.

14. The Assembly welcomes the active and effective role played by the national Ombudsperson in Albania. It calls on the authorities to ensure that sufficient resources are made available to his office to carry out its work and asks the Albanian Parliament to systematically and consistently place both special and statutory reports of the Ombudsperson on the parliamentary agenda for debate.

15. Despite the progress achieved in the honouring of Albania's membership obligations and accession commitments, serious concerns remain, in particular with regard to the impartiality of democratic institutions and the civil service, the independence of the judiciary and the fight against endemic corruption in Albania. Concrete action by all stakeholders, the authorities and the opposition is needed to ensure that all the membership obligations and accession commitments are fully honoured. In this respect, the Assembly

emphasises that it is crucial that the many reforms and legislative packages that have been adopted also be actually implemented in order to effectively address the concerns noted by, *inter alia*, the Assembly. Against this background, the Assembly resolves to continue to monitor the honouring of obligations and commitments by Albania.

## B. Explanatory memorandum by Mr Petrenco and Mr Evans, co-rapporteurs

### 1. Introduction

1. Albania joined the Council of Europe on 29 June 1995. Upon its accession, Albania undertook to honour the obligations incumbent on all member States under Article 3 of the Statute of the Council of Europe with regard to pluralist democracy, the rule of law and human rights. In addition, it undertook to honour a number of specific commitments listed in [Opinion 189 \(1995\)](#) on the application by Albania for membership of the Council of Europe, adopted by the Parliamentary Assembly on 29 June 1995.

2. In conformity with the monitoring procedure, as established in [Resolution 1115 \(1997\)](#), the Assembly has regularly assessed Albania's progress with regard to its honouring of obligations and commitments. The previous report on the honouring of obligations and commitments by Albania<sup>3</sup> was discussed by the Assembly on 27 January 2007 and led to the adoption of [Resolution 1538 \(2007\)](#). A subsequent report on the honouring of obligations and commitments by Albania was foreseen to be debated at the Assembly's January 2010 part-session. For that purpose, a preliminary draft report was discussed in the Monitoring Committee and the comments of the Albania authorities on this text were examined by it. However, as a result of the political crisis that ensued after the June 2009 elections, and specifically the boycott of the parliament by the opposition – which paralysed major reforms and hampered the overall functioning of the parliament –, this report was replaced by a report on the functioning of democratic institutions in Albania.<sup>4</sup> This report was debated in the Assembly on 28 January 2010 and resulted in the adoption of [Resolution 1709 \(2010\)](#). This was followed by a visit of the Presidential Committee and co-rapporteurs to Albania, on 22 and 23 February 2010, with the objective of seeking a solution to the ongoing political crisis with the parties concerned.

3. The political crisis was compounded by a new political standoff that resulted from the controversy surrounding the outcome of the mayoral elections in Tirana on 8 May 2011. It was finally overcome in September 2011, when the Socialist Party (SP) ended its *de facto* boycott of the work of the parliament after coming to an agreement with the ruling Democratic Party (DP). However, the political environment remained polarised and acrimonious. The political situation changed drastically after the parliamentary elections which resulted in a change of power in Albania.<sup>5</sup> We therefore consider this an opportune moment to take stock of Albania's progress in honouring its obligations and accession commitments to the Council of Europe.

4. Since the joint mission with the Presidential Committee after the 2009 elections, the co-rapporteurs made five fact-finding visits<sup>6</sup> to the country and participated in the Assembly's election observation and pre-electoral missions for the 2013 parliamentary elections. The information notes<sup>7</sup> produced on the basis of these fact-finding visits were declassified by the committee.

5. On 24 January 2011, Mr Tomas Jirsa (Czech Republic, EDG) was appointed as co-rapporteur to replace Mr David Wilshire (United Kingdom, EDG). On 30 May 2011, Mr Grigore Petrenco replaced Mr Jaakko Laakso as co-rapporteur. Mr Jirsa was subsequently replaced by Mr Jonathan Evans (United Kingdom, EDG) on 23 January 2013.

### 2. Main political developments

#### 2.1. Aftermath of the 2009 parliamentary elections

6. As mentioned in the last report of the committee to the Assembly ([Doc. 12113](#)), parliamentary elections of June 2009 resulted in a political standoff between the two main political parties in Albania, the Democratic Party, until recently led by former Prime Minister Sali Berisha, and the Socialist Party, led by Mr Edi Rama, at that time Mayor of Tirana. This standoff threw the country into a deep political crisis. The overt animosity existing between Mr Berisha and Mr Rama strongly influenced inter-party relationships and strategies and hampered efforts by the international community to overcome the political crisis.

7. The parliamentary elections in 2009 were conducted on the basis of a new Electoral Code that was drafted and adopted on the basis of a consensus between the main political parties. It introduced a variant of a regional proportional election system. These elections were won by the Democratic Party (which gained 70

3. [Doc. 11115](#).

4. [Doc. 12113](#), [Resolution 1709 \(2010\)](#) and [Recommendation 1902 \(2010\)](#).

5. These developments will be outlined in more detail in the sections below.

6. 30 June and 1 July 2011, 2 to 4 April 2012, 17 to 19 April 2013, 1 to 5 December 2013 and 2 and 3 June 2014.

7. AS/Mon (2011) 21 rev, AS/Mon (2012) 11 rev, AS/Mon (2013) 13 rev.

of the 140 parliamentary seats. The Socialist Party won 66 seats and the Socialist Movement for Integration (SMI) of former Prime Minister Ilir Meta won the remaining four seats. A ruling coalition was formed between the DP and SMI and Mr Berisha was appointed, for a second time, Prime Minister of Albania.

8. Alleging that fraud had taken place in a number of districts, the SP appealed against the results of the 2009 parliamentary elections to the Central Election Commission (CEC), and later to the Electoral College.<sup>8</sup> In both instances, the appeals of the SP were dismissed. In protest against the outcome of the elections, the SP decided to boycott the work of the parliament, as well as of a number of State institutions. Given that the governing majority lacked the two-thirds majority to implement constitutional changes, this boycott negatively affected the implementation of a number of important reforms needed to obtain candidate status with the European Union, which is the professed political priority for all parties.

9. The SP subsequently announced that it would return to the parliament only if a number of conditions were met. The most important were the establishment of a special inquiry committee into the alleged election shortcomings and the opening of the ballot boxes in order to establish proof of possible electoral fraud. In subsequent meetings with the rapporteurs at that time, the SP leadership clarified that, while they formally accepted the results of the elections, they wished to open the ballot boxes in order to investigate, and collect evidence of, the electoral fraud they alleged had taken place. While the authorities were willing to establish a special inquiry commission, they resolutely refused, with the backing of the courts, to allow the re-opening of the ballot boxes on the grounds that the final results had been announced in line with the existing legislation and had been certified by the courts. The election process had therefore legally ended and consequently the boxes could not legally be opened again.

10. Most observers are of the opinion that internal politics and power relations inside the SP also played a significant role in the 2009 stand-off. According to the SP by-laws, introduced by Mr Rama, a party leader must resign if the party loses an election under his or her leadership. However, on the proposal of Mr Rama, the SP adopted a resolution in which it stated that the party had not lost the election, but that instead the election had been stolen from it. As a consequence, Mr Rama was not obliged to give up his post as party leader. It should be noted that this decision, as well as the boycott strategy, was not unanimously supported among the party membership. This was highlighted by the decision of a number of SP MPs to enter the parliament despite their party's boycott of its work.

11. In mid-2010, the SP ended its formal boycott of the parliament and replaced it by a "conditional relation with the parliament". This decision was partly guided by the wish not to lose its parliamentary mandates, which it would have done if its members had not been sworn in within six months after the new parliament was inaugurated. While the SP formally returned to the parliament, its *de facto* boycott of the work of the parliament continued until 5 September 2011, when an agreement was reached between the SP and the DP on the direction of the reforms crucial for the country, including electoral reform and reform of the working methods of the parliament.

## **2.2. Local elections**

12. On 8 May 2011, the elections of local councils and mayors took place in Albania. Given the fact that Mr Rama was running for re-election as Mayor of Tirana, these elections were seen by many as a referendum on the SP's political strategy of boycotting the work of the parliament.

13. The 2011 local elections in Albania were observed by international observers from, *inter alia*, the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) and the Congress of Local and Regional Authorities of the Council of Europe. The Congress and the OSCE/ODIHR concluded that overall these elections, despite the polarised and antagonistic political environment, were conducted in a democratic manner, although a number of procedural shortcomings were noted.<sup>9</sup>

14. While many had hoped that the local elections would calm the political environment in Albania, regrettably they were a source of renewed tension and antagonism between the DP and the SP. When the preliminary results were announced, the incumbent Mayor of Tirana, Mr Rama of the SP, appeared to have won the elections with a 10 vote difference over his rival Mr Basha of the DP. However, several complaints were filed with the Central Election Commission from a number of polling stations in Tirana.

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8. The Electoral College is the highest election-related court in the country.

9. Report of the Congress of Local and Regional Authorities CPL(21)3, and the final report of the OSCE/ODIHR Election Observation Mission on the 8 May 2011 Local Elections in Albania.

15. For each different election<sup>10</sup> (mayor, city council, head of commune), ballots were supposed to be placed in separate ballot boxes. The complaints that were filed alleged that a considerable number of votes were declared invalid simply because they had been “miscast” in the wrong ballot box. As a result, in one district the district election commission had not been able to agree on the results. In its decision on these complaints, the CEC ruled that miscast, but otherwise valid ballots, should be considered as valid votes. The CEC therefore ordered these votes to be counted in the polling stations where complaints had been filed. After these votes were counted, the winner of the elections turned out to be Mr Basha, with 80 votes more than Mr Rama.

16. The CEC’s decisions were strongly disputed, especially given the fact that the CEC was divided along party lines on this issue. The SP appealed against the outcome of the results with the Electoral College. The latter declared that miscast, but otherwise valid ballots should indeed be considered as a valid vote and ordered the CEC to open all the ballot boxes in Tirana – and not only in those polling stations where complaints were filed – in order to count all miscast votes. On 23 June 2011, Mr Basha was officially declared the winner of the 2011 mayoral election for Tirana with a difference of 93 votes over his rival, incumbent mayor Rama. Appeals by the SP against this outcome were rejected by the Electoral College and, on 1 August 2011, Mr Basha was installed as the new Mayor of Tirana.

17. Although the outcome of these elections increased the tensions between the DP and the SP, they were generally accepted by the Albanian population and the tensions soon subsided with the agreement between the SP and the DP, which resulted in the SP fully returning to the work of the parliament.

### **2.3. Presidential election**

18. Albania holds indirect elections for the President, who is elected by the parliament. The previous President of Albania, Mr Bamir Topi, had been a candidate of the DP. However, the relations between Mr Topi and Mr Berisha had become increasingly tense and acrimonious and the DP therefore announced that it would not support the candidature of Mr Topi for a second term. Elections for the new President took place in the parliament on 30 May and 4, 8 and 11 June 2012. In order to be elected, a presidential candidate needs a three-fifths majority in the first three rounds of voting. If, after these three rounds, no candidate has been elected, a simple majority is sufficient from the 4th round onwards. No candidate received the required three-fifths majority in the first three rounds, as the SP was boycotting the vote. Subsequently, Mr Bujar Nishani, who was proposed by the DP, was elected, by simple majority, President of Albania with 73 out of 76 votes in the 4th round of voting.

### **2.4. Protests of 21 January 2011**

19. On 21 January 2011, during a protest march organised by the opposition in front of the parliament and Prime Minister’s Office that had turned violent, four demonstrators were shot dead by security officers guarding the Office of the Prime Minister. This raised questions with regard to the possible use of disproportionate force by police officers.<sup>11</sup> Questions were also raised about the organisers’ apparent inability to maintain control over the participants in the demonstration. As a result, allegations were made by both sides of malicious intent by the other. In the tense political climate in Albania, the investigation into these events was heavily politicised. Contributing to this was the fact that the then Minister of the Interior, Mr Basha, was the DP candidate in, and ultimate winner of, the elections for the Mayor of Tirana.

20. The politicisation of the investigations negatively affected the institutional independence of the judiciary and prosecution. The Prosecutor General was accused of being partisan when she initiated a criminal investigation into the January events and the Prime Minister called on the police not to co-operate with her investigation. Equally worrisome, evidence from CCTV cameras was illegally deleted by the security detail of Prime Minister Berisha. A special parliamentary committee to investigate these events was not able to come to any conclusion due to the diametrically opposed views of the SP and DP factions on these issues. The politicisation of the investigation was condemned by the international community, which has asked all parties to refrain from undermining the independence of the judiciary and law-enforcement bodies.

21. Following her investigation into the events, the Prosecutor General initiated criminal proceedings against a member of the Republican Guard who allegedly shot the protesters, as well as against his commanding officer. In addition, criminal charges were filed against a member of the Republican Guard for

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10. Legally, these distinct elections are part of the same election.

11. See also the report by the Council of Europe Commissioner for Human Rights, Thomas Hammarberg (CommDH(2011)9).

allegedly wiping the hard disk containing the video recordings of the 21 January events from the CCTV cameras outside the Prime Minister's Office. On 17 July 2012, the Tirana District Court acquitted this policeman, who was accused of hiding evidence and obstructing justice. On 7 February 2013, the Tirana District Court acquitted the other two policemen from any responsibility or wrongdoing in the death of the four demonstrators on 21 January 2011. This decision by the Tirana District Court was widely condemned in Albanian society, as well as by some international actors, including by the Ambassador of the United States in Tirana. The decision of the Tirana District Court was appealed by the Office of the General Prosecutor. In September 2013, the Tirana Court of Appeals annulled the acquittal and sentenced two of the three defendants to prison sentences of respectively one and three years for manslaughter.

## **2.5. European Union candidate status**

22. On 28 April 2009, Albania applied for membership of the European Union. Following a request by the European Council, the European Commission prepared an opinion on Albania's request for membership that was submitted to the European Council in November 2010 and endorsed by the latter in December 2010. In this memorandum, the Commission concluded that considerable efforts were needed by the Albania authorities before candidate status could be considered, especially in the fields of stability of institutions, democratic governance and the rule of law. The Commission therefore recommended opening accession negotiations with Albania only after Albania demonstrated that it complied with the Copenhagen political criteria for European Union membership in relation to the functioning of democratic institutions, the independence of the judiciary and the rule of law. For that purpose, 12 priorities were formulated which needed to be implemented by Albania before candidate status could be conferred.<sup>12</sup>

23. On 8 November 2010, the European Council adopted a proposal to introduce a visa-free regime for holders of Albanian passports. This decision was implemented on 16 December 2010.

24. As a result of the ongoing political crisis, the government lacked the necessary two-thirds majority to adopt crucial legislation required to implement the 12 priorities set by the European Union. Moreover, the ongoing political stand-off clearly showed that the Albanian Parliament was not functioning "on the basis of a constructive and sustained political dialogue among all political parties", which was one of the 12 requirements stipulated by the European Commission. Therefore, not surprisingly, on 12 October 2011, the European Council, on recommendation of the European Commission, declined to confer candidate status on Albania and open accession negotiations.

25. Following the return to the parliament of the Socialist Party, a number of reforms and laws were adopted that were necessary to implement the 12 European Union priorities. However, questions remained with regard to the functioning of democratic institutions and a number of key reforms had not been implemented by the end of 2012. On 10 October 2012, the European Commission, recognising the considerable progress made by Albania with regard to implementing the key reforms identified by the Commission, decided that candidate status could be conferred as soon as Albania had adopted the Law on Civil Service, the Law on the High Court, as well as the new rules of procedure of the parliament. In addition, the Commission stated that Albania needed to organise the 2013 parliamentary elections fully in line with international standards before accession negotiations could start.

26. On 31 May 2013, the Albanian Parliament, in an extraordinary session, passed the Law on Civil Service, the Law on the High Court, as well as the new rules of procedure of the parliament in a consorted effort by the ruling majority and opposition. Following the adoption of these laws, the organisation of genuinely democratic elections in line with international standards was the last remaining condition of the European Commission that the country needed to fulfil to be granted candidate status.

27. On 16 October 2013, the European Commission adopted its 2013 progress report on Albania. In this progress report, the Commission noted that, with the successful conduct of the parliamentary elections on 23 June 2013, Albania had met the priorities set by the European Commission in its 2012 decision and therefore recommended granting candidate status to Albania. However, the Commission also emphasised that additional steps and sustained efforts were needed to ensure the independence and accountability of the judiciary, to ensure effective investigations and prosecution of cases of corruption at all levels and to maintain

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12. See "Commission's Opinion on Albania's application for membership of the European Union", COM(2010)680.

an inclusive dialogue between the ruling majority and the opposition. The Commission therefore recommended opening accession negotiations only after Albania had implemented the following five priorities. Albania should:<sup>13</sup>

- continue to implement public administration reform with a view to enhancing professionalism and depoliticisation of public administration;
- take further action to reinforce the independence, efficiency and accountability of judicial institutions;
- make further determined efforts in the fight against corruption, including towards establishing a solid track record of proactive investigations, prosecutions and convictions;
- make further determined efforts in the fight against organised crime, including towards establishing a solid track record of proactive investigations, prosecutions and convictions;
- take effective measures to reinforce the protection of human rights, including of Roma, and anti-discrimination policies, as well as implement property rights.

28. Despite these preconditions, outlined in the recommendations of the European Commission, several European Union member States announced that they had doubts as to whether Albania would be ready to meet the requirements of a candidate country. In addition, it was felt that more time should be given to the newly elected government to demonstrate that they had the capacity and commensurate political will to implement the reforms required to start accession negotiations, especially with regard to the fight against corruption and organised crime and the independence of the judiciary. On 17 December 2013, the European Council therefore decided to postpone its decision on granting candidate status to Albania until June 2014, pending a new report by the European Commission on the progress made by the authorities in, *inter alia*, the implementation of anti-corruption and judicial reform strategies and the relevant legislation that was adopted to this end. On 4 June 2014, the European Commission published its report to the European Council and European Parliament on Albania's progress in the fight against corruption and organised crime and in judicial reform.<sup>14</sup> In this report, the Commission confirms its previous recommendation of granting candidate status to Albania, and urges Albania to focus on implementing legislation to combat corruption, including deep judicial reform and to increase inter-agency and international co-operation with a view to combating organised crime and to enhancing the efficiency of its proactive investigations. In addition, the Commission emphasised that the authorities should "rigorously pursue" judicial reform, especially with a view to ensuring the independence and accountability of the judiciary.<sup>15</sup>

29. We fully support the principle of Albania's membership of the European Union and consider that the implementation of the reforms needed for European Union membership – including those underscored by the European Commission in the above-mentioned five priorities – will also result in the honouring of all the remaining accession commitments and membership obligations. We understand the disappointment of the authorities with the postponement of a decision on candidate status by the European Council in December 2013. Both the authorities and opposition have belatedly made great efforts to meet the conditions for candidate status set by the European Commission, which should be welcomed and acknowledged. However, in this context, we also must emphasise our general concern that, while Albania has passed many laws and strategies to address issues regarding its obligations concerning human rights, democracy and the rule of law, implementation of the laws continues to be weak or lacking. We therefore urge the authorities to pay special attention to the prompt and comprehensive implementation of the strategies and legal reform packages that have already been adopted.

## **2.6. 2013 parliamentary elections**

30. The parliamentary elections which took place in Albania on 23 June 2013 were crucial for the country, also as their democratic conduct, in line with international standards, was a main criteria for European Union candidate status. Following an agreement on the political priorities of the country between the DP and SP, a working group on electoral reform was established by the parliament. This working group proposed a series of amendments to the electoral code that were adopted by the parliament on 19 July 2012. These amendments addressed such issues as voter and candidate registration, campaign funding, complaints and

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13. European Commission: Communication from the Commission to the European Parliament and Council on the Enlargement Strategy and Main Challenges 2013-2014 (COM(2013)700 final) and Albania 2013 Progress Report SWD(2013)414 final.

14. COM(2014)331 final

15. *Ibid.*, p. 11

appeals procedures, composition of, and appointment procedures for, the Central Election Commission and lower level election commissions, as well as measures to strengthen the independence of the Electoral College.

31. According to the Albanian Electoral Code, the election commissions are composed on the basis of proposals by political parties on the principle of a balance between the opposition and the ruling majority. At the same time, the Electoral Code also specifies that the members of the election commissions are institutionally independent and impartial and should act accordingly.

32. Up until a few months before polling day, the governing coalition of the DP and SMI was considered very stable, with the SMI faction loyally supporting its senior coalition partner, the DP, on all important votes in the parliament. However, on 1 April 2013, the SMI and the SP announced that they would form an election coalition for the next parliamentary elections. On 3 April, the SMI left the ruling coalition and formed, together with the SP, the coalition "Alliance for a European Albania". In addition to the SP and SMI, 35 smaller parties joined this Alliance.

33. This switch of allegiance of the SMI took place after the formation of the election commissions in which the SMI had obtained places as part of the quota reserved for the ruling coalition. Therefore, as a result of the switch, the SMI-SP-led opposition alliance obtained *de facto* control<sup>16</sup> over the election administration, including the Central Election Commission. This situation was considered unacceptable to the DP, which used, controversially<sup>17</sup>, its parliamentary majority to remove the SMI-nominated member from the CEC and appoint a new member nominated by another party in the ruling coalition. In response, the CEC members nominated by the opposition parties resigned from their posts. The opposition parties subsequently refused to nominate any replacements for them. As a result, the CEC functioned with only four members during the elections, which raised questions with regard to the legality of a number of its decisions. It is clear that the replacement of a CEC member by the parliament and subsequent resignation and non-replacement of the opposition-nominated members is questionable from the point of view of the Election Code and contradicts and severely undermines the notion of an impartial and institutionally independent election administration.

34. The parliamentary elections were observed by an ad hoc committee of the Bureau of the Parliamentary Assembly in the framework of the International Election Observation Mission (IEOM) that also included the Election Observation Mission of the OSCE/ODIHR and a delegation of the OSCE Parliamentary Assembly. The two co-rapporteurs of the Monitoring Committee in respect of Albania were *ex officio* members of the ad hoc committee.

35. The IEOM concluded that the elections had generally been conducted in line with international standards and that "the elections were competitive with active citizen participation throughout the campaign and genuine respect for fundamental freedoms".<sup>18</sup> However, the ad hoc committee of the Assembly, as well as the IEOM, also stressed that the antagonism and mistrust between the two main parties had tainted the electoral environment and negatively affected administration of the elections.<sup>19</sup>

36. On 26 June 2013, with 98% of the votes counted, Prime Minister Berisha conceded the defeat of his coalition "Alliance for Employment, Prosperity and Integration" to Mr Rama's SP/SMI-led coalition, "the Alliance for a European Albania". The final results were announced by the CEC on 6 August 2012. The Alliance for a European Albania obtained 57.6% of the vote and received 83 seats in the new parliament. The Alliance for Employment, Prosperity and Integration obtained 39.5% of the vote and received 57 seats in the new parliament. It is important to note that of the 83 seats of the Alliance for a European Albania, 16 were won by the SMI, which confirms its role as kingmaker in these elections, as was the case during the 2009 elections.

37. On 10 September 2013, at the opening session of the new parliament, Prime Minister Berisha formally tendered the resignation of his Cabinet to President Nishani, who appointed Mr Rama as the new Prime Minister on proposal of the SP and allied parties. Mr Ilir Meta, leader of the SMI, was elected Speaker of the Parliament.

38. After the elections, a member of the opposition switched allegiance and joined the ruling coalition. This gave the ruling majority the 84 seats necessary to pass legislation that needs a three-fifths qualified majority without the consent of the opposition. This can be important for overcoming a possible blockage of legislation

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16. Only normative acts and some decisions mainly regarding the establishment of the outcome of the elections need a qualified majority of five votes. All other decisions are taken by simple majority.

17. In the view of several legal experts, the legal basis for this dismissal was questionable.

18. IEOM, Statement of preliminary findings and conclusions.

19. Election Observation Report of the ad hoc committee (Doc. 13296).

and reforms but should not be allowed to undermine dialogue and deliberation between the opposition and ruling majority about the governance of the country. We therefore call on the ruling majority to seek consensus about the reforms needed whenever possible and not to use their qualified majority to unnecessarily bypass the opposition.

39. Following the coming into power of the new government, considerable personnel changes took place in the civil service including in the police service, where in addition to the National Head of the Police and his Deputy, also the directors and deputy directors of all 12 police districts were replaced. Similar reports were received about prison and customs staff. The profound personnel changes in prison staff raised concerns with, *inter alia*, the OSCE mission in Tirana, regarding the continuity of their prison reform programme and especially the training programmes for prison staff organised in that framework. These changes underscore the politicisation of the civil service, at all levels, by the main parties when they are in power. This, in turn, undermines public trust in the impartiality of the civil service and government institutions, which is an issue of continuing concern.

### 3. Democratic institutions

#### 3.1. Electoral reform

40. The conduct of elections has continued to be a major point of contention between the main political parties. A new Election Code, which introduced a new regional proportional voting system, was adopted in December 2008, based on a consensus between the DP and SP. The provisions in the code regarding the election system and election administration are widely considered to be favourable to the two larger parties to the detriment of smaller parties and new entrants in the political arena.

41. In its opinion on the 2008 Electoral Code,<sup>20</sup> the European Commission for Democracy through Law (Venice Commission) concluded that it formed “a thorough foundation for the conduct of democratic elections” if implemented fully, properly and in good faith by all stakeholders. However, the Venice Commission also noted that the Code had gaps, ambiguities and provisions that needed to be addressed in order to ensure that it fully meets international standards. To that end, we would like to add that the ambiguities and gaps open a space for possible abuse and contention, especially in the polarised political climate in Albania. This vulnerability was confirmed during the 2011 local elections.

42. The 2008 Election Code gives the largest opposition and the largest governing party – in essence, given the political environment of Albania, the DP and the SP – considerable responsibilities at every step of the electoral process. The Venice Commission noted that this resulted in an overly detailed and complex Code that “can result in challenges in administering elections, as well as possible obstruction of the electoral process by representatives of the two largest parties”.<sup>21</sup>

43. Following the contested local elections, especially in Tirana, and the ensuing political stand-off, the Secretary General of the Council of Europe, Mr Thorbjørn Jagland, requested, on 24 August 2011, the opinion of the Venice Commissions on possible improvements to the electoral legislation and electoral practice in the light of the experiences of the 2009 parliamentary and 2011 local elections.

44. In its joint opinion with the OSCE/ODIHR,<sup>22</sup> adopted on 16 and 17 December 2011, the Venice Commission recalled its previous opinion on the law, which stated that the legal framework provided a sound basis for democratic elections if implemented fully and in good faith. However, it also noted several inconsistencies and ambiguities that were left unaddressed and that could allow possible misuse or obstruction by one of the two main parties if they so wished. In that context, the Venice Commission noted that the election administration, at all levels, is appointed on the basis of proposals of the largest party in opposition and largest party in the ruling majority. While this balance was meant to foster trust in the election administration, in reality the administration remains divided among party lines, which hinders the effective and impartial conduct of the elections. Moreover, it also allows one of the two main parties to effectively obstruct the work of the CEC – or the underlying election commissions – by withdrawing from the election administration or boycotting its decision-making process. This was exactly what happened during the June 2013 parliamentary elections.

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20. Document CDL-AD(2009)005.

21. Document CDL-AD(2011)042.

22. *Ibid.*

45. The 2008 Election Code introduced the establishment of special centralised vote-counting centres, one in each election administration zone.<sup>23</sup> The use of this system has created long delays in counting votes. This potentially allows for political influence over the counting process and politicised decision-making by the election administration. This, in turn, negatively affects the overall legitimacy of the outcome of the elections in the eyes of the public.

46. Following the return of the SP to the parliament, a special ad hoc parliamentary working group for electoral reform was set up to prepare amendments to the election code with a view to addressing the Venice Commission and OSCE/ODIHR recommendations, as well as other shortcomings noted during the previous elections. In addition, it drafted amendments to the criminal code, establishing a number of election-related crimes. The amendments formulated by this working group were unanimously adopted by the parliament. The amendments to the electoral code addressed *inter alia* the following issues: the selection process for members of election commissions; they abolished the right of parties to recall their members on the election commissions after they have been appointed; they improved the procedure for the verification of the voter lists; they improved the requirements for equal media access for all parties; they clarified some issues with regard to electoral complaints; and they simplified candidate registration. These amendments are generally seen as an improvement of the electoral legislation. However, a number of important recommendations of the Venice Commission on crucial aspects such as independent candidate rights, campaign financing, the electoral complaints process and possible abuse of administrative resources, were left unaddressed.

47. While we welcome the improvements in the Electoral Code, it should be emphasised that previous versions of the Election Code were considered to be an adequate – or even a sound basis – for the conduct of genuinely democratic elections in Albania, provided the Election Code was implemented in its entirety, in good faith and not only in letter, but also in spirit. Regrettably, the experience of previous elections has shown that it was lack of political will among the main political stakeholders to implement the Electoral Code in good faith and to refrain from politicising the electoral process that caused the shortcomings noted during the elections. Changes to the Election Code alone are not sufficient to resolve the recurrent shortcomings and to ensure the conduct of democratic elections in line with international standards. Equally important are a change in attitude and the practises of the main political stakeholders. Such political will of all political stakeholders is essential for the consolidation of a robust and genuinely democratic electoral process in Albania.

48. We call on the Albanian Parliament to seek consensus between all parties on further amendments to the Election Code that will address the remaining recommendations of the Venice Commission and reduce the vulnerability of the election administration and electoral process from politicisation and possible obstruction by political stakeholders. Similarly, we call on all political actors to show the commensurate political will to implement an impartial and democratic election process and to refrain from any actions that unnecessarily politicise the conduct of the elections and ultimately undermine public trust in the election process.

49. The Parliament of Albania had decided to implement, during the 2013 parliamentary elections, two pilot projects to use new technologies to increase the efficiency of, and public trust in, the electoral process. One of the pilot projects, to take place in Tirana, was to test electronic voter registration. The second pilot project, to take place in Fier, was to test electronic vote counting. Tirana and Fier are the two largest election districts in Albania. However, preparations for these projects and their successful testing could not be concluded within the legal deadlines. In addition, a number of political decisions negatively affected the technical implementation of these projects. On 17 and 18 June 2013, close to the election date, the CEC therefore decided to cancel the implementation of the pilot projects. While we welcome any mechanism to increase the trust of voters in the electoral system and especially to speed up the vote count, we call on the authorities to ensure that such technologies are well tested and independently certified long before elections take place. Moreover, even if these pilot projects are successfully tested, due consideration should be given to the manner in which they are deployed in the rest of the country, given the uneven technical infrastructure in the different regions. Failure to do so could undermine public trust in the electoral process as such.

### **3.2. Parliamentary reform**

50. In the polarised political environment a “winner takes all” climate often prevails within the parliament, which fails to provide a proper place and role for the opposition in its work and in the governance of the country and which prevents a constructive dialogue between all the different political forces in the country. The challenges to the proper functioning of the work of the parliament were underscored when the SP boycotted the parliament after the 2009 elections. Therefore, in its opinion on Albania’s request for membership of the

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23. These election administration zones do not necessarily coincide with a constituency.

European Union, the European Commission decided that the “proper functioning of the parliament on the basis of a constructive and sustained political dialogue among all political parties”<sup>24</sup> was one of the key priorities that Albania needed to fulfil before it could be granted candidate status. This was underlined again in the Communication of the European Commission<sup>25</sup> to the European Parliament and European Council, which stated that Albania should only be granted candidate status after adoption of new rules of procedure of the parliament.<sup>26</sup>

51. Following the return of the SP to the parliament, an ad hoc Committee for Parliamentary Reform was established and tasked with the drafting of a new set of rules of procedure for the Albanian Parliament. The original rules of procedure of the Albanian Parliament, drafted in co-operation with our Assembly, had been adopted by consensus among all parties. However, subsequent amendments to the rules of procedure were not consensual. It was therefore agreed between the main parties to adopt an entirely new set of rules of procedure that would have the consent of the two main political parties. The rules of procedure of the European Parliament have reportedly been the basis for the new rules of procedure of the Albanian Parliament.

52. The ad hoc committee agreed unanimously on most aspects of the rules of procedure. However, two issues proved to be a stumbling block. The first issue, requested by the SP, was the right of the leader of the parliamentary opposition to speak directly, and with equal time, after the Prime Minister’s weekly address to the parliament. The second issue of contention was the possibility to have a secret vote on the confirmation of presidential decrees. This is less benign than it would seem at first sight. The Constitution gives the President the prerogative of proposing candidates for high State offices, such as for the High Council of Justice and the Head of the Secret Service. His proposals to the parliament take the form of a decree. Appointments of candidates proposed by the President would therefore be decided by nominal vote instead of by secret vote as otherwise is the case for appointments. The SP objected to this departure from normal procedure and argued that this would give the parties undue control over the individual votes of their MPs in relation to appointments.

53. The differences of opinion of the SP and the DP on these issues precluded any agreement on the new rules of procedure until the very last moment. On 31 May 2013, in an extraordinary session, the Parliament of Albania adopted the rules of procedure of the parliament, jointly with the other two remaining laws necessary to obtain European Union candidate status. According to the new rules of procedure, decrees containing nominations will only be voted upon by nominal vote if the parliament agrees with that. If not, these will be adopted by secret voting, either electronically or by ballot. Secret voting by ballot will take place if requested in writing by at least 25% of the MPs. According to the new rules of procedure, the speaking time of individual ministers will count towards the total speaking time of their political group. There are no restrictions on the speaking time of the Prime Minister, who can speak whenever and for as long as he wants. Although not foreseen in the rules of procedure, former Prime Minister Berisha is given the same speaking prerogatives as the Prime Minister. While this informal arrangement has removed a potential obstacle to co-operation between the ruling majority and the government, it depends on the benevolence of the ruling majority. We would recommend that a proper institutional arrangement is agreed upon between the opposition and the ruling majority that does not depend on either the benevolence of the ruling majority or the personality of the former Prime Minister.<sup>27</sup>

54. We welcome the adoption of the new rules of procedure, but wish to emphasise that constructive co-operation between the majority and opposition, based on a mutual respect for their proper constitutional role and place in a democratic system, cannot be legislated via the rules of procedure alone. This also needs a change of attitude and the fostering of a culture of co-operation and democratic values. We express the hope that both the opposition and the ruling majority will strive to create such a democratic culture and will work constructively together, with due respect for each other’s proper role, in furthering the democratic development and European integration of the country. In this respect, we regret that the charged rhetoric that also characterised the pre-electoral period seems to be continuing unabated.

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24. Commission opinion on Albania’s application for membership of the European Union, COM(2010)680, Chapter C.

25. Communication from the Commission to the European Parliament and the Council, COM(2012)600 final, paragraph 6.21.

26. The rules of procedure need to be adopted with a two-thirds majority, implying a consensus between the two main political parties, the DP and the SP.

27. Mr Berisha is formally neither party leader nor the leader of the DP parliamentary faction in the parliament.

### 3.3. Media pluralism

55. Overall, Albania has a diverse and pluralist media environment.<sup>28</sup> However, this environment is heavily politicised, with most, if not all, media outlets serving and promoting the political interest of their owners, including in their editorial policies. This trend of politicisation of media outlets has steadily increased over recent years and has raised questions with regard to the independence of the media.<sup>29</sup> In this respect, a number of interlocutors expressed their concern that, in recent years, most public advertising is channelled to media seen as supportive of the government, increasing the pressure on journalist and editorial staff by the owners of media outlets to avoid criticising the ruling majority.

56. The Albanian public broadcaster is considered to be under the *de facto* control of the government, which reportedly regularly interferes in the management of the public broadcaster.<sup>30</sup>

57. A key aspect influencing the media environment is the switch from analogue to digital broadcasting. This switchover is currently being implemented on the basis of the national strategy for the digital switchover that was adopted on 2 May 2012. A key aspect of this strategy was the adoption of a new broadcasting law: the Law on Media Services. The adoption of this law was delayed until early September as a result of disagreements between the DP and the SP.

58. The main point of contention between the ruling majority and the opposition with regard to the Law on Media Services was the composition formula for the National Council of Radio and Television (NCRT) (the licensing authority) and Albanian Radio and Television Council (which oversees the public broadcaster). Regrettably, the new media law does not contain adequate provisions for a proper selection procedure for these two bodies that would ensure their independence.

59. The adoption of a new composition formula for the NCRT is essential for fostering an independent and pluralist media environment. Currently, the NCRT is heavily politicised and seen as an instrument for the authorities to exert control over the public broadcaster and media environment in general. We expect the political forces in Albania to now strive to reach consensus about the actual composition of the NCRT that will guarantee its functioning independently of the authorities and political forces and other interests. Furthermore, we also urge them to reach a consensus on additional steps to be taken with a view to strengthening the independence of the public broadcaster, including – if need be – by further amendments to the broadcasting laws.

60. After coming into power, the ruling majority proposed a series of amendments to the Law on media services. These amendments foresee, *inter alia*, a reshuffle of the NCRT. The OSCE Representative on Freedom of the Media, in January 2014, offered to provide the authorities with a legal analysis of these amendments. However, these amendments were later withdrawn by their initiator. The authorities informed us that currently no changes to the Law on Media Services are envisaged by the ruling majority.

61. In a positive development, the establishment of a National Business Registration Centre has notably increased the transparency of media ownership in Albania. In addition, recent amendments to the civil and criminal codes have abolished prison sentences for defamation as well as abolished special protection against defamation of special categories of persons. However, defamation is not decriminalised and journalists found guilty of defamation can still face heavy fines, although they need to be proportionate and cannot jeopardise the financial survivability of the media outlet in question<sup>31</sup>. That notwithstanding, the continued criminalisation can still have a chilling effect on journalists and be an incentive for self-censorship. We therefore call on the newly elected parliament to adopt amendments that would decriminalise defamation, and bring any provisions in the civil code into line with generally accepted Council of Europe standards in this respect.

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28. In the 2014 World Press Freedom Index of Reporters without Borders, Albania was ranked 85th, 17 places up from the previous year.

29. According to IREX's Media Sustainability Index, which measures the strength and viability of a country's media sector, the independence of the media was eroded in 2013. See also [www.irex.org/resource/albania-media-sustainability-index-msi](http://www.irex.org/resource/albania-media-sustainability-index-msi).

30. Communication from the Commission to the European Parliament and the Council, COM(2012)600 final, p. 18.

31. In addition, the fines can be transformed into public service work if the defendant is unable to pay.

### 3.4. Law on the civil service

62. The functioning of the democratic institutions in Albania is negatively affected by partisan State institutions and a highly politicised civil service. The appointment procedure of civil servants lacks transparency and civil servants at all levels are often appointed, and dismissed, on the basis of party affiliation. This results, *inter alia*, in a high turnover of staff and loss of experience and professional capacity. In addition, public trust in the civil administration is undermined by its lack of impartiality.

63. The reform of the public administration with a view to strengthening its independence and impartiality has been a recurrent recommendation of the Parliamentary Assembly as well as one of the conditions set by the European Commission that needs to be fulfilled before candidate status can be granted to Albania.

64. In this respect, progress was achieved with the adoption of the Law on the Administrative Courts on 3 May 2012, as well as the election of a new Ombudsperson on 22 December 2011, after the post had been vacant for over two years as a result of the political crisis following the 2009 parliamentary elections. Furthermore, the parliament, after considerable delay, adopted two key pieces of legislation for the reform of the public administration: on 27 September 2012, the parliament adopted the Law on the Organisation and Functioning of Public Administration and, on 31 May 2012, the Law on the Civil Service.

65. According to its provisions, the Law on the Civil Service, which, *inter alia*, governs the dismissal and hiring procedures for civil servants, was to come into effect on 1 October 2013. However, on 26 September 2013, the new Minister of the Interior announced that the new law, in the view of the authorities, was unimplementable and that the government would therefore seek to delay its implementation in order to allow it to be amended. A normative act to this extent was tabled by the authorities with the Albanian Parliament.

66. The DP-led coalition strongly opposed the draft normative act tabled by the ruling majority. It dismissed claims that this act would be unimplementable and, pointing at the high level of dismissals and appointments effectuated by the new authorities, alleged that the real reason for the delay was the authorities' wish to circumvent the impartial and merit-based dismissal and appointment procedures proscribed by the law, with the objective of filling the civil service with SP sympathisers before the new law came into effect. The government expressed its willingness to engage in a dialogue with the opposition regarding the normative act, but threatened to use its majority in the parliament to adopt the act without the support of the opposition if need be.

67. In its communication accompanying the 2013 progress report on Albania, the European Commission stressed the need for swift implementation of the Law on the Civil Service and underscored that accession negotiations were conditional on the continuation of public service reform with a view to depoliticising the civil service and strengthening its independence. The controversy regarding the implementation of the Law on the Civil Service runs counter to this.

68. The DP challenged the adoption of the Normative Act of the Council of Ministers with the Constitutional Court of Albania. On 5 February 2014, the Constitutional Court published its decision in which it declared the adoption of the Normative Act unconstitutional and annulled it. The implications of this ruling and especially the status of those civil servants dismissed or hired between 1 October 2013 – the date in which the Law on the Civil Service was supposed to come into force – and the date of formal enactment of the law, is unclear at the time of writing. Following the Constitutional Court's decision, the Law on Civil Service came into force on 26 February 2014. Implementing legislation was adopted and came into force on 1 April 2014. Since then, the legal provisions on hiring and dismissal of civil service employees are fully in effect.

69. These developments regarding the Law on the Civil Service underscore the importance of the issue of the politicisation of the civil service in the political environment of Albania. The large number of personnel changes at all levels of the civil service initiated by the incoming government, in combination with the controversial decision to postpone the enactment of the Law on the Civil Service, gives credence to allegations that the new ruling majority wishes to stack the civil service with party loyalists. We urge the authorities to ensure that all personal changes take place in full compliance with the relevant merit-based provisions for the dismissal and hiring of civil servants, as foreseen in the Law on the Civil Service.

### 3.5. Local self-government

70. In line with its accession commitments, Albania signed the European Charter for Local Self-Government (ETS No. 122) on 27 May 1998, and ratified it on 4 April 2000. The Charter came into force on 1 August 2000. Albania did not sign the additional protocol to the European Charter for Local Self-Government

on the right to participate in the affairs of a local authority (CETS No. 207). Given the importance of the principle of the right for all citizens, and indeed residents, to participate in local government, we recommend that the Albanian authorities sign and ratify this protocol.

71. The Congress of Local and Regional Authorities of the Council of Europe adopted, at its October 2013 plenary session in Strasbourg, a report on local and regional democracy in Albania. The two previous reports of the Congress on this subject were adopted in 1997 and 2006. In its present report, the Congress noted that the decentralisation of State power to the local level has been a “major component of democratisation in Albania”. It considers that the system of local and regional democracy in general is in line with the European Charter for Local Self-Government, but that a number of critical shortcomings remain, some of them in apparent contradiction to the provisions of the Charter.<sup>32</sup> Moreover, the Congress recommended that the Albanian authorities “intensify the decentralisation process in the light of the Charter and the recommendations provided by the Congress, and begin a reform of the territorial system that will allow communes and municipalities to carry out their responsibilities, particularly in the area of the spatial development of their territories and urban planning”.<sup>33</sup>

72. There are today two levels of administration in Albania: there are 373 Local Government Units<sup>34</sup> (LGUs) and a second level of local government consisting of 12 regions or “*qarks*”. Due to the large number of LGUs, several of them are too small to effectively manage their local affairs and lack the resources and capacity to be financially and politically viable institutions. The Congress, as well as other international institutions, has recommended that the Albanian authorities consider reducing the number of local authorities with a view to creating larger and stronger municipalities that are viable units of local democracy. Similarly, there seems to be widespread agreement that the number of regions (12) is too high for a country the size of Albania, with six to seven regions being recommended as the optimal number for the development of strong self-governing regions.<sup>35</sup>

73. Regrettably, the above-mentioned polarisation between the main political parties at the national level seems also to have percolated to the local level. As a result, local authorities of a different political colour are unable to find common ground and defend their common interest *vis-à-vis* the central government. This weakens local self-government and hinders the development in Albania of strong local authority associations, which could represent general local authority interests to the central government.

74. Mayors and local councils are directly elected and regional councils are composed of *ex officio* members delegated by each local community in that region. Each local authority must include the elected mayor in its delegation. A weakness of the law on the Organisation and Functioning of Local Government is that it does not grant the city council any authority over the elected mayor, which can potentially lead to conflicts. The regions are headed by a prefect, who is appointed by the Council of Ministers. The prefect is the representative of the central government at the regional level and is tasked with ensuring that national policies are followed at the local level. However, it was reported to us that in many cases ministries maintain their own direct representatives at the regional level. The prefecture and ministerial representatives at the regional level are jointly seen by a number of interlocutors as a mechanism of the central authorities to exercise direct control over local and regional authorities. This is compounded by the fact that regional councils are generally weak and that regional structures are dominated by the prefecture.

75. It is recommended that the functioning and competences of regional structures as a second level of local government on the one hand, and as administrative units of the central government on the other, be clarified and clearly delimited by law. In order to be fully compliant with the Charter, it is recommended that the authorities consider regional councils being directly elected in the future.

76. While the share of own revenue of local authority budgets has increased considerably over the last years, local authorities are still overly dependent on central government financing, especially as local authorities cannot collect their own local taxes. The local authorities should be provided with the means for own financing commensurate to their competencies in order to reduce their dependency on the central government.

77. The new authorities have announced administrative and territorial reform, with a view to making local governments politically, administratively and financially independent, to be one of their policy priorities. This is to be welcomed. It is important that this reform is inclusive and consensual not only between the ruling

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32. Congress of Local and Regional Authorities, Rec 349(2013), paragraphs 5 and 6.

33. *Ibid.*, paragraph 7.a

34. Municipalities, communes and settlements.

35. Congress of Local and Regional Authorities, CG(25)11PROV, paragraphs 50-54 and 101.

majority and opposition but also between central government and the local authorities concerned. We urge the authorities to elaborate and implement this reform in close consultation with the relevant Council of Europe departments and institutions including the Congress of Local and Regional Authorities.

78. On 24 January 2014, the parliament established a bipartisan ad hoc committee on administrative territorial reform. Regrettably, the opposition has, until now, declined to take part in this ad hoc committee, despite offers by the ruling majority of parity of members in the committee and a right to veto committee decisions.

79. On 16 May 2014, the Minister for Local Government Issues, Mr Bledar Çuçi, presented five versions of the planned administrative division of the country, which foresees the reduction of the current 385 Local Government Units to 30, 39, 47, 57 or 63 Units. Originally, it was suggested that the number of regions would be reduced to six. However, following allegations that the planned territorial reform would have an impact on the composition of the parliament, it was decided to keep the number of regions unaltered. Some interlocutors have expressed their concern that the planned reform seems, at this moment, to be mostly focused on the administrative division of the country and less on the functional aspects of local self-government, and especially the manner in which local authorities would obtain the necessary resources to implement the services that the law, and citizens, are expecting from them. This mirrors criticism made by the opposition on the planned administrative territorial reform.

## 4. Rule of law

### 4.1. Independence of the judiciary and administration of justice

80. The independence and impartiality of the judiciary is not sufficiently ensured and the judiciary continues to suffer from political pressure and interference.<sup>36</sup> The lack of independence of the judiciary<sup>37</sup> and efficient administration of justice continue to be points of concern with regard to Albania. This lack of independence, compounded by endemic corruption among the judiciary and lack of resources undermine the public trust in the justice system as such. Continuation of the reform of the judiciary, especially with a view to guaranteeing its independence and combating corruption, is therefore a priority.

81. In that respect, some welcome progress has been made in the reporting period. A strategy for judicial reform in 2011-2013 was adopted and is being implemented, albeit incompletely and with delays. It is important to conduct a comprehensive evaluation of the strategy and its implementation, in order to create a proper basis for further reforms in the judicial sector.

82. A number of important laws have been adopted, such as the law on the High Court, the Law on the Administrative Courts and the Law on the Judicial Administration. In addition, the Criminal Code, the Civil Code and the Civil Procedure Code were thoroughly amended. A review of the Criminal Procedure Code is foreseen, as are amendments to the Law on the Constitutional Court and the Law on the High Council of Justice, with a view to bringing them into line with European standards and best practices. To our satisfaction, the Albanian authorities have established close co-operation with the relevant Council of Europe departments, and particularly the Venice Commission, on the changes to these laws.

83. Until now, the reform of the judiciary has focused on the adoption and changing of legislation. However, the implementation of this new legislation is lagging behind, also as the result of a lack of resources – both human and financial – and deficient inter-institutional co-operation.<sup>38</sup> It is important that all the main political forces in Albania show the commensurate political will and allocate the necessary resources to ensure the efficient implementation of the reform of the judiciary and justice system.

84. The margin of discretion of the High Council of Justice in the appointment, transfer and promotion of judges is too large, and the decision to open and close a disciplinary procedure against a judge is still fully a prerogative of the Minister of Justice. The appointment process of judges to the Constitutional and Supreme Courts, as well as to the High Council of Justice, is vulnerable to politicisation, undermining the independence and impartiality of these institutions and, through them, the justice system as such. Changing this would imply the adoption of constitutional amendments for which, until now, the necessary political will and consensus has

36. Freedom House, Nations in Transit 2013, p. 54.

37. The World Economic Forum ranks Albania 101th out of 142 countries with a score of 3 out of 7 (1 being fully controlled and 7 being totally independent).

38. See also Communication from the Commission to the European Parliament and the Council, COM(2012)600 final, p. 9.

been lacking among the main political forces in the country. We call on the current authorities to adopt, without delay and in close consultation with the opposition, the amendments to the Constitution, and the related implementing legislation needed to strengthen the independence and impartiality of the judiciary. We expect the authorities to continue their close co-operation with the Venice Commission in the drafting of these amendments.

85. Two controversial replacements of prominent members of the judiciary strengthened the perception of politicisation of the judiciary. The Vice-President of the High Council of Justice, Mr Kreshnik Spahiu, resigned when he was accused of abuse of office – and when a parliamentary inquiry committee was established to investigate illegal political activities – for his involvement in the nationalist Red and Black Alliance. The General Prosecutor, Ms Ina Rama, who had initiated a number of investigations into alleged corruption of senior government officials, as well as into the events of 21 January 2010, was replaced after a controversial interpretation of the length of her term of her office.

86. As mentioned, corruption among the judiciary continues to be a cause for serious concern and the main obstacle in the fight against corruption in general. In a welcome development, the Parliament of Albania adopted, after a long delay, a series of amendments to the Constitution that limit the immunity of members of government, MPs, judges and high-level State officials and allow for their investigation and prosecution without prior authorisation. These amendments had long been called for by the Assembly.

87. In March 2014, amendments to the Criminal Procedure Code were adopted implementing these constitutional amendments. According to these amendments, personal and house searches, as well as the arrest of members of the government, MPs, judges and high-level State officials still need to be organised by the competent authorities, which is the High Council of Justice in the case of ordinary judges and the Supreme Court for Constitutional and Supreme Court judges. In addition, in a welcome development, corruption offences by State officials are now covered by the Serious Crimes Prosecution Office and Serious Crimes Court. According to some interlocutors, some of these provisions would benefit from further clarification to address some ambiguities that could affect their efficient implementation. In addition changes to other laws, such as the Law on the High Council of Justice, are necessary to ensure the full implementation of the constitutional amendments.

#### **4.2. Fight against corruption**

88. The persistent and endemic corruption in Albania hampers the country's democratic and socio-economic development. In its 2012 Corruption Perception Index, Transparency International ranks Albania 133th out of 176 countries with a score of 33 out of 100.<sup>39</sup> In its 2013 Global Corruption Barometer, Transparency International reported that 40% of the population felt that corruption had increased a lot in the past two years and an additional 26% said corruption had increased a little. Moreover, 50% of the Albanian population considers corruption to be a serious problem and 30% a problem; 66% of the population thinks the government is entirely or to a large extent run by a few big entities working in their own best interests; and 58% of the population feel that the actions of the government against corruption have been ineffective. The spread of corruption to practically all levels of society is also clear from the fact that 72% of the respondents felt that political parties were corrupt or very corrupt, 66% the parliament, 81% the judiciary, 58% the police and 52% government officials and civil servants.<sup>40 41</sup> Similarly, in its 2013 Nations in Transit report, Freedom House gave Albania a score of 5.25, down from 5.0, with 1 being best and 7 being worst. The high level of corruption was confirmed by, *inter alia*, high-level police and justice officials.

89. The Albanian Government adopted an Anticorruption Action Plan for 2011-2013, and adopted in March 2014 an anti-corruption package. In addition, in November 2013, a National Anti-Corruption Coordinator was appointed and focal points in the relevant ministries and State institutions established. As mentioned in the section on the independence of the judiciary, constitutional amendments and changes to the Criminal Procedure Code were adopted that limit the immunity of State officials and facilitate their prosecution in case of corruption. An evaluation of the anti-corruption strategy is planned for January 2015. While the number of cases successfully prosecuted has gone up in recent years,<sup>42</sup> and reportedly continues to rise, the authority's anticorruption efforts have unfortunately yielded limited results, especially in comparison to the size of the problem. Many interlocutors blamed insufficient institutional enforcement, and occasional lack of political will, for these weak results.

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39. A score of 0 signifying highly corrupt and a score of 100 very clean.

40. In addition, 70% felt that educational institutions and 80% that medical and health services were very corrupt.

41. Transparency International, 2013 Global Corruption Barometer.

42. 94 convictions at district courts in the first six months of 2013 and 56 cases at appeals courts over the same period.

90. In two high profile cases involving ministers, all charges were dropped after the Supreme Court ruled that the authenticity of video recordings allegedly showing acts of corruption could not be verified, despite reports to the contrary by international experts. Without wishing to discuss the merits of these court decisions, we are concerned that these two highly publicised cases have contributed to the public perception of impunity for corruption of high-level State officials. In a welcome development, a small number of investigations into, and prosecution of, high-level corruption cases were initiated in the first half of 2014.

91. As mentioned in the previous section, in a welcome development, constitutional amendments were adopted that limit the immunity of public officials, including MPs and judges. The manner in which the members of the Supreme Court are appointed should change as – in addition to risking the politicisation of the court – the current appointment procedure is seen as abetting the perception of impunity for corruption. Members of the Supreme Court are appointed by the parliament upon proposal of the President. The Supreme Court is the court of first instance for cases involving corruption of high-level State officials, including ministers and MPs, and, in the view of many, is unlikely to rule against members of the government and of the ruling majority.

92. The High Inspectorate of Declaration and Audit of Assets (HIDAA) is a key instrument in the fight against corruption. All elected officials, judges and high-level civil servants must declare their assets, as well as those of their spouses, children and cohabitating persons to the HIDAA, which is an independent institution. This currently concerns around 6 000 people. In April 2014, amendments were adopted to the Law on Asset Declarations. As a result, all declarations will from now on be audited and the random selection of declarations to be audited has been abolished. In addition, all judges and prosecutors are now included in the category of people that need to file yearly asset declarations under this law. They need to be audited at least every four years. It is unclear how the HIDAA will be able to handle this increased workload.<sup>43</sup> Regrettably the HIDAA is understaffed<sup>44</sup> and under-resourced in comparison with its workload and the importance of its task. Of concern are the indications that the findings of the HIDAA are not followed up by the Prosecutor General's Office. In 2012, 14 cases were sent to the Prosecutor with a request to start criminal investigations. All of them were suspended by the prosecution, despite the reported seriousness of the charges filed by the HIDAA. We urge the authorities to ensure that all findings of wrongdoing and requests for criminal investigation by the HIDAA are properly and promptly followed up by the prosecution services. In that respect, we welcome the fact that, in the first half of 2014, seven cases<sup>45</sup> have been opened by the Prosecution Service against erroneous asset declarations.

93. In general, the State institutions that are responsible for the fight against corruption are vulnerable to political pressure and interests. This underscores the need for the prompt implementation of the Law on the Civil Service, which aims to reduce political influence and pressure by, *inter alia*, introducing merit-based appointment and dismissal procedures.

94. The number of investigations started by the Department of Internal Control and Anti-Corruption (DIACA) and the High Inspectorate for the Declaration and Audit of Assets has gone up. The authorities should ensure that sufficient resources are made available to these two bodies to strengthen their investigative and audit capacity. We welcome the fact that, since April 2014, judges and prosecutors are now effectively covered by the Law on Asset Declarations. This is important as it is clear that eliminating corruption among the judiciary is a key to the success of the overall fight against corruption.

95. On 11 November 2013, a memorandum of understanding was signed between the Albanian State Police, the General Prosecution Office, and the State Informative Service (SHISH), with the aim of improving the fight against organised crime and corruption.

96. At its 60th plenary meeting, which took place from 17 to 21 June 2013, GRECO adopted its second compliance report<sup>46</sup> on Albania in its third evaluation round. The third evaluation round focuses on the criminalisation of corruption in Albanian legislation and on the transparency of party funding. This compliance report concludes that Albania has satisfactorily implemented all 12 recommendations contained in the Third Round Evaluation Report of GRECO. It is now important, as noted by GRECO, that all legal provisions now be efficiently implemented in practice. The 4th Round of GRECO evaluations indicates several areas where

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43. The new head of the HIDAA informed us that out of the 5 800 declarations received, 2 600 were incomplete or had obvious errors that needed to be corrected.

44. It has a total staff of 53 of which 23 are inspectors.

45. Concerning three judges, one prosecutor, one ambassador and two inspectors.

46. Greco RC-III(2013)7E.

there is need for improvement for Albania.<sup>47</sup> Albania received 10 recommendations, focusing on increasing transparency in the legislative process, improving the process of declarations of assets, and improving the evaluation of judges and prosecutors.

97. On 16 January 2014, the Council of Europe Commissioner for Human Rights, Mr Nils Muižnieks, published a report<sup>48</sup> in which he expressed his concern that the high level of corruption in the judiciary “seriously impedes the proper functioning of the judiciary and undermines public trust in justice and in the rule of law”.

### **4.3. Execution of judgments of the European Court of Human Rights**

98. As at 17 January 2014,<sup>49</sup> 478 complaints were pending against Albania, 424 of which have already been declared admissible. The majority of the cases that have been declared admissible concern claims regarding violations of the right to a fair trial and the right to an effective remedy

99. The execution of judgments of the European Court of Human Rights (“the Court”) against Albania is pending in 32 cases. The majority of these judgments concern the non-execution of domestic judicial and administrative decisions regarding the restitution of, or compensation for, properties nationalised under the communist regime, in violation<sup>50</sup> of Article 1 of Protocol No. 1 to the European Convention on Human Rights (ETS Nos. 5 and 9) (right to property). These cases have revealed such a persistent structural deficiency with regard to the enforcement of domestic court decisions, and such a lack of effective remedy, that they are followed by the Committee of Ministers under an enhanced supervision procedure.<sup>51</sup> In view of the scale of the problem, the Court delivered a pilot judgment in the case of *Manushaqe Puto and Others v. Albania*.

100. In this pilot judgement, the Court requested the setting up of an effective compensation mechanism within 18 months of the date on which the judgment became final (namely before 17 June 2014). In addition, the Court suggested the compilation of a database on the basis of which an estimate could be made of the global compensation bill; it also suggested the revision and update of valuation maps reflecting market prices, and the establishment of realistic and binding time limits. Pending the adoption by the Albania authorities of the general measures ordered by the Court, the latter adjourned, until 17 June 2014, all similar cases lodged after the adoption of the pilot judgment. However, it will continue to consider similar cases lodged before the pilot judgment came into force. The Registry of the Court estimates that there are 83 pending<sup>52</sup> cases that would fall in this category.

101. In its resolution<sup>53</sup> regarding the execution of the pilot judgment, adopted during its 1 172nd sitting on 6 June 2013, the Committee of Ministers noted “with great concern that to date, only one of the measures identified has been finalised, namely the land valuation map, and that no action plan demonstrating the ability of the Albanian authorities to establish an effective compensation mechanism within the deadline set by the Court, has been submitted”. Given that the high number of similar cases pending and being lodged with the Court is having a serious negative impact on the efficient working of the Court, we welcome that there has been some progress in addressing this issue by the Albanian authorities.

102. On the basis of consultations between the authorities and the Department for the execution of decisions of the European Court of Human Rights, in February 2014, an action plan was submitted by the authorities to the Committee of Ministers that outlined a comprehensive set of measures aimed at introducing an effective mechanism by June 2015. While regretting that the deadline fixed by the pilot judgement would not be met, the Committee of Ministers, at its 1 193rd meeting in March 2014, noted with satisfaction the priority given by the authorities to this issue. The action plan was adopted by the Council of Ministers of Albania on 24 April 2014, and updated when it entered into force on 15 May 2014, which gives this plan a legally binding nature. During its 1 201st meeting, from 3 to 5 June 2014, the Committee of Ministers of the Council of Europe welcomed the adoption of the action plan by the Albanian authorities but, in view of the deadline for the

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47. See document [GrecoEvalVRep\(2013\)9E](#), published on 27 June 2014.

48. CommDH(2014)1.

49. [www.echr.coe.int/Documents/CP\\_Albania\\_ENG.pdf](http://www.echr.coe.int/Documents/CP_Albania_ENG.pdf).

50. As well as in violation of Article 6.1 (right to a fair trial) and Article 13 (right to an effective remedy).

51. For more information on supervision of the execution of judgments and decisions of the European Court of Human Rights, see: [www.coe.int/t/dghl/monitoring/execution/Presentation/Pres\\_Exec\\_en.asp](http://www.coe.int/t/dghl/monitoring/execution/Presentation/Pres_Exec_en.asp).

52. Letter of the Registry of the European Court of Human Rights to the Committee of Ministers regarding the case of *Manushaqe Puto and others v. Albania* (ECHR-LE21.3CM/modYP/yp).

53. CM/ResDH(2013)115.

implementation of this plan, urged the authorities to intensify their efforts with a view to reducing this time frame as much as possible. Reportedly, the Albanian authorities have requested the Court for an extension of the original deadline given in the *Manushaqe Puto and Others* judgment.

## 5. Human rights

### 5.1. Human rights protection

103. Progress has been made with regard to strengthening the human rights protection mechanisms in Albania. Freedom of assembly, association, thought, conscience and religion are generally respected in Albania. The concerns with regard to freedom of expression have already been outlined in the section on media freedom and pluralism. Concerns with regard to the right to a free trial have been outlined in the section on the rule of law.

104. In the reporting period, Albania signed and ratified a number of important Council of Europe conventions, including the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210).

105. As already outlined above, concerns exist with regard to the number of cases lodged with the European Court of Human Rights and the delay in the execution of the judgements of the Court. In this context, the respect for property rights remains a point of concern that is now being tackled by the Albanian authorities.

106. Blood feuds and revenge killings are a matter of concern in Albania. The 2012 Human Rights Report of the US State Department reports an increase in such killings and notes that in several cases minors and women were targeted, contrary to the traditions surrounding this practice. The Albanian National Reconciliation Committee reported 152 blood feud killings in 2012. Blood feuds or revenge are aggravated circumstances for premeditated murder. The Albanian authorities have indicated that they recognise the importance of this issue. Amendments to the Criminal Code increased the maximum punishment for Blood Feud killings from 20 to 30 years or life imprisonment. The Ombudsperson's Office has prepared a special report on blood feuds that was presented to the parliament and in which he concluded that the 2005 Law on Blood Feuds was still to be implemented by the authorities. Regrettably this report, like the others produced by his office, has not (yet) been discussed by parliament.

### 5.2. Torture and cruel, inhuman or degrading treatment

107. On 20 March 2012, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) made public its report on its visit to Albania from 10 to 21 May 2010. The CPT noted that it had received very good co-operation from the authorities.

108. With regard to pre-trial detention, the CPT noted that pre-trial detention facilities fall under the responsibility of the Ministry of Justice, in line with European standards, but that no proper procedure exists for the transfer of detainees from police cells to pre-trial facilities. As a result, people remained detained in police cells – which are not equipped for long periods of detention – far beyond the statutory limit.

109. Regrettably, despite some progress in this area since previous visits, the CPT continued to receive a significant number of allegations of ill-treatment of detained persons by the police, especially during questioning, with the aim of extracting confessions or proof. This is of serious concern, especially taking into account that no independent enquiries were started after complaints were formally received. The authorities need to take urgent steps to remedy this situation.

110. Proper access to a lawyer while in police custody, as well as to a doctor, are important mechanisms to prevent ill treatment. Considerable improvements have been made with regard to ensuring access of detainees to lawyers and doctors, but delays often occur. This undermines the effectiveness of those mechanisms.<sup>54</sup> In addition, it is recommended that the systematic recording of police interviews is introduced as a mechanism for safeguarding against possible ill treatment while in police custody. The April 2014 amendments to the Criminal Procedure Code reportedly included provisions that strengthen the rights of prisoners and detainees.

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54. CPT/Inf (2012)11, paragraphs 21-24.

111. In its report, the CPT regrets that, at the time of their 2012 visit, hardly any of their previous recommendations with regard to the conditions of detention in police establishments had been implemented by the Albanian authorities. Holding cells (for detention of up to 10 hours) in general lacked any possibility to rest, such as chairs and benches, while in custody cells (for detention up to 96 hours) the conditions were described by the CPT as “appalling”: generally lacking ventilation and natural light and with minimum conditions of hygiene.

112. On the other hand, the CPT acknowledged the progress made by the Albanian authorities in reducing prison overcrowding and improving the conditions in prisons, although the latter remains of concern, especially as a result of limited funding. We welcome that virtually no allegations of ill treatment in prisons were received by the CPT, while supporting the CPT’s view that continuous vigilance by the authorities is necessary in this respect.

113. The findings of the last CPT visit underscore that prison health care is still a point of concern that, given the potential impact on public health in general, needs the full attention of the authorities.

114. The National Mechanism for the Prevention of Torture, functioning under the Ombudsperson’s Office has become increasingly active in inspecting prisons and other places of detention.

### **5.3. Minorities and discrimination**

115. The Advisory Committee of the Framework Convention for the Protection of National Minorities adopted its third opinion on Albania on 23 November 2011.<sup>55</sup> The most recent report<sup>56</sup> of the European Commission against Racism and Intolerance (ECRI) was adopted on 15 December 2009 in the framework of the fourth monitoring cycle.

116. Albanian legislation only recognises as distinct legal entities three national minorities (Greek, Macedonian and Serbo-Montenegrin) and two ethno-linguistic minorities (Roma and Vlach/Aromanian). People belonging to other groups, such as Bosniacs and Egyptians for example, are not recognised as belonging to national minorities and therefore do not benefit from national and international instruments for the protection of the rights of minorities, such as the Council of Europe Framework Convention for the Protection of National Minorities (ETS No. 157). In addition, also as a result of this limited recognition, several minorities are not represented on the official bodies established to represent minority interests *vis-à-vis* the authorities. The current system of recognition of minorities is inadequate and too limited and should be changed to ensure flexibility.

117. The legislative framework for the protection of minorities has been improved over the reporting period. However, a comprehensive law on minorities that would address all recommendations of the framework convention is still lacking. We hope that the new parliament will adopt such a law, in close consultation with the relevant Council of Europe bodies, without further delay.

118. A population census was conducted in Albania in October 2011. The Law on the Census was amended several times before the census took place. A fine was initially introduced for incorrectly replying to the question on ethnic origin. This provision was reportedly withdrawn only three months before the census took place. The answers given were going to be cross-checked with the civil registry, which is notoriously inaccurate on such data. This not only raised questions with regard to compatibility of these provisions with the principles of the framework convention, but also with regard to the accuracy of the census data on ethnicity and nationality.

119. One issue that has created some controversy is the draft for a parliamentary resolution on the Cham<sup>57</sup> issue, which is circulating in the parliament. This draft resolution addresses several issues that are important for the Cham community in Albania, including the repeal of the 1940 law on the war between Greece and Albania and restitution of property left behind when the Muslim Chams were forced to flee Greece. The value of the contested property is estimated to be around 10 billion euros. Not unexpectedly, this draft resolution is negatively affecting relations with Greece, which has indicated that they find the text to be “unacceptable” in its current form. All the main political forces in Albania have underscored that they do not wish that the

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55. ACFC/OP/III(2011)009.

56. CRI(2010)1.

57. The Chams are ethnic Albanians who originally resided in the coastal region of Epirus in north-western Greece. After the Second World War, the Cham population was almost entirely deported from Greece as a result of the collaboration of (a large) part of the Cham population with the Italian and German occupiers of Greece.

discussions on this issue should undermine friendly relations with Greece, and the initiative for this draft resolution should possibly be seen in the context of an increased nationalist discourse in the run up to the 2013 parliamentary elections.

120. The teaching of minority languages (recognised and other) remains inadequate. In special minority areas schools providing education in Greek and Macedonian are functioning, but outside these areas requests for education in these languages are generally rejected. No education is provided in the Roma, Serbo-Montenegrin or Vlach languages. Regrettably, Albania has neither signed nor ratified the European Charter for Regional or Minority Languages (ETS No. 148), despite this being an explicit accession commitment.<sup>58</sup> We call on the authorities to honour this accession commitment without further delay.

121. Important progress has been made in combating discrimination. The Criminal Code has been amended to introduce as an aggravated circumstance offences committed on the basis of gender, race, ethnicity, gender identity, sexual orientation, religion, political beliefs or health. In addition, an Anti-Discriminations Commissioner was established by law. The establishment, and appointment, of such a commissioner was a long standing ECRI recommendation and should be welcomed. However, several interlocutors emphasised that the roles of the Anti-Discrimination Commissioner and the Ombudsperson need to be clarified and clearly delineated in order to avoid overlap and possible interference. On 4 February 2010, the Parliament of Albania adopted a comprehensive anti-discrimination law, in line with recommendations from, *inter alia*, ECRI and the Advisory Committee on the Framework Convention. The authorities should make every effort to ensure that this law is now fully and efficiently implemented.

122. Marked progress was made with regard to fighting discrimination against lesbian, gay, bisexual and transgender people (LGBT). A working group on LGTB rights was established within the Ministry of Social Affairs and both main parties have manifested clear support for enhancing LGTB rights.

123. While Albania is generally a tolerant society towards minorities, discrimination of Roma remains a point of concern. In its recent reports, both ECRI and the Advisory Committee on the Framework Convention have called on the authorities to develop and implement an action plan – and in general step up their efforts – with a view to combating discrimination of Roma and to ensure their proper integration into society. The Albanian Ministry of Social Welfare and Youth has initiated the drafting of a concrete action plan to improve the situation of the Roma community.

124. Highlighting some of the problems faced by Roma in Albania, in February 2012, the Albanian Ombudsperson allowed the temporary settlement of 37 Roma families on the land of his Office, after these families were evicted from the land they were occupying without being given alternative shelter.

#### **5.4. Ombudsperson**

125. We welcome the fact that the Ombudsperson has been increasingly active in the protection of human rights and helping citizens to assert their rights vis-à-vis the government. In this context, we regret the delay in his appointment during the political stand-off between the ruling majority and the opposition following the 2009 parliamentary elections.

126. While the recommendations of the Ombudsperson are increasingly acted upon, his reports to the parliament until now have not been included in the parliamentary agenda and therefore are not debated in parliament. We call on the Albanian Parliament to systematically place the reports – both special and statutory – of the Ombudsperson on the parliamentary agenda for debate. We welcome the marked improvement in co-operation between the Ombudsperson and the Speaker of the Parliament and the latter's promise that the reports of the Ombudsperson would soon be discussed in the plenary sessions of the parliament.

127. As mentioned above, the Ombudsperson also acts as the National Mechanism for the Prevention of Torture. In total, 5 200 complaints were received in 2012. However, the Ombudsperson has only limited financial and human resources – he has a total staff of 48 persons at his disposal to properly execute all the functions placed on him by law. We call on the authorities to make sufficient resources available to enable his Office to properly carry out his duties, including for the establishment of professionally staffed regional offices, which are at this moment staffed by volunteers from civil society organisations.

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58. [Opinion 189 \(1995\)](#), paragraph 17.11.

### **5.5. Follow-up to the Assembly's report on the inhuman treatment of people and illicit trafficking in human organs in Kosovo**

128. On 25 January 2011, the Assembly adopted [Resolution 1782 \(2011\)](#) on the investigation of allegations of inhuman treatment of people and illicit trafficking in human organs in Kosovo, based on a report<sup>59</sup> prepared by Mr Dick Marty. In this report, Mr Marty outlined credible indications that Serbian prisoners of war in Kosovo, as well as some Kosovar Albanians, were murdered for their organs, which were subsequently traded on the black market. While the report did not place any responsibility or allege any complicity of Albania, these crimes were alleged to have taken place in secret detention places under the control of the Kosovo Liberation Army (KLA) in Northern Albania. In [Resolution 1782 \(2011\)](#), the Assembly therefore invited the Albanian authorities to co-operate unreservedly with the European Union Rule of Law Mission to Kosovo (EULEX), as well as with the Serbian authorities, in their investigations into these crimes and to start a serious and credible investigation of their own into the allegations that several of these crimes were committed on Albanian territory.<sup>60</sup>

129. We welcome the fact that the Albanian authorities have given full and unhindered co-operation to the EULEX investigators of these alleged crimes on Albanian territory. Considering it of utmost importance that the allegations raised in this report are investigated fully and in a transparent manner, the Albanian Parliament adopted the law "on jurisdictional relations in criminal matters with the EULEX special investigation unit" in May 2012. Based on this law, EULEX prosecutors are allowed to investigate within Albanian territory on the alleged implications of Albania in the illicit trafficking in human organs on Albanian territory. They have had the full support of all competent institutions. With regard to the independent and separate investigation by the Albanian authorities, as requested by the Assembly, the authorities stated that their investigations have until now not confirmed Mr Marty's findings.

## **6. Conclusions**

130. The preliminary draft report was sent to the Albanian authorities for comments on 11 March 2014. Their comments were received on 30 May 2014, and have been taken into account in the finalisation of the report.

131. During the reporting period, Albania has, albeit belatedly, made marked progress in honouring its obligations and commitments to the Council of Europe. However, in several areas, most notably with regard to the impartiality of democratic institutions and the civil service, the independence of the judiciary and the fight against corruption, serious concerns remain, especially with regard to the actual implementation of the many reforms and legislative packages that have been adopted. Against this background, we therefore recommend that the Assembly continues to monitor the honouring of obligations and commitments by Albania until these concerns have been satisfactorily addressed.

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59. [Doc. 12462](#).

60. [Resolution 1782 \(2011\)](#), paragraph 19.5.