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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 O. KASK (Member, Estonia)**

* 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. Amendments in Article 64 of the Albanian Constitution are very positive and reasonable. The exact electoral system is left to be stipulated in electoral law, while the general principle of proportional electoral system is provided by the Constitution. By that amendment it is desisted from overregulation in the Constitution. The electoral system used up to now brought a lot of confusion and a system with two votes for each voter. By the amendment the system will be changed and electoral system will be more balanced.
2. By Article 65 point 1 in any case, the Assembly remains on duty until the first meeting of the newly elected Assembly. It needs further to be clarified which cases are meant here.
3. By Article 65 point 3 if the Assembly is dissolved prior to the termination of its full mandate, elections are held no later than 45 days after its dissolution. Although that principle is common in democratic countries, an exception should be suggested for the duration of the mandate of the Assembly in this case. If early elections are held, the period for general elections will remain the same for next elections as well. If those elections are held in a period when e. g. the budget should to be adopted, the provision may bring some difficulties for all electoral periods, not only once. It could be thus suggested to stipulate that ordinary general elections will take place in certain date or month of the year when the mandate of the Assembly ends. The term of the mandate is less important than functioning of the parliament and constitutional system.
4. It should be clarified whether and how the Article 65 point 4 will be applied in case of extraordinary elections or in case of late elections (Article 66).
5. Changes in Article 67 are of clarifying and précising nature and have not crucial and substantial importance.
6. The amendments in Article 68 are of clarifying and précising nature and regulate the substance of electoral law in a more detailed way than the Constitution earlier did. It is welcome to prohibit a candidate to be in more than one list simultaneously. Also the rule to avoid changes in candidates' lists after the submission deadline is welcome. It can be clarified in electoral law that when a candidate dies or is deleted from the list by electoral commission on other reasons provided by law (e.g. because of losing the right to be elected according to Article 45 of the Constitution), the ranking is changed, but the order of other candidates remains unmodified.
7. The amendments in Article 87 avoid endless cycle of presidential elections and elections of the Assembly. It will be easier to elect the president without having extraordinary general elections. Neither the number of electoral rounds for the election of the president nor the time-limit between each voting has been decreased. For the first three rounds of voting the quorum requirement remains the same. So the elections of the president remain often time-consuming and the campaign will last for many weeks, but the danger of this time to be extended even for many months is minimized. Such amendments go in the right direction and are positive.
8. According to Article 87 the President is elected by the Assembly after the extraordinary elections by a majority of all its members. It should be clarified what happens if no candidate gains the required majority: will there be five electoral rounds as provided in section 2 and new general elections will be held if the newly elected Assembly fails to elect the President?
9. According to Article 88 point 2 the mandate of the President is extended only in case of war, and for as long as the war continues. By Article 170 point 6, during the period of extraordinary measures, a new President of the Republic may not be elected. It results that in case of extraordinary measures imposed on other reasons than war the mandate of the President will not be extended and new elections will not take place. By Article 91 point 1 the Speaker of the Assembly takes his place and his powers. Although the aim to extend the mandate of the President in time of war is reasoned to avoid the leading and controlling of the armed forces, it is less obvious in case of e.g. natural disaster, as the constitutional powers need to be fulfilled

without delays to allow the speaker to get used to duties of the President in such cases as well. The aim of distinction between these cases should be clarified further.

10. Amendments in Article 104 give the Prime Minister a wide power to call for extraordinary elections of the Assembly. The amendment changes the balance between the Assembly and the Government, as although there might well be possibilities for the Assembly to elect a new Prime Minister, the no confidence towards the incumbent one leads to extraordinary general elections. It makes the opposition more eager to present motion of no confidence and Members of Assembly supporting the government more subordinated to the will of the government.

The amendment causes decrease of the importance of coalition parliamentarians, as the government politics will be more up to the government. Reasons for that amendment should be clarified further. It may be suggested to give the President a decisive role in the question about extraordinary elections or the appointment of a new Government.

11. Amendments in Article 105 give the Government a more stabile status. The motion of no confidence may not be presented by the opposition if the position of the new Prime Minister remains vacant. So the Assembly has to agree in new Prime Minister before voting the motion no confidence towards the incumbent Prime.

There are systems similar to the previous and to the new system of motion of no confidence in European democracies. Since the political system in Albania does not have long traditions and is instable, such amendments may well be appropriate to allow the governments to fulfil its tasks.

12. Article 9 of the draft law regulates the amendments in Article 149 of the Constitution. It foresees the prosecutor general to be appointed for five years with the right to be re-appointed. In its Opinion on Ukraine (CDL-AD(2006)029, section 33) the Venice Commission stated: "Under the proposed Section 3, the term of office of the Prosecutor General would be extended from 5 to 7 years. 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 the age of retirement or, if a limited term of office is preferred, to exclude the possibility of reappointment, as is the case for constitutional judges under Article 148 of the Constitution. Otherwise, the Prosecutor General may be unduly influenced in his or her decisions by the desire to be re-elected."

Same has to be said on the proposed Article.

13. By the amendments part 12 of the Constitution "Central Electoral Commission" is abrogated. Such amendment is welcome: electoral bodies are rarely of constitutional nature. It is not necessary to regulate the independent body organizing the elections in constitution. The regulation of electoral commission might in this case be too rigid. It has still to be noted that the regulation has to be entered in the electoral laws. It is impossible to clarify in the opinion on constitutional amendments whether such regulation will be in accordance with democratic standards.