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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

**MEETING OF THE SUB-COMMISSION ON
CONSTITUTIONAL REFORM
TOGETHER WITH THE TASK FORCE ALBANIA
(Venice, 11-13 June 1998)**

MEETING REPORT

1. Adoption of the agenda

The Sub-Commission on Constitutional Reform met together with the Task Force Albania and a delegation from Albania on 11 June 1998. The meeting was continued by a smaller group on 12 and 13 June, parallel to the 35th Plenary meeting of the Commission.

The draft report on Constitutional Law and European Integration, appearing as item 3 in the draft Agenda, was postponed since its author, Mr Toledano Laredo, was unable to participate in the meeting.

2. Albania – Examination of the draft Constitution in the presence of an Albanian delegation

The Sub-Commission went, article by article, through the text of the draft Constitution as it appears in document CDL (98) 63 with the exception of Part I – Basic Principles and a major part of Part II – The Fundamental Human Rights and Freedoms, which had already been examined during the visit of the Task Force to Tirana.

The Sub-Commission noted that the text examined was not yet complete. In particular, the draft chapters on the judiciary and on local government are still missing. It therefore agreed to meet, if possible, during the first half of July to examine the remaining chapters.

The Sub-Commission was impressed by the generally high quality of the text and noted that on the basis of this draft it would seem likely that Albania would have a modern Constitution fully in line with European standards and principles.

As regards the way of drafting, the Sub-Commission noted that the draft text was based on a

policy decision in favour of a very precise and comprehensive text providing clear rules for the various State organs.

With respect to the draft text, the following comments were made:

PART II – THE FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

Article 30

With respect to paragraph 2, it was noted that only a final court decision is a reason to be deprived of the right to vote.

Article 31

With respect to paragraph 2, the Albanian delegation underlined that this was a procedure for the registration of organisations and that it did not imply that organisation did need an authorisation from the court. The Sub-Commission underlined that paragraph 2 would have to be interpreted in the light of paragraph 1.

With respect to paragraph 3, the Sub-Commission noted that this text would have to be reviewed to harmonise it with the much more precise and detailed paragraph on the prohibition of political parties (Article 11, paragraph 2 of Part I of the Constitution), which according to its wording is also applicable to other organisations. The critical remarks made by the Task Force in Tirana with respect to the paragraph on the prohibition of political parties, especially the need to redefine certain criteria and the need for procedural safeguards such as the involvement of the Constitutional Court would have to be borne in mind. The words “in accordance with the law” would also have to be added to this paragraph.

Article 32

Paragraph 2 seems drafted in too restrictive a way and the Albanian delegation agreed to delete the words “in cases”. It underlined that on the basis of Article 3 of this part of the Constitution, the principle of proportionality and the guarantees of the ECHR would be applicable.

Article 33

It was suggested to replace “the organs of the State” by a formula such as “the appropriate authorities or the Assembly”.

Article 35

It was underlined by the Albanian delegation that “place of work” was to be understood not in a geographic sense but as a particular job.

Article 36

The link between this article and article 31 was underlined. Different opinions were voiced as to whether it would be advisable to require that trade unions and employers' associations must have a democratic structure.

Article 38

It was suggested to replace "employees" in paragraph 2 by "persons" to underline that also people looking for a job for the first time should have such a right. The word "compensation" is not an accurate translation and should be understood in the sense of subsistence.

Article 39

It was suggested to redraft the paragraph by providing for a subjective individual right to marry.

Article 40

Paragraph 3 should be redrafted as a subjective right of the children to be protected from violence.

Article 41

The Albanian delegation underlined that the first paragraph was to be understood in conjunction with paragraph 1.c of Article 45 and that it was aimed to secure an equal level of health care to everyone.

The present wording of paragraph 2 is unsatisfactory since the main justification for involuntary medical treatment would be the good of third parties and not the good of the patient. It was agreed that it seems preferable to delete both paragraphs 2 and 3.

Article 45

It was underlined that this article was necessary mainly for political reasons. Its paragraph 2 might be further strengthened (cf. Article 45 of the Irish Constitution; "The principles of social policy set forth in this article are intended for the general guidance of the Oireachtas. The application of those principles in the making of laws shall be the care of the Oireachtas exclusively, and shall not be cognisable by any court under any of the provisions of this Constitution.").

Article 46

Paragraph 1 should be redrafted putting particular emphasis on maladministration and not only on illegality. It would seem advisable to give to the people's advocate the right to introduce claims before the Constitutional Court.

Article 47

With respect to paragraph 3 it would seem more logical to grant to the people's advocate immunity in parallel to the immunity of judges and not of government ministers.

PART III – THE ASSEMBLY

Article 3

The Commission members considered that this article contained too many details, thereby requiring an amendment to the Constitution in the case of major changes in the electoral law. The Albanian delegation explained that this was in particular motivated by the desire to avoid any undue amendments to the electoral law immediately preceding an election. It was suggested that this could be better achieved by prohibiting amendments to the electoral law during a specific period before the holding of elections.

Article 4

The wording of this article seems contradictory since a dissolved assembly continues to function. The powers of a dissolved assembly or the old assembly after the election of the new assembly should be limited to urgent business (cf. Article 68 of the Cyprus Constitution; “Whenever a House of Representatives continues to be in office until the assumption of office by a newly elected House ..., such House shall not have power to make any laws or to take any decisions on any matter except only in case of urgent and exceptional unforeseen circumstances to be specifically stated in the relevant law or decision.”).

Article 5

Divergent views were voiced as to whether paragraphs 2 and 3 of this article are useful.

Article 7

The Commission members wondered whether it would not be preferable to give, at least with respect to direct elections in the constituencies, to everybody the right to present him/herself directly as a candidate.

The Albanian delegation explained that the main purpose of this provision was to avoid a pseudo-pluralism as in past elections when bodies like trade unions were authorised to put forward candidates.

Article 9

In paragraph 2 “government” should be replaced by Council of Ministers to avoid ambiguities about secretaries of state.

In paragraph 4 the competent court, preferably the Constitutional Court, should be specified.

Article 10

The Albanian delegation explained that the purpose of the first paragraph was to prohibit any undue interference immediately after the election of the candidate. It was nevertheless considered preferable to put “when he is proclaimed elected”.

Article 12

The exception foreseen in the second sentence of paragraph 1 was considered unacceptable by the Sub-Commission with respect to opinions expressed in Parliament. At the utmost, responsibility might be foreseen for making knowingly untrue defamatory statements or better this provision should be deleted.

Article 14

It was pointed out that for most aspects internal regulations, and not a statute, would seem sufficient.

Article 16

The need to enable the opposition to demand the setting up of investigatory committees was underlined (cf. Article 44 of the German Constitution; “the Bundestag has the right, and upon the motion of one quarter of its Members the obligation, to set up committees of inquiry ...”).

Article 17

It should be clarified whether this is the majority of votes cast or the majority of members present.

Article 19

The Albanian delegation explained that paragraph 2 was supposed to be applicable also to Assembly committees. This might however be undesirable, for example, with respect to investigatory committees.

Article 20

The right of every single deputy to propose a draft law may lead to an overburdening of the work of the Assembly.

According to the Albanian delegation, “codes” has a precise meaning in Albanian law, referring to the major traditional codes.

Article 21

The present wording seems too restrictive. A better solution would be to slightly reword paragraph 3 (“no non-governmental draft law that necessitates an increase in the State budget or diminishes income ...”) and to delete the first paragraph.

Articles 23 and 24

The present Article 24 should be put before the present Article 23. In its second paragraph it should be specified “this veto”. (The right of the President, which is not a real veto, might also be called right to send back legislation).

Article 25

Paragraph 1 duplicates paragraph 1 of Article 4 of Chapter VIII and one of the two provisions will be deleted.

PART IV – THE PRESIDENT OF THE REPUBLIC

Article 3

In the text of the oath it would be better to put that the President respects the rights and freedoms of citizens.

With respect to paragraph 4, there may be other circumstances than war justifying an extension of the mandate of the President.

Article 4

The wording seems too broad. The reference to private activity should be limited to private professional or business activity. It might be specifically mentioned that the President of the Republic may not be member of a political party.

Article 6

Paragraph 1 is to be understood in the sense that the President himself decides whether he/she is temporarily unable to exercise his/her functions. In paragraph 2 a specific reference to the discharge of the President should be added.

Article 7

In b) a reference “according to the law” should be added. In d) the counter signature of the Prime Minister should be required.

It is intended to delete e); otherwise, a reference to the law would have to be added.

PART V – THE COUNCIL OF MINISTERS

Article 1

To clarify that paragraph 2 refers only to executive functions one might put “other branches of power, State organs or to local governments”.

Articles 2-5

The Albanian delegation explained that in principle it had a strong sympathy for the German system of a strong Chancellor with overall responsibility for the work of the whole government. Nevertheless, having regard to the specific tradition of Albania, it seems problematic to make the Prime Minister too strong. Therefore, a certain degree of individual responsibility of the other ministers had been foreseen. It had also been the intention to avoid giving the President influence on the composition of the government.

The Commission noted that under these circumstances it was understandable to give to Parliament the possibility to approve at the beginning the composition of the government. Nevertheless, the present proposal for Article 5, paragraph 3, according to which the Prime Minister may discharge a minister only with the approval of the Assembly seems in contradiction with the system of parliamentary government and may lead to conflicts undermining political stability. The best solution would be to provide in Article 5.1 that ministers are appointed or dismissed within seven days by the President of the Republic on the binding proposal of the Prime Minister.

Paragraph 3 of Article 5, and, preferably, also paragraph 2 should then be deleted.

Article 8

According to a similar logic, the Prime Minister should have the power to resolve disagreements between the members of the government.

Article 9

Paragraph 2 should be deleted.

In paragraph 4 the correct translation is “instructions” and not “recommendations”.

Article 10

The members of the Commission considered it extremely strange that ministers have a higher degree of immunity than members of the Assembly. They suggested deleting paragraph 3.

Articles 11 and 12

The Albanian delegation explained that the Constitutional Commission had not accepted a proposal for a constructive vote of no-confidence according to the German model.

It was agreed that in paragraph 1 of Article 11 the words “not approved” should be replaced by “rejected”.

Article 12 should be drafted in parallel, requiring an absolute majority of the members of the Assembly for the adoption of a motion of no-confidence.

PART VI - JUDICIAL ACTS AND INTERNATIONAL AGREEMENTS

Article 1

In accordance with the hierarchy of norms, ratified international agreements (presently c) should appear before the laws (presently b).

Article 3

The Albanian delegation explained that the regulations (sub-legal acts) referred to in Article 3 are identical with the normative acts of Articles 1 and 2. This terminology should be harmonised.

Article 4

The word “rules” in the first paragraph has to be understood in the sense of “rules of procedure”.

Article 6

The word “rejection” should be replaced by “denunciation”. 1a will be reworded “political and military alliance treaties” and 1b “human rights and freedoms and the obligations of citizens as are provided in the Constitution”.

Article 8

It was suggested to redraft the first sentence as follows: “An international agreement that has been ratified constitutes part of the internal juridical system after it is published in the official journal of the Republic of Albania. It is directly applicable, except in cases when it is not self-executing, in which event a law shall be passed for this purpose.”

In paragraph 3, “law” should be replaced by “the internal law”.

PART VII - REFERENDUM

The articles on referendum were discussed extensively. It was acknowledged that much depends on political choices and that there is no ideal solution which can be generally recommended. As a result of the discussion, the following proposal was made:

- a referendum may be called by the Assembly by majority, by the Council of Ministers by majority, by the President on his/her own initiative or following a request by at least fifty thousand citizens addressed to the President;
- in each case the Constitutional Court will have to certify that the subject matter is not excluded from referendums by Article 2.2 and that the proposed referendum concerns a question of special importance;
- it seems advisable to give to the citizens only the power to introduce an abrogatory referendum annulling a decision taken by State organs; by contrast the State organs may

call a referendum both on political issues and on draft laws.

PART VIII – PUBLIC FINANCES

Article 1

The word “law” in this article has to be understood in the sense of statute.

Article 4

It was proposed to add that all expenditure by an organ of the central State has to be included in the budget. The Albanian delegation confirmed that this is the present practice in Albania.

In paragraph 2 a *pro rata temporis* clause such as “on a monthly basis” should be included.

Article 7

In the second sentence the Albanian Constitutional Commission might wish to consider putting “the exclusive independent right”.

Chapter – Armed Forces

Article 1

Not only religious reasons but all conscientious objections against military service have to be accepted as a reason not to do such service.

Article 4

There seems to be some contradiction between paragraph 1, which does not mention the Prime Minister, and paragraph 2 which mentions the Prime Minister, but not the Minister of Defence.

The Albanian delegation explained that the command of the armed forces by the President is mainly symbolic.

Chapter – The High State Control

Article 4

It would be preferable to put that the Head of the High State Control may be invited to the meetings of the Council of Ministers.

Article 5

In accordance with their proposal on immunity for government Ministers, the Sub-Commission members proposed deleting this article.

Chapter – Extraordinary Measures

Article 3

In paragraph 1 in the original it is the Assembly and not the President of the Republic which may decide a state of emergency. It should be added that in any case the state of emergency will be revoked as soon as the conditions making it necessary disappear.

Article 4

It has to be added that the decree of the President also specifies which rights are suspended during this particular state of emergency.

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** Also present on 12 and/or 13 June.*