



Organization for Security and Co-operation in Europe
OSCE Presence in Albania

Report to the Permanent Council
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Introduction

The last report of the OSCE Presence in Albania to the Permanent Council made in June provoked an intense debate amongst the Albanian government, political parties and the media. Particular focus was given to the issues raised by the Presence as regards the economy and freedom of the media. Whilst the current role of the Presence in the country was discussed at length in mostly positive terms, the commentary was not without invective. Nonetheless, discussions held during the summer and early autumn on the role of the Presence, its mandate and 2004 budget outline were constructive.

There has been strong continued support for the role of the Presence, which during the last six months has acted as an important moderator on two main issues carrying particular political importance, namely electoral reform and property restitution. At the same time, the Presence maintained its ongoing work in support of the rule of law and democratisation. In the case of both elections and property, the Presence played the role of a facilitator, helping to move along the political process. Albanian experts undertook the legislative drafting and decision-making themselves whilst the Presence contributed legal and other expertise. During this period, the Presence also worked with other local representatives of the international community to outline a framework for donor co-ordination that corresponds to the government's current needs. It has been agreed that this new forum will be led by the European Commission.

The role of the Presence in the preparation and observation of the elections was significant, and comprehensive support was given to the OSCE/ODIHR Election Observation Mission (EOM) by engaging all resources. Presence co-operation with Ambassador Robert Barry, head of the EOM, and his team was excellent.

Since the last report, the previously positive political climate marked by consensus has become more charged for a number of reasons. Primarily, the strong tensions due to the elections that emerged between the government and opposition, as well as within both the government and opposition all impacted Albania's political life. In this respect, the role of the Presence as a consensus builder was once again accentuated as the welcome reception of the draft law on property restitution presented by the Presence-supported Technical Expert Group showed that there are still possibilities to reach agreements on vital issues. .

The unresolved tensions within the majority Socialist Party (SP), however, have called into question the viability of the Government. Prime Minister Fatos Nano's failure to secure parliamentary approval for a new foreign minister, following Ilir Meta's resignation on 18 July as Deputy Prime Minister and Minister of Foreign

Affairs accompanied by Sokol Nako, Minister of State for European Integration, meant that the Socialists entered the 12 October local elections as a sharply divided party, although all competing SP leaders managed to have a reasonably unified front during the campaign.

Shortly thereafter, the ruling majority reached an impasse when a second vote on 23 October failed again to secure the approval of a foreign minister and that of a new minister of public order, who had been forced to resign. Currently, the government functions without two key ministers, a situation decried by critics as being unconstitutional. Some key party officials have undertaken attempts at mediation. It appears likely though that any solution to the government crisis will only be found after the Socialist Party's quadrennial party congress on 12 December, where the chairmanship of the party is to be decided. If no solution is found, early parliamentary elections seem a possibility. The ongoing negotiations with the small parties during this period have shown their relative importance. The surprising inclusion of the opposition New Democrat Party in the talks could have the effect of re-drawing the political map.

This pre-occupation of the government with its internal divisions has stalled the reform process. At the close of the latest round of negotiations between Albania and the European Union on the Stabilisation and Association Agreement (6–7 November), the EU expressed its growing concern at the slow pace of reform, which put at risk the negotiation process.¹ The European Commission criticised the distraction caused by the ongoing internal political issues for having channelled energies away from following up on the recommendations made at earlier meetings. The head of the Commission's negotiating delegation did make clear, however, that there was no reason that talks were to be put off. Whilst the unsatisfactory implementation of reforms, such as those related to the judicial sector or against corruption were criticised, progress in other directions was recognised.

Election Results

The achievements made in the electoral reform process and the improved underlying political will to conduct free, fair and democratic elections significantly contributed to a very different kind of electoral campaign, one in which candidates throughout the country addressed issues affecting people's daily lives. Notably, quality-of-life issues such as water supply, road infrastructure, urban planning, civic life, schooling and health services became central to the candidates' campaign themes. The campaign in Tirana set the tone for the rest of the country.

The visible changes to Tirana brought about by incumbent Mayor Edi Rama (SP) over the past three years, with the support of international donors, left citizens in other municipalities wanting more from their mayors. The personalised approach of the main opposition candidate Spartak Ngjela (DP), whose daily walks through the neighbourhoods of Tirana, put citizens in touch with a politician in a way little seen before. The mutual respect shown by the candidates and the absence of negative politicking contributed to a healthy, yet competitive campaign. The characteristics seen in Tirana were reflected across the country, where numerous debates sponsored by the Presence, national and international organisations and the media brought an

¹ Delegation of the European Commission in Albania, *Press Release* (7 November 2003).

inquisitive and demanding public in close proximity to the candidates. The omnipresence of party leaders in the campaign, however, often overshadowed the candidates themselves giving the impression of national, rather than local election.

The continuing trend, noted in previous Presence reports, of converging political, commercial, and media interests in Albania was again noticeable in this election, raising concerns over any potential success of anti-corruption efforts and potentially foreshadowing negative consequences for the rate of state capture, which had hitherto been calculated as relatively low.²

The differences in the results between the mayoral and proportional vote give some evidence to vote splitting having taken place, potentially reflecting early signs of maturation in Albanian voting behaviour, where voters rejected incumbents with few accomplishments or poorly chosen candidates. The emergence of the importance of the proportional vote for municipal/communal council in this election also differentiates it from the past. Many municipalities now have mayors without clear majorities in the council, which may force local coalitions different from those at the national level. This will become particularly important during votes on issues such as the municipal budget, which require a qualified majority to pass.

The results of the election show the SP retaining a majority of the mayoral seats (approximately 52% of 384 local government units), although this represents a loss of more than 16%. The opposition Democratic Party (DP) made the most gains by increasing their share of mayoral seats by over 13%. These gains occurred mostly in the urban areas of central Albania and some in the south. The SP continued to make inroads in the north, a trend already seen in the 2001 parliamentary elections. In terms of the proportional vote, used to determine party representation in the municipal and communal councils, the DP achieved nearly the same results as in 2000 winning slightly over a 32% share, while the SP lost nearly 9%, mostly in favour of the small parties collectively. The proportional results show an electorate more or less evenly divided into thirds with the left wing (SP and other small leftist parties in parliament) capturing 52% of the popular vote.³ Taken together, the results show a less sharply divided country than before. Although the traditional voting pattern showing DP strength in the north and SP in the south is still visible, the gains made by both main parties make the distinction less noticeable.⁴

The representation of women in these elections, however, was wholly unsatisfactory. Only 70 of the 1948 candidates were women, representing 3.5% of the total.⁵ Only 4 of 384 mayors elected is a woman (1%), marking a decline from the 2000 where 12 women were elected (3%). In the 2001 parliamentary elections, 8 out of 140 elected were women (5.7%).⁶ In nominating so few female candidates, the parties did not respect their own internal statutes or public commitments on women's representation, an issue that needs urgent addressing.

² The "sale" of parliamentary votes and government decrees. World Bank ECA/PREM survey of Albanian businesses, 2001.

³ Based on the results of 369 LGECs, the SP won 35%, DP 33% and the small parties collectively 32%.

⁴ The figures cited in this paragraph are subject to further change as the results of a number of re-runs are still to be declared.

⁵ OSCE/ODIHR Election Observation Mission, *Interim Report 2* (21-28 September 2003), pp. 4-5.

⁶ A ninth woman was later elected to parliament in a December 2002 by-election.

Electoral Reform Process

With the approval of the new Electoral Code on 19 June, the process of electoral reform in Albania reached an important milestone after more than a year of intense negotiation and debate. The political process underpinning the Bipartisan Committee was unique and its success came through the political commitment of the parties and the active facilitation efforts of the Presence working closely with the leaders of the two main political parties. The expertise contributed by ODIHR in terms of clarifying electoral standards and comparing proposals to established norms was essential. Success, however, was not guaranteed. The extension of the committee's mandate and the subsequent ancillary SP-DP negotiations showed that some issues remained potentially disruptive until the last moment.

Key to the success of the committee was its decision-making formula, which required a proposal to be accepted by the two main parties before being approved, and the close co-operation with the Presence. In this way, the process required bipartisan consensus, acting as a form of "reconciliation" for past violations committed by both sides. Not all were pleased with the results of the committee, however, as most of the small parties represented in parliament strongly criticised the process for, in their view, having unfairly favoured the interests of the two large parties.

The Bipartisan Committee managed to address almost all of the OSCE/ODIHR recommendations made after the 2001 parliamentary elections, including the complaints and appeals process, the state's role in the elections, policing, media balance, composition of coalitions and voter lists. Both the SP and DP made a commitment to continue the electoral reform process before the next parliamentary elections (due in June 2005) to tackle the issues of the nature of the electoral system, campaign financing and electoral zone boundaries.

The success of the Bipartisan Committee process ultimately led to the dissipation of political tensions in the run up to the electoral campaign. Although parties remained competitive, they nonetheless exhibited the political will to ensure good elections. Insufficient political will, as noted by the OSCE/ODIHR in its past reports, had marred previous Albanian elections. Despite the existence of this will and the success of the electoral reform process, some issues that had been successfully resolved through consensus became divisive during the campaign.

The issue of a politically imbalanced CEC, delayed party financing and proposed changes to the rules on police contributed to the opposition's suspicions that the governing majority, through its unilateral issuance of normative acts in the Council of Ministers, was attempting to abuse its position to guarantee itself a favourable outcome. Intervention by the Presence supported by the ODIHR EOM helped to secure the release campaign funds from the government and to ensure the deployment of the police respected the consensually agreed upon rules. Presence efforts to support the President in establishing a Code of Conduct for all parties in the elections and for trying to resolve the imbalance in the CEC proved, however, unsuccessful.

Despite initial scepticism and, in some cases, hostility, to the Electoral Code's changes to the rules governing media and the amendments on police, respect of the law produced largely successful results. The media coverage of the election campaign

was generally balanced, and the police was widely praised for its professionalism on Election Day.

The post-election period, however, has shown the protracted and litigious nature of Albanian elections.⁷ Incompetence, disorganisation and political obstructionism—including the use of the blocking minority in decision-making—created an unsatisfactory situation in Tirana, where 30% of the electorate lives. After some reluctance to intervene at an earlier stage, the CEC took over administering the results from the Tirana Local Government Election Commission (LGEC) on 24 October and decided to examine every ballot box and respective complaints. As noted by OSCE/ODIHR in its *4th Interim Report*, the significant problems and delays in Tirana risked undermining the observers' initial positive evaluation, which had originally stated that these elections “marked further progress towards compliance with OSCE, Council of Europe and other international commitments and standards for democratic elections.”⁸ The results for Tirana eventually came after 32 days, however, the Tirana Prosecutor's Office has opened two investigations to look into the voter list problems and allegations that voting centre and LGEC material had been falsified.

The controversy surrounding the voter lists remains the most contentious problem, particularly affecting Tirana and Durrës, Albania's second city. Although OSCE/ODIHR initially stated in its *Preliminary Conclusions* that it had no evidence of political manipulation of the voter lists or that the problem could have influenced the results,⁹ further evidence led it to conclude that the voter lists were actually worse than in previous elections. The Presence has been actively studying this problem and, together with ODIHR, is analysing the means of addressing the shortcomings in the near future and planning the timetable, keeping in mind the possibility of early parliamentary elections. Once the necessary wider analysis of how the new Electoral Code worked in practice has been accomplished and the internal political situation settles, the electoral reform process can continue in accordance with earlier political commitments. The Presence is prepared to extend its support and means of facilitation as before and has already begun the practical planning and other related work.

Property Restitution

The Presence delivered the draft on property restitution to the Speaker of the Albanian Assembly on 27 October prepared by the Technical Experts Group (TEG) working under Presence guidance. The group had been established upon agreement of the Presence and the Assembly to produce a single draft text merging the two existing proposals that had been submitted by the government and the opposition.¹⁰ Apart from experts of the Presence and the Assembly, the TEG was composed of legal and property experts nominated by the SP, DP and Republican Party to ensure a degree of political authority to their contributions. Both before and during this largely technical

⁷ The OSCE/ODIHR Final Report on the 2001 Parliamentary Elections stated that “...the election process was protracted, litigious, uncertain and fragmented.” OSCE/ODIHR, *Final Report: Republic of Albania Parliamentary Elections, 24 June-19 August 2001* (Warsaw: 11 October 2001), p. 1

⁸ OSCE/ODIHR and Council of Europe Congress of Local and Regional Authorities of Europe (CLRAE), *Local Government Elections: Statement of Preliminary Findings and Conclusions* (Tirana, 14 October 2003), p. 1.

⁹ Ibid.

¹⁰ The “opposition” draft was submitted by Fatmir Mediu of the Republican Party and Alfred Çako of the National Front Party.

process, the Head of Presence held a series of negotiations to establish and carry forward the group's work, especially at critical moments when the extensions to deadlines were sought. During its several months of work, the TEG held hearings with a variety of interest groups including former landowners, religious communities and representatives of the government and opposition.

The draft produced by the group aims to provide for a just regulation of the issues of property rights that have arisen from expropriation, nationalisation or confiscation. It attempts to balance the need of correcting past injustices with the need to ensure social and economic stability. The law deals with the recognition and restitution of immovable property and provides for compensation when restitution is impossible. It also contains provisions for the central and local administrative bodies that will handle claims and regulates their procedures. The draft has proposed completing the process of recognition and restitution of property by 2006, with a time frame of 10 years for the compensation process.

Although both the Socialist and Democratic parties have publicly supported the text, the Republican and National Front parties, co-authors of the opposition draft, have pronounced themselves strongly against the text, despite the considerable influence the RP-nominated lawyer had on the final draft. In accordance with parliamentary procedures, the TEG draft has been introduced into the Assembly by a number of deputies and the government has withdrawn its earlier submission. Debate will take place in the three committees on Economy, Finance and Privatisation; Laws and Constitutional Issues; and Agriculture and Food.

The Presence has already outlined a work plan to support the proper implementation of the property legislation after it passes the Assembly to help avoid the fragmentary application that occurred with the original 1991 law¹¹ and ensure transparency of the restitution process. Additional data from the government as to the amount of land remaining for restitution or available for compensation, the areas of land under dispute and those abandoned, refused, misallocated or restituted outside the law—which has not yet been made available—will be needed for the implementation phase. The numbers of outstanding unresolved restitution and compensation claims also need to be identified. A financial analysis should also be undertaken to assess the potential size of cash compensation claims so that this obligation can be provided for in the annual state budget or by other means.

Rule of Law/Combating organised crime and trafficking

Considering continued international concern that the weaknesses of the judicial system and the growing effects of organised crime represent serious risks for the country and the wider region,¹² the Presence has been pursuing a multi-dimensional approach to its work in this field by combining the efforts of its Rule of Law/Human Rights and Security Co-operation Departments. The Presence's *Legal Sector Report*, its long-term research project analysing the functioning of the judicial system in Albania is nearly complete. The report's range of conclusions and recommendations will be used for identifying the future work of the Presence in this field.

¹¹ Law No. 7501 "On Land", dated 19 July 1991.

¹² Speech given by US Ambassador James Jeffrey at the Magistrate's School, Tirana, 27 October 2003.

An area of main concern to the Presence based on the report's conclusions is an across-the-board need for greater transparency to reduce the inequities and arbitrariness of the judicial system resulting from the corruptive effects of influence peddling and conflicts of interest. Areas requiring further attention include greater public participation in legislative drafting, publication of court decisions and codification of a more transparent means of assigning cases in the prosecutor's offices and courts. The weaknesses of the notary services, already described in the microsystem report of the government's anti-corruption monitoring board, is another area of main concern, given its particular impact on the process property registration. The Presence has submitted a number of proposals for EU CARDS funding to support initiatives based on the recommendations of the report.

The government's creation of a specialised court for serious crimes responsible for trafficking, armed robbery and other such related crimes marks a step forward. The Presence has closely followed this issue and contributed extensive comments on the bill when it came before the parliamentary Committee on Constitutional Issues and Laws. Following its approval by the Assembly on 24 July, the new court is now foreseen to be established in early 2004. The Presence's fair trial development project has identified the new court as being a main area of interest for its fair trial development project, which will concentrate on following trafficking cases.

The recent success in Albania of the Operation Mirage 2003, held under the auspices of the Southeast Europe Co-operative Initiative (SECI) resulted in the arrests of 125 persons involved in trafficking following raids in two phases on 800 establishments in September.¹³ By way of comparison, Mirage 2002 netted only 12 arrests. These results placed Albania at the top of the list in terms of arrests, however, as noted by the Presence in previous reports and as underlined by the US Department of State in its 2003 Trafficking Report, real success can only be achieved through successful prosecutions of those arrested with appropriate sentencing.¹⁴ The Presence's following of these cases should therefore provide insight into the areas that may require further strengthening or additional support.

As successful prosecutions depend on the presentation of sufficient evidence, a witness's testimony, particularly in the case of trafficking, is necessary. For this reason, the Presence has established a memorandum of understanding in June to formalise the ongoing operation of the Witness Protection Task Force that includes several international organisations, government ministries and the Prosecutor General's Office. Through the task force the international community has been able to offer temporary assistance to the government for the protection of witnesses, who can provide evidence against traffickers in human beings or in cases of serious crimes. As the primary co-ordinating agency for the task force, the Presence is aiming for the Albanian authorities to assume gradually the responsibility for the activities described in the MoU pursuant to the eventual witness protection legislation. In recent cases of witness relocation, the Albanian government was able to fund victim escorting for the first time, an important first step in transferring the duties of the task force to the Albanian authorities. A bill on witness protection, for which the Presence provided

¹³ Government of Albania, Ministry of Public Order, *Report on the Preparation and Implementation of Operation Mirage 2003* (Tirana: 24 October 2003).

¹⁴ US Department of State, Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report* (Washington, DC: 11 June 2003).

comments based on the experience of the task force, is now pending in the Assembly for approval.

The recognised regional nature of organised crime and all forms of trafficking means that effective border management and cross-border co-operation is necessary. Following the May 2003 Ohrid Regional Conference on Border Security and Management, the Presence successfully moved to underpin the Joint Border Co-operation Meeting (JBCM) process through vertically extending the co-operation from the border police to senior management personnel from UNMiK and the Albanian State Police. Simultaneously, the process was expanded horizontally to specialist areas of policing such as those responsible for combating trafficking in human beings, auto theft, and drug and weapons trafficking. Initiatives have also been taken to expand the mechanism to other areas of Albania's borders in accordance with the Presence's obligations under the Ohrid Conference's *Way Forward Document*. Moreover, the Presence, together with its international partners and the Ministry of Public Order, have expanded the pre-screening system, intended to address the needs of illegal migrants, trafficking victims and asylum-seekers entering Albania, to the border crossing points.

The Presence has continued to support the implementation of the government's National Strategy on Trafficking in Human Beings both through the pre-screening system as well as through its Victim's Assistance Project that provides counselling and legal advice to victims of trafficking. The successful Women's Rights and Anti-trafficking Education Project has also been relaunched for another phase, now focusing on rural women, the northeast, and the Roma community. In addition, the Presence and the Ministry of Finance are collaborating on money laundering issues.

Democratisation

The newly elected mayors may find it difficult in some cases to honour public expectations and campaign promises as the process of decentralisation has not yet given sufficient autonomy to local government structures to take decisions on key issues of local concern. A form of "tethered democracy" at the local level means that the central government still maintains close reign on local government decision-making, particularly through deconcentrated structures headed by government-appointed prefects. Nevertheless, the ongoing process of fiscal decentralisation now allows local governments discretionary control over a growing share of their budgets, though this is estimated to be still less than a quarter. Local governments were allowed for the first time to keep their locally generated tax and fee revenue in 2003. This makes local government budgeting much more important than in the past, raising the stakes in localities where a mayor does not enjoy a comfortable majority in the council. It is possible, therefore, that local demands stimulated during this election period could become a catalyst for furthering the decentralisation process once confronted by the deficiencies in local government competences.

A process of territorial administrative reform will be launched in 2004, through which local government boundaries will be redrawn throughout the country as communes are merged to create fewer and larger units. Given the clear political implications for such a challenging process, requiring transparency and fairness, the Presence has been invited to play a key role in this multi-year process by both the Ministry of Local Government and the leader of the opposition.

The question of territorial administrative reform has a direct link to the soon-to-be launched process of redistricting the hundred electoral zones for the parliamentary elections. Both these processes are moreover connected to the preparation of perennially contentious voter lists, which, according to the new Electoral Code, will be compiled through a decentralised process managed by the civil registry offices operating at the local government level beginning with the 2005 elections. The government has recently approved a strategy for the computerisation of the national civil registry system, which will also provide for a national identification card and unique social insurance number. An international feasibility study is currently underway, the results of which will be available at the beginning of the new year.

With the eventual passage of legislation on property restitution and compensation and its implementing regulations, a parallel process registration and legalisation of property will occur, impacting on territorial planning, land usage, the limits of cadastral zones, and by extension, the boundaries of local government units. A further implication of this process should be the establishment of a standardised system of addresses analogous to the standardised civil registry system.

The Presence has contemplated the political implications of these interrelated processes that Albania's current stage of development now requires and the profound effects they will have on a system still prone to ambiguity and arbitrariness. During the past twelve years, Albania has experienced great internal migration, massive emigration and an explosion of illegal construction. Over the medium- to long-term, these changes will result in the ability to establish an individual's identity and residence, thus incorporating them into a civil polity with all of the rights and responsibilities that that entails.

The Presence's project of Civil Society Development Centres (CSDCs), developed to deliver a grass-roots development programme to strengthen non-governmental organisations and stimulate civic participation in the governing process at the local level, is a contribution in this direction. The activities of these centres have engendered a number of initiatives developed by local stakeholders. The network of five centres recently opened another branch in the northern city of Shkodra.

At the level of national decision-makers, the Presence's parliamentary support project on modernising the capacity of the Albanian Assembly continues to focus on its two priorities in 2003: working with the Committee on Economy, Finance and Privatisation to expand and strengthen their participation in and oversight of the annual budget process and continuing the parliamentary administration staff training. The Presence also collaborated with other OSCE missions in SEE in organising a regional parliamentary conference on the role of parliaments in human and economic development in Southeast Europe in Sarajevo in October. The Presence is currently assisting with the revision of the Assembly's Rules of Procedure that is now taking place and will begin constituent outreach in 2004.

Other projects in the field of democratisation focus on gender equality, media development and good governance. The Presence has been engaged in a dialogue with national Albanian structures such as the National Committee for Equal Opportunities to support their efforts in drafting a National Gender Action Plan, and in close co-

operation with national women organisations, the Presence is striving to expand the existing network of women's counselling centres and legal aid offices to tackle the problem of domestic violence. As regards, the media, the Presence provided the Assembly with comments on the draft amendments to the electronic media law prepared by ARTICLE 19, a London-based NGO, and provided through the Office of the OSCE Representative on Freedom of the Media. A programme on Introducing Business Ethics in Universities of Albania is also planned in order to enable the young people to run their business without corruptive practices.

Conclusions

Looking ahead to the coming year, there are a number of fundamental issues as discussed in this report remaining to be resolved in Albania, whose political nature requires the involvement of the Presence as a broker to facilitate the political process. Following on from the success of the electoral reform in 2003, further elements of reform, in particular the possibility of changing the electoral system and redrawing of electoral zone boundaries, will be debated in 2004 prior to the 2005 national elections. The issue of revising the territorial divisions within the country will also proceed in 2004 after the finalisation of the October's municipal elections. Moreover, the highly divisive and emotional issue of property restitution and compensation, if resolved by the end of 2003 through the adoption of a new law, will require the Presence's engagement to help ensure proper implementation at least in its early stages. Further legal sector reform is vital to underpin most of the other ongoing reform processes.

Despite the relatively positive signs of development in the overall institutional structure of the country and strengthening of the fundamental building blocks of the state, the country suffers from continued weaknesses in the field of justice and home affairs, in particular as regards the means to combat corruption and organised crime. Whilst the government has launched active measures and comprehensive strategies in this regard, implementation, as repeatedly noted, is slow and suffers from a lack of prioritisation. This slow progress, due also to the continual pre-occupation with internal political struggles, has endangered further advancement of the Stabilisation and Association Process, as recently stressed by the EU. With concerns also being raised from many sides regarding the increasing intersection of business interests with politics, greater efforts at transparency, such as asset declarations, and the establishment of codes of conduct and ethics are required. The Presence is pursuing a number of programmes to assist in these areas. Its proposed budget for 2004 outlines its priorities for the next year, concentrating on furthering the reform process and strengthening democratic institutions.