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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

COMMENTS

**ON THE AMENDMENTS
TO THE CONSTITUTION
OF THE REPUBLIC OF ALBANIA**

**(Adopted on 21 April 2008
by the Assembly
of the Republic of Albania)**

**by
Mr J. JOWELL (Member, United Kingdom)**

* 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.

Article 1 (amending Article 64):

1. Article 64 of the Constitution formerly provided for an electoral system that used both (1) single-member electoral zones (100 deputies) and (2) a nationwide constituency for the allocation of supplemental mandates (40 deputies) to political parties and coalition lists, where the total number of deputies of a party or coalition was to be proportionate to the votes won nationally in the first round of the election.
2. In the light of the complexity of that system (and its apparent openness to abuse), this amendment introduces a regional-proportional system, with a total of 140 deputies.
3. Subsection 3 provides that the law on elections will set out the detail on the implementation of this provision, the determination of the electoral zones and the number of seats to be obtained in each of them.
4. Provided this measure is faithfully implemented, this reform should be viewed positively, as it introduces a system that is less complex than the previous system, as well as being closer to the voters, more easily implemented and better understood by ordinary voters.

Article 4 (amending Article 68):

5. Subsection 1 of this new Article provides that candidates for deputies can be “presented” (nominated) for the electoral zone by only one of the “proposing subjects”, which include political parties, coalitions of political parties and voters.
6. Subsection 1 also provides that the ranking of candidates in multi-name lists may not be subject to change after the list has been submitted to the electoral commission.
7. Subsection 2 allows for the law on elections to provide more detail on electoral practices.
8. In my view, these proposals legitimately permit to a range of political parties and coalitions the opportunity to nominate candidates. That opportunity is also provided to independent candidates.
9. The prohibition on changing candidate rankings after submission is to be welcomed as it will restore the fundamental principle that a voter knows the consequences of his or her vote.
10. This amendment does not, however, seek to exclude the possibility that a candidate’s name can appear on more than one list of the same proposing subject, but it is to be hoped that such a provision will be included in the electoral law.
11. On a pedantic point, this amendment would be clearer if it were divided into three sections, with the ranking of candidates as subsection 2 and the rules for elections all in section 3.

Article 2 (amending Article 65)

12. Subsection 1 of this amendment alters and clarifies the length of the Assembly’s mandate, starting with the first meeting after elections and ending on the same date of the same month four years later. The old Assembly stays on until the meeting of a new Assembly.
13. Subsections 2 and 3 then provide for elections of the Assembly to be held in the “nearest electoral period” that precedes the date of the termination of the preceding Assembly’s mandate. Detailed rules will be provided in the law on elections.

14. Subsection 3 provides for elections to be held no later than 45 days after a premature dissolution of the Assembly.

15. Subsection 4 then provides that the Assembly may not approve laws during the period 60 days prior to the termination of its mandate except when extraordinary measures have been imposed (under Part 16 of the Constitution – Article 170 et seq.)

16. Subsections 1-4 seem to helpfully specify the previous unclear situation. The purpose of subsection 4 is however less clear. Disabling it for its last 60 days may prevent an unpopular government from abusing the end of its mandate. However, the electors voted for a 4 year term and not for 4 years minus 60 days, and there is a danger that during that period governance will be paralysed, a situation which might tempt the introduction of extraordinary measures.

Article 3 (amending Article 67)

17. This article provides for the President to convene a newly elected Assembly no earlier than the date of the termination of the mandate of the previous Assembly, but no later than 10 days (previously 20 days) after its mandate has expired (or, where the preceding Assembly was dissolved, no later than 10 days after the announcement of the election results). If the President does not exercise this function, this happens automatically after 10 days (subsection 2).

18. These provisions seem sensible.

Article 5 (amending Article 87)

19. Subsection 1 of this amendment provides that a candidate for President must be proposed by at least 20 MPs and that an MP may not propose more than one candidate at a time.

20. The remaining subsections provide the procedure for voting for the President. The previous rule that no less than three-fifths of the votes of all members of the Assembly are required to elect the President is retained for the first three round of voting. However, in the fourth and fifth rounds, a simple majority is required.

21. In my view the new situation is more decisive than the previous system and, although this may favour the larger parties, this only takes place after three previous rounds. There comes a time when the members must decide to support a candidate and allow the majority principle to prevail. There can be little doubt that the process as a whole meets European democratic standards.

22. I am somewhat more concerned about subsection 4, which provides that if, at the fourth round, no one candidate has achieved more than half the total votes, and there are more than two candidates with the same votes, lots should be drawn so that the final run-off is between just two candidates. This seems to introduce an unnecessary degree of arbitrariness into an otherwise rational process.

Article 6 (amending Article 86)

23. This amendment deals with the time of the President's mandate. Subsection 2 is reformulated so that the mandate ends precisely 5 years after the President took his oath. Subsection 2/1 sets out the periods for the procedure for the election of the President.

24. I have some concern with the provision that states that the President's mandate "is extended" in case of war, for as long as it continues. This term "is extended" is not clear. Is it intended that the President's term is automatically extended in times of war (which may, under Article 171 (1) be declared by President on the request of the Council of Ministers) and under

Article 171 (2) be declared by the Assembly on the proposal of the President)? Or is there discretion in this matter and, if so, who proposes the extension of the President's mandate? And who decides? This should be clarified.

Article 7 (amending Article 104)

25. This Article deals with a motion of confidence (as opposed to a motion of no confidence under the next section) moved by the Prime Minister in his Council of Ministers. Previously, if such a motion were rejected, then another Prime Minister would be elected within 15 days. Here if fewer than half of all the members of the Assembly vote for the motion, the Prime Minister "requests" (does this mean may or must request?) the President to dissolve the Assembly.

26. This provision seems to provide an incentive to MPs to support votes of confidence in the Council of Ministers, in the interest of stability. It does not fall short of European democratic standards.

Article 8 (amending Article 105)

27. The English translation of this Article is, again, not clear but it seems as if it provides that a motion of no confidence in the Prime Minister may be initiated by one fifth of MPs. However, at the same time they must propose a new Prime Minister. If the motion must receive the support of more than half of all the members of the Assembly, the President decrees, within 10 days, the dismissal of the incumbent Prime Minister and the election of the new.

28. Like the previous amendment, this seeks to make it more difficult than before to unseat an incumbent Prime Minister, in the interest of stability. But it too does not fall short of European democratic standards.

Article 9 (amending Article 149)

29. This article provides that the General Prosecutor is appointed by the President with the consent of the Assembly for a five year mandate, "with the right to be reappointed".

30. It is vitally important that public prosecutors be independent and this amendment raises some concerns in that regard. First, it is not clear from the words "right to be reappointed" whether the reappointment is automatic, or whether there is a further vetting procedure (by the President and Assembly?) that has to be gone through. If the latter, there is a danger that the prosecutor's independence may be compromised by a desire to be reappointed.

31. I would endorse in this respect the words of the Venice Commission's *Opinion on Ukraine (CDL-AD(2006)29)*, which approved an amendment to the Ukrainian Constitution which extended the term of office of the Prosecutor General from 5 to 7 years. The Opinion stated:

"This longer term should diminish the politicisation of the office and could be a guarantee of the impartiality of the Prosecutor General. It seems therefore a step in the right direction. It would seem even better to provide that the Prosecutor General may stay in office until reaching retirement . . . as is the case for constitutional judges."

Article 10 (amending Part 12 of the Constitution)

32. This amendment abrogates the Central Election Commission.

33. I assume that the organisation and rules about the Commission will be set out in the new Electoral Code but it is not clear whether its replacement will be situated in the Ministry of

Interior or keep its independent character. Many European countries (including the United Kingdom) seek to ensure the strict independence and impartiality of the electoral process by means of an independent regulatory commission. Without further information on the form any replacement structure will take, it is difficult to comment on the intent of this amendment. However, legitimate concerns that the Commission will be politicised need to be allayed.