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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**  
**AND**  
**OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS**  
**(OSCE/ODIHR)**

**JOINT OPINION**  
**ON THE ELECTORAL LAW**  
**AND THE ELECTORAL PRACTICE**  
**OF ALBANIA**

**Adopted by the Council for Democratic Elections**  
**at its 39<sup>th</sup> meeting**  
**(Venice, 15 December 2011)**  
**and by the Venice Commission**  
**at its 89<sup>th</sup> plenary session**  
**(Venice, 16-17 December 2011)**

**on the basis of comments by**  
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## I. Introduction

1. On 24 August 2011, the Secretary General of the Council of Europe asked the Venice Commission to provide an opinion on the question of which improvements should be made to electoral legislation and practice in Albania in the light of recent experience.

2. The present Opinion has been prepared jointly by the Venice Commission and OSCE/ODIHR on the basis of comments by Mr Pieter van Dijk (member of the Venice Commission, the Netherlands), Mr Oliver Kask (member, Estonia), Mr Konrad Olszewski (expert of the Venice Commission, Poland) and Ms Marianna Skopa (expert, OSCE/ODIHR).

3. This Joint Opinion is based on an unofficial English translation of the Electoral Code ("the Code") provided by the OSCE Presence in Albania (CDL-REF(2011)038). It should be noted that any legal review based on translated law may be affected by issues of interpretation resulting from translation.

4. In addition to the Code, this opinion is based on:

- an unofficial English translation of the Constitution of Albania;
- Council of Europe and OSCE/ODIHR Election Observation Reports, in particular:
  - the OSCE/ODIHR Election Observation Mission Report on the 8 May 2011 Local Government Elections;<sup>1</sup>
  - the report of the Congress of Local and Regional Authorities of the Council of Europe on the observation of the local elections in Albania (8 May 2011) (CPL(21)3);
  - the OSCE/ODIHR Final Report on the 2009 Parliamentary Elections;<sup>2</sup>
  - the report of the Parliamentary Assembly of the Council of Europe on the observation of the parliamentary elections in Albania (28 June 2009);<sup>3</sup>
- the Joint Opinion on the Electoral Code of the Republic of Albania by the Venice Commission and the OSCE/ODIHR adopted by the Venice Commission at its 78th plenary session (Venice, 13-14 March 2009) (CDL-AD(2009)005).

5. A delegation of the Venice Commission and of the OSCE/ODIHR, including all four rapporteurs, visited Albania on 24-25 October 2011 and met the main political and electoral stakeholders, in particular the Prime Minister, the President of the National Assembly, the Minister of Foreign Affairs, the leaders of the Democratic Party and the Socialist Party and the Socialist Movement for Integration, as well as the chair and vice-chair of the Central Election Commission. The members of the delegation would like to thank the Council of Europe Office in Tirana for organising these meetings, and to the Albanian authorities for their friendly reception and frank discussions.

6. Previous comments and recommendations made in the Joint Opinion on the Electoral Code of the Republic of Albania (CDL-AD(2009)005), which was adopted by the Venice Commission on 13 March 2009, are still valid. They will not be repeated here in a systematic way, but, after general comments and remarks on general provisions, the emphasis will be put on issues

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<sup>1</sup> Available at <http://www.osce.org/odihr/elections/albania/75913>.

<sup>2</sup> Available at <http://www.osce.org/odihr/elections/albania/38598>.

<sup>3</sup> Available at [http://www.assembly.coe.int/ASP/Doc/DocListingDetails\\_E.asp?DocID=12829](http://www.assembly.coe.int/ASP/Doc/DocListingDetails_E.asp?DocID=12829).

which appear to be the most essential ones in view of the observation of the last local elections, as well as on other major issues.

7. This opinion was adopted by the Council for Democratic Elections at its 39<sup>th</sup> meeting (Venice, 15 December 2011) and by the Venice Commission at its 89<sup>th</sup> session (Venice, 16-17 December 2011).

## II. General comments

8. The current Electoral Code of Albania was adopted in December 2008. Since then two elections were held: parliamentary elections in 2009 and local elections in 2011. The Code has previously been assessed by the OSCE/ODIHR and the Venice Commission as providing a thorough technical foundation for the conduct of democratic elections, if implemented fully and properly and with the political will to uphold the letter and the spirit of the law.<sup>4</sup> The Code is not, however, without gaps, ambiguities, and provisions that could be improved in order to ensure full respect of international standards and good practices. The gaps are even more pertinent in regard to local elections, which are less regulated in the Code. Local elections appear to be treated in a secondary manner and some specificities of local elections are not properly taken into account by the provisions of the Code.

9. The Code was drafted by a bi-partisan committee, which introduced a number of provisions that gave the two largest political parties in Albania (governing and opposition) significant responsibilities at every step of the electoral process. As a result, the Code is overly detailed and includes many checks and balances that can result in challenges in administering elections, as well as possible obstruction of the electoral process by representatives of the two largest parties.

10. It is doubtful that the recurrent problems with conducting democratic elections in Albania could be resolved through changes in electoral legislation alone. The recent experience with the local elections in Albania shows that even comprehensive and detailed electoral legislation will not ensure the conduct of elections in full conformity with OSCE and Council of Europe commitments and other international standards in the absence of good will among key electoral stakeholders to implement the law in an impartial and fair manner.<sup>5</sup> This is due, in particular, to an environment characterised by severe polarisation and a lack of trust among the two main political parties. A change of attitude and practices by the main political groupings and their leaders is therefore of vital importance, as is the impartiality of the electoral administration. It has, however, also to be acknowledged that election results in Albania tend to be quite close and that only a few votes (less than 100 of 240,000) separated the two main candidates in the elections for the Mayor of Tirana. In such circumstances, every detail becomes potentially decisive and the task of the election administration to act impartially is crucial. This is not to say, however, that weaknesses in the Code which were exposed during the recent elections in Albania should not also be addressed.

11. It should also be noted that the Code contains many logistical and practical details which might have been left to the Central Election Commission (CEC) to regulate. The necessity to be so precise at the level of primary legislation, an approach which makes necessary or desirable amendments very complicated, could be reconsidered. It should be underscored that it is not always possible, nor desirable, to regulate all potential problems in legislation.

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<sup>4</sup> See CDL-AD(2009)005 and OSCE/ODIHR Final Report on the 2009 Parliamentary Elections.

<sup>5</sup> The priority recommendation from the 2009 and 2011 final reports states: "Parties should demonstrate the political will for the conduct of democratic elections commensurate with the broad privileges they enjoy under the law in regard to the conduct of elections. They should discharge their electoral duties in a responsible manner for the general interest of Albania. This extends to the performance of election commissioners and elected and appointed officials at all levels, who should refrain from basing election-related actions and decisions on political considerations."

### **III. Remarks on general provisions**

12. While Article 1.2.b of the Code only speaks of the registration of "electoral subjects", Article 2, paragraphs 3 and 4 speak of "candidates" and paragraph 20 contains a definition of "electoral subject", where there is also reference to candidates. The relation between the two notions should be clarified and the order of the definitions reorganised.

13. In Article 2.22, the term "partial election" is used for the election of a new local council in case of dissolution, but not in relation to the election of the Assembly in case of dissolution. This definition should be extended.

14. Article 3.8 is formulated only as an obligation to abstain from hindering the conduct of elections. It should be formulated as also containing a positive obligation on the part of the authorities to promote and defend the unimpaired conduct of elections.

15. According to Article 4.1 of the Code, "[t]he administration of the Council of Ministers and of the Prime Minister's Office, any ministry, the Prefect's office and municipalities have the obligation, no later than 24 hours after the setting of the election date, to appoint a liaison officer responsible for the exchange of information with the CEC on activities that are related to the administration or conduct of free, fair and democratic elections". Article 4.3 places the liaison officer in an awkward position, if he or she works within the office concerned, and *a fortiori* if, by virtue of the final provision of paragraph 2, the head of the respective institution shall be deemed to have taken the function of liaison officer.

16. Moreover, it is not clear what the consequences of the information from the CEC to the liaison officer will be or what his or her competences to act are (Article 4.5).

17. In Article 7.2.a, the power of the CEC to give instructions on election observation should be a qualified one, to prevent undue influence vis-à-vis independent observers.

### **IV. Election administration**

#### **A. Composition and appointment of election commissions**

18. The Code provides for the appointment of members at all levels of the election administration from among representatives of governing and opposition parties represented in the parliament.

19. According to Article 14, two CEC members and a chairperson are proposed by the largest party in the parliament, two by the largest opposition party, and the remaining two members are proposed by "groupings of deputies of parliamentary majority parties other than the largest party of the majority grouping" and by "groupings of deputies of the parliamentary opposition parties, with the exception of the largest party of the opposition". A similar system of appointment of election commissioners by both governing and opposition groupings is also applied at the level of the 66 Commissions of Election Administration Zones (CEAZs), Voting Centre Commissions (VCCs) and Ballot Counting Centres (BCCs), with the exception that the chairpersons are nominated by the governing majority in one half and the largest opposition party in the other half.

20. The partisan system of formation of election commissions was apparently established to increase the confidence of the two largest political parties in the work of the election administration. It is quite a sophisticated system which, both with respect to composition and decision-making, tries to establish a balance between the two main parties, to the extent that

this is possible without leading to deadlocks in the functioning of the election administration. The 2009 Joint Opinion of the Venice Commission and OSCE/ODIHR noted that the new legal framework for elections “may contribute significantly to reduce the highly politicised environment in election administration that has been observed in past elections in Albania”.<sup>6</sup> However, the conduct of the 2009 and 2011 elections showed that this expectation was regrettably not fulfilled. The election administration remained divided along partisan lines and displayed a lack of collegiality, a fact which affected the electoral process.

21. The Code of Good Practice in Electoral Matters provides for the impartiality of election administration. “Where there is no longstanding tradition of administrative authorities’ independence from those holding political power, independent, impartial electoral commissions must be set up at all levels, from the national level to polling station level.”<sup>7</sup> While there is no single recommended formula for the composition of the highest election administration body, its members’ impartiality in the exercise of their duties is of paramount importance and an indispensable condition for the conduct of democratic elections.<sup>8</sup> Moreover, “impartiality in election administration must be accompanied by the appearance of fairness. Regardless of how an election administration is structured, it is important that it not only function in an impartial manner but also be perceived by the electorate as doing so.”<sup>9</sup>

22. Even though a different system of formation by itself cannot be the automatic solution to the high polarisation that permeates all levels of the election administration in Albania, it might be helpful to revise the current composition and possibly involve other institutions that enjoy a certain degree of trust among the citizens of Albania, on the condition that broad consensus can be reached. Although the Code of Good Practice in Electoral Matters<sup>10</sup> suggests that representatives of parties should be included in electoral bodies, this does not necessarily imply that the majority of electoral bodies be composed on the basis of nominations by political parties. Several options may be considered to reduce political polarisation, including increasing the number of nominating bodies, inviting different public institutions to nominate representatives, including a member of the judiciary<sup>11</sup> or independent members from the civil society (e.g. nominated by universities). This could improve the efficiency of the election administration and help reaching consensus.<sup>12</sup>

23. *The Venice Commission and OSCE/ODIHR recommend reconsidering the current system of formation of election commissions in order to narrow the scope for possible partisanship and politicisation of election administration that puts party interests above voter interests. The dominate role of political party representatives in election commissions at all levels could be complemented by appointing, in addition to party representatives, election officials selected from among representatives of the judiciary, civil society or professional election administrators without party affiliation. However, any changes must be based on broad consensus.*

24. However, it should be acknowledged that in the current political atmosphere in Albania, it would be extremely difficult to identify individuals or bodies considered impartial and who could be entrusted with the task of appointing “neutral” CEC members. Past attempts to establish a non-partisan CEC, as provided for in the 1998 Constitution, were not successful since the CEC

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<sup>6</sup> CDL-AD(2009)005, par. 45.

<sup>7</sup> CDL-AD(2002)023rev, II.3.1.b.

<sup>8</sup> OSCE/ODIHR Existing Commitments for Democratic Elections in OSCE participating States, Part 1, paragraph 4.1 states: “The administration of elections must be conducted autonomously, free from government or other interference, by officials or bodies operating transparently under the law. Appointees to the election administration shall be required to carry out their responsibilities in an effective and impartial manner and should be individuals with the competence and commitment to do so.”

<sup>9</sup> OSCE/ODIHR Existing Commitments for Democratic Elections in OSCE participating States, Part 3, IV. Democratic Elections: Components and Considerations.

<sup>10</sup> CDL-AD(2002)023rev, II.3.1.d.ii.

<sup>11</sup> Code of Good Practice in Electoral Matters, II.3.1.d.i.

<sup>12</sup> Code of Good Practice in Electoral Matters, II.3.1.h.

was considered to favour one political side. The Venice Commission and OSCE/ODIHR experts that visited Tirana did not hear any feasible proposals on how such non-partisan CEC members could be appointed.

25. The CEAZs consist of seven members and a secretary who are appointed by the CEC upon the proposal of parliamentary parties. The Code also requires political balance between the parliamentary majority and the parliamentary opposition in the composition of the CEAZs. Article 28 foresees that two members are proposed by the main party of the parliamentary majority, two members by the main party of the parliamentary opposition, one member by the second party of the parliamentary majority and one member by the second party of the parliamentary opposition. In half of the CEAZs, the seventh member is proposed by the largest party of the parliamentary majority, while in the other half the seventh member is proposed by the largest party of the parliamentary opposition.

26. Article 29.5 foresees that, if the political parties of the parliamentary majority and opposition that have the right to submit their candidacies for CEAZs, do not exercise their right within the stipulated time limits, this right will automatically be transferred to the next parties in rank within the respective grouping. When this is not possible, the respective group is compensated with the candidacies of the main party (Article 29.1.a).

27. The Code does not, however, foresee a situation in which all parties of a parliamentary grouping are unable or unwilling to nominate their CEAZ candidacies within the prescribed deadline. This gap can lead to an impasse that does not only have the potential of hampering the effectiveness of the election administration, but also of endangering electoral timelines and potentially, the elections, themselves.

28. Article 29.4, second part, provides for the case when “two or more parties have the same number of seats and it is impossible to decide the party to be given an advantage”. This provision is unclear as to its meaning and impact, and would benefit from the deletion of “and it is impossible to decide the party to be given an advantage”.

29. Article 36 provides that the voting centre is composed of seven members and a secretary, in accordance with the manner and criteria provided by Article 29. Therefore, the comments above also apply to this article.

30. To sum up, the Venice Commission and OSCE/ODIHR are conscious that previous experience with election commissions described as non-partisan led to justified criticism and that the label “non-partisan” does not guarantee independence and impartiality. However, a way should be found in order to reduce the politicisation of such bodies.

31. *The Venice Commission and OSCE/ODIHR recommend that Articles 29 and 36 be amended to provide for alternative ways to complete the formation of the CEAZs and voting centres when a parliamentary grouping does not submit candidacies within the deadline, and that the second part of Article 29.4 be clarified. The Venice Commission and OSCE/ODIHR further recommend providing effective sanctions against parties that do not propose members of election commissions, such as making receipt of public funds for campaign finance contingent on compliance. The principle of proportionality of sanctions has to be respected in any case.*

32. Article 29.1.ç, concerning gender balance in the composition of election commissions, does not apply to voting centres (Article 36.1). It is not clear why that is the case.

33. *The Venice Commission and OSCE/ODIHR recommend consideration be given to also applying a rule on gender balance to voting centres.*

34. Article 20, concerning the competences of the chairperson and the deputy chairperson of the CEC, may complicate the proceedings of election commissions considerably. In the first place, it is difficult to see how the chairperson should chair the meetings together with the deputy chairperson. If s/he only represents the CEC jointly with the deputy chairperson, this would mean that during absences, the latter is not able to replace the former. In fact, the chairperson is always accompanied by the deputy chairperson, while the last sentence of paragraph 3 contains a very broad exception that may lead to difficult discussions about the validity of the chairperson's orders. Normally, a chairperson is competent to act under general *ex post* supervision and a deputy chairperson officiates only when the chairperson is not available.

35. *The Venice Commission and OSCE/ODIHR recommend addressing the respective powers of the chairperson and deputy chairperson of the CEC.*

36. Article 30 provides for incompatibilities between the function of member and secretary of a CEAZ, on the one hand, and *inter alia* "deputies or candidates for deputy to the Assembly" and "mayors of municipalities or communes", on the other hand. This Article does not exclude membership of local assemblies, while at the same time being a candidate for mayor or any other local authority.

37. *The Venice Commission and OSCE/ODIHR recommend providing for incompatibilities between membership of CEAZs and any elected position or candidacy to such a position.*

38. Article 13.1 provides that a member of the CEC has a four-year mandate with the right to be re-elected. It would seem desirable to provide that, except in the situation dealt with in Article 19.2-3, the period of the mandate starts shortly after the previous elections have taken place in order to enable the members of the CEC to prepare for the next elections. If non-partisan members are included, it would be suitable that the mandate of the CEC does not coincide with the mandate of Parliament.

39. *The Venice Commission and OSCE/ODIHR recommend clearly delineating when the mandate of a member of the CEC starts in the Code.*

## **B. Decision making of the election commissions**

40. Article 24 of the Code provides for a qualified majority of five votes to adopt several important CEC decisions. Therefore, the successful conduct of elections requires a collegial approach and co-operation between both sides of the political spectrum. However, in case of serious disagreements, one side of the political spectrum is able to withdraw from the work of the CEC, leaving it unable to make important decisions.

41. Article 35 paragraph 2 provides that meetings of CEAZs are valid when a majority of all members participate. Decisions of CEAZ are made by a majority vote of all their members. However, the Code does not address the risk of a decision-making deadlock caused, for example, by a lack of quorum caused by the failure of some political parties to designate their representatives to CEAZs in a timely manner before election day or in case of a boycott by such parties.

42. According to Article 42 of the Code, decisions of the VCCs are made by a majority of all members. Thus, there is a possible risk that some parties may attempt to obstruct the election process by having their representatives withdraw from their work on election day.

43. *The Venice Commission and OSCE/ODIHR recommend that the Code stipulate what measures should be taken to allow all election commissions to undertake necessary*



*preparations to elections despite a lack of quorum, if some parties fail to appoint their representatives in a timely manner.*

44. If the requirement of a qualified majority is maintained, more precision would be suitable as to its scope. Among the decisions for which Article 24 of the Code provides for a qualified majority in the CEC are “acts of a normative nature that aim to regulate issues related to elections”. The requirement of a qualified majority for acts of a normative nature may be justified as these decisions establish legal norms and need to be adopted collegially. It is, however, noteworthy that neither the Code nor the Code of Administrative Procedures<sup>13</sup> contains any definition of a normative act. During the 2011 local elections, the normative nature of several CEC acts was seriously disputed between the majority-appointed and minority-appointed members of the CEC.

45. Even if a legal definition is, by nature, abstract and each case would have to be examined in order to determine whether it fits the components of the definition, *the Venice Commission and OSCE/ODIHR recommend considering the inclusion of a definition of what constitutes a normative act to help decrease disagreements over the nature of election administration acts.*

46. Article 42.3 provides that members of VCCs have to state the reasoning for their votes on decisions in writing. This is rather unusual and cumbersome if strictly applied, in particular in view of the kinds of decisions listed in the fourth paragraph. It may be assumed that the commission secretary keeps minutes of the discussion. *The Venice Commission and OSCE/ODIHR recommend reconsidering this rule.*

### **C. Removal of members of CEAZs and VCCs**

47. Among other grounds for removal, Article 32.2 provides for the removal of CEAZ members and the secretary when the proposing electoral subject requests their substitution. This unrestricted right of electoral subjects extends to the removal of VCC members even on election day (Article 39.2). These provisions have repeatedly been criticised by OSCE/ODIHR and the Venice Commission as undermining the independence and efficiency of the election administration and as being incompatible with international and European standards.<sup>14</sup> During the 2011 local elections, electoral subjects used this provision extensively.

48. During the visit of the Venice Commission and OSCE/ODIHR to Albania, electoral interlocutors informed that such provisions were aimed at avoiding bribery of the members of election commissions. Some political parties even gathered their members of election commissions in separate premises up to the last moment in order to prevent their external influences. Such information is far from reassuring and, on the contrary, tends to indicate the intention of political actors to ensure the dependence rather than independence of members of election commissions on their nominating party.

49. The possibility of removing members of election commissions at will also goes against the *ratio legis* of the provisions setting deadlines for their appointment (Articles 28.2, 29.6, 36.2); that is, against proper organisation of elections by competent bodies. In particular, the removal

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<sup>13</sup> The Code of Administrative Procedures contains only the definition of an individual administrative act.

<sup>14</sup> OSCE/ODIHR Existing Commitments for Democratic Elections in OSCE participating States, Part 1, Paragraph 4.2, states: “Appointments to election administrative positions at all levels should be made in a transparent manner, and appointees should not be removed from their positions prior to their term, except for legal cause.” The Venice Commission’s Code of Good Practice in Electoral Matters, Chapter II.3.1, par. 77 states that: “...bodies that appoint members to election commissions should not be free to recall them, as it casts doubts on their independence. Discretionary recall is unacceptable, but recall for disciplinary reasons is permissible – provided that the grounds are clearly and restrictively specified in law.”

of members of election commissions at the last moment or even a few weeks in advance of elections very much jeopardises efforts made to train them.<sup>15</sup>

50. *Therefore, the recommendation of the previous Joint Opinion, that “the Electoral Code be amended to provide that a member of an election commission can only be dismissed for failure to fulfil the member’s legal duties imposed by the Code” (CDL-AD(2009)005, par. 71) remains highly relevant.*

#### **D. Establishment of Voting Centres**

51. Article 62 of the Code places the establishment of voting centres under the responsibility of mayors. Each voting centre must have between 150 and 1,000 voters. In recent and past elections, many voting centres had more than 1,000 voters, some up to 2,000 voters, which led to overcrowding. It is reasonable that mayors are involved in the establishment of voting centres, since they are familiar with their area. However, the CEC, whose task it is to ensure the smooth conduct of election operations, should be given a decisive role in the designation of voting centres and in ensuring the implementation of the requirements of the Code.<sup>16</sup>

52. *It is recommended to consider giving the CEC the final authority for establishing voting centres.*

#### **V. Right to vote and voter registration**

53. Although limiting the right to vote to citizens of a country (Article 3.3, 44.1) is in line with international and European standards, the Venice Commission and OSCE/ODIHR draw attention to a growing tendency to extend the right to vote in local elections to non-citizens who have been residents for a certain period.<sup>17</sup>

54. The voter registration system is a passive one based on national computerised civil registers. The voter lists are extracted from the database of the National Civil Status Register by the Civil Status Offices (CSOs) that are under the authority of local government. The Code provides for extraction of a preliminary voter list, written notification of voters, a procedure of revision and changes, and the posting of a final list. Regarding changes to the voter lists, Article 52.1 states that requests for changes to the preliminary voter list may not be submitted later than 60 days prior to the date of elections. The final voter lists are to be printed and sent to the CEAZs for posting no later than 30 days before election day (Article 54). If a voter changes residence after the posting of the final list, the voter is to vote in the voting centre where his/her name appears on the list (Article 55.2). During the 2011 local elections, the government interpreted the relevant provisions in the manner that the final voter lists should reflect all changes to a citizen’s status up to the printing of the final voter list and most CSOs implemented it accordingly. This interpretation was very much disputed by the major opposition party that considered all changes after the deadline of Article 52.1 illegal.

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<sup>15</sup> The importance of training of election commissions is reflected in the Code of Good Practice in Electoral Matters: “Members of electoral commissions must receive standard training” (CDL-AD(2002)023rev, II.3.1.g).

<sup>16</sup> CEC authorisation is required only when voting centres are established in private premises (Article 93.2).

<sup>17</sup> Cf. the Convention on the Participation of Foreigners in Public Life at Local Level (ETS 144).

The UN Human Rights Committee in its General Comment 25 confirms the existence of an emerging trend to grant voting rights to permanent residents at local elections, see:

<http://www.unhchr.ch/tbs/doc.nsf/0/d0b7f023e8d6d9898025651e004bc0eb?Opendocument>.

The Code of Good Practice in Electoral Practices of the Venice Commission of the Council of Europe states, “it would be advisable for foreigners to be allowed to vote in local elections after a certain period of residence” (CDL-AD(2002)023rev, I.1.1.b.ii).

55. In order to enhance clarity and to eliminate the possibility of controversy, *the Venice Commission and OSCE/ODIHR recommend that the provisions of the Code pertaining to voter lists be amended to clearly define a deadline for any changes to the voter lists.*

56. It should also be noted that, different from Article 52.6, Article 55.3 does not make the decision of courts on voter lists dependent on the presence of the plaintiff at a hearing.

57. *The Venice Commission and OSCE/ODIHR recommend ensuring coherence between Articles 52.6 and 55.3.*

## **VI. Nomination procedures**

### **A. Registration of candidates in the Tirana municipality**

58. Registration of candidates for parliamentary elections is done by the CEC, while for local elections it is the task of CEAZs (Article 67). The system of mid-level election commissions is peculiar in that the geographical territory covered by a CEAZ does not correspond with a constituency. The 11 CEAZs of Tirana constitute an exception for local elections since each of them covers one Tirana borough (Article 27.4).<sup>18</sup> The Code does not specify which election administration body is competent for the registration of candidates for the Tirana municipality. In the 2011 local elections, the CEC decided to register these candidates itself. The decision of the CEC to act as the CEAZ for the Tirana municipality went beyond registration of candidates and eventually led to disputes and appeals during the stage of aggregation of results, even though at the time it provided the means to overcome this gap in the legislation in order to register candidates in Tirana. In particular, the CEC, instead of proceeding with the tabulation of results for the municipality of Tirana provided by the CEAZs, decided to open ballot boxes to search and attribute “miscast” ballots (see *below in Counting and Tabulation of Results*), claiming that it did so assuming the functions of the CEAZ of Tirana.

59. *The Venice Commission and OSCE/ODIHR recommend that the Code be amended to clearly state which election administration body is competent for registration of candidates in Tirana. Its functions as well as its relation with the other administrative bodies involved in the conduct of local elections in the Tirana municipality should also be specified.*

### **B. Gender requirements**

60. In their previous opinion, the Venice Commission and OSCE/ODIHR raised doubts about the efficiency of the provisions in the electoral legislation aimed at ensuring representation of both genders in elected bodies. In particular, providing for parliamentary elections that “at least thirty percent of the multi-name list and/or one of the first three names in the multi-name list should be from each sex” appears as a rather weak commitment.

61. *The Venice Commission and OSCE/ODIHR recall their recommendation that the “and/or” text in Article 67.5 referring to parliamentary elections be changed to “and”. It is further recommended that Article 67 be reviewed to provide more efficient mechanisms to promote women representation in parliament.*<sup>19</sup>

62. The second sentence of Article 67.5 appears to be setting a stronger requirement for the candidate lists in local elections, requiring one in every three names on the list to belong to each gender. However, Article 67.6 permits electoral subjects to exempt themselves from this requirement by paying a rather low fine.

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<sup>18</sup> Each borough constitutes a local government unit (constituency for local elections).

<sup>19</sup> CDL-AD(2009)005, par. 20.

63. *The Venice Commission and OSCE/ODIHR recommend that Article 67.6 be revised. Consideration could be given to increasing the amount of the fine for non-compliance with the gender requirement and to making receipt of public funds for campaign finance contingent on compliance.*<sup>20</sup>

### **C. Deadlines for registration**

64. According to Articles 67-73, candidatures for parliamentary elections must be submitted to the CEC no later than 40 days before election day or to CEAZs for local elections. The competent election commission verifies the regularity of candidacy documents and if it notices irregularities, returns them for correction no later than 35 days before election day. The corrected documentation should be submitted no later than 32 days before election day and the decision for approval or rejection of the candidacy must be taken within 48 hours from their submission. In case of rejection of a candidacy and in case the electoral subject chooses or needs to pursue all means of legal redress, the final decision on the candidacy could be issued close to election day and potentially at a moment that would put at risk the timely production of ballot papers. This is particularly relevant to local elections, since the number and variety of ballots to be printed is much higher than in parliamentary elections

65. *The Venice Commission and OSCE/ODIHR recommend that the legal deadlines for the registration of candidates be reconsidered.*

### **D. Submission of signatures in support of candidates proposed by groups of voters**

66. Several issues pertaining to collection and submission of signatures in support of candidates proposed by groups of voters and by non-parliamentary parties have been discussed extensively in the 2009 Joint Opinion on the Electoral Code of Albania (CDL-AD(2009)005).<sup>21</sup> The first sentence of Article 68 as well as the first sentence of Article 71 that pertain to parliamentary elections were abrogated by the Constitutional Court Decision 32/21.06.2010. The parts of these provisions that regulate local elections still remain in force. In particular, the Code should exempt candidates supported by a group of voters from the requirement of voting signatures if they already hold a mandate.

67. Signatures of supporters must be deposited before a CEAZ employee or a notary. This can be cumbersome and challenging to the functioning of a CEAZ. The provision could be revised and this requirement could be removed. Instead, people signing in support of candidatures could provide sufficient information to an authorised representative of the candidate so that they can be identified and contacted if there is a need for further verification.

68. *The Venice Commission and OSCE/ODIHR recommend considering whether the requirement to deposit signatures of supporters before a CEAZ employee or a notary could be reconsidered.*

## **VII. Voting process**

69. The Code does not provide for voting abroad. This is a political choice which is not against international or European standards, but it must be underlined that the practice in Europe is

<sup>20</sup> OSCE/ODIHR and Venice Commission "Guidelines on Political Party Regulation" (CDL-AD(2010)024), par. 191 states: "allocation of funds based on party support for women candidates may not be considered discriminatory...and can be contingent on compliance with requirements for women's participation". Also, par. 192: "it is reasonable for states to legislate minimum requirements that must be satisfied before the receipt of public funding. Such requirements may include...gender-balanced representation".

<sup>21</sup> CDL-AD(2009)005, par.22 ff.

increasingly in the direction of facilitating voting from abroad.<sup>22</sup> The issue of giving Albanian citizens residing abroad the right to vote in a safe and reliable way could be addressed in the future, although the risks of doing so in a polarised political environment should be duly considered.

70. Military personnel as well as voters in State Police Forces should be able to vote at their place of registered permanent residence or in the regular polling station where they are stationed. The Code of Good Practice in Electoral Matters<sup>23</sup> recommends that military personnel should vote at their place of registered permanent residence whenever possible. Although it is difficult or even impossible to allow all military personnel to vote at their place of residence, voting at their home polling stations should be allowed for military personnel posted in their home municipality.

71. *The Venice Commission and OSCE/ODIHR recommend that Articles 60 and 111 of the Code be amended in order to allow military personnel to vote at their place of registered residence whenever possible.*

72. By stipulating that a voter unable to perform the voting procedures himself or herself, must be present, Article 108.1 does not take into account the situations in which a voter is physically unable to come to the voting centre. This requirement could be mitigated if an alternative system of voting that is safe and reliable were introduced for these voters.

### **VIII. Electoral system**

73. Article 166.3 states that “the seats of the local councils are allocated by the CEC on the basis of the proportional system, in accordance with the same procedures provided in articles 162 and 163 of the Code”, that is according to the same procedure as in parliamentary elections. Both these articles regulate in detail the method and timeframe of allocation of seats. However, Article 162 paragraph 1 stipulates specifically that “for elections to the Assembly” (parliament), parties and coalitions are subject to 3 and 5 per cent *thresholds*. Thus, it could be interpreted that the thresholds apply for parliamentary elections only.

74. *The Venice Commission and OSCE/ODIHR recommend making it clear in the Code whether thresholds apply only to National Assembly elections or whether they apply also to local elections.*

### **IX. Media access provisions**

75. Articles 80-85 that regulate access to media during the campaign give an undue advantage to parliamentary parties without a proportional legitimate aim, even if Article 84, paragraph 9 obliges private radio and television broadcasters to make airtime available for the benefit of candidates proposed by voters. The issue has been discussed at length in the 2009 Joint Opinion.<sup>24</sup> In particular, “Article 84(2) discriminates in favour of specific political parties and raises questions of compatibility with the principle that a state should not itself determine media content or exercise political authority or influence to determine media content”.<sup>25</sup> This goes against Articles 10 to 14 of the European Convention of Human Rights (ECHR). It is difficult to see that the restrictions which Article 84 imposes upon these private persons and institutions are necessary in a democratic society for the protection of any of the interests listed in Article 10.2 ECHR. The advantage of major parliamentary parties is even more unjustified in the

<sup>22</sup> Cf. CDL-AD(2011)022 Report on out-of-country voting, adopted by the Council for Democratic Elections at its 37th meeting (Venice, 16 June 2011) and by the Venice Commission at its 87th Plenary Session (Venice, 17-18 June 2011).

<sup>23</sup> CDL-AD(2002)023rev, I.3.2.xii.

<sup>24</sup> CDL-AD(2009)005, par. 28 ff.

<sup>25</sup> CDL-AD(2009)005, par. 36.

context of local elections. The Code could also benefit from some clarifications as to what constitutes a political advertisement in broadcast media, for instance what elements (such as the identification of the electoral subject) should be visible.

76. *The Venice Commission and OSCE/ODIHR reaffirm their recommendations to amend the provisions on media access in order to avoid any undue advantage of major political parties, in particular in local elections, as well as any undue restriction of freedom of expression.*

77. Article 84.2 of the Code provides that airtime for government activities that are related to the electoral campaign is included in the time of the party to which the head of the institution that organises the activity, belongs. The assessment of whether an activity is related to the electoral campaign is carried out by the members of the Media Monitoring Board, who have come up with diverse and conflicting interpretations during past elections.

78. *The Venice Commission and OSCE/ODIHR recommend that Article 84.2 be amended to include a definition of what constitutes “government activities that are related to the electoral campaign”.*

79. Article 84.8 of the Code provides that advertisements of public institutions during the campaign period are included in the time of the political subject to which the head of the institution belongs. *It would be advisable to avoid such inclusion as the advertisement of public institutions should be politically neutral and has other aims than campaigning.* Campaign at the cost of public institutions is dealt with in Article 88 of the Code on prohibition of the use of public resources for the support of electoral subjects.

80. The Code does not entail provisions on the working methods, costs and dismissal or resignation from office of the members of the Media Monitoring Board.

81. *The Venice Commission and OSCE/ODIHR recommend foreseeing such provisions in order to make the Media Monitoring Board work efficiently. The Code could also include provisions on staff (secretariat) of the Board.*

## **X. Campaign finance provisions**

82. While previous recommendations of the OSCE/ODIHR and the Venice Commission on campaign finance remain valid,<sup>26</sup> it should be noted that most of the relevant provisions seem to have been drafted with parliamentary elections in mind and are, therefore, not well adapted to local elections. In particular, the provision of the Code (Article 87) that foresees the allocation of funds for the elections only to parliamentary parties is contrary to good practice,<sup>27</sup> by leading to unequal and even unfair treatment without a proportional legitimate aim. This would seem to protect the political establishment and not stimulate political pluralism. Moreover, the application of such a provision in the context of local elections is highly questionable. If the aim were to provide public funding to parties that already enjoy a minimum support among the electorate, it should equally apply to parties having elected mayors or holding seats in the municipal council.

83. Moreover, the relation between the provisions under Article 87.2.a – allocation of funds to parties that have seats in the Assembly - and Article 87.2.b – allocation of funds to parties that have obtained not less than 2 seats in the previous Assembly - is not clear. Does it mean that the political parties referred to under b) also benefit from the distribution under a)? And does it

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<sup>26</sup> CDL-AD(2009)005, par. 40 ff.

<sup>27</sup> OSCE/ODIHR and Venice Commission “Guidelines on Political Party Regulation” (CDL-AD(2010)024), par. 187 states: “the formula for the allocation of public funding... should also prevent the two largest political parties from monopolising the receipt of public funding.” Par. 188 states, “to promote political pluralism, some funding should also be extended beyond those parties represented in parliament to include all parties putting forth candidates for an election and enjoying a minimum level of citizen support.”

mean that under a) the political parties referred to profit on an equal basis irrespective of their numbers of votes? A solution might be to grant public funds also to these political parties, which would then also be under the obligation of restitution under paragraph 3. Moreover, while paragraph 2 only refers to political parties, it follows from Article 90, paragraph 4, that it may also apply to candidates proposed by voters.

84. *The Venice Commission and OSCE/ODIHR recommend that the relevant provisions be amended taking into account established good practices and the peculiarities of local elections.*

85. Concerning abuse of public resources, Article 88.2, which provides for the “exception of motivated cases”, appears as very broad and needs some specification.

86. *The Venice Commission and OSCE/ODIHR recommend amending Article 88.2 in order to limit the scope of this exception.*

87. Although Article 91 of the Code provides auditing of electoral campaign funds and expenses after the elections, there are no provisions for reports to be published prior to election day.

88. *The Venice Commission and OSCE/ODIHR recommend including in the Code provisions obliging electoral contestants to publish (for example, on their website or through the CEC) their expenses weekly in the campaign period. This would lead to public and media control over the expenditures.*

## **XI. Counting and tabulation of results**

### **A. Counting at ballot counting centres**

89. The Code provides for centralised counting on at CEAZ level in BCCs under the supervision of CEAZs. The counting is performed by Counting Teams that consist of four members.

90. Although the use of special Counting Teams for vote counting rather than VCCs is not covered by international standards, the regulation has to be in compliance with democratic standards in order to guarantee the secrecy of suffrage and overall legitimacy of the election administration. In case the election results are not delivered speedily, risks exist for politically orientated decision-making by the electoral administration, illegal influence of political parties or candidates on the members of election administration, as well as manipulation of uncounted votes. If counting in special centres is maintained, *the Venice Commission and OSCE/ODIHR recommend that the number of counting centres be increased to speed up the process.*

91. The composition of the Counting Teams is established by Articles 95 and 96. According to Article 95, the Counting Teams are established two days prior to election day. Proposals for nominations are made at least four days before the elections. In order for the Counting Teams to work more proficiently, it would be advisable to provide for their earlier setup. This would give their members more time to be trained appropriately beforehand.

92. Article 96 of the Code provides that Counting Teams are composed of four people, with the chairperson and one member distributed among the two largest parties in the parliament. The third and fourth members of the Counting Teams are to be appointed by lot from among representatives of “the lists of political parties of the parliamentary majority and the lists of the parliamentary opposition that are registered in the elections and that have won no fewer than two parliamentary seats in the last parliamentary elections”.

93. These provisions assume that there would be at least two parties, one of the majority and one of the opposition, besides the main ones in Parliament, and that they would both have won at least two seats in the preceding elections. Such a configuration may not necessarily be the case. Such was the case in the 2011 local elections when, besides the main opposition party, there was no other party within the opposition with at least two seats.

94. Even though the issue was eventually regulated by the CEC without controversy, *it is recommended that Article 96 be amended in order to provide more flexibility in composition so that gaps in its application are avoided, without jeopardising balanced representation of political parties.*

## **B. Counting procedure**

### **1. Timing**

95. According to Article 118, the procedure for evaluation of the votes is quite time-consuming, since all votes have to be announced aloud, even if the count can be observed through a live video feed. As the counting should be timely, it could be considered to amend Article 118.1 accordingly. Article 118.6 last sentence provides for the restart of the vote count for an electoral subject on the request of any member of the BCT.

96. *The Venice Commission and OSCE/ODIHR recommend considering the revision of Article 118 in order to make the counting process timelier.*

97. Article 122 requires that the Aggregate Table of Results for the respective Electoral Administration Zone be issued by the CEAZ no later than 17:00 on the day following the elections. Such a short deadline has proven to be unrealistic, even more so in the local elections, given the large number of ballot papers (of different types), particularly given the limited number of BCCs (66). The experience of the 2011 local elections showed that the counting may take up to a week in most BCCs and even two weeks in Tirana. The inability to observe the deadline also affects the complaints and appeals process, which starts with the tabulation of results. This makes the process protracted and renders the time of its conclusion and consequently the announcement of final results uncertain.

98. *The Venice Commission and OSCE/ODIHR recommend that the deadline for summarising the results in local and parliamentary elections be extended.*

### **2. Sequence of Counting**

99. The Code is ambiguous regarding the sequence of counting of ballots cast in local elections. Article 120 provides that in local elections each Counting Team counts ballot boxes divided by local government unit, beginning with the municipality with the largest number of voters, followed by other municipalities in descending order.

100. Article 116, paragraph 2 stipulates that members of the Counting Teams “take from the stacks the ballot boxes, one after the other, in ascending order of the ordinal numbers of the voting centre”. The Counting Teams should take the ballot boxes from each voting centre separately and count them, beginning with the box for mayoral elections, followed by the box for council elections. At the end of the count in each voting centre, the Counting Teams should fill in the result sheet for each voting centre and proceed to take ballot boxes from the next voting centre.

101. However, Article 116, paragraph 1 states that in the Tirana municipality, the count should begin in the following order: “a) the ballot boxes for the mayor of Tirana municipality and Tirana municipal council, and b) the ballot boxes for the mayor of the municipal borough and the



municipal borough council". It is not clear whether this sequence should apply to all ballot boxes from all voting centres in Tirana, or only to the four ballot boxes within each voting centre.

102. In line with Article 116, paragraph 1 and the logic of verification of boxes with election materials (initial step in the count process), including checking the list of voters and counting signatures, each voting centre should be counted separately. An alternative sequence of the counting (counting first the boxes for the mayor of Tirana and the Tirana council from all voting centres) creates certain procedural challenges like: 1) the box with voters list, stamps and the voting centre closing form which is opened first and stored along with boxes with counted ballots would not be available during the count of boxes for boroughs, which is likely to be conducted several days later, and 2) counting the ballots mistakenly cast by voters in the wrong ballot boxes would be difficult.

103. *The Venice Commission and OSCE/ODIHR recommend that the Code provide that all four contests in Tirana are counted in the order of voting centres, like in all other municipalities.*

### **3. Miscast ballots**

104. For the local government elections, two ballot boxes are used in the voting centres, one for the mayoral election and one for the council election. In the voting centres in Tirana, four ballot boxes are used, one for the mayoral election of the borough, one for the election of the borough council, one for the mayoral election of the Tirana municipality and one for the election of the Tirana Municipality Council (Article 104). It is, therefore, not uncommon that ballot papers are erroneously cast in the wrong ballot box within the same voting centre. The Code fails to address the problem of counting ballots which were mistakenly placed by voters in the wrong ballot boxes. Neither did the CEC issue any instruction to that effect. This issue led to a major controversy during the recent local elections in the Tirana municipality when counting of misplaced ballots changed the very narrow results of the mayoral election. This led to an even more acute polarisation at the CEC and to a lengthy appeals process.<sup>28</sup>

105. *The Venice Commission and OSCE/ODIHR recommend that the Code expressly addresses the problem of ballots cast in the wrong box. Also, a clear procedure for the reconciliation and inclusion of miscast ballots in the results should be established. For example, such ballots could be placed in a separate pile on the counting table and be counted after completion of the count of all ballot boxes from a voting centre.*

### **4. Other issues**

106. *The Venice Commission and OSCE/ODIHR recommend evaluating all contested votes thoroughly and amending the Code in order to guarantee that only those votes which are objectively not clear are considered as invalid. The current text of the Code (Art 119.2 and 119.3 as well as Art. 118.2 last sentence) should be amended accordingly.*

107. According to Article 138.3, the CEC may conduct a re-count or re-evaluation of the votes. It is questionable whether it should be carried out by the CEC itself, as it may be time consuming and in case such re-count or re-evaluation affects many voting centres, the aim of speediness in vote count cannot be achieved.

108. *The Venice Commission and OSCE/ODIHR recommend that those bodies charged with counting the ballots also conduct any recounts.*

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<sup>28</sup> For a complete account, see OSCE/ODIHR Final Report on the 2011 local elections, available at: [www.osce.org/odihr/81649](http://www.osce.org/odihr/81649).

109. Article 115 provides procedures for the CEAZs to declare a ballot box “irregular” upon reception from the VCC in case it has or could have been tampered with. If irregularities are noted during the verification of election material or the count, the CEAZ makes a decision to continue the vote count, after the irregularity has been confirmed and reflected on the Record of Findings (Article 116.6). The Code does not contain any provisions for the CEAZ or the Counting Team to declare a ballot box irregular once the vote count has started. This may present problems in different directions: if a ballot box is evidently stuffed, then it is rather difficult to argue that it should be counted since it was declared regular upon receipt. On the other hand, Article 116.6 gives much discretion to the CEAZ, which can lead to arbitrariness. In fact, during the counting for the 2009 elections, Article 116.6 was interpreted as giving the CEAZ authority to stop the count of a ballot box or not to include it in the Aggregate Table of Results.

110. *The Venice Commission and OSCE/ODIHR recommend that the Electoral Code clearly specify how CEAZs and Counting Teams should handle ballots and election material boxes deemed regular upon receipt, but which are later found to have problems that indicate serious irregularities. The Code should also clearly state in an exhaustive manner which conditions have to be met for a ballot box deemed regular upon receipt not to be included in the count.*

111. The Code does not contain any specific provisions on the publication of preliminary results. Thus far, the CEC has been publishing results on its website, without including key figures such as number of registered voters, number of ballots cast and number of invalid ballots. *In order to enhance transparency, the Venice Commission and OSCE/ODIHR suggest that it would be helpful to include in the Code a provision that would oblige the CEC to publish results per voting centre including key figures mentioned.*

## **XII. Complaints and appeals**

112. CEAZs decisions can be appealed to the CEC and CEC decisions can be appealed to the Electoral College. Article 123 sets an exception requiring that CEC decisions on the approval of the Aggregate Table of Results per Electoral Zone be appealed to the CEC. While approval of the Aggregate Table of Results requires a simple majority of four out of seven votes, upholding a complaint against such approval requires a qualified majority of five votes (Article 24.1.b). As the 2009 and 2011 elections have shown, a qualified majority is very rarely obtained in such cases, since that can only be possible if at least two CEC members among those who originally approved the results change their minds and overturn their own decision. Consequently, no effective remedy is guaranteed in this case.

113. *The Venice Commission and OSCE/ODIHR recommend that the Code be amended so that CEC decisions on the Aggregate Table of Results may be challenged before a judicial body in the same way as all other CEC decisions. Any judicial review should be guaranteed access to the relevant documents.*

114. The allocation of mandates is undertaken by the CEC and it requires a qualified majority of five out of seven votes (Article 24.1.a). In case the CEC does not obtain five votes, it fails to make the relevant decision. When the CEC fails to make a decision, electoral subjects have the right to file an appeal with the Electoral College (Article 145.2). In this case, the Electoral College does not judge the merits of the case and, when it accepts the request, it compels the CEC to make a decision. Article 145.2 sets exceptions, presumably in an attempt to avoid a lengthy back-and forth transfer of cases between the CEC and the Electoral College. It states: “this rule does not apply to CEC decisions to reject a request for appeal, in relation to decisions taken in compliance with letters (a), (b), (c) and (ç) of Article 24 of this Code”. However, the decision or the inability to reach a decision on allocation of mandates under Article 24.1.a cannot be considered as a “decision to reject a request for appeal”. The wording is unclear and

confusing. If the intent is that the Electoral College can allocate the mandates itself, it should be clearly stated.

115. *The Venice Commission and OSCE/ODIHR recommend rewording Articles 145.2 and 24 more concisely so that the ambiguity is eliminated.*

116. Article 158.5 states that "the decision of the Electoral College is final. No appeal may be made against it". This provision may raise constitutionality issues. Article 43 of the Constitution states that "everyone has the right to appeal a judicial decision to a higher court, except when the Constitution provides otherwise".

117. *The Venice Commission and OSCE/ODIHR recommend reconsidering Article 158.5.*

118. In the second sentence of Article 132.1, "also are joint" should probably read in the English translation "may also be joined", since the next sentence makes clear that it is a discretionary power of the CEC to join requests.

119. The relation between the two sentences of Article 143.3 is not clear: if the final decision has to be taken not later than 10 days from recording of the appeal, what kind of decision has to be taken not later than 2 days from its submission?

120. *The Venice Commission and OSCE/ODIHR recommend clarifying Article 143.3.*

121. Since all members of the Electoral College are judges of an appellate court and function under oath, the utility of requiring them to take another oath that contains duties covered by the general oath (Article 146.4) is questionable. For the same reason, Article 149 would seem to be superfluous, since the members enjoy immunity as judges of an appellate court.

122. *The Venice Commission and OSCE/ODIHR recommend reconsidering Articles 146.4 and 149.*

123. It is difficult to understand on what grounds, other than those already listed in Articles 148 and 150 of the Code, a parliamentary party could justifiably reject a judge whose name has been drawn by lot. Since the reason for removal may not be specified, there is a lack of transparency and a risk of arbitrariness. This amounts to undue political influence on the composition of the Electoral College and is incompatible with the principle of the independence of the judiciary.

124. *The Venice Commission and OSCE/ODIHR recommend reconsidering the possibility for parliamentary parties to reject a judge for the Electoral College without any motivation.*

125. In Article 151.3 (on excluding a judge from hearing a case), it may be assumed that "All judges" does not include the judge whose exclusion has been requested.

126. Articles 172 and 174-176: Fines, although of an administrative nature, may have such a material or immaterial impact on the person concerned, that they may fall under "criminal charge" in the sense of Article 6 of the ECHR and require the possibility of appeal to an independent court.<sup>29</sup> From Article 174, paragraph 3, it follows that an appeal is provided for. However, the competent court is not specified.

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<sup>29</sup> European Court of Human Rights (ECtHR), *Weber v. Switzerland*, judgment of 22 May 1990, § 34.

### **XIII. Repeat elections**

127. The holding of repeat elections is ordered by the CEC if the invalidation of elections in one or more voting centres impacts the allocation of seats in the electoral zone or nationwide (Article 161.1). It is not self-evident that this would require repeating voting on a broader scale than in the voting centre concerned. The possible impact that the voters in the voting centre concerned may, in case of a repeat election, be influenced by the outcome of the electoral zone would seem unavoidable.

128. *The Venice Commission and OSCE/ODIHR recommend introducing the possibility to cancel an election, when possible, in only one or several voting centres instead of a whole constituency.*<sup>30</sup>

129. Article 161.3 states that "...elections for the local government councils are not to be repeated". It is not clear why this exception is established.

130. *The Venice Commission and OSCE/ODIHR recommend that Article 161 be revised and this exception be abolished.*

### **XIV. Conclusions**

131. As stated in the previous Joint Opinion of the Venice Commission and OSCE/ODIHR, the Electoral Code of Albania provides a thorough technical foundation for elections.<sup>31</sup>

132. However, recent experience in the implementation of the Code shows that a number of improvements are still required in electoral legislation and practice.

133. The recurring problems with the conduct of democratic elections in Albania cannot be resolved merely through changes in electoral legislation. Any meaningful improvement in the quality of the electoral process will not be achieved without a change of attitudes and practices of the main political groupings and their leaders. Nonetheless, existing weaknesses in the Code that were exposed during the recent elections in Albania need to be addressed. Key amendments could include in particular:

- Rules ensuring the appointment of members of election commissions in a timely manner and preventing their removal except when duly motivated, as well as the rejection of a judge for the Electoral College without any motivation;
- Changes in and clarification of the vote counting procedures, especially concerning miscast ballots;
- Taking better account of the specificities of local elections in the Code, in particular as regards provisions on media access, campaign financing, and peculiarities of the elections in Tirana;
- Making provisions relating to media access and campaign financing more effective;<sup>32</sup>
- Eliminating other gaps and ambiguities, for example regarding the application of the electoral threshold in local elections, gender requirements, and complaints and appeals.

134. The crucial challenge is, however, whether it will be possible to move away from the present partisan composition of the election administration, based on a balance between both main political parties, to an election administration including a non-partisan and impartial

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<sup>30</sup> Cf. Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev), II.3.3.e.

<sup>31</sup> CDL-AD(2009)005, par. 94.

<sup>32</sup> CDL-AD(2009)005, par. 94.

element. This change is indispensable if one wishes to reduce conflicts and polarisation within the election administration. However, under present circumstances, it will be extremely difficult in Albania to identify a person or body who could appoint such non-partisan members of the election administration in a way that is deemed impartial. This should not prevent the Albanian authorities from trying to develop such a solution.

135. The Venice Commission and OSCE/ODIHR recall that the stability of the electoral legislation is important for the public's confidence in the electoral process.<sup>33</sup> Amendments should therefore aim mainly at improving the conformity of the legislative framework with international standards.

136. A public process, with the inclusion of all stakeholders, is instrumental in encouraging trust and confidence in electoral outcomes. All parties, both in the government and the opposition, have a responsibility in this regard. The process for revision of the electoral legislation should therefore be inclusive. It should also be finalised well in advance of the next elections.

137. The Venice Commission and OSCE/ODIHR continue to stand ready to assist the authorities of the Republic of Albania in their efforts to create a legal framework for democratic elections in full conformity with Council of Europe and OSCE commitments and other international standards for democratic elections.

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<sup>33</sup> Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev), II.2.b; Interpretative Declaration on the Stability of Electoral Law (CDL-AD(2005)043).