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OPINION ON THE ALBANIAN LAW ON THE ORGANISATION OF THE JUDICIARY (CHAPTER VI OF THE TRANSITIONAL CONSTITUTION OF ALBANIA)

INTRODUCTION

On 26 June 1995, prior to Albania's accession to the Council of Europe, and with a view to facilitating the future monitoring of obligations in accordance with Resolution 508 of the Parliamentary Assembly, the Legal Affairs and Human Rights Committee of the Parliamentary Assembly asked the Venice Commission to consider the constitutional provisions governing the independence of the courts in Albania, and to furnish it with an opinion thereon.

In the course of July and August 1995, the relevant laws and regulations were the subject of a first examination by the Working Group on Albania, and were also discussed in general terms by the Commission as a whole at its 24th plenary meeting on 8-9 September 1995.

On 9-11 November 1995, a Commission delegation, consisting of Messrs Malinverni, Russell and Said Pullicino, travelled to Albania to discuss the relevant law and practice with Albanian officials, judges and lawyers. During its visit, the delegation met with the Minister of Justice, as well as with Ministry officials concerned with the training, appointment, transfer and dismissal of judges; the Presidents and members of the Appeal, Cassation and Constitutional Courts; the President of the District Court of Tirana;the Prosecutor General; the Presidents of the District Prosecutor's Office, the Appeal Prosecutor's Office and the Military Court Prosecutor's Office; the Head of the Judicial Department of the Prosecutor General's Office; the President of the Judges Association; and the President of the Bar Association of Tirana.
The present report was drawn up on the basis of written observations by some members of the Commission, having regard also to the several discussions entered into by the Working Group's delegation in Tirana. It was adopted by the Commission at its 25th plenary meeting on 24-25 November 1995, for transmission to the Assembly in due course.

A. CONSTITUTIONAL AND REGULATORY OVERVIEW

The Albanian Law on the Organisation of the Judiciary is part of a series of laws adopted by a two thirds majority of the Albanian Parliament to progressively abrogate and replace the former Constitution. Adopted by law n° 7561 of 29 April 1992, it is set out, with its original numbering, in Chapter VI of the transitional Constitution (the Law on Major Constitutional Provisions). Chapter VI is divided into three sections, dealing respectively with the ordinary judicial system, the Constitutional Court, and certain miscellaneous provisions.

One of the effects of the adoption of the Law on the Organisation of the Judiciary in April 1992 was to abrogate a prior ordinary Law on the Status of Magistrates, applicable to both judges and prosecutors. That law contained detailed provisions on the rights and duties of magistrates, including extensive procedural and substantive safeguards against arbitrary removal from office. At the same time, however, it was clearly the intention of the statutory scheme established by Chapter VI that similar implementing legislation be introduced - Article 5 provides that the organisation of the courts is to be regulated by law; Article 10 provides that the circumstances and procedures for the removal of judges from office should be provided for by law; furthermore, it is not consistent with international standards for legal guarantees of judicial independence, which Article 10 also pledges to respect, that questions of judicial qualification, appointment, transfer and discipline be left unregulated by either the Constitution or an Act of Parliament.

Notwithstanding this intention, only some legislative action has since been taken, with the result that there is at present only piecemeal provision in the ordinary laws (adopted by Parliament) in force in Albania for rights and duties of judges in the exercise of their judicial functions, or for their qualification for office, or the grounds and manner in which they may be appointed, transferred or dismissed. These are set out in law n° 7574 of 7 July 1992, "On the Organisation of Justice and some changes to the Criminal Procedure Code and Civil Procedure Code". In addition, a number of important matters are provided for in the "statute defining the function and administration of the High Council of Justice", a regulation adopted by the High Council of Justice itself.

The Commission has been informed that the Secretary General of the Council of Europe has received a request from the Albanian government for legislative assistance in drafting new legislation in this area, and understands that such an exercise may proceed in the coming months. In consequence, the present opinion includes, at section B.2 below, a brief examination of the various provisions of the above law and "statute" which will need to be replaced by appropriate legislation.

B. THE ORDINARY JUDICIAL SYSTEM

1. Constitutional provisions

Chapter VI of the provisional Constitution contains a number of governing principles designed to be applied to the country's judicial branch: the separation and independence of the judicial power from other State powers (Article 1); its exclusive authority to exercise judicial functions in civil and criminal matters (Articles 1 and 2); the democratic origin and character of the administration of justice (Article 3); the obligation of the courts to uphold the principles of legality and equality before the law (Article 4); the personal independence of judges in the exercise of their functions; the obligation on all State bodies and public authorities to enforce judicial decisions and orders (Article 9); and the obligation on courts to provide reasoned decisions (Article 9) and generally to administer justice in public (Article 12).

These principles conform to the fundamental principles supporting the administration of justice in a State governed by the rule of law, and reflect European standards in the matter.

In the light of these principles, the Commission has formulated the following observations on the more specific provisions in Chapter VI:

a) Military jurisdiction

Under Article 5, military courts are part of the judiciary. However, unlike the other courts which are the subject of further constitutional attention in Articles 6-7 and 10, no other mention is made of military courts. It would be at the least desirable that the Constitution or the law include a description of the general features of military jurisdiction, that is to say its structure and composition, the scope of its jurisdiction and its powers of sentencing (e.g, do these extend to the death penalty?). The Commission notes in this connection that Article 5 of law n° 7574 of 7 July 1992 is not sufficiently detailed on these matters.

b) Administrative jurisdiction

Article 2, which sets out the various justiciable disputes falling within the jurisdiction of the courts, makes no mention of administrative jurisdiction. From a reading of Chapter VI as a whole, it is unclear how and before whom public law disputes between individuals and the State are to be resolved. At present, the Constitution, far from providing for judicial review of administrative action, appears to vest the exclusive power to abrogate unlawful acts and decisions (other than those violating the Constitution) in Ministers and in the Council of Ministers (Articles 37 and 40 of Chapter IV of the transitional Constitution). However, the Commission has been informed that, in practice, such disputes are assimilated to civil jurisdiction in Albania. In

addition, the Commission has noted that the draft Code of Civil Procedure currently being prepared by the Albanian government will include a special chapter on administrative jurisdiction.

Having regard to the specificity of public law remedies against the administration, to the need for particular procedures to be tailored to this end, and to the importance of this jurisdiction for the rule of law in general, the Commission believes it would be preferable that administrative tribunals or specialised administrative chambers be established. In addition, the details of administrative jurisdiction should be provided for by law, in accordance with the third paragraph of Article 5 of Chapter VI, which provides that the organisation and powers of courts are to be regulated by law.

c) Specialised tribunals

Although paragraph 2 of Article 5 quite rightly prohibits the establishment of extraordinary courts, it would be useful to foresee in Chapter VI that specialised tribunals might be established to supplement the jurisdiction of the ordinary courts in specific areas, either *ratione materiae* (e.g, labour disputes, social security matters) or *ratione personae* (e.g, minors).

d) Appointment of judges and term of office

Under paragraph 2 of Article 6, the President and the Vice President of the Court of Cassation are elected by Parliament at the proposal of the President, whereas the other members of the Court are elected by the Assembly without any such intervention by the President. This difference of treatment between members of the same court does not appear to be justified, and it is in any case ill advised that the President should participate in the nomination of judges.

In the view of the Commission, future constitutional reform in Albania should require that the above inconsistencies be remedied and that a common procedure for the appointment of judges for defined or indefinite terms of office, be provided for in the Constitution. In the immediate term, legislative intervention is imperative, in accordance with the third paragraph of Article 5 of Chapter VI. The number of judges on the Court of Cassation should also be fixed by law.

e) Immunities and guarantees against dismissal

Section I of Chapter VI provides for two distinct procedures for the removal of judges from office, one applicable to members of the Court of Cassation, the other to members of District and Appeal Courts.

Court of Cassation judges may be removed, under paragraph 4 of Article 6, only on the grounds of conviction of a serious criminal offence established by law or on grounds of mental disability by a vote of Parliament which expressly invokes such reasons. While such grounds for removal cannot be criticised, it is precisely because they are and should be so narrowly defined that the power to make such a finding should rather be entrusted to a judicial body such as the Constitutional Court. Care should be taken to ensure that procedures for the discipline and removal of judges are free from any suggestion of political influence.

As regards District and Appeal Court judges, Chapter VI does not specify the grounds or the manner in which they may be removed. Paragraph 2 of Article 10 provides that their immunity may be withdrawn and that they may be removed from office only by a competent body, consistent with circumstances and procedures provided for by law. Furthermore, paragraph 3 provides that any such law must respect constitutional and international guarantees of judicial independence. The only other relevant provision is Article 15, which makes it clear that the sole "competent body" for disciplining and dismissing judges is the High Council of Justice, the composition of which is considered below.

In the Commission's view, there is no justification in principle for treating judges differently in matters of discipline and removal according to whether they are members of superior or inferior courts. All judges should enjoy equal guarantees of independence and equal immunities in the exercise of their judicial functions. In this last connection, it may be observed that whereas members of District and Appeal Courts benefit from an express constitutional guarantee of immunity in the exercise of their functions in Article 10, no similar guarantee is extended to members of the Court of Cassation. This contrasts also with the express guarantees in Article 22 for members of the Constitutional Court.

In the view of the Commission, future constitutional reform in Albania should require that the above inconsistencies be remedied and that a common procedure for the removal of immunity, on the basis of common and strictly defined grounds, be provided for in the Constitution. In the immediate term, as indicated at point B.2 below, legislative reform is required.

f) Qualification and incompatibilities

There is no provision in Chapter VI either for the minimum qualifications for office or the incompatibilities of function of District and Appeal Court judges. Although Article 6 provides for the minimum qualifications of members of the Court of Cassation, no provision is made for incompatibilities. This contrasts with Article 21, applying to members of the Constitutional Court.

These are matters which, although they need not feature in a constitutional text, might sensibly be so included as important elements circumscribing the authority and independence of the judiciary. Again, the Commission would recommend that these matters be considered in the context of future constitutional reform in Albania. In the immediate term, they must be regulated in detail for each level of jurisdiction by appropriate legislation.

g) Prosecutors

As a matter of practice, the Commission understands that the following position applies to prosecutors in Albania:

- The prosecution system in Albania has undergone significant reform in recent years, shifting towards an accusatory system in which prosecutors appear as equal parties before the courts. Prosecutors are said to be independent from the Ministry of Justice or any other executive power, having the formal status of magistrates within the judicial branch of government (although not performing any functions of adjudication). In particular, they are not subject to inspections or otherwise to the authority of the Ministry of Justice. Rather, the head of each prosecution office, at State, District, Appeal and military levels, supervises his or her own staff;

- Although the Prosecutor General has a general duty to ensure that prosecutors apply the law correctly, and can issue general instructions to this effect, the decision of a prosecutor not to prosecute a particular case can be disputed only by the alleged victim of an offence, by challenging the decision before the courts. In such an event, the court cannot order the prosecutor to prosecute, but only to reconsider the matter;

- Apart from representing the State in criminal proceedings, prosecutors in Albania are charged with the investigation of crimes and for this purpose instruct the judicial police who are attached to each of the prosecution offices and who are answerable solely to such offices.

This structure of this system complies with Council of Europe standards in this field. However, although it is confirmed and largely regulated by the recently adopted Code of Criminal Procedure, the Commission notes that, as with judges, many provisions of law n° 7574 of 7 July 1992, as indicated at point B.2 below, need to be amended and supplemented in certain important respects. In the view of the Commission, such reforms, applicable to

both judges and prosecutors, can be so addressed in the context of a general law on the status of magistrates.

As regards constitutional provisions, Chapter VI calls for the following observations:

Under Article 13 of Chapter VI, the Office of the Public Prosecutor "is the only authority which conducts criminal prosecutions during investigation and trial". Although it appears from the English translation of the text that it is indeed the intention of Article 13 as a whole to position the prosecution firmly within the judicial branch of government, there are certain inconsistencies which nonetheless give rise to doubt: in the second paragraph, reference is made to the judicial activities of prosecutors, which might imply that they have other non-judicial functions.

Concerning the obligation on prosecutors to obey the orders of their hierarchical superiors in the exercise of their functions, as provided for in the same paragraph, the Commission has been informed that they are under no such obligation as a matter of law in connection with pre-trial and trial decisions in concrete cases.

h) The High Council of Justice

The composition of the High Council of Justice, which under Article 15 is vested with important powers to appoint, transfer and dismiss District Court and Appeal Court judges as well as prosecutors, is problematic. Although the Commission is aware that other countries, with a longer democratic experience than Albania, may provide for analogous specialised bodies for judicial appointments and discipline, the Commission is of the view that the Albanian model creates an undue imbalance in favour of the executive branch of government, for the following reasons, taken together:

- the fact that the Council is chaired by the President of the Republic, who participates in its deliberations and has a vote;

- the participation by the Minister of Justice in its deliberations, his right to vote, and the fact that proposals are made exclusively by him in matters concerning judges (under Article 7 of the "statute", the President can also make proposals, although in practice it is always the Minister of Justice who performs this function);

- the fact that proposals are made exclusively by the Prosecutor General in matters concerning prosecutors;

- the fact that there is no guarantee that the "nine lawyers distinguished by their capabilities" will themselves be members of the judiciary;

- the fact that the Council is not required to decide matters unanimously or at least by a weighted majority;

- the unclear manner (at least in the English version) in which the nine lawyers distinguished by their capabilities are elected.

It is imperative that a more appropriate balance to the Council's composition be provided for and guaranteed by law, with provision for at least a majority of its members to be members of the judiciary elected by members of the judiciary. In addition, as detailed at point B.2 below, the law must provide for a number of procedural and substantive safeguards affecting the exercise of the Council's various powers.

i) Court budgets and judicial salaries

Articles 29 and 30 together make up the sole two provisions in the third section of Chapter VI. Each, in dealing with the questions of court budgets and judicial salaries respectively, and having regard to the absence of implementing legislation providing for governing principles in this area, may be said to be insufficiently detailed on important points of principle affecting the independence of judges:

- Article 29, while stating the general principle that the judiciary has its own budget which is fixed in order to be sufficient for its normal functioning, does not specify the extent to which the Ministry of Justice, which has overall responsibility for the administration of justice, intervenes in the administration of that budget. In practice, it appears that the Ministry in fact controls every detail of the courts' operational budgets, a practice which contains obvious dangers of undue interference in the independent exercise of their functions.

- Article 30 does not state that the salaries of judges cannot be reduced during their term of office, which is a common and desirable guarantee of judicial independence.

These questions can and should also be addressed by ordinary legislation. In principle, there is no reason why they could not be so addressed in the context of a law on the status of magistrates.

The Commission notes, for the purposes of this Report, that each of the Presidents of the various courts which exchanged views with the Commission's delegation to Tirana emphasised that they had insufficient administrative autonomy from the Ministry of Justice. In addition, the low level of salaries of judges in Albania, relative to other professions and activities though not to comparable positions in the civil service, was repeatedly identified as an objective factor contributing to corruption among judges and to the consequent reduction of public confidence in the courts.

2. Regulatory and penal provisions governing discipline and dismissal

i) Law n° 7574 of 7 July 1992 and the statute of the High Council of Justice

Having regard to the request of the Albanian government for assistance from the Council of Europe in drafting new legislation in this area, the Commission avails of this opportunity to make certain brief remarks on the contents of the various provisions of law n° 7574 of 7 July 1992 and the existing "statute" of the High Council of Justice which will need to be addressed by appropriate legislative reform.

The Commission notes, first, that law n° 7574 of 7 July 1992 is concerned primarily with jurisdictional matters, and provides only for certain basic provisions on qualification for judicial office, incompatibilities, immunities and discipline. The only other **relevant** legal instrument is the "statute defining the function and administration of the High Council of Justice", a regulation adopted by the High Council of Justice itself in purported reliance on the third paragraph of Article 15 of Chapter VI, which provides as follows:

> "The manner in which the Supreme Council of Justice functions and acts is defined by a statute approved by the Supreme Council of Justice."

In the Commission's view, this provision enables the High Council of Justice to determine its own rules of procedure by adopting an appropriate "statute", but does not allow for important matters governing its powers and affecting the rights and duties of magistrates to be so regulated. These matters should rather be regulated by a law adopted by Parliament.

At present, however, the statute contains many provisions granting extensive powers to the High Council of Justice, powers which by their nature should be regulated by law. Indeed, Article 10 of Chapter VI provides *inter alia* that First Instance and Appeal Court judges can be removed only in circumstances and in accordance with procedures provided for by law, a guarantee which is not in the Commission's view satisfied by the above regulation. This observation applies equally to prosecutors, having regard to Articles 13 and 14 of Chapter VI.

In consequence, the Commission points to the necessity of revising the statute of the High Council of Justice so as to confine it to matters properly

affecting "the manner in which it functions and acts".

a) In Article 1 of the statute, the High Council of Justice is stated to have powers over military judges. The Council cannot, however, unilaterally extend its powers in this way - neither Article 15 of Chapter VI nor any provision of law n° 7574 provides for such a competence.

More generally, the exact status of "deputy judges" requires to be clarified (see Section D below).

b) In Article 5 of the statute, the provision for adoption of decisions by simple majority of those present should be revised.

c) Articles 8,9,10,11 and 12 of the statute, which require revision, should not be retained in the statute, but provided for by law.

The power to transfer, demote and reduce the salaries of judges for disciplinary reasons, variously provided for in Article 20 of law n° 7574 and Article 8 of the statute, is contrary to accepted standards of judicial independence. It is worth repeating in this connection that the President and Minister of Justice should not participate in such decisions.

In Article 19 of the law and Article 9 of the statute, the system of having professional tests following appointment is obviously open to abuses in connection with the confirmation of a magistrate in his or her post. In addition, periodical breaches of discipline, professional incompetence and immoral acts are categories of conduct which are imprecise as legal concepts and capable of giving rise to abuse.

Any legislative provision replacing Article 10 of the statute should be reworded to comply fully with the presumption of innocence until conviction.

Article 11 of the statute provides for secret deliberations and a discretionary power to summons and interrogate affected persons quite contrary to the right to be heard and other procedural rights. The Commission notes in this connection that the practice of the High Council of Justice confirms that affected persons are frequently notified of decisions affecting them only after such decisions have been taken.

Decisions on the transfer of judges, in Article 10 of the law and Article 12 of the statute, also require to be circumscribed by appropriate procedural safeguards.

Finally, on a point of general importance, the Commission has learned that the Constitutional Court has jurisdiction to hear complaints against decisions of the High Council of Justice which allegedly violate the independence of judges, guaranteed by Article 10 of Chapter VI, and that it has struck down a decision to transfer a judge in at least one case.

While this is to be welcomed, a future law on the status of magistrates should provide for judicial review of decisions affecting judges and prosecutors more generally, prior to the review exercised by the Constitutional Court.

ii) Application of certain Penal Code provisions to judges and prosecutors.

Article 315 of the Penal Code of Albania, contained in Chapter VIII, Section II - "Penal acts against State activity committed by the State administration or Public Service employees" - provides for an offence of "unjust verdict imposition", in the following terms:

> "Imposing a final judicial verdict, recognised and known to be unjust, is punishable by a fine or a sentence varying from three to ten years' imprisonment."

The Commission has been informed that this provision has been used to arrest, to threaten with arrest, and in some cases to prosecute judges for acquitting or convicting defendants in criminal cases. This offence is so clearly open to abuse that it should be repealed as a matter of urgency.

The offence established under Article 313 of the Penal Code, "illegitimate prosecution initiation", is equally questionable, and should be abolished forthwith. This offence is framed in the following terms:

> "The illegitimate institution of legal proceedings on the part of the prosecutor against a person recognised and known not to be guilty is punishable by a fine or by a sentence of up to five years' imprisonment."

C. THE CONSTITUTIONAL COURT

The provisions of Chapter VI governing the Constitutional Court are set out in the second section, comprising Articles 17 to 28.

In general, it can be said that the guarantees provided for the independence of the Constitutional Court are far more satisfactory than those applying to the ordinary courts.

a) Power of Court to review legality of measures generally

In Articles 17 and 28, there is a suggestion that the Court, in addition to having the power to review laws and other measures having regard to the Constitution, has the power to review the legality of measures more generally. The Commission has noted in this connection that the Court itself appears to exercise this dual role in practice when seized of a particular case.

The review of the legality of decisions and measures is, however, properly the task of the ordinary courts, and this should be clarified accordingly.

b) Manner of appointment

Article 17 provides that five members of the Court are elected by Parliament and four by the President of the Republic. This should be interpreted, if not amended, so as to ensure that Parliament adopts its own procedures for selecting and nominating candidates rather than being confined to voting on a proposition from the President or other member of the executive. In addition, in order to avoid an undue influence on the Court by the executive, consideration should be given to requiring a weighted majority of Parliament rather than a simple majority for the election of the Parliament's five candidates to the Constitutional Court.

c) Non-renewable term of office

As appears to be the intention of Article 18, the term of office of members of the Court should be expressly stated to be non-renewable.

d) Incompatibilities

The prohibition on members, in Article 21, from being members of political parties or political organisations appears unwarranted and, possibly, contrary to the rights of freedom of opinion and freedom of association.

e) Jurisdiction

Articles 24 and 25 provide in detail for the various types of jurisdiction exercised by the Constitutional Court. Some of these require clarification:

- What is the difference between paragraphs 1 and 2 of Article 24?

- Does the Court's jurisdiction under paragraph 4 extend only to international human rights treaties, or to all treaties? Whereas the former competence is entirely justified having regard to the similarity of protection afforded by constitutional guarantees in the domestic legal order, the power to examine domestic law for compliance with international obligations more generally falls outside the usual competence of Constitutional Courts.

- In Article 25, it should be stipulated whether the Court proceeds by way of abstract review only or concrete review only, or whether it can undertake both such types of review in any or all of the cases before it.

D. SOME RELATED PROBLEMS IN THE JUDICIAL SYSTEM

In considering Chapter VI of the transitional Constitution, the Commission has identified a number of systematic features of the administration of justice in Albania which have a bearing on the general independence of judges and prosecutors and which call for additional comment. Although these are not questions which call for constitutional resolution, in the Commission's view they are sufficiently important to the overall independence and effectiveness of the Albanian judicial system to warrant inclusion in the present Report. These are listed here for convenience:

a) "Deputy judges"

The Commission has been informed that approximately 30% of District Court judges in Albania, and many prosecutors, do not have formal legal training, but have rather attended a six month course and subsequently passed an accelerated series of law exams. At the same time, although the Commission has been unable to clarify whether such persons have been appointed as full judges, there is a system in operation whereby a number of "deputy judges" participate fully in panels of three judges at District Court level, and can outvote the presiding judge. In addition, it appears that "non-permanent" deputy judges are appointed in practice for short periods of time, thus giving rise to *ad hoc* panels of judges which have every appearance of extraordinary courts.

Whereas the Commission has taken note of Albania's difficulties in establishing a fully trained corps of practising judges, it stresses that guarantees of judicial independence and impartiality must apply to all members of the judiciary.

In certain legal systems, lay assessors may participate in deciding questions of fact; in addition, non-lawyers sometimes participate in specialised tribunals, such as industrial tribunals. However, the present situation in Albania far exceeds such precedents, and requires to be addressed as a matter of priority.

b) Execution of judgments

The system for executing judgments should be reviewed so as to provide that bailiffs are subject only to the authority of judges in the exercise of their functions. The question of the suspensory effect of appeals should also be examined.

c) The legal profession

Article 16 of Chapter VI of the transitional Constitution provides for the free exercise of the legal profession, subject to regulation by law. Pursuant to this provision, a licensing system for lawyers was introduced by the 1994 Law for the Legal Profession. The constitutionality of this law, which vests substantial supervisory and regulatory powers over the profession in the Minister of Justice, has since been upheld by the Constitutional Court.

The Commission wishes to stress, nonetheless, that the guarantee of the free exercise of the legal profession in most democracies is supported and encouraged by a system of supervision and regulation which is exercised largely by the profession itself and by the superior courts of the country, with only a much more limited role being reserved to the executive than is presently the case in Albania.

Because the question was raised as a point of particular concern to practising criminal lawyers in Albania, the Commission points out in passing that Article 7 of the 1994 law confers on a lawyer the right to converse in private and to meet, without limit, his or her client held in custodial arrest, under arrest, or in jail. Authorised persons have the right to observe, but not to listen to, the discussions in such meetings. This provision conforms to international standards for defence rights in pre-trial proceedings.

E. GENERAL AND CONCLUDING REMARKS

As is usual with constitutional provisions governing the administration of justice, a true appreciation of the constitutional position requires a consideration of the existence and content of relevant implementing laws and regulations. Whether Council of Europe standards in this field are met cannot be ascertained from an examination of the Constitution alone.

At present, Chapter VI of the transitional Constitution of Albania provides in general for a reasonable constitutional basis for the significant reforms to the judicial system which have been established over the past four years. Evidently, as outlined above, there are a number of provisions in Chapter VI which could usefully be amended and supplemented in the context of future constitutional reform, but the overall regulation of the legal system requires, first and foremost, legislative action.

In particular, it follows from the above examination of Albanian law and practice that, quite apart from the adjustments which might be made to Chapter VI of the transitional Constitution in the adoption of a definitive Constitution, the absence in existing Albanian laws of detailed guarantees for the proper exercise of judicial functions represents a significant lacuna in the Albanian legal system. Similarly, although the newly adopted Code of Criminal Procedure consolidates many of the reforms in the prosecution system, the law is silent on many important guarantees and safeguards for the independent and proper exercise of prosecution functions. In the Commission's view, these matters can be addressed in a single law on the status of magistrates.

In this last connection, it is to be noted that, with some exceptions, the existing constitutional text does not prevent the Commission's various recommendations for legislative action from being taken up. One such important exception relates to the participation of the President of the Republic and the Minister of Justice in the deliberations of the High Council of Justice: on this matter, nonetheless, it should be noted that Article 15 of Chapter VI does not provide that these members should propose matters to the High Council, nor that they should participate in its votes, and that legislative modification of these aspects of the present system might therefore be possible.

The Commission also stresses the importance of repealing Articles 313 and 315 of the Penal Code.

Other legislative reforms, as indicated above, might address the questions of military jurisdiction, administrative jurisdiction, court budgets and operational autonomy, the execution of judgments, the number of Appeal Courts and the regulation of the legal profession.

As a final remark of central importance to the Commission's task in reporting to the Assembly on Albanian law and practice in this field, the Commission

wishes to record that it has been unable to satisfy itself that judges in Albania feel themselves free to arrive at their decisions without fear of negative consequences for their professional life.