

APPENDIX

The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Albania

ECRI wishes to point out that the analysis contained in its third report on Albania, is dated 17 December 2004, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, ECRI's draft report on Albania was subject to a confidential dialogue with the Albanian authorities. A number of their comments were taken into account by ECRI, and integrated into the report.

However, following this dialogue, the Albanian authorities requested that the following viewpoints on their part be reproduced as an appendix to ECRI's report.

“COMMENTS AND OPINIONS ON THE THIRD DRAFT REPORT FOR ALBANIA

1. The government of the Republic of Albania appreciates the work of European Commission against Racism and Intolerance (ECRI) for adopting the third draft report for Albania and the respective recommendations, as well, which provide the systematic attention of this commission relating to the national minorities issue that live in the territory of the republic of Albania. We also appreciate the fact that ECRI constitutes progress in some fields, the problematic of which is dealt in its second Report (April 2001).

2. In Albania, the good relations, tolerance, co-operation and good understanding of the Albanian people with the national minorities that live in its territory have historic tradition, which could serve as a model for the entire Balkans region.

3. Appreciating the issue of respecting the rights of minorities, the Albanian government is committed to undertake any initiative, which helps in the improvement of their conditions, preservation and the development of their national, cultural identity, their traditions and their language.

4. Further on we submit our comments and suggestions for some of the issues and recommendations of the Draft Report that we think must be reconsidered or corrected.

5. Relating to the recommendation for the signature and ratification of European Charter “On Regional or Minorities Languages” (paragr.6), we deem that our official position should be taken into consideration for not having signed this document, which is based on arguments as further goes:

- The respect and protection of minority rights is guaranteed perfectly by the actual domestic legislation, beginning with the constitution of the republic of Albania and many other laws. As well as in other fields this legislation is being improved and being completed continuously.
- The Framework Convention “On the Protection of National Minorities”, which after being ratified is considered an integral part of the domestic legislation, is valued as a continuous guaranty for the protection of minority rights in Albania.
- Based on the actual situation in the Albanian state administration, the signing of the European Charter “On Regional and Minority Languages” would bring considerable difficulties regarding to its implementation from the part of local and central institutions.
- The request for signature of this chart is never expounded by the representatives of minority organizations or experts who deal with issues of minority rights. For this reason this issue is artificially reflected and has no ground on the actual situation.

Domestic legislation

6. During the last years, there have been a small number of criminal proceedings for criminal offences of racial nature (articles 253, 265, and 266 of the Criminal Code). This is a positive indicator of the obvious lack in Albania of the attitudes, opinions and behaviors of racial discriminative and xenophobic nature.

7. Despite this fact in function of respecting democratic principles of Albanian criminal legislation and evaluating as an important element in accordance with progressive European standards, the inclusion of “racial motivation” as an aggravating circumstance is foreseen as one of the most important legislative steps, which will be realized during the year 2005.

8. But we have to explain that the determination of racial motivated offences as an aggravating circumstance cannot be applied for all crimes but only for those, which are committed for racial reasons. Therefore we consider not correct the phrase "...for all offences.." included in the respective recommendation (paragr.12) and we require dismissing (omit) this phrase.

9. Relating to the recommendation for the strengthening of legal framework aiming the elimination of direct or indirect discrimination in the civil and administrative field (paragr.20), we emphasise that in the Action Plan for the Implementation of Priorities of European Partnership are provided even the further legislative measures:

- The amending of laws "On Police of State" and "ethic Police Code", aiming to review the complaint procedures for violations in general and discrimination especially in the police bodies.
- The review of the law "On Police of State" in function of a more extended participation of minority members in the public order bodies, especially in those areas where they live in a considerable number.
- The indication of the criteria relating to the right for the use of minority native language into the regional traditional denominations and other topographic indicators in the areas where they live.
- The approval of rules from local governmental units for the promotion of information of minority members for the rights acknowledged to them by the local governmental bodies.
- The use of minority language during the electoral campaign in the areas where they live, like the distribution of the brochures and pamphlets in their language.

10. Taking into consideration the above expressed opinions in paragraph 18-20 of the Draft-report on the domestic, civil and administrative level of legislation, we assess that our legislation in these fields responds to the scope of elimination and prevention of any form of discrimination in all social and economical aspects like: employment, education, access in the public services etc.

11. For these reasons we think that in paragraph 20, the first sentence of this recommendation must be changed as further goes:

"ECRI encourages Albanian authorities to continue the strengthening of the legal framework in this field through a complete legislation conducted on the fight against direct and indirect discrimination in the most important life fields..."

Reception and status of non-citizens

12. The domestic legislation and the daily practice as well confirm that the illegally coming foreigners in Albania are not penalized and treated as criminals. this is already a consolidated situation. For this reason we think that the recommendation about this issue (paragraph 43) is not necessary.

Access to Education

13. In the scholar books or any kind of literature there are no phrases, events, or elements of content, which incite the racial discrimination and xenophobia for roma and Egyptian community or for minorities in general. This fact doesn't constitute a phenomenon in Albania. For this reason we assess that in the respective recommendation (paragr.59) the phrase "... Ensuring textbooks do not promote negative stereotypes about roma and Egyptians..." must be dismissed as inappropriate.

Monitoring the situation

14. Relating to the ascertainment in the paragraph 79 of the Draft Report about the non inclusion of the question on ethnic belonging during the population census in year 2001, as

well as the recommendation about organizing another census where must be included the question about the ethnic belonging (paragraph 81), we explain that:

- a) The political, economical and social changes under which Albania is passing through during this transition period that brought a different concept and point of view from the past on how to show the interests of the population. the concept and the tendency of the free movement of people, especially abroad for employment reasons, have created different mentality, which because of the realization of these interests would not reflect the reality in the questionnaire.
- b) The indication of ethnic origin only through the self-declaration, is deemed as inappropriate because based on the above-mentioned reasons, a part of the population would not express the reality in the individual self-declaration, aiming to benefit in function of their interests and for this reason the result of this process would be deformed.
- c) Taking into consideration the above-mentioned factors this question should be accompanied with other additional questions like the religious belonging or mother tongue, which had their own technical difficulties on the formulation of the respective questions. Thus, such a process was difficult to be accomplished.
- d) Many individuals, for their own interests have used the Civil Status Office where through informal payments (bribery) in favor of particular officers, could easily change the characteristics and individual data, including even the change of the nationality. This fact rendered difficult to provide realistic objective information.
- e) The gathering of this information was difficult because of the lack of a correct legal definition for the national minorities.
- f) From the formal legal point of view, the framework Convention "On the protection of minorities", doesn't determine any expressed obligation for the state parties to undertake a similar process for the identification of the ethnic belonging of citizen.

All these reasons altogether brought about a questionnaire, which identifies only the citizenship.

15. The Statistic Institute (INSTAT) Study about minorities, which evaluates the minority percentage in 1.4 % of the general number of population, has completed the vacuum that exists since a long time about the official data for ethnic structure in Albania. By this study one of the main engagements of the Albanian government in the framework of Stabilization-Association Process with EU is fulfilled.

Minority participation in the public life and state institutions

16. Relating to the recommendation about assuring an effective representation of minorities in the political life (paragraph 95), we emphasize that the participation of individuals in legislative and executive decision taking bodies, central and local, is opened for all the stratum categories without any discrimination or limitation by ethnic, racial or religious character.

17. Political, economical and social interests for minorities in general are protected by all the Albanian political parties, in which adhere a considerable number of individuals who belong to national minorities. Also, in Albania exercises its activity the Party "The human rights union" which represents the minority interests (another similar party is created lately), in which individuals or different minority groups adhere. So from this point of view the minority groups are not limited from their opportunities to be represented in legislative central or local bodies.

18. In every legislature of Albanian assembly there have been on the average 5-10 deputies who belong to minorities (especially the Greek one). In parliament there is a special committee for human rights and minorities that is conducted by a minority representative. We express the same fact even for the representation of minorities in the local governmental bodies.

19. Relating to the registration of citizens who belong to these communities (paragraph 94) we emphasize that the Law no.9296, dated 21.10.2004 "On the verification, identification and registration of citizen by the Local Governmental Units" creates many facilities about the registration of persons who belong to these groups, because of their participation in elections.

20. According to the domestic legislation also in the daily practice do not exist elements or limiting or discrimination criteria for minorities. at the other hand should be taken under consideration even the fact that the participation in the legislative and executive bodies, central or local in any kind of level requires at any cost the fulfillment of some criteria relating to the educative, intellectual, professional level of the individuals. Meanwhile, another determinative element is the will and the self-stimulation of any individual to be engaged in the public life. all Albanian citizen who posses these elements despite their ethnic belonging, have open and equal opportunities without any discrimination.

About the status of "Egyptians" community

21. Relating to the status issue of Egyptian community we emphasize that in the determining as national minority of a certain group, except the subjective criterion which undermines the personal choice to be part of this minority, exist even some objective criteria provided in international acts like as:

- a) existence in this group of ethnic, cultural, religious, linguistic, characteristics
- b) the obvious will to keep the culture, tradition, religion or their language.

22. Historically "gypsies" have arrived in Balkans (including Albania) from India through Egypt and this fact is the sole element, which relates them with this country. Differently from roma who have ethnic characteristics and their own language, the gypsies are sedentary and spread in many areas of Albania. In the home language they are called "jevgj" and their origin is disputable. They do not have their own language and can speak only in Albanian language. they have been integrated completely in the Albanian population and their only difference from the other part of Albanian people is the color of their skin.

23. The allegation of a group of people that is so called "Egyptian" and requires to be considered as minority group exists only in Albania. In no other country of Balkans region and Europe does exist such minority group. If we consider ECRI reports for all the member states (second or third report), we ascertain that are present issues about "roma community" or "roma /gypsies community" and is not evidenced any Egyptian community. If this would be real, this community, big or small, would exist even in other neighbour states with Albania.

24. For this issue we mention again the fact which is expressed even before that the embassy of the Arabian republic of Egypt in Tirana has declared that does not acknowledge any Egyptian minority in Albania and this community which lives in Albania has no ethnic relation to the Egyptian people.

25. Based on all the international acts regarding to the national minorities and considering objective and subjective criteria determined in them for the status of national minorities, criteria accepted even from the council of Europe, we consider that there do not exist

fundamental elements which can oblige the Albanian state to acknowledge to Egyptian community the status of national minority.

26. The arguments and comments on the Draft-report submitted above reflect the serious engagement of the Albanian Government in combating the racism, intolerance, discrimination and xenophobia. We express our opinion that the evaluation of these results must be taken into consideration in the eventual improvements of the Draft-report during its final approval process.

27. Expressing again our appreciation for the work done by ECRI, we emphasize once more the consequent position of the Albanian government in favor of respecting and guaranteeing the minority rights and the continuous improvement of this process.”