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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**COMMENTS ON THE REVISED DRAFT LAW ON THE
ORGANISATION AND FUNCTIONING OF THE COUNCIL
OF MINISTERS OF THE REPUBLIC OF ALBANIA
(CDL (2001) 28)**

THE REVISED DRAFT OF THE ALBANIAN LAW ON THE COUNCIL OF
MINISTERS

Notes by prof. Sergio Bartole, University of Trieste.

I. I see that no decision was taken about the number of the ministries. Therefore my remarks about the structure of the Executive are still relevant.

II. It should be underlined that the fifth alinea of art. 6 covers all the hypotheses provided for by the previous alineas.

III. Art. 9 7) ç can be misleading: the Government has to submit to the Constitutional Court all the international agreements and not only those " that it considers incompatible with the Constitution " (art. 131 b of the Constitution).

IV. There are still some ambiguities in the rules concerning the functions of the Prime Minister. a) In the opening part of art. 11 a provision should be inserted to clarify that the Prime Minister has the power of proposing to the Council of ministers " the principal directions of the general policies " which the Council is competent to approve. b) At the beginning of par. 3 of the same article it has to be emphasized that the Prime Minister " specifies the principal political and administrative directions of the ministers " in the frame of " the principal directions of the general policies " adopted by the Council of ministers. c) It is not clear which are the disagreements between ministers which the Prime Minister " resolves " (art. 11 d) : I guess that they are conflicts of competences. Political disagreements are covered by the provision of art. 11. 3 according to which the Prime Minister " suspends the application of acts of the ministers and proposes their repeal, submitting them to the Council of Ministers at the next meeting ".

V. I realize that the Prime Minister submits proposals for the appointment and discharge of high functionaries in the foreign service without a previous decision of the Council of ministers. Do I understand correctly the draft?

VI. According to art. 26 g) the General Secretary " covers all the economic problems of the administration, of personnel, and of technical services in the apparatus of the Council of ministers ". Does he have also the power of controlling and supervising the functioning of the cabinets provided for by articles 21 and 22?

VII. In art. 28 it has to be stated that experts and public employees invited to take part in the meetings of the Council of ministers don't have the right to vote: the same rule is explicitly stated for the viceministers.

VIII. I would be advisable that art. 30 provided that the General Secretary has to prepare the agenda of the meetings of the Council of ministers under the direction of the Prime Minister according to art. 11.

IX. In art. 43 third alinea I would prefer that " the Prime Minister coordinate the program of the Council of ministers with the legislative program of the Assembly ".

X. In art. 49 decisions with the force of law should enter into force only after their publication in the " Official Journal ".

XI. Reference in art. 55 to other articles of the draft could be misleading: it could be useful distinguishing articles whose implementation requires a substatutory normative act (I mean articles 20, partially 21 and 22, 33, 34, 40, 41) from those articles which have to be implemented through executive acts (for instance, the appointment of the Secretary General ex art. 32, and the appointment of the personnel of the two cabinets and the disciplinary measures affecting them ex art. 21 and 22).

Renzo Davide

**Draft Law on the Organization and Functioning
of the Council of Ministers of the the Republic of Albania
(Version: Translation of 22 February 2001)**

Comments by Mr. Georg Nolte (Substitute Member, Germany)

I. General Comments

The following comments relate to the revised version of the Draft Law on the Organization and Functioning of the Council of Ministers of the the Republic of Albania (version: translation of 22 February 2001). The original version has already been subject to comments by members of the Commission, including the present author (see CDL (2000) 91 of 21 November 2000). The revised version has incorporated a number of suggestions from CDL (2000) 91, in particular those which raised doubts concerning the constitutionality of certain provisions. Most other suggestions in CDL (2000) 91 concerned questions of expediency. It is assumed that these suggestions have been taken into account and considered appropriately. As far as they have not been taken up, they shall not be repeated here.

The revised version contains a limited number of new elements which do not, however, bring about major changes. It is perhaps notable that the powers of the Prime Minister vis-à-vis the Ministers have been enlarged (see e.g. Article 19 (Discharge of a Minister)).

For these reasons the comments can be short. They only refer to minor points.

II. Specific comments concerning the revised draft law

1. **Article 3 (Definitions):** Why can the Prime Minister issue „individual acts“, but not „normative acts“, while the ministers can issue both?
2. **Article 5 (Structure of the Council of Ministers):** In this respect I have been convinced by the pertinent comments of my colleague, Mrs. Hanna Suchocka, in CDL (2000) 108 of 7 December 2000. Since the goal should be not to involve Parliament too much Variant II is preferable.
3. **Article 9 (Competencies of the Council of Ministers):** I wonder whether paragraph (7)(a) is consistent with Article 11 (1) insofar as the first does not expressly include officials in the foreign service while the second does. On the other hand, the second does not include the director of State Police while the first does.
4. **Article 18 (Incompatibility of Function of a Member of the Council of Ministers):** I still wonder whether this provision is not too narrow. A member of the Council of Ministers may not be „a director of or member of the organs of for-profit companies“. Does this include every enterprise? Does this include the situation that the Member of the Council of Ministers is a simple employee of the for-profit company? If not, the provision would be easy to circumvent. Or is the pay of a Member of the Council of Ministers so low that he or she must seek for other sources of income?
5. **Article 31 (Loyalty and Solidarity):** The rule according to which Members of the Council of Ministers „shall avoid every expression of disagreement ...“ will probably be

violated frequently, sometimes for understandable reasons. There should be no sanction in cases of such violations.

6. **Article 47 (Legality of Acts):** It is proposed to exchange the term „expressly“ for the word „specifically“. Whether an authorization to delegate is (sufficiently) „express“ is liable to produce fruitless formalistic disputes. What is important is that the delegation is sufficiently specific in substance.
7. **Article 49 (Entry of Acts into Force):** Individual acts should only receive „juridical force“ after their communication to their addressees. Another point: The formulation „the date when the act is communicated to the interested subjects“ raises an issue which is perhaps only a problem of translation: In some systems of administrative law, the term „interested subjects“ encompasses not only the addressees of an act, and also not only those persons whose rights are (or could be) infringed the act in question but everybody who has some personal interest in the matter (e.g. the neighbor). It would seem ill-advised to make the entry into force of an individual act dependent on its communications of any „interested subject“. In my opinion it is preferable to choose the addressee of an individual act.