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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

Summary Report on the visit of a delegation from the Task Force on Albania to Tirana on 20-22 May

S Y N O P S I S

1. A delegation of the Commission's Task Force on Albania, consisting of Messrs La Pergola, Batliner, Malinverni and Russell, accompanied by Mr Buquicchio and Mr Markert, went to Tirana on 20-22 May for discussions with the Constitutional Commission of Albania.
2. The delegation, or in some cases Mr La Pergola alone, had a number of political meetings with President Meidani, Prime Minister Nano, Speaker Gjinushi, the head of the Socialist Parliamentary Group, Mr Majko, the leadership of the Democratic Party (Messrs Berisha, Pollo, Arbnori and others) and Ambassador Everts from the OSCE. The political discussions focused on possibilities for the Democratic Party to join the Constitutional Commission. The DP asks for a co-chair and a blocking minority on the Commission. The others would be willing to accept 4 co-chairs (a representative of the socialists and the DP in addition to the existing ones) but the DP insists in this case on adding a fifth co-chair from the monarchist party. The DP (as well as the small parties) is also strongly in favour of bicameralism which is firmly opposed by the Socialists.
3. A meeting with the two co-chairs of the Constitutional Commission, Minister Imami and Mr Godo from the opposition Republican Party, dealt mainly with the question of the right to property. Mr Godo favours restitution of expropriated land and insisted that the various ways of acquiring property be included in the Constitution. In the end he accepted that the question of restitution may be addressed in the Constitution only in the form of a mandate for the legislature.
4. A meeting with the Constitutional Commission was mainly devoted to the question of unicameralism vs. bicameralism. For the moment the Constitutional Commission proposes two alternative drafts on legislative power. The delegation explained that both systems are perfectly acceptable from a democratic point of view, that bicameralism is unusual for a small unitary State but that it may be helpful in the specific context of Albania.

5. The delegation discussed article by article the first two parts of the draft Constitution on General Principles and Fundamental Rights with the co-chairman of the Commission, Minister Imami, and the technical staff.

The following main elements resulted from the discussion with the technical staff of the Constitutional Commission:

- the ECHR will be incorporated into Albanian law in the section of the Constitution on the sources of law;
- it has proved difficult to define the restrictions to fundamental rights article by article; the text is therefore limited to some general principles applicable to all rights (principle of proportionality, "Wesensgehaltsgarantie") and refers for the individual restrictions to the ECHR;
- the state of emergency will be addressed separately in the Constitution;
- the draft is as yet deliberately incomplete; social and some other rights like property have not yet been examined by the Constitutional Commission (for the previous version see Appendix X to Mr Favilli's report of 21 March 1998);
- there was agreement that the drafting of some articles should be improved in accordance with the proposals by the Venice Commission rapporteurs.

The general impression of the delegation was that the drafting is of good quality and that it is to be expected that the text will fully conform to European standards.

6. The Task Force will continue to be consulted on the individual chapters of the draft Constitution as soon as they are adopted. The discussions will be continued at the meeting of the Sub-commission on Constitutional Reform on 11 June 1998 and at the Plenary Meeting on 12 to 13 June 1998, in the presence of a sizeable delegation from Albania. Once the full text of the draft Constitution is approved by the Constitutional Commission, it will be submitted to the Venice Commission for an opinion on the text as a whole.

G. BUQUICCHIO

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