

The Constitution of Albania

LAW NO.9675, DATED 13.1.2007

"Some amendments to the law No.8417, dated 21.10.1998 "THE CONSTITUTION OF THE REPUBLIC OF ALBANIA"

THE ELECTORAL CODE OF THE REPUBLIC OF ALBANIA
(Approved by law no.9087, dated 19.6.2003 and amended by law no. 9297, dated 21.10.2004, law no. 9341, dated 10.1.2005 and law no. 9371, dated 14.4.2005)

LAW NO. 9341, DATED 10.1.2005
"Some amendments to the law no.9087, dated 19.6.2003 "The Electoral Code of the Republic of Albania", amended by law no.9297, dated 21.10.2004

LAW NO. 9371, DATED 14.4.2005

"An addition to the law no. 9297, dated 21.10.2004, which amends law no. 9087, dated 19.6.2003 "The Electoral Code of the Republic of Albania", amended by law no. 9341, dated 10.1.2005

LAW

NO. 9087, DATED 19.6.2003

"The Electoral Code of the Republic of Albania"

LAW NO.8780, DATED 3.5.2001

"Additions and amendments to the law no. 8609, dated 8.5.2000, "The Electoral Code of the republic of Albania"

LAW NO. 8416, DATED 12.10.1998

"Some amendments to the law no. 7866, DATED 6.10.1994 "On Referendums "

Electoral Practice & Reform

NOSA
Network of Open Society for Albania

ECA
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LAW NO.8151, DATED 12.9.1996

"Some amendments to the law no. 7573 dated 16.6.1992 "On elections of local government bodies"

LAW NO. 8218, DATED 16.5.1997

"Some amendment to the law no. 7556, dated 4.2.1992 "On elections for the National Assembly of the Republic of Albania", amended by law no. 8143, DATED 11.9.1996

LAW

NO. 8218, DATED 16.5.1997

"Some amendment to the law no. 7556, dated 4.2.1992 "On elections for the National Assembly of the Republic of Albania", amended by law no. 8143, dated 11.9.1996

LAW NO. 8143, DATED 11.9.1996

"Amendment to the law no. 7556, dated 4.2.1992 "On elections for the National Assembly of the Republic of Albania" amended by law no. 8055, dated 1.2.1996

LAW

NO.7866, DATED 6.10.1994 "On referendums"

LAW NO.8055, DATED 1.2.1996

"Some amendments to the law no. 7556, dated 4.2.1992 "On elections for the National Assembly of the Republic of Albania"

LAW NO.7423, DATED 13.11.1990

"On elections for the National Assembly"

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Free and fair elections are a legal and political process, which provide for the existence and strengthening of democracy in a particular country. The election process remains the only mechanism through which citizens ensure their representation and protection of their interests with the institutions of the country. In this framework, the trust of citizens to these institutions is related first with their trust to the election process.

Based on the above principle, "Elections to Conduct" Agency – ECA and the Network of Open Society in Albania (NOSA) initiated a Civil Society Experts Forum on electoral practices and reform issue in Albania.

This initiative aims at strengthening democratic principles and standards for free and fair elections, based on the recommendations quoted in the documents of Organization for Security and Co-operation in Europe (OSCE), Council of Europe and other International Organizations, which have been recognized by the Republic of Albania. The Election Forum participants and partners are distinguished experts of civil society who have contributed in the enforcement of electoral practices

The Forum was organized in separate sessions and it included issues like: electoral system, election administration, voting and counting procedures, complaints & appeals, political parties' finances and media & observers. The debate and conclusions of this Forum were based on:

- i. the results of the public opinion on electoral practices (national survey) and
- ii. the contribution of international and local experts who addressed respectively the international practices and local perception on the above issues.

At the end, the experts group has prepared these Recommendations, which is a public Document and it is directed to the Assembly, Special Commission for the Electoral Reform, President of the Republic, Political Parties, Diplomatic Missions and International Organizations accredited in Albania.

Distinguished Ladies and Gentleman,

The intent of this Recommendations` Document is not to stipulate the voting procedures that Albanian citizens should apply or how their vote should be administrated properly; but to lead the legislator towards electoral practices, which are guided by the constitutional principle of the right to vote, secrecy, free and fair voting process. In this way, the forthcoming elections will not have as a consequence another electoral reform.

Thank you

The Albanian electoral system has the first and main distinction that it is stipulated in the Constitution of the Republic of Albania. Albania represented (and yet, represent) a new and unconsolidated democracy of pluralism. Consequently, the political competition and governing alternatives, in many cases have not been applied with appropriate or not appropriate rules and procedures for all the competing political alternatives in one electoral process.

The political wing that had the political/legislative power prior to the next electoral competition has always attempted to apply electoral rules which could bring about unfairly and incorrectly to a better electoral result at the end of competition.

Not only in Albania, but in almost all countries with new democracy it is observed that the issue of electoral system options is perceived mostly as a political arrangement instrument.

It's noticeable that the elimination of many cases to use the changes or electoral rules sanctions based on the political interests of the moment, in favor of one part and against the other one, has conditioned the sanction of the electoral system in Constitution.

It's also obvious that the change of the electoral system, while it is part of the Constitution, represents a larger difficulty as compared to the case when the electoral system is part of a non constitutional law.

The Albanian Constitution stipulates that¹:

- a- The Assembly is composed of 140 members;
- b- 100 of them are elected directly in 100 electoral zones, with an approximate number of voters;
- c- 40 members are elected by multi-names lists of political parties or coalitions, which receive more than 2.5% of valid votes (for political parties) and 4% of valid votes (for coalitions);
- d- The total number of members of parliament for each political party/coalition is defined based on the closest number of the valid votes attained nationwide.

¹ Reference to article 64 of Constitution

Thus, as per the above definition, the seats of one party/coalition won in Assembly are in fair proportion with the number of valid votes received by this party. If a party obtains the above number of seats in Assembly by the elections results of single member zones (for the 100 candidates), it (the party) doesn't win other mandates from the 40 supplementary mandates.

The party/coalition that has passed respectively the threshold of 2,5% and 4% of won valid votes nationwide, but it didn't win any direct mandate in single member zones, it has the right (and its generally enabled by the system) to obtain seats from the 40 supplementary mandates, which are selected by the parties/coalitions multi-names list.

The Electoral Code defines also the applied formula of the mandates that a political party/coalition wins².

The Constitution does not provide for the local government election system.

The elections of 2001 and 2005 for the Assembly of Albania were conducted based on the above election system.

Apart of the problems noticed during these elections with respect to their administration, it seems that the electoral system in place has not created the confidentiality among all parties involved in the process; some electoral subjects did not receive a "fair" result from this electoral system.

It seems that the so-called "Dushk" phenomenon, which in fact has a non exceptionable formal legitimacy, has not respected the principle of the electoral system. The opportunity offered by the system to choose 2 alternatives at once is not applied to satisfy the electorate, offering the possibility of a more qualitative election of its representatives to the Assembly; but it's obviously utilized only by the political parties to impose the electorate through the tactical voting, in order to obtain the preferred elections results.

Thus, the system offers the possibility that in an electoral zone, the voter votes the candidate/individual that better represents his interests to the Assembly, regardless of his (candidate) political party affiliation. At the same being able to vote for political parties with a second ballot paper, the voter has the opportunity to express his sympathy also for his political party.

² Reference to article 67 and 68 of Electoral Code – amended

Obviously, this electoral system offers an extensive representation of the political spectrum in Albania, without considering in this case how representative this spectrum is in relation with the electorate. It looks like the 40 (forty) supplementary mandates provide a chance for small parties to be presented to the Assembly. Because the so-called big parties, are able to win more candidates from the single member zones (as per the formula/system), they do not obtain supplementary mandates. In this way, these mandates are quite a “grant” for the small parties.

The general elections for the Assembly of Albania held on 2001 and 2005 showed in some cases that different political parties have tested this electoral system in extremity, trying to profit as much as the system could offer.

As with any other electoral system, even this one may be deformed if it will miss the political will to apply it in a “fair” way. Even the international observers have come to the same conclusion.³ As per their findings, it looks like there is no direct critique to the applied electoral system itself, but the lack of the political will to interpret article 64 of the Constitution in the right and fair way is criticized.

This is more evident if we face the fact that many Electoral Code provisions have serious deficiencies compared to international standards. For example, we may mention the provisions related to the right of the political parties to file with CEC their internal agreements on the ordering of their winning candidates from the multi-names list.⁴

Today, there are parties in the Assembly of Albania that have a number of seats which is in disproportion with their electorate percentage.

Is understandable that there is no electoral system that can always provide for a fair matching of the number of votes received by a political party, proportionally with the number of seats that this party obtains in the representative body.

In addition, it seems that on the other side, this system provides for a stable government, which is a very important fact for countries with new democracies (like Albania); where the need for reforms requires political “tranquility” and “calmly” governance, without problems with political allies.

³ Reference to OSCE/ODIHR report, 7 November 2005

⁴ Reference to OSCE/ODIHR report, 7 November 2005

Therefore, this system may not be criticized if we want a “wide” political representation together with stable governance. In fact, these two elements are important components in the requests list on which should be based the design of an electoral system.

It is obvious that the “flexibility” of the system helps the political parties to utilize it in an “unfair” way, in order to achieve the best from the elections results.

Being part of the Constitution, it is an additional guarantee for the electoral system that it can not be changed only by the governing majority due to political and electoral ambitions of the moment, but on the other side it eliminates the possibility to be flexible on potential changes when it is needed. This contradiction is present in countries like Albania, in particular. On one side, it is necessary that the system should not be a changeable instrument in the interest of one party against the other one, but on the other side, being a society in development it may face the need for adapting an electoral system which can match with the political and economical situation of the country.

Nevertheless, we can not say that this system is the best per se, or even if we refer to our country conditions. In a quick assessment, it seems that in every circumstance it (the system) deserves a first critique. This electoral system is not very simple to be comprehensive not only by the voters, but also by the electoral subjects; in addition, it is not simple to be applied and administrated. The first requirement for the selection of an electoral system is its simplicity and compressibility.

Moreover, the system is such as the last final calculation for the seats won by a political party in Assembly, can not be made unless the elections are over in all the single names zones, in order to have a final result. This fact has brought as consequence the extension of electoral period beyond any international standard, producing negative effects for the economical and political stability of the country during the elections. Meanwhile, the delays of electoral results declaration, reduces also the credibility of this result, whatever it is.

Apart from that, the “deformation” which political parties have tried to make to this system have apparently “desolated” its credibility not only to the electorate, but also to politics itself.

Therefore, even the change of the system is not a necessity; it looks like there is a need to reconsider it. If this will be an agenda of the Albanian politics and respective institutions, this document would suggest the following recommendations for consideration:

RECOMENDATIONS

- I. The Electoral System may not be part of the Constitution, but the Constitution may stipulate the rules through which an electoral system should be selected. In order to guarantee that the selection of the electoral system may not be a decision of a certain majority only, the Constitution may define that " the law for the elections of the Assembly of Albania and local government to be approved with no less than $\frac{3}{4}$ of the votes of all the members of the Assembly".

This solution could enable the changes in electoral system, if considered, more often, without the need of "complicated" procedures of changes to the Constitution;

- II. In case of the point I, the Constitution should determine what the above law should contain, such as: how and when the elections date is set, which are the bodies that administrate, supervise, control and declare the elections results, etc.

In this way, the definition in Constitution of what the "law on elections" should contain, diminish the possibility of any majority to abuse with the stipulation of the numbers and forms of the regulations that the law should contain. – (an abusive case could be: a majority stipulates in the "law on elections" some rules related to i.e. the voters list compilation, the procedures for complaints and appeals, etc, but it doesn't include rules on the composition of the commissions or another one of this form. The majority may include the other mentioned rules as part of another law, which may be considered that doesn't requires a qualitative majority);

- III. The Electoral System should be simplified to guarantee the delivery and, administration of the voting process, as well as the declaration of the elections results possibly in one day – in this context, the elections may take place with one round and the formula of final result tabulation would not be related with the elections or/and the declaration of results in one particular electoral zone;

- IV. In the actual conditions of the economical and political development of Albania, the electoral system should provide a greater possibility for stable governing majority, able to apply the reforms of the moment, but at the same time, it should provide to minority a strong role in expression of its viewpoints and statements concerning the government program and its progress – thus, an electoral system where the subject that obtains the best electoral result wins also the right to govern with absolute majority could satisfy this requirement, or maybe even a clear majority system in conditions of a credible and technical administration;

- V. Even though the political configuration in Albania is really extensive, it is clear that the political and electoral conspicuous individualities are part of a very limited number of political parties. Some other political parties are represented in the legislative body, only because of the “political granting” of other “allies” with a bigger electoral power than these parties.
- Therefore, the needless to have such a large number of parties represented in the Assembly might justify the selection of a system that allows the representation in Assembly of those parties or political groups, which win a significant percentage of votes – so, the increase of electoral threshold could serve gradually as a filter for achieving this goal, but in the same time would give a chance to those parties, which even though are called “small”, they are close to what may be determined as a “real electoral power”;
- VI. In order to have a stable political life in the country, as well as having the conditions to achieve important political agreements for different issues, requires a strong role of political parties and maybe also of their leaders. But, the time is showing that in electoral choices the voters are oriented much more toward the individual values rather than what the individual represents politically. Nevertheless, the political sympathy remains a decisive factor in the electoral choice of the Albanian voter – based on this rationale, an electoral system that harmonizes these interests would be the right solution. So, it may be voted for political parties, but those candidates who win the mandate as per the number of the votes obtained by the political party they represent, may be ranked by the voters themselves. This is proportional voting system with opened lists;
- VII. Albania is in the phase to demonstrate to the international institutions it aspires the membership, that it is a democratic country, which recognizes and respects the rights of minorities and specific social groups. For that reason, Albania should firstly guarantee that in cases these groups are compounded by a noticed number in proportion with the population of that zone; they should have a real possibility to have a reasonable number of representatives. – An option could be the electoral system that guarantees in every case a number of preliminary seats to these ethnic or social groups;
- VIII. Aiming a more harmonized development in the whole country territory, at least to the extent that this is objectively possible, it’s necessary that the government policies should have in focus possibly every part of the territory.
- Inclined by clear political and electoral interests, the governments orient their programs in many times in favor of bastions, which gives them a better political support, or in those areas that they may show better their “governing quality”, leaving this way other areas or territories out of attention. But, the existence of the representative voices from these

“discriminated” areas/territories, at least could bring to the public opinion the attention these areas need and in the best case, could effect the specific programs of development. As per the above, it is necessary a correlation between a specific territory/community and its representatives to the Assembly.

The interest of the representative to win the next elections could be a very adequate encouragement for him to express everywhere and in any occasion the community interests/needs that he represents. – In order to meet this obligation, the solution could be a clear majority system or proportional system, with open list, regionally.

In Albania, the election administration remains one of the most discussed issues of elections panorama. Regardless of the periodical changes undertaken by the Albanian Legislator, aiming the improvement of the election administration functioning and effectiveness, yet, it remains a problematic issue, which requires a definitive adjustment by appropriate judicial mechanisms.

The amendments approved by the Assembly of Albania in January 2007, in the eve of the local elections of 18 February 2007, although they aimed to create inherent political equilibriums, they did not produce an election administration, which would be more capable and responsible for the judicial administration of the electoral process. By law no. 9675, dated 13.01.2007, the Assembly amended the article 154 of the Constitution increasing the number of CEC members from 7 to 9. By the same law, the mandate of the local elected (mayors) changed to four years. It used to be three years (since the approval of the Constitution the Referendum)

Moreover, the Assembly of Albania, by law no. 9676, dated 13.01.2007 "On some additions and amendments to law 9087, dated 19.06.2003 "The Electoral Code of the Republic of Albania", adjusted the previous electoral law, providing among others the increase of the lower level commissions (LGEC, VCC, VCT) number, which was stipulated with 12 members and 1 secretary. The principle of this amendment was the political will to establish a new balance of political parties in election commissions, increasing at the same time the political parties representation.

Central Election Commission

The Central Election Commission, regardless of the increase of its membership, is established by members appointed by the President of the Republic, the Assembly of Albania and the High Council of Justice. In the spirit of this article, the CEC members should be individualities of various fields, away from political influence, which during the exercise of their function obey only to the law. Article 22 of the Electoral Code, provides for the appointment procedure of the CEC members by the institutions defined in the Constitution, which has as its basis the guarantee of the political balance for the CEC composition.

Thus, the CEC composition inevitably reflects, as it has been demonstrated in many cases, the influence of the political parties, which have nominated the CEC members. The examination and voting of filed cases to CEC with a partisan approach, has damaged the judicial administration of

the electoral process. The influence of the political interests in CEC decision making has been the matter that the Legislator has attempted to avoid in the articulation of the article 154 of the Constitution.

The Local Government Election Commissions, the Voting Center Commissions and the Vote Counting Teams

Generally, the low levels commissions have faced enormous political overloading, seriously damaging all the electoral process. The increase of the low commissions' membership has not offered any benefit for the electoral process improvement. On the contrary, it has increased the conflictuality within commissions themselves, in between the different political wings. From this point of view, as well as taking in consideration that the increase of the membership of these commissions, was an "invention" to afford the Electoral Code amendment and to put an end to political cramp, before the local elections of 2007, the organization of these commissions with 13 members is worthless. This number becomes more worthless, when the procedure stipulated by the Electoral Code, provides that all the mechanical procedures of the votes counting are charged to the chairman, vice chairman and somehow to the secretary of the Votes Counting Team. As per the duties stipulated clearly by the Electoral Code, the commissions of low levels require an agiled and accurate structure.

RECOMMENDATIONS

- I. It is necessary to find mechanisms for the elimination of the political parties influence to the CEC decision making, improving the nomination procedures of candidates for CEC members. The contradictions of article 22 of the Electoral Code with the Constitution should be eliminated, reformulating this article in the spirit of the article 154 of the Constitution, in order to guarantee a professional CEC composition;
- II. The nomination of candidates for CEC members, individually or by particular groups, to the institution that appoints them, may bring to an inherent solution. The public hearing might be considered as a procedure, which would provide compliance to the Constitution provisions and would increase the credibility of the potential candidates, as well as of the institution they are going to represent;
- III. The Local Government Election Commissions (as well as the Zones Election Commissions) should return to the composition with 7 members, or further advancing reduction to 5

members, which would bring agiled procedures and an effective administration of elections budget;

- IV. Even though the nomination of commissions could continue to be the attribute of political parties, it is essential that their right to replace election commissioners has to be restricted in maximum, allowing only in extraordinary cases, which should be stipulated by the Electoral Code;
- V. LGECs and ZECs should be composed by members of high education. This is not a difficult criteria to be met and it creates premises for the establishment of professional commissions;
- VI. The number of the Voting Center Commissions members should be reduced. The VCCs may be composed by 3 o5 members. The reduction of the number of VCC members may be followed by the increase the number of political subjects observers;
- VII. The Vote Counting Teams should be established by individuals who are permanently trained with the procedures of evaluation and counting of ballot papers. The Legislator may reevaluate the actual votes counting procedures, in order to increase the effectiveness of all the members of vote counting teams. In the meantime, the Electoral Code may stipulate (in the article that provides the duties of CEC) the delivery by CEC, in one ore more electoral zones, of pilot projects using computerized alternatives for the process of votes evaluation and counting, which in this case may be ruled by a CEC normative act;
- VIII. The political parties should nominate experienced commissioners for election processes or individuals who have attended training courses for electoral procedures and have received the relevant certificates;
- IX. The CEC should not appoint elections commissioners, who have been administratively fined in the prior electoral processes;
- X. The Electoral Code should provide stronger sanctions for those elections commissioners, who conduct administrative and/or penal violations.

Voting procedures

In the international practice, voting procedures are widely considered as the most consolidated elements, which form an electoral process. It simply needs to notice the minimum of attention paid to them, comparing with other elements of the electoral legislation or even more, with the electoral right field. Meanwhile, not only for the experts of this field, but also for the public it is obvious that this is the most direct and concretized moment of the voting process. It is the moment when the voter is inevitably involved. Based on the above rationale, the permanent legislators concern is focused on the standard definitions that enable voting procedures which are simple, as more transparent as possible and confident, in order to apply a voting process in which the voter may easily absorb the process automatism and on the other side, might guarantee its transparency and fairness.

In the case where one polling center has up to 1,000 voters that should vote during 11 or 12 hours (approx. 50 seconds per voter), the conduction of a flowing process takes an imperative meaning for the process development. On the other side, it should not be permitted that in order to clear the voter rows near the polling center, to disregard the accuracy and implementation of the legal procedures that should be followed; a fact that is especially noticed in the last voting moments where the control procedures and marking with the special ink are impossible to be respected because of the voters pressure. Therefore, if the political parties' observers will be provided with the voters list of the polling center (those that are interested to have it), it will significantly increase the transparency of the process.

The Electoral Code (article 100, point 1, letter dh), has defined that "after receiving the ballot paper, the voter is marked with the special ink in the left hand....".

In the situation where a considerable part of the voters in our country use the certificate as identification document, and this document is not returned to the voter, but is filed with the VCC (voting center commission), the legislator preference is justifiable, even though this option is not entirely in the logic of voting process progress. Considering the fact that in the next elections, it is expected that the voters will be provided with the new identification document, it is reasonable that the legislator should rearticulate the actual legal framework on the subject, turning it to the above-mentioned acknowledged practice.

Another phenomena, which is becoming more and more a concern for the voting processes, is related with the fact that the amendments of the Electoral Code have always aimed to increase the VCCs competences with respect to decision-making on many elements of the voting process. In the situation of the partisan commissions and even militants in many cases, these decisions are only the reflection of political representation reports. The Legislator may avoid a considerable number of VCCs decision-making competences: it should be emphasized the case of technical commissions – there limited decisions are taken by VCC and mostly are the chairman competence, but the parties representatives have the right of contest in written.

The counting process

The counting process carries naturally all the accumulated tension during the electoral campaign, that in Albania is becoming more tensed.

It is an accepted fact that based on the evidenced problems during the electoral processes up to local elections of 2003, the Electoral Code approved in 2005, stipulated the centralized vote counting, which is a known practice in many countries, but applied for the very first time in Albania. This practice had as consequence the legal deadline excess for the result tabulation (which is the next day, 17.00 – as per the article 109/7, point 1).

In addition, the law, but also CEC (Central Election Commission) have tried to limit the pressure options towards the Counting Teams, but it did not work out. That, because the pressure phenomena has the basis in what is routinely called as “the lack of political parties will” to respect a fair competition. Competing parties which are under the expected winning or losing fevers increase the pressure towards their representatives in the Counting Teams, involving them in their electoral tactics, which has brought in many cases to a blocked process.

During vote counting process, as well as during the voting process, a certain level of competence by the members of Counting Teams in charge is required. This means that there are a lot of logical procedures, which should work in perfection, in order to accomplish a correct process, which means a conduction of the process in time, rigorously and with transparency. Logically, the Electoral Code has foreseen the training of the persons involved in this process. The difficulty stands on the fact that the selected moment (just before the start of counting process) and the time available to deliver training (please, note that the appointment of the Counting Teams members is made “..not later than 2 hours before the voting closes”) stipulated in the Electoral Code are extremely challenging and the training may not be entirely effective. Again, this entire situation has the basis on the distrust between the parties.

One of the factors considered during the discussion of the centralized counting idea was the avoiding of electoral tactics utilized usually by the parties during the counting process by VCC, which has brought the result discrediting in those Voting Centers where the opposing candidate was notably attaining a winning result. After the first exercises, it's obvious that even with the centralized counting practice is found the scheme to reach the same result. The same actions now are trying to be applied in the moment of electoral materials handover in the counting center or during their transport, regardless the fact that the Legislator has tried to provide a good protection of this part of the process.

The problem stands on the disrespect of the legal provisions, as well as on the fact that what the Electoral Code has stipulated for this part of the process is not the Centralized Vote Counting (in this case, the votes should be mixed up and then counting together), but the centralized of voting centers for the counting of votes.

RECOMMENDATIONS

- I. The duties between the VCC members should be defined by the CEC instructions, thus be avoided by Electoral Code provisions. This method functions in the case of technical VCCs, as well as in that of the actual ones;
- II. As the law provides the possibility for the electoral subject participating in process to possess the voters list, it could be a very positive procedure to define the obligation of the person who is in charge to verify voters identification document, to read loudly the identity of the voter and his ID number;
- III. In a situation when the voters are expected to be provided with identity cards, it should be defined that their marking with the ink has to be made after he has voted and will be presented to the VCC to pickup his identity card.
- IV. The Electoral Code should exactly define the VCC procedures before the closing of the voting center. The voting is closed in the time defined by the law (and not based on the VCC decision). In that moment VCC identifies (if there are) voters waiting in line (collects their identity cards) and proceeds by calling them one by one.
- V. In the new Electoral Code, cases when the VCC is obliged to take decisions must be avoided in maximum. These cases should be replaced with rigorous definitions, such as "the chairman declares the opening/closing of the voting process".

- VI. If the centralized vote counting will remain in power, changes should be considered aiming to increase of the affectivity of Counting Teams, in order to achieve the reduction of time needed for the vote counting process. In this case, the use of high technology for the Vote Counting Process should be eventually considered.

- VII. Based on experience and evidences so far, has been created a persuasion that apart of a certain voluntarily, the lack of respect for the legal procedures is also evident; therefore its imperative to enforce the repressive aspect of the Electoral Code.

Due to the changes made during 2004 by the Assembly of Albania, the Electoral Code provided for the first time in the Albanian electoral legislation dispositions related to the financing of the electoral campaigns of the political parties and candidates, as well as the declaration of their expenses incurred during the electoral campaign. The legal adjustment constitutes the first effort towards the fulfillment of one of the most essential principles for a free and fair electoral process, that of transparency.

Part Eleven (articles 143, 144, 145 and 145/1) of the Electoral Code has as an object the financing of the electoral subjects through public funds as well as from other private sources. The Code reflects the logic of the law "For the political parties" which apart from the state budget funds provides also private donations, membership quotes and any other type of wealth earned legally by the political parties⁵.

In accordance with Article 144/1 of the Electoral Code, the electoral subjects (the political parties registered with the CEC, the candidates supported by the political parties, and the independent candidates) may benefit for their electoral campaigns gifts from local private physical or judicial bodies. The gifts or the counter value in objects or services cannot be higher than 1 million leke. The electoral subjects are obliged to keep a regular documentation and to follow the legislation in power in any case depending on the donor distribution.

The general principals embodied in the electoral legislation define that "*the electoral subjects are free of making propaganda in any legal way*", establishing in this way the basis for further adjustments of the financing issues in the electoral campaign, aiming the provision of equal chances for each electoral subject.

In this spirit, is also included the general principle of the electoral legislation that is the obligation of the state institutions to execute strictly the general principles, which in our case should be understood as an obligation of not giving assistance or financing in favor of any of the electoral subjects, a principle which is further explained in detail in the Article 5 of the Electoral Code.

⁵ See, Law or. 8580, dated 17.2.2000 "For the Political Parties" changed with Law No. 9452, dated 2.2.2006.

So, prohibition of the use of resources from the ministries or other public administration institutions in central or local level, including any kind of movable or immovable resources, material or human, provides for equal rights to electoral subjects in the start of the electoral campaign.

Based on the Article 145/1 of the Electoral Code, in the eve of the parliamentary election of 2005, the Central Election Commission for the first time treated the issue of the financing of the electoral campaigns of political parties, approving a specific instruction for this purpose, in accordance with the requirements of the Electoral Code.

The CEC Instruction No. 17, dated 06.06.2005 *“For the definition of regulations for the declaration of the electoral campaign expenses, of the participating electoral subjects for the Assembly of Albania for 2005”*, regulated to a certain point the relations between the CEC, as the responsible institutions for the fulfillment of a procedure which might be already considered similar to the ones of the auditing on the used finances by the political parties during the electoral campaign, as well as on these political subjects. As the Electoral Code, this instruction, besides the political parties, would also expand its affect to the candidates of these political parties, to the independent candidates and the electoral coalitions, reflecting in this way the joint recommendations of the Commission of Venice and OSBE-ODIHR⁶.

Almost the same procedure was followed by the CEC for the local elections of 18 February 2007. Sub legal acts approved by CEC have shown the way how the electoral subjects should state the incomes created during the electoral campaign and the way of spending of these funds, through special application forms. The framework, within which this rule applies, as specified by Article 144 of the Electoral Code, is from the moment of the issue of the Decree of President of the Republic setting the election date up to the date the election will take place⁷.

In both elections (parliamentary and local) the practice showed that the majority of the electoral subjects did not respect the 45 days term provided by the Electoral Code for the statement of the funds used in the campaign.

Even more concerning is the fact that both main parties did not declare their expenses, meanwhile nobody can certainly say that if the statements of the other electoral subjects are true or not, due to the lack of a controlling or investigative procedure provided by the Albanian legislation.

⁶ Reference: *Joint Recommendations on the electoral law and electoral administration in Albania, by the Venice Commission and the OSCE-ODIHR, Opinion no. 273/2004, paragraph. 76 page 22.*

⁷ i.e.. *the declaration of electoral subjects of local elections includes in some cases the first Decree of President of the Republic, which sets up the elections day on 20 January.*

The legal adjustment made by the Electoral Code for the financing of the political parties in the electoral campaign, in the same line with the Article 9/3 of the Albanian Constitution which stipulates that *“the financial resources of the political parties, as well as their expenses are always done public”*, requires further explication and specification, concrete rules and procedures applicable in practice.

The electoral legislation does not give to CEC real control competencies or instruments to verify on the reality of the statements made by the electoral subjects. Practically, the dispositions of the Electoral Code are applied in practice in the form of good will initiatives included in the process (CEC from one side and electoral subject from the other), testifying in the same time the lack of the coercive mechanisms that CEC might use towards the electoral subjects.

This is clearer when we read Article 145/3 of the Electoral Code, which in fact, provides administrative sanctions to be applied by CEC only in those cases when the electoral subject does not fulfill the reporting obligations, meaning the formal aspect of reporting. But the above mentioned disposition is silent regarding the verification of the statement genuineness and of the efficient control mechanisms as to the sanctions that should follow on a false statement situation of the electoral subjects.

Lack of control of the private donations

It is a fact that a non clear judicial definition for the political parties makes impossible the adjustment of the procedure for their financial control. The Constitutional Court itself describing the political parties as volunteer unions of the citizens on the basis of their obedience and aspects of common political interests has emphasized that in the legal and constitutional aspect, they (the political parties) cannot be unified with other state institutions or other juridical state persons⁸.

Starting from the above mentioned matter, the Constitutional Court abrogated a part of the Article 23 of the Law “For the political parties”, removing the right of the High State Audit, to exercise control on the financing of the political parties by private subjects. According to the Constitutional jurisprudence the right of control of the HSA should be limited only in that part of funds that the political parties benefit from the state budget. With the abrogation made by the Constitutional Court to the part of Article 23 (second sentence) the disposition results incomplete. Even though 6 years have passed from this decision of the Constitutional Court, the legislator has not yet filled this gap.

⁸ Reference: Decision of the Constitutional Court No. 33, dated 9.5.2001.

In the conditions when the legislator has not filled this gap which creates consequences not only from the point of view of the legislative technique, raises the question that, what happens with those funds which are not in the frame of the exercised control by the High State Audit. In the absence of a precise legal adjustment it seems that the Constitutional Court itself has tried to offer a solution which might be applied in the Albanian context and which would bring unpredicted political consequences and mainly for the electoral subjects which have fulfilled their constitutional and legal obligations by making their finances public.

According to the Constitutional Court, Article 93 of the Constitution obliges the political parties that their financial resources and their expenses be stated always public. Therefore, the disrespect of this constitutional obligation based also on the Article 131, "d" of the Constitution, forms constitutional jurisdiction and one of the competencies of the Constitutional Court to decide for the constitutionality of the activities of the political parties⁹.

RECOMMENDATIONS

- I. The judicial position of the political parties in contravention with the state institutions and other non state institutions should be defined in a clear way. This definition would identify the political parties as an entity within a specific grouping of institutions, aiming the application of the respective legal dispositions, regarding the financial auditing, reporting and other obligations with fiscal or financial nature, etc.
- II. A necessary legal intervention should be done for the establishment of a professional and independent auditing system, which will make possible a real investigative procedure for the expenses and financial statements made by the electoral subjects. Such a system might be created in the framework of the Central Election Commission, which in this case should be provided with the necessary human and technical resources for the fulfillment of the audit, as well as the precise definition of duties and limits that this institutions would have in this process.
- III. A special attention should be given to the definition of the reporting period and the auditing of the finances of the parties. Even though the President of the Republic decrees the date of the elections at maximum 2 months ahead of this date, and because the electoral campaign starts 1 month ahead of this date, the financing of the electoral campaign is not necessarily related to this period. This means that the auditing could be expanded even before the

⁹ Refer to note 3.

decree of the President of Republic, considering that this is a process realized *a posteriori*, would create premises for a full investigation and transparency of the financing received by the political parties.

- IV. The detailed adjustment of the procedure of financial statements and reporting should include also the statement of the full list of the contributors. Firstly, this would serve as an appropriate instrument for the fulfillment of the auditing process, and from the other side through the publication of this list, would ensure an appropriate completion of the transparency of the political parties, of the electoral process and the financing of the political parties towards the public.
- V. The Central Election Commission in cooperation with international or local partners, or even with other institutions, should offer appropriate informative and training programs (with payment) for the accountants of the political parties or their branches, for the candidates or other persons engaged in the administration of the financing during the electoral campaign.
- VI. There is also place for legal adjustment in the financing of the political parties for the obligation of the finance filtering of the political subjects through the banking system in special accounts, which should be made public, thus avoiding the cash donations, regardless of the amounts.
- VII. Application of strict sanctions towards the violators should be in the center of the attention of the CEC during the procedures of examining the financial reports of the political parties. Appliance of strict sanctions up to the abrogation of mandate, would serve for a healthier climate in this aspect.

Regarding the electoral complaints, the rule of law is incorporated in part twelve of the Electoral Code, dividing the complaints issue in two separate chapters, based on the responsible examining authority, respectively:

- Administrative review of electoral commissions' decisions; and
- Judicial review of CEC decisions.

As most of the Electoral Code provisions, even the provisions of this part have been subject of permanent changes aiming the definition of more precise rules with respect to the electoral actors and decision-making bodies' performance. The changes have mostly dealt with the details/almost the numbering of the elements related to the form and content of a complaint, as well as the procedural steps to be followed up to a final CEC/or Electoral College decision.

The complaint to CEC against the decisions of second level commissions (ZECs/LGECs), as well as the procedures to be followed up to CEC decision includes 21 articles; 5 of them have been added for the first time and the other 16 articles have been amended by the law no. 9341, dated 10.01.2005; while the judicial revision of CEC decision by the Electoral Code, as well as the procedures to be followed up to a final decision of Electoral College includes 16 articles, whereof 2 articles have been added for the first time and 9 articles have been amended with the law no. 9341, dated 10.01.2005.

The Electoral Code provides the right of complaint to the CEC against the ZECs/LGECs decisions within a time limit of 3 days. The above right is principally acknowledged to groups (political parties, non-for-profit-organizations) and in some cases to individuals (candidates or observers who are refused respectively the request for registering as electoral subject or for accreditation)¹⁰. This way, the law discriminates simple citizens, voters, compared to political subjects and candidates, elected. Regardless of the reasons that have brought to this definition, this inability of the simple citizens to be recognized as complaining subjects has been discussed since the very beginning as a serious deficiency of the Electoral Code, moreover, has been considered also as a provision, which is in opposition with the Albanian Constitution.

¹⁰ Reference to article 146, Electoral Code.

The Code provides that subject of administrative complaint might be the appeal against a CEZs/LGECs decision or for invalidation of elections¹¹. While in the first case the electoral subjects appeal against the result (accepting the legitimacy and regularity of the process, but appealing the result interpretation method), in the second case they appeal the legitimacy of the process *per se*, without considering at all the result reached by the process. In order to minimize the abusing possibility with the right to complaint by electoral subjects, avoiding to appeal initially the decision-making, the election result, and in the case of the refusal of the appeal request with this subject, in order to avail the right to appeal for invalidation afterward, basing their pretences in the same proves, where on, the CEC has already come with a decision; it was argued that the time line for the appeal against the ZECs/LGECs decisions, as well as for appeals request for invalidation of elections, could be 3 days, starting from the declaration of result by ZECs/LGECs.

While in most of the cases this amendment results positive, as it impedes the abuses with the right of complaint, but making more difficult and overloading the CEC work activity, in some cases even this amendment resulted unsuccessful, as relating the moment when the right of complaint starts with the decision-making, the declaration of the numeric result, it did not provide the non decision-making by ZECs/LGECs related to the declaration of results as consequence of many factors¹².

In the absence of a formal decision on elections results by these commissions, the process passes to the appealing system and only after the declaration of the result, may start the right to appeal request for invalidation. Consequently, we have again an extended time line and potential possibility that subjects appeal twice: once against the result and second, request for invalidation of elections, basing their pretences on the same evidences which has been already presented and investigated by CEC. In order to avoid this situation, the time line related to appeal request for invalidation might be allied with a timing genuine event, which should not be evaluated by the willing of the actors involved.

The Electoral Code provides the right of parties to have in disposal other evidences once they present their pretences¹³. It is the CEC which takes the final decision to whether accept evidences or not, in case it considers that is a benefit for the judgment. The law provides that CEC may refuse the request to accept evidences only in one case: when it judges that the requested evidences by the party doesn` t contribute to prove the pretended facts¹⁴.

¹¹ Reference: article 146 and 117 of Electoral Code

¹² Reference: article 38/5 and 44/5 of Electoral Code

¹³ Reference: article 156 of Electoral Code

¹⁴ Point 3 of the above article

Certainly, the required evidences by the party for administration purposes are not related with the elections material, which is administrated by the commissions, it serves to reflect the objections or problems that the commissioners/or electoral subjects have perceived during the process, it lies in the ballot box with other elections materials, and that CEC has the right to inspect it based on the request of the party or mainly¹⁵.

Of course, that the election materials, the notes and objections reflected, identifies the completed and incontestable prove, where the parties in conflict base their pretences. Nevertheless, it should not and may not be presumed/argued that the absence of objections, notes or marks within elections materials in general, which basically proves that the party had objections related to the process, or part of it, absolutely testifies that the subsequent pretences of parties and the evidences requested by them, do not prove the contrary.

The practice has shown that not always CEC has read and applied properly this fact. In many cases of appeals, CEC has refused the request of evidences by parties, when by the inspection of the election materials by CEC itself have not been found traces that might bring to the existence of irregularities or violations. The TV transmissions or the monitoring reports of the different agencies working on the elections monitoring, which CEC has refused to accept as evidences, whilst they have been transmitted for the public, have proved that the refuse of their inspection by CEC has seriously prejudiced the elections result and the credibility of the CEC.

The Electoral Code provides a time line of 10 days, as per the moment of complaint filed to CEC. Considering the large number of complaints filed to CEC and the relatively short time available to the CEC to administrate, inspect and decide with regard to elections complaints, results that the working intensity of this institution is very high, and potentially exist the chance for real errors in decision-making. Therefore, it should be seriously considered the time line extension for the complaints examination, in order to improve the quality and uniformity of the decision-making.

The invalidation of elections is declared by CEC, mainly on the bases of the subjects' request. There are various reasons on which are based the requests for invalidation of elections, but all of them complete 2 groups: a) when there is a violation of the law; and b) the process has been jeopardized to that extend, that it might have influenced on the mandates allocation in the electoral zone or in the whole country¹⁶.

Moreover, the article 61/2/ç provides that CEC may declare the invalidation of elections in one or more voting centers of electoral zone or in the entire electoral zone. This paragraph has a conflict

¹⁵ Reference: article 158 of Electoral Code.

¹⁶ Reference: article 117/1 (a-c) and /5 of Electoral Code

with the language and the logic used in the article 117 of the Electoral Code, as the Legislator has predicted that elections invalidation may be declared by CEC in the electoral zone, in one or more voting centers where have been identified violation of law to the extend that it might have influenced on the mandates allocation in the electoral zone; and as a special case, but luckily, it has been considered up to now only as a theoretical possibility, the invalidation of elections in one zone may cause the declaration of elections invalidation in the whole country.

Thus, the decision making related to invalidation in one or more voting centers has no meaning, it's not an objective per se, but only a reason to reach the invalidation in the entire electoral zone, which means the repetition of elections in the whole zone. The law is clear in the point that it does not allow the repetition of elections only in some voting centers, but in the whole electoral zone.

In order to rule this absence of precision and conflict between 2 provisions the formulation of the phrase should be amended, referring to the electoral zone and to special voting centers.

The final judicial settlement of elections complaints against the CEC decisions or non decision-making is made by a judicial body of 8 judges selected by a lottery conducted by the High Council of Justice, based on the names of all judges of all Appeal Courts of the Republic of Albania. The selection of these judges by these courts is considered as the best solution, as it is presumed that these judges possess a higher level of law acknowledgment, as well as a higher level of autonomy and professionalism. This form of solution has been imposed by the fact that the Electoral College decisions my not be appealed.

Regardless the lottery, each of the two political parties of majority and opposition holding respectively the highest numbers of seats in the Assembly, have the right to remove one name from the eight names drawn from the lottery box, without specifying any reason for removal, and with no right to challenge this decision by the other parties.¹⁷ Even though it has been argued that this kind of act serves to advance the integrity in decision-making and the credibility of the actors involves in the process, we believe that it seriously violates the judge image, as it abusively allows the parties to prejudice the independence, the moral image and the professionalism of the judge. The request for removal of judges should be based on the same provisions as stipulated in the Code of Civil Procedures and the article 167/1 of the Electoral Code; the request for removal of judges, which are selected after the lottery, should have grounded reasons and followed by a decision-making procedure.

¹⁷ Reference: article 163 of Electoral Code

Perhaps, the biggest problem faced during the Electoral College activity has been the failing to have same settlements for the same cases and generally, the lack of electoral practices knowledge. The fact that the Electoral College is established not later than 24 hours from the Decree of the President of the Republic does not help the process. As the electoral legislation is a particular discipline of the jurisprudence, and of course, out of ordinary courts jurisdiction, and considering that the Electoral College practice has not a long time experience, it is important to advance the judges' knowledge with the electoral law and practice.

Certainly that a permanent professional training of Appeal Courts' judges with electoral issues, the publication of Electoral College decisions during the last 2 electoral processes, as well as a trained court administration with the electoral subjects, which will permanently assist the Electoral College during its activity, could help in the practice unification and the strengthen of the Electoral College decision-making credibility.

RECOMMENDATIONS

- I. The voter should be included in the list of subjects who have the right to complain against ZECs/LGECs decisions, which violate their legitimate interests;
- II. The timeline regarding the request for invalidation should be related to a specific date after the close of elections, in order to avoid blocking situations with respect to the results declaration, which aims the change of the result/or the process de-legitimizing based on the delay of the result declaration.
- III. The CEC should seriously examine every request of electoral subjects for proves administration with and distant from any prejudice; even though in the elections material box exists traces of proves left by the electoral subjects, which base, or may base the pretences of the party who request the prove administration.
- IV. The time line in disposal of CEC to examine the electoral complaints should be extended, in order to provide the necessary time for this institution to administrate all the required evidences and proves and improving the decision-making credibility.
- V. The language used in article 117 and 161/2 should be amended with a clear formulation, which articulates clearly that invalidation is declared not for the voting center, but for the electoral zone.

- VI. The request for removal of the judge selected with lottery, as per the article 13, should be justified and include the reasons in which is based the request. The request should be followed by a decision-making process of a competent body who decides regarding this request.

- VII. The permanent training of Appeal Courts' judges regarding the electoral legislation, as well as the training of a permanent administration, which assists the Electoral College in decision-making.

It seems that regarding the role of media and of the monitoring, the elections in Albanian are somehow closer to the international standards, at least concerning the legal adjustment of these issues.

From one election to another, media and monitors have played an important and influential role to the standard of elections. Albania, as a member of OSCE and of other organizations too, has fulfilled in a ratable scale the obligation to guarantee the observation of the elections from international or local observers¹⁸.

Articles 18 and 19 of the Electoral Code define the subjects that have the right to have observers during the electoral process. These dispositions also include the terms and procedures for the accreditation of these observers. Article 109/8 of the Electoral Code defines the circle of subjects/persons that have the right to be present during the process of votes counting and the declaration of results. According to article 18 of the Code and article 109/8, representatives of the media are eligible to observe elections. Articles 133 up to 142 of the electoral Code define rules on the presentation of the electoral campaign in media and the role of the media in the electoral process.

Further to the written media role in this process, the following rules are missing:

Dispositions of the Electoral Code which ratify the role of the media in the electoral campaign, firstly define the ways and the procedures according to which the electoral subjects benefit air time in radio and television. A special adjustment in these dispositions takes the definition of rules regarding the electoral campaign in the public radio television¹⁹.

Definition of the air time that will be given to an electoral subject in comparison with another subject is dependent to their electoral result. This goes for the public radio television as well as for the private electronic media. The time that the political parties benefit in the public radio television is free and the CEC is defines how mush this time will be²⁰.

¹⁸ Reference: Copenhagen Document 1990 – point 8

¹⁹ Reference: Article 136 to 139 of the Electoral Coder

²⁰ Reference: Article 136od the Electoral Code

The air time that the political parties or other electoral subject, benefit in the private media, is payable. According to the Electoral Code, the private media should offer equal requests and conditions per different electoral subjects. The private media can not make any differentiations in price timing for different electoral subjects. This is what the Electoral Code provides and ratifies.

The role of the observers in the elections is becoming more present and more qualitative. Local non governmental organizations, specially the two – three last elections, have shown a better quantitative and qualitative engagement compared to the past. In this way the number of the electoral process aspects which are covered by the local observers is increased, as well as more frequent reporting regarding the voting process during the elections day and after.

The importance of monitoring and the increase of capacities of this monitoring is also verified in the reports of the international organizations specialized in the elections monitoring²¹.

However, the monitoring of elections does not include all the phases of the electoral process. So, the Electoral Code does not make possible the monitoring of the elections preparatory phase. According to this Code the right of election monitoring starts with the beginning o the electoral campaign.

In fact, the lack of monitoring and of the electoral preparatory process composes a gap in the report for the international standards. Lack of monitoring the elections and of the preparatory phase is also identified by the international observers, which have recommended the improvement of the legal framework regarding this issue²².

Another problem related to the monitoring is that of the classification of the observers and their registration terms. It seems that without any basic reason the Electoral Code makes differences between the observers of non governmental organizations and observers of the political parties.

The Code also makes differences in the terms of registration (accreditation) of observers between the local observers and the international ones. As it is mentioned in the international monitoring reports this differences are not justifiable, moreover it brings confusion and obscurity, the same as it is the difference between the observers of non governmental organization and those of political parties.

²¹ Reference: *final reports from OSBE/ODIHR for the elections of 24 June 2001 and 3 July 2005*

²² Reference: *“Joint recommendations of OSBE/ODIHR and the Commission of Venice regarding the electoral law and the administration of election in Albania”, as well as the final report of OSBE/ODIHR for elections of 3 July 2005*

The Electoral Code has also obscurities regarding the monitoring media during the electoral process. It seems that the Electoral Code gives the right to the media to be present during different aspects of the electoral process, only in cases that this one has the accreditation from the CEC. There is an emphatic obscurity in the Electoral Code regarding this issue.

As per the role of the media in the elections, even though it seems that there are a lot of improvements regarding the definition of rules for the functioning of media during electoral periods and electoral campaigns, still many issues do not find a clear/or full adjustment.

There are also uncertainties regarding the way of calculating the air time of the "small" parties in the public radio television; there are uncertainties on how a private media should act in case of recipient of request for transmission only from some out of all electoral subjects, etc.

There are no other adjustments in the Electoral Code relating to the presentation of the electoral campaign from groups which represent ethnical minorities or other specific social groups.

RECOMMENDATIONS

- I. Rules regarding the time and procedure for the accreditation of the observers should be unified, without making any difference between observers of the non governmental organizations with the political parties ones;
- II. The role of media in the electoral campaign should be well defined, considering its presence during the electoral process and electoral campaign, in a specific role, different from the one of the "classic" observer. These rules should be further discussed and should be taken into consideration that the media be present during some electoral procedures, with no need of getting accreditation:
- III. The period of observing the election should include a wider period than the electoral one. Maybe this period might start from the moment when the election date has been set up to the moment the final elections results declaration;
- IV. The time line of requests for the observers accreditation should be extended, and should be not limited up to the 15 days ahead of the elections day as it stands for the local observers;
- V. When defining the air time of the political parties, the electoral result of the last elections should not be as a determinant criteria;

VI. Clear rules should be defined regarding the presentation of the electoral campaign in the private media. There should be defined how the air time should be shared between different political parties when their financial possibilities are different from each other. There also should be defined that big financial possibilities cannot give bigger air time in the private media.

The Constitution of Albania has sanctioned some of the main definitions regarding the referendums.

The part 11 of Constitution, articles 150 up to 152, stipulates the rules on how the referendums are conducted in general, which are the issues that may require a decision-making process based on referendum, who decides if an issue should be voted by referendum, etc.

Apart of the above-mentioned articles, the article 177 of the Constitution stipulates the rules related to the constitutional process, in case of potential changes of the Constitution itself.

In base of/and for appliance of the above provisions of the Constitution, the Electoral Code has sanctioned in articles 122 up to 131, detailed rules regarding the referendums.

Even a superficial sight of the Electoral Code provisions which regulate the referendums issues, shows deficiencies, uncertainty and incompatibility with the Constitution in some cases.

This fact has been also mentioned in the joint recommendations of the Venice Commission and OSCE/ODIHR in respect of the electoral legislation in Albania, which recommends the reconsideration of these provisions.

Even though these recommendations have been made on 2004, it has not been any amendment/improvement on the referendums` provisions, although the continuing changes of the electoral law until 2007.

Article 126, paragraph 3 of the Electoral Code, conflicts with article 150 of the Constitution: The above provision indicates the abrogation of a part of the law; meanwhile, article 150, point 1 of the Constitution stipulates that apart of other reasons, a referendum may take place also for a law abrogation.

In addition article 129, point 3 of the Electoral Code also conflicts with article 152, point 3 of the Constitution. This provision provides for the right of the President of Republic to decide whether to hold or not a referendum on issues of special importance.

Article 152, point 3 of the Constitution provides the President of Republic only the right to define the referendum date, and not to declare whether to hold or not a referendum.

Apart of the abovementioned aspects of the unconstitutionality of the Electoral Code provisions in respect to referenda, there are also other aspects of this issue which are related to the deficiency of legal adjustments.

In this point of view the Electoral Code doesn't provide any rules on referenda campaign financing, on how campaigns should be conducted, on the referenda procedures, on the right of complaints and appeals, etc.

RECOMMENDATIONS

- I. Provision related to referenda conflicting with the Constitution, should be abrogated/amended;
- II. It should be provided for a precisely defined position of CEC, related to referenda requests reviewing;
- III. It should be stipulated the right to appeal against CEC decisions, in case of referenda elements reviewed by CEC, as well as the respective procedure;
- IV. There should be stipulated clear procedures for referenda conducting, timelines, the competent body who is responsible for the organization of referenda in all possible levels;
- V. There should be stipulated clear rules on referenda campaign financing;
- VI. It should be provided for clearer and complete procedures related to different types of referenda.