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General Comments
On the Albanian Draft Law on the Protection of National Minorities
(Second Draft 24 October 2016)

1. First of all, I should like to recommend the Albanian authorities for the inclusiveness of the process intended to lead to the adoption of the new Law on the Protection of National Minorities in Albania. This – necessary and welcome - inclusiveness is reflected not only in the participation of Members of Parliament and representatives of national minorities and other stakeholders in the relevant working groups, but also in meetings like the one on 26 October 2016. It is essential that this inclusiveness and transparency will continue.
2. Again, I should like to stress the particular problems connected with the drafting of a Framework Law. As such a law cannot contain all the necessary detailed regulations, drafters have to rely on the legislative technique of referring to other, specific legislation (e.g. on elections, education, use of languages, administrative procedure, etc). This is inevitable but implies that all actors involved (Parliament, Government and civil society including representatives of national minorities) ensure that such specific legislation is fully in line with the letter and, above all, the spirit of the Framework Law.
3. The present draft constitutes a considerable improvement as compared to the first draft. Many provisions such as, e.g., Arts. 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 15, 16, 18 and 19 are, in my assessment, good although some of them might be slightly revised (see my specific comments). Moreover, I should like to stress that the new draft (having included a number of rights previously not addressed) now deals with all the principles and rights enshrined in the Framework Convention and fully reflects the “list of rights” used by the Venice Commission. Notwithstanding that there might be some discussion as to the appropriate legislative approach (e.g., I should prefer to foresee a separate provision for the issue of electoral rights presently dealt with in the context of the freedom of association, but this not a major issue), with the new law, Albania will be one of the few Council of Europe Member States with domestic legislation addressing all the relevant rights and principles.

4. As recognized by the drafters themselves, there are a number of open issues; these relate to

- a) the so-called List of National Minorities, i.e. who decides which are the groups considered as national minorities for the purposes of this legislation;
- b) all the open issues connected with the drafting of the very important Arts. 12, 13 and 14;
- c) the threshold of 30% .as foreseen in Art. 14 (2);
- d) the seemingly unresolved regulation of the Committee of National Minorities, in particular its composition, its representativeness, its competences, its procedures, and its budgeting.

So, while it is clear that the Albanian authorities have come a long way, there is still some distance to be covered. But in my opinion, it is clear that the Albanian authorities if continuing the approach chosen so far will eventually be able to present a good piece of legislation to Parliament which fully complies with the applicable European standards.

Frankfurt, 31 October 2016.



Prof. Dr. Dr. Rainer Hofmann