



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

**REPORT OF THE HEAD OF THE OSCE PRESENCE IN ALBANIA
TO THE OSCE PERMANENT COUNCIL, 8 SEPTEMBER 2011**

The OSCE Presence in Albania has continued to benefit from policy guidance provided by participating States, the OSCE Chairmanship and the Secretariat over the last twelve months. The Presence also received visits from a high envoy of the Lithuanian Chairmanship in Office, from the OSCE Parliamentary Assembly, and the former Secretary General, all of which assisted efforts regarding the political situation and in strengthening institutional ties with Albania. The Presence continued to co-operate closely with neighbouring OSCE field operations, including hosting the annual regional heads of mission meeting in Tirana. In carrying out all its activities, the Presence has endeavoured to reflect national strategic priorities. Appreciation should be expressed to the Albanian Ministry of Foreign Affairs for their support as well as to all the other line ministries, state institutions, and civil society the Presence has engaged with. Finally, appreciation must also go to all the participating States and multilateral institutions that have funded programming over the last year.

GENERAL SITUATION

From an Albanian perspective, the greatest single national achievement was clearly the lifting of the Schengen visa regime for citizens holding biometric passports on 15 December 2010. To date, Albanian citizens have shown that they merited the trust placed in them by all the countries of the Schengen area. However, the main political issue has been the continuation of the political impasse that has been ongoing since the autumn of 2009. As a consequence, the Assembly became stalled with no legislation requiring a three-fifths qualified majority being approved. As a further consequence, the reform agenda has remained largely blocked. While repeatedly avoiding any serious attempt at constructive political engagement in the Assembly, the opposition was seen to organize public protests, including the violent events of January 2011 in Tirana. The impasse continued through to the Local Government Elections in May. In different ways, both sides must now look to significantly adjust their strategies and policies in order to tackle the current challenges facing the country. Only when all sides begin to fully understand what being in *Government* and being in *Opposition* actually means within a democratic system will Albania be able to make significant headway on the reform agenda.

With regard to the May 2011 local government elections, this report will not enter into any detailed assessment of the electoral process as the final OSCE/ODIHR Election Observation Mission Report states what needs to be said. All political sides need to read the OSCE/ODIHR report in its entirety, avoiding the temptation to *cherry pick* on liked or disliked elements. The recommendations contained in the report, as well as those from the 2009 report, now need to be transformed into a successful electoral reform. Clearly, in order for this to happen, far greater cross party political dialogue needs to be demonstrated. A full reform should be: a) technically sound; b) widely consulted and certainly not rushed; and c) consensual to the widest extent possible. A reform based on all three elements is possible if the party leaders wish it to be so. There is also an urgent need to see an Electoral Code agreed that all sides can read in the same way. With previous electoral reforms having often become protracted, and with Presidential elections in the Assembly due in 2012, the potential for further challenges remains. The potential inclusion in any reform of a review of the electoral

system reinforces the need for the reform process to start immediately. On the assumption that both sides are serious about seeing the next elections comply fully with international standards, they need to start now or run the risk of failing again. In liaison with OSCE/ODIHR, the Presence will look to provide support to the reform process in order that a momentum is established and maintained so that a consensual result can be found in due time.

Regarding the violent events of 21 January 2011, as both prosecution and Assembly investigations remain ongoing, it seems appropriate to note that a protest organized by the main opposition Socialist Party (SP) saw violent skirmishes take place between protesters and police that resulted in four fatalities with injuries caused to many others. How these deaths occurred and the identification of those responsible must be a focus of the ongoing inquiries. In the days following the disturbances, some of the harshest public language heard in recent times from both sides was observed, not least from the Government in relation to attacks against the President of the Republic and the General Prosecutor, which served only to exacerbate an already tense situation. All sides now appear to understand how their respective conduct during this period did little to raise Albania's international reputation. To date, neither the General Prosecutor's office nor the inquiry committee have been able to present any tangible results.

Regarding the Assembly, despite repeated international calls to return unconditionally to the Assembly, the SP's refusal to do so contributed to the Assembly's inability to pursue reforms. As a consequence of the frequent and extended absence, the SP failed in its constitutional duty to scrutinize government work and, in particular, to contribute to electoral reform in time for local government elections. That said, assuming that from now on the opposition finally shows a greater willingness to work with the ruling coalition in the Assembly, more needs to be done by the Assembly leadership and the ruling coalition in helping to establish a more inclusive political environment. While in all modern democracies, the ruling coalition has the political right to *govern*, the need also to involve the opposition in the policy making process and to allow them sufficient space to scrutinize Government is also clear. Although a number of efforts to reform the Rules of Procedure were attempted by the Ruling Coalition, these changes ostensibly targeted only limited areas of parliamentary life and were also not approved by consensus. A comprehensive review should take place of a number of legislative and internal regulations namely: the Law on the Status of MPs, the Law on the Work of the Assembly in the Process of Albania's Integration into the European Union and the Assembly's Rules of Procedure to allow all parliamentarians to effectively fulfil their duties. These changes should be agreed with the consensus of both sides.

While progress has been made with regard to the public availability of minutes of Assembly meetings, the legislative drafting process is often characterised by a lack of transparency, proper consultation, adequate legislative drafting and appropriate time frames for thorough consideration. The ability of MPs and staff alike to successfully track amendments to draft legislative bills appears to be an issue. Although Albania has committed itself to adopt specific rules on strengthening public transparency and consultation in the legislative process, no rules have been approved. Provisions encouraging public hearings, contained in the Rules of Procedure, are rarely put into practice, and invitations appear to be selective. The Assembly amended rules on immunity from criminal prosecution. Accordingly, MPs can now waive their immunity in cases of criminal prosecution for corruption charges by signing an individual declaration at the start of their mandate. However, immunity remains the prerogative of the Assembly and not of a single MP. Hence, one MP cannot give authorization for criminal prosecution nor can the Assembly give an *ex ante* authorization for

such. Thus, the Assembly's approval of this provision seems open to debate as the declaration could be turned into an obstacle for possible criminal proceedings.

On the rule of law, the political impasse has meant that neither legislation nor senior state appointments requiring a qualified majority were possible; including a draft law on National Judicial Conference that is needed to appoint High Council of Justice members, and a draft law on administrative courts needed to introduce courts that deal with administrative disputes. The independence of state institutions and the judiciary needs further strengthening as the justice system currently lacks sufficient transparency, accountability and efficiency. While the approval, in the Council of Ministers, of a justice sector reform strategy shows a political will for reform, it remains an open question whether the strategy will have the intended impact. Again, to address the issue of reform, greater political will is needed.

The replacement of two thirds of the nine Constitutional Court's judges remains incomplete. Regarding the interpretation of the respective article of the Constitution, the Court decided that the President and the Assembly should co-operate in defining the legal criteria in order to have a qualitative composition of the Court and that the definition of the proper mechanism for renovation of the court composition every three years was needed. Following this decision, only three new judges were appointed, whereas the remaining three nominations were sent back to the President by the Assembly. The reasoning is that a current replacement of two thirds of the Court's judges would violate the Constitution. However, while the replacement of six judges at once violates the constitutional provision stating that one-third should be replaced every three years, the present situation with judges in office for more than one year after the expiration of their term violates the constitutional provision stating that the term is limited to 9 years. The Assembly now needs to provide a solution to this issue.

More recently, public statements have been made by the opposition, urging constitutional reform. So far, such calls have gone unheeded from within the ruling coalition. The last constitutional amendments date from April 2008 and were consensually agreed by the two main political parties, and overwhelmingly approved in the Assembly. At that time, many argued that the changes proposed required greater scrutiny and that the changes agreed raised legitimate concerns about the constitutional separation of powers – namely the perceived increased power of the Prime Minister inter alia the power of the President. However, the ruling coalition contend that changes to the Constitution should not be amended after only three years and even then only after sound preparations have been made. As the changes made in 2008 were agreed by both sides, they suggest that any calls now for further revisions could be seen as political in their nature. Ultimately, it must be up to national actors to decide how relevant a discussion on the nation's constitution is at this particular moment in time. If the time between now and the next parliamentary elections is to be a period when demonstrable progress is to be seen in pushing forward the reform agenda, then all political sides need to assess the volume and breadth of legislative 'projects' that can be undertaken. Otherwise, the danger remains of good intentions becoming politically 'drowned' through a mixture of institutional overload and political rancour. The first objective should be an agreement on electoral reform. Other issues of policy and political interest can be discussed afterwards.

The *Gerdëc* court case dealing with the blast in an ammunition dismantling factory near Tirana in 2008, in which 26 people were killed, has continued without any signs of a conclusion. The judicial process in this case has not moved in full compliance with fair trial principles. While a defendant must have the fundamental right to legal defence, the repeated non-appearance of defence lawyers in court hearings is a clear abuse of the legal process. Further delays will serve only to undermine much needed public confidence in the rule of law.

The legal authorities should make every effort to ensure that a fair and public hearing is held and concluded within a reasonable timeframe. The public remains disappointed and frustrated by the protracted nature of this case. It deserves some concrete answers so that lessons can be learnt.

On human rights, while the legal framework for the protection of minorities is in place, implementation in relation to the Roma minority, in particular, remains unchanged. They remain largely marginalized with high unemployment, illiteracy and poor access to healthcare and education. Although a national Roma strategy has been approved, no clear signs of its implementation were visible. On child rights, the approval of a law on the protection of child rights strengthened the legal and institutional framework on this issue. While the mandate of the Ombudsperson expired in February 2010, this post remains vacant, as the appointment of a new Ombudsperson requires a qualified majority in the Assembly. For over a year, all duties were performed by the longest serving Commissioner even though the law allows such practices to continue for only one month. Although the new duties of the Ombudsperson as the National Preventative Mechanism have been carried out successfully, on many occasions local government agencies failed to respect the recommendations coming from that Office. Prison overcrowding remains an issue, especially in the only women's prison, and in pre-trial detention facilities. Healthcare is also insufficient, not least in regard to mental health issues. Detainees with mental health issues should be treated outside of the prison system as determined by international and national legislation.

On civil service reform, the institutional procedures for recruiting, promoting, appraising and dismissing public officials requires further strengthening in terms of transparency and the rule of law. The Civil Service Commission remains unable to fully execute its role in solving disputes between civil servants and state institutions. However, this is more a reflection of the lack of will of state institutions to implement Commission decisions. Its independence should be respected by all other public institutions. Final court decisions on the legality of dismissals are to a large extent still not being enforced. The system for judicial review of administrative decisions needs to be made more independent, accountable and transparent through the introduction of an administrative court system in line with international recommendations.

On property reform, private and public investment and lending remain hindered as property ownership cannot be guaranteed in all cases throughout the system. These issues will remain unresolved until further progress is made in developing a comprehensive property reform strategy. Another concern is the unresolved claims of the former property owners for compensation or restitution of property confiscated during the former regime. Currently few former owners have had their claims resolved. The process is slowed by a debate over the authority of the agency responsible to resolve the issue. There appears to be also a lack of transparency and consultation in the drafting of property related legislation. Co-ordination between Government and the relevant state agencies needs strengthening as currently there is unnecessary inefficiency and duplication of effort. The lack of an apparent strategic framework has resulted in poor planning and the insufficient allocation of budget resources to ensure that property laws are fully implemented. On a positive note, the Government has produced an action plan to implement European Court of Human Rights decisions related to the restitution process. Final approval of this action plan is pending in the Assembly.

In fighting corruption, the further alignment of national legislation with international obligations is a positive development. The Government was able to pass amendments to the Criminal Code related to acts of corruption by foreign officials and for imposing significant penalties for corruption in the private sector. Progress was made by the High Inspectorate for

the Declaration and Audit of Assets, including a rise in the prosecution of corrupt junior and mid-level officials. The introduction of electronic procurement systems in public administration also reduces contact between contracting authorities and bidders, thus reducing opportunities for corruption. Yet, efforts to pursue senior state officials accused of corruption remains an issue, not helped by a lack of follow-up by the Prosecution office. Immunity of senior public officials also remains an important issue to be addressed. Ruling coalition attempts to lift the immunity for senior officials failed due to the political impasse. A stronger track record of trial verdicts and appropriate sentencing and/or fines in corruption cases involving senior officials is important in restoring public confidence. The fight against corruption will only succeed when all sides work together instead of misusing it for partisan self interest.

In combating the trafficking of human beings, positive signs were noted in: the drafting of standard operating procedures to identify, refer and protect trafficked persons, the drafting of the 2011-2013 National Anti-Trafficking Action Plan and the Government's decision to budget support for victims of trafficking. The identification of victims of trafficking returning from other countries has also increased. The identification of internal victims of trafficking, however, remains inadequate due to the current legal framework, poor investigation techniques, insufficient inter-agency co-operation and corruption. Corruption within the judiciary hampers the Government's ability to prosecute suspected traffickers. State protection schemes are inadequate to provide witnesses due protection. Child labour, especially involving forced child begging, remains an area in need of attention, while the child protection system lacks sufficient involvement of state social services. Labour exploitation patterns also require additional investigation and attention. Further efforts should be made in the pre-screening of illegal migrants detained when transiting Albania to identify possible victims of trafficking.

In fighting organized crime, the State Police prosecuted several important money laundering cases following the approval of a so-called *anti-mafia law*. National legislation needs to be aligned with international standards. In addition, efforts to introduce preventative measures and to reduce cash transactions are also needed. An increase of joint operations was noted with other national police services in the EU relating to drug seizures and other organized crime activities. An increase was also observed in the confiscation of criminal assets. A further strengthening of institutional co-operation between law enforcement agencies now needs to happen. On cybercrime, significant police operations were organized relating to the forgery of credit cards or thefts via the internet. The on-line criminal intelligence system is widely used, leading to an increased number of arrests and a reduction of drug trafficking. The process should now involve the transfer of all criminal data from criminal files into the system and the sharing of the system with all law enforcement agencies. While the police increased capacity in using advanced techniques in crime investigation, forensic capacities need strengthening allowing DNA to be more often used as evidence. The Internal Control Service strengthened its ability in investigating internal corruption. Joint border co-operation process is working well. Co-operation needs to be strengthened on the *blue border*.

On decentralization, while the Government produced a revised sector strategy, neither a final document nor an Action Plan is available. A territorial planning law has established planning authorities and competencies at a central, regional and local level. Sub legal acts are needed to refine the roles of all actors involved. Although the implication of this law raises the issue of redesigning territorial divisions, the draft decentralisation strategy contains no guidelines for establishing a territorial-administrative reform. Decentralisation of water and sewage services continued with the transfer of fixed assets from central to local government. Major challenges

relate to the commercialisation of the sector, which remains heavily subsidized due to inherited debt, low revenue collections, systemic wastage and structural imbalances. Financial resources available to local government have also not kept pace with their expanded responsibilities leading to an increased reliance on central government grants for essential local public investments. This trend runs counter to the principle of local fiscal autonomy. Amendments in 2010 to a law on local taxation, for example, required authorities to reimburse the expenses incurred by local businesses obligated to install cash registers from local tax revenue. The Law on the Organization and Functioning of the Local Government, however, states that when central government requires local authorities to achieve a national standard adequate fund should be available for the process. Finally, the political impasse fractured the Albanian Association of Municipalities. As a consequence, no unified bi-partisan body currently exists to advocate for common interests of local government.

On environmental governance, the positive developments noted last year regarding strengthened environmental legislation and regulation have had limited impact to date. Major infrastructure projects proceeded with poor quality Environmental Impact Assessments and with limited public consultation. The benefits of integrating environmental permit issuance into the national licensing system remain stalled due to the limited capacities of regulatory bodies to ensure compliance with national and international planning obligations. An Environmental Fund for sustainable environmental financing has not materialised and the Ministry of Environment remains the only ‘guardian’ of environmental protection rather than roles being shared with other state institutions. While an increased number of recycling companies and a widening of materials collected were noted, the overall solid waste management picture worsened: continued waste disposal, including sewage, directly into water courses by local authorities raised concerns on pollution.

On the media, freedom of expression is generally being respected. There are no known cases of any journalist having been taken to Court by the state on the basis of their publicly held views. What is becoming noticeable is that the Government is able to ‘encourage’ certain media over others by either selectively attributing public advertising or by using certain provisions of rental contracts for state owned premises with selected media outlets in an attempt to evict some and/or to accommodate others. In policy terms, the Assembly European Integration Committee approved a draft law on Audio and/or Audiovisual Broadcasting, verifying its compliance with EU directives. The draft law currently has serious flaws relating to the powers provided to the media supervisory body for electronic media as well as with regard to the political composition of this body. The Assembly agreed to refer the draft back to a working group to address the Presence’s concerns. A draft strategy on digitalization is still being circulated within the Government and Assembly, with the public consultation process remaining stalled. The legal provisions in the Penal and Civil Codes, as well as the restrictive law on access to public information, are all in need of further reform.

In terms of gender, it was positive to note that a national strategy on gender equality and eradication of domestic violence was adopted and that a National Council on Gender Equality was established. However, while the law on gender equality calls for the appointment of gender equality focal points at the central and local level, not all focal points have been selected. Representation of women in senior political party positions is modest in numbers aside from a few exceptions. In terms of elections, the number of women elected still failed to meet expectations, despite a gender quota being in place. This shows that much work still needs to be done by the main political parties in promoting women in politics. It will also be important to ensure that an electoral reform includes the further revision of the gender quota,

as some of the existing language remains ambiguous and could again lead to a lower than expected representation of women after the next parliamentary elections.

Civil society cannot as yet be seen as a full strategic partner in policy making as there are no institutional procedures in place for dialogue. Although a national Civil Society Support Agency is now established and has begun to issue its first grants for NGO activities, more could be done to make the selection process of projects more transparent. A new law on financial inspection also appears to give central government excessive access to those local NGOs working with state and donor funds based on a government order without any legal limitations. The more active NGOs remain heavily concentrated in Tirana, with most having generally weak internal structures, memberships and capacities and who continue to rely on donors for funds. The heads of many NGOs remain, or are at least perceived to be, politically biased one side or the other. Such a situation hinders the ability of all NGOs to strengthen the legitimacy of civil society in delivering projects and in issuing public statements. A broad based and independent civil society, therefore, cannot be said to exist. The last year saw the emergence of a movement called *the Red and Black Alliance* that campaigns against a recently approved census law on ethnic and religious grounds.

PROGRAMME HIGHLIGHTS

The goal of the Presence over the last year has been to promote democratization, the rule of law and human rights, as well as to consolidate democratic institutions in line with OSCE principles and commitments. The Presence has continued to work in the areas of legislative and judicial reform, property reform, electoral reform, regional administrative reform, parliamentary capacity-building, anti-trafficking and anti-corruption, media development, promotion of good governance, the development of civil society and police assistance.

On *Democratization*, on electoral reform, the Central Election Commission received training and public affairs support. Election experts participated to an OSCE seminar on *E-voting* in Vienna. The Ministry of Interior was assisted in establishing civil and address registries that served as a basis for preparing voter lists. On Assembly support, an IT network for databases and an intranet were installed. Live web broadcasting of plenary sessions was developed to strengthen transparency. The archive and library were further modernised. The staff participated in a communications seminar in Sarajevo and a human rights seminar in Vilnius. Staff visited the Portuguese Parliament's Publication's Department and recommendations for the Assembly's public relations strategy were facilitated. An assessment was made of the Assembly's work on European integration issues. Meetings of the European Integration Assembly Committees of Albania and Montenegro and a regional meeting of women MPs were held in Budva. A seminar on parliamentary oversight was held in co-operation with OSCE missions and ODIHR. Assembly Security Committee members attended a security conference in London.

On civil society, an international gender conference and a considerable number of regional forums were held to promote women's political participation. Women candidates received training in advocacy, public speaking, and media skills. TV shows were produced to promote women's political participation. A National Platform for Women promoted their participation in elections involving women from political parties and civil society. An assessment was made on strengthening National Council for Gender Equality. Planning workshops were held with the National Council of People with Disabilities, with members sent on a study visit to London. A strategy paper was developed for the Ministry of Education and Science on civic

education. Support was provided to the creation of a self-regulatory media body. Expertise was provided to the draft national digitalisation strategy and a draft law on audiovisual media.

On *Governance in Economic and Environmental Issues*, the Property Restitution and Compensation Agency and the Immovable Property Registration Office received support to strengthen their capacities. Workshops were held for Regional Anti-Trafficking Committees; an assessment was made on compliance of legislation with the Council of Europe Anti-Trafficking Convention and suspected trafficking cases were referred to specialized agencies. Support was given to local government and NGOs on public planning mechanisms. Public officials were trained on conflict of interest legislation and a study visit for the High Inspectorate for the Declaration and Audit of Assets was organized to Riga. A public awareness campaign was launched to expose corruption, whereby NGOs were assisted in strengthening co-operation with anti-corruption bodies. Aarhus Information Centres were assisted in hosting events for state and civil society on environmental issues.

On *Rule of law and human rights*, a survey was organized on public access to district courts and an assessment was made on improving accountability, efficiency and transparency in civil court proceedings. The Presence participated in a working group to draft a new Criminal Procedure Code. The Commissioner for Protection from Discrimination was supported in developing their website and in translating the Law on Protection from Discrimination in minority languages. Support was provided to the Civil Service Commission to strengthen its ability to protect civil servant rights. Local government staff received training on the implementation of civil service legislation. Managers and staff within the probation service received training, with a manual produced on probation service and alternative sentencing for judges, prosecutors and lawyers. On child protection, seminars were held for police to improve their communications with children. Trainings were delivered to social workers, child protection units, and law enforcement agencies on increasing institutional co-operation.

On *Security co-operation*, the State Police received training on investigation techniques, drugs simulation purchase training. An international needs assessment was conducted regarding public protest management. Police participated in a regional cyber crime seminar in Belgrade. Training on joint procedures at joint border crossing points helped to strengthen cross-border co-operation. The State Police received training on election policing as well as with telecommunication equipment. Donations included equipment for the State Police's control room, for covert policing and for the staff recruitment process. The Ministry of Defence received new band saws. The installation of a further surplus ammunition demolition line was facilitated. The Ministry was supplied with equipment for all surplus ammunition demolition factories. Support was given for the disposal of hazardous chemicals.

LOOKING AHEAD

With the Presidential elections due in 2012 and with the possible hardening of the political debate prior to the 2013 parliamentary elections, the window of opportunity for reform between now and mid 2013 is small. Unless the fullest use is made of what remains of 2011 and 2012 by the Albanian political leaders, there is every chance of the political impasse continuing until the 2013 parliamentary elections. In order to try and avoid such a scenario, political leaders in Tirana will have to deliver. The message is simple: 'More than enough time has been lost already. If you really want to show the Albanian public and your international partners that you take your responsibilities and obligations seriously, then we need to see a swift and permanent return to the language of dialogue as well as a sincere willingness to compromise in order to move forward with the reform agenda.' The next year

will provide some answers as to which direction political leaders wish to take Albania – in the direction of reform, progress and national prosperity or into a downward spiral of delay, stagnation and political rancour. The choices are that simple.