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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**MEMORANDUM  
ON THE MEETINGS  
BETWEEN THE ALBANIAN AUTHORITIES AND  
A DELEGATION OF THE VENICE COMMISSION  
ON THE REFORM OF THE JUDICIARY  
IN ALBANIA**

(Tirana, 19-20 February 2014)

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*\*This document has been classified restricted on the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

1. By letter of 14 October 2013, the Minister the Minister of Justice of Albania, Mr Nasip Naço, asked the Venice Commission for assistance for the reform of the Judiciary in Albania.
2. On 21 November 2013, a delegation of the Venice Commission, composed of Mr Sergio Bartole, accompanied by Mr Schnutz Dürr from the Secretariat and the Deputy Head of the Council of Europe Office in Tirana, Mr Olsi Dekovi, met (in chronological order): the President of the Constitutional Court of Albania, Mr Bashkim Dedja the Deputy Minister of Justice, Mr Arben Isaraj, the Minister of Foreign Affairs, Mr Dimitir Bushati and the Minister of State for Relations with Parliament, Mr Ilirjan Celibashi, in order to discuss judicial reform. In parallel, also on 21 September 2013, the Minister of Justice met with the President of the Venice Commission, Mr Buquicchio and the Deputy Secretary of the Venice Commission Ms Simona Granata-Menghini in Brussels.
3. On the basis of these discussions, in a letter of 7 January 2014, the Minister of Justice identified six areas for reform for which he sought assistance from the Venice Commission:
  1. Checks and balances between the judicial, executive and legislative powers and within the judiciary itself;
  2. Redefining the constitutional position of the High (or Supreme) Court;
  3. Reforming the functioning of the High Council of Justice;
  4. Improving court administration;
  5. Improving the procedure of appointment of the Prosecutor General and defining the role of the Council of Prosecutors;
  6. Improving the constitutional position of the Judges of the Constitutional Court and defining the role of the National Judicial Conference.
4. On 18 and 19 February 2014 a delegation of the Venice Commission, composed of Messrs Bartole and Paczolay and accompanied by Mr Dürr from the Secretariat and the Head of the Council of Europe Office in Tirana, Mr Marco Leidekker, visited Tirana and had meetings with (in chronological order):
  - the Minister of Justice, Mr Nasip Naço, and Deputy Minister of Justice, Mr Ildir Peci,
  - the Chair of the Union of Judges, Mr Ervin Metalla,
  - the President of the High Court, Mr Xhezair Zaganjori,
  - the Deputy Head of the High Council of Justice, Mr Elvis Cefa,
  - the Secretary General of the President's Office, Mr Arben Idrizi,
  - the Chair of the Bar Association, Mr Maksim Haxhia,
  - the Prosecutor General, Mr Adriatik Llalla,
  - as well as with the EU Delegation and EU and CEPEJ experts.
5. At its 98<sup>th</sup> plenary session (Venice, 21-22 March 2013), the Commission authorised the transmission of the rapporteurs preliminary remarks to the Albanian authorities prior to the next plenary session. The present memorandum implements this task.

#### **Issues discussed at the meetings in Tirana**

6. The scope of the envisaged reforms, set out in the letter of 7 January 2014 and discussed in February 2014 in Tirana, is very wide and involves both constitutional and legislative amendments.
7. A major issue raised by authorities is the perception of widespread corruption at all levels of the Judiciary, including at the High Court. It seems that existing disciplinary procedures are not efficient enough.

8. Contrary to ordinary judges, High Court judges are not subject to evaluation or disciplinary procedures. They can be revoked by Parliament but this cannot replace a disciplinary procedure. One of the proposals made was to bring the High Court under the control of the High Judicial Council. The Commission's delegation supported this proposal.

9. Another issue raised by the authorities is the backlog of some 12.000 cases at the High Court. Many cases relate to issues of immovable property. The Minister of Justice and the President of the High Court agree that the Court should reduce its case-load through more uniformisation judgements.

10. In uniformisation judgements, the plenum of the High Court decides on the provisions of the law, which have been interpreted differently by various appeals courts or – preventively – when such diverging interpretations are likely. These decisions have the force of binding precedent and should allow deciding similar cases more quickly. Given that uniformisation judgements are not abstract but are given in individual cases, the Venice Commission's delegation did not object to this practice.

11. It seems however, that uniformisation judgements alone will not be sufficient for dealing with the backlog within reasonable time. In 2013, 5600 cases had been settled at the High Court but 5400 new cases had arrived.

12. One solution proposed during the meetings was to transform the High Court into a real cassation court, which should not take any evidence and look into points of law only. Any first instance jurisdiction should be removed from the High Court. The delegation supported this idea.

13. The authorities also referred to the appointment of judges of the High Court. According to the Constitution, they are elected by Parliament with a simple majority. As a consequence, only few of the current judges are career judges but a recent amendment to the law on the High Court provides that 75 per cent of the judges should come from the appeal courts. This provision has not yet been implemented, however.

14. Changing the way how High Court judges are appointed, by removing the election of the judges of the High Court by Parliament by simple majority, would imply a constitutional amendment. The Commission's delegation supported this proposal. In the absence of constitutional changes, even on the legislative level at least a disciplinary procedure could be introduced for the judges of the High Court.

15. On 17 March 2014, the Ministry of Justice requested an opinion on two draft laws amending the Civil and Criminal Procedure Codes, which would limit the possibility to appeal to the High Court in a number of cases in order to reduce the case-load of the Court and to bring it closer to a cassation court. The draft would also allow for the punishment of lawyers who do not come to Court hearing or otherwise delay proceedings. The adoption of this opinion is foreseen for the 99<sup>th</sup> plenary session of the Venice Commission, on 13-14 June 2014.

16. The Commission's delegation pointed out that its work would build on the numerous reports and proposals made, *inter alia*, in the framework of the EU Euralius projects.

### **Major proposals**

17. Several proposals were discussed during the meetings:

1. A constitutional amendment, which would bring the High Court under the umbrella of the High Council of Justice: its judges would no longer be elected by Parliament with simple majority for renewable nine year mandate. The Venice Commission's

delegation supported this proposal which also would ensure that the High Court judges became subject to disciplinary liability.

2. The Commission's delegation supported the idea that the High Council of Justice should be depoliticised. Its members should be elected by a qualified majority in Parliament and higher qualifications should be required.
3. Currently, the High Council is chaired by the President of the Republic. Again, a constitutional amendment would be required to change this. Alternatively, the President's powers could be limited by introducing procedural safeguard by law.
4. The High Court should become a real cassation court dealing with points of law in appeal cases and should no longer examine evidence. In the light of the huge backlog of the court, the delegation supported this proposal as well.
5. The overlapping of the inspection by the Minister of Justice and the High Council of Justice should be addressed. Ideally, a single system should exist, preferably under the authority of the High Council.
6. The Minister of Justice also proposed transforming the existing prosecutorial council from an advisory body into a decision making body as concerns the appointment and discipline for judges. Given the diversity of models of organisation of the prosecution systems in Europe, the delegation did not take a stance on this issue. However, in a number of opinions, the Venice Commission insisted on the need for prosecutors to be able to appeal to a board of prosecutors or a judicial instance against allegedly illegal instructions.

18. Constitutional amendments are clearly preferable for items 1 and 2 above. However, if constitutional amendments were impossible to implement, important improvements could be achieved also on the legislative level.

19. Criteria for High Court judges could be specified in the law and the High Council of Justice could be called upon to advise Parliament on the merits of High Court judge candidates. The role of both the President of the Republic and the Minister of Justice in the Judicial Council could be reduced also on the legislative level.

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