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**JOINT RECOMMENDATIONS ON THE ELECTORAL LAW
AND THE ELECTORAL ADMINISTRATION
IN ALBANIA**

**by
the Venice Commission
and
the OSCE/ODIHR**

**Adopted by the Council for Democratic Elections
at its 9th meeting
(Venice, 17 June 2004)
and endorsed by the Venice Commission
at its 60th Plenary Session
(Venice, 8-9 October 2004)**

on the basis of comments by

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**JOINT RECOMMENDATIONS ON
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**by
OSCE/ODIHR and CoE Venice Commission**

I. INTRODUCTION

1. This joint assessment of the Electoral Code of the Republic of Albania¹ is provided by the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights ("OSCE/ODIHR") and the Council of Europe's European Commission for Democracy Through Law ("Venice Commission"), on the basis of comments by two experts of the OSCE/ODIHR, Mr. Jessie Pilgrim (USA) and Mr. Adriaan Stoop (Netherlands).

2. Furthermore, the assessment is based on:

- an unofficial English translation of the Electoral Code (CDL(2004)009)²;
- the Constitution of Albania;
- the OSCE/ODIHR Final Report on the 2001 Parliamentary Elections in Albania, 24 June - 19 August 2001 (11 October 2001);
- the OSCE/ODIHR Final Report on the 2003 Local Government Elections in Albania, 12 October 2003 – 25 January 2004 (25 February 2004);
- the report of the Ad hoc Committee of the Parliamentary Assembly of the Council of Europe for the observation of the parliamentary elections in Albania (24 June, 8 July, 22 July, 29 July and 19 August 2001) (Doc. 9193, 10 September 2001);
- the report on the observation of the local elections in Albania held on 12 October 2003 (CG/CP (10) 16, 8 December 2003);
- the report on the local by-elections in Tirana (Albania), 28 December 2003 - Addendum to report Albania, CG/CP (10) 16 – (CG/Bur (10) 87, 23 February 2004);
- comments by Mr Bernard Owen (Venice Commission, expert, France);
- comments by Mr Rinaldo Locatelli (Congress of Local and Regional Authorities of the Council of Europe, expert, Switzerland); and
- the Code of good practice in electoral matters adopted by the Venice Commission, including the Guidelines on Elections (CDL-AD(2002)023rev).

3. The present recommendations were elaborated following resolution 1320 (2003) of the Parliamentary Assembly of the Council of Europe, which invites the Venice Commission to

¹In this assessment the Electoral Code of the Republic of Albania will be referred to as "the Electoral Code". The Electoral Code is Law No. 9087, dated 19 June 2003, and consists of 183 articles on 75 pages of text. This assessment is the first opportunity for either the OSCE/ODIHR or Venice Commission to formally comment on Electoral Code since its adoption in 2000.

²The report does not warrant the accuracy of the translation reviewed, including the numbering of articles, paragraphs, and sub-paragraphs. Any legal review based on translated laws may be affected by issues of interpretation resulting from translation. A law can be assessed only on the literal translated text that is provided for review.

formulate opinions concerning possible improvements to legislation and practices in particular member states or applicant countries.³

4. This opinion was adopted by the Council for Democratic Elections at its 9th meeting (Venice, 17 June 2004) and endorsed by the Venice Commission at its 60th plenary session (Venice, 8-9 October 2004).

5. The Electoral Code was adopted by Parliament on 19 June 2003, primarily on the basis of amendments to the previous law agreed consensually in a bipartisan parliamentary committee on electoral reform. This bipartisan committee was established on the suggestion of the OSCE/ODIHR Final Report on the 2001 Parliamentary Elections. All parliamentary parties were represented on this committee, which was co-chaired by the Socialist Party and the Democratic Party.⁴ Amendments were approved with full consensus, in almost all cases⁵, in accordance with a decision-making formula requiring a simple majority which included the votes of the two main political parties. The bipartisan committee addressed most of the recommendations of the OSCE/ODIHR Final Report on the 2001 Parliamentary Elections⁶. Two subsequent protocol agreements between the Socialist Party and the Democratic Party committed the signatories to address outstanding issues, notably election financing and electoral systems, after the 2003 local government elections. The text of the resultant SP-DP joint amendments, which deals with the three levels of election commissions and electoral zone boundaries, was included with the amendments approved by the bipartisan committee to form the new Electoral Code of Albania.⁷ Although this new Electoral Code reflects most of the recommendations of the OSCE/ODIHR Final Report on the 2001 Parliamentary Elections, some amendments raise concern and require clarification. A number of significant issues remain to be addressed. The opportunity remains to address these issues prior to the Parliamentary elections scheduled for 2005.

6. This assessment is intended to assist the authorities of Albania to further develop and improve the legislative framework for the conduct of democratic elections in order to meet OSCE commitments and other international standards. The OSCE/ODIHR and Venice Commission remain committed, together with the OSCE Presence in Albania, to provide assistance to further improve the legal framework for elections in Albania.⁸ However, the extent to which any amendments to the law can have a positive impact will ultimately be determined by the level of good faith and political will exhibited by political parties, state institutions and officials responsible for implementing and upholding the law.

³Point 11.ii.b.

⁴In this assessment the Socialist Party may be referred to as "the SP" and the Democratic Party may be referred to as "the DP". The parliamentary committee is referred to herein as "the bipartisan committee".

⁵Individual small political parties only dissented within the bipartisan committee on ballot paper format, multi-name lists, provision for CEC intervention to clarify ambiguous political party or coalition names, and were in favour of strictly equal rather than proportional distribution of free campaign media time.

⁶The OSCE/ODIHR Final Report on the 2001 Parliamentary Elections can be found at www.osce.org/odihr/electionreports. However, it must be noted that an election observation mission report can provide only a brief overview of some of the more relevant portions of an electoral law and is not intended, nor should be construed, as a formal assessment or comprehensive analysis of an electoral law. Thus, failure to comment in an election observation mission report about a particular provision of an electoral law cannot be interpreted as agreement with the provision.

⁷The OSCE/ODIHR made no recommendations on these issues in the Final Report on the 2001 Parliamentary Elections.

⁸OSCE/ODIHR and Venice Commission experts intend to travel to Albania in 2004 for a dialogue, with the authorities and civil society, on the Electoral Code and the possibilities for further amendments.

II. EXECUTIVE SUMMARY

7. Most of the recommendations of the OSCE/ODIHR Final Report on the 2001 parliamentary elections have been taken into account in the Electoral Code. A key improvement has been the introduction of a new system for complaints and appeals against decisions of election commissions. The Electoral Code in general provides an adequate basis for conducting democratic elections and marks significant progress in the development of the legal framework for elections in Albania.

8. However, shortcomings remain in the Electoral Code and there are provisions that raise serious concerns. Some of the shortcomings are due to the written text of the Code. Other shortcomings are due to practical implementation, as shown during the local government elections of October 2003.⁹ Of major concern are provisions regulating formation of electoral commissions and establishing qualified majority voting requirements in commissions on significant issues. These provisions have given an extremely dominant role to each of the two main political parties at every level of the election administration. Intended to address concerns that the previous composition model led to the under-representation of the opposition, these changes have failed to diminish the highly politicized environment noted in previous reports and some members of election commissions have continued to behave in response to political pressure rather than in their required role of impartial and independent election administrators. This situation has also provided each of the two main political parties with the ability to block decision making in election commissions at every level.

9. Other important areas of concern are:

- provisions for appointment of members of the CEC that limit the prerogative of the appointing institutions established in the Constitution;
- provisions for appointment of members of the CEC and all lower election commissions that may hinder the professional and non-partisan performance of the election administration;
- provisions that grant Parliament authority to dismiss a member of the CEC, which likely are contrary to the Constitution;
- provisions regulating referenda elections, which likely are contrary to the Constitution;
- ambiguity in registration provisions that could permit political parties and coalitions to change the order of candidates on a candidates list after elections;
- lack of sufficient provisions for the timely and accurate compilation and updating of voter registers;
- extraordinarily complex rules for the allocation of Parliamentary mandates;
- unnecessarily complicated counting procedures;
- vague provisions for the invalidation of election results that fail to take into account the use of two ballot sections;
- insufficiently detailed rules on political party finances and their disclosure; and

⁹The local government elections were held on 12 October 2003 throughout Albania, except for two constituencies where deadlock situations occurred in the relevant Local Government Election Commissions. On 16 November 2003, elections were held in these two constituencies and re-run elections were held in whole or in part in seven other constituencies. Re-run elections were also held for 118 out of 345 centres in Tirana on 28 December 2003.

- inconsistency in the use of definitions and deadlines, as well as in the use of terminology.

10. The recommendations provided in this assessment address the outstanding and problematic issues that remain and offer possible solutions respectively.

III. DISCUSSION ON THE ELECTORAL CODE

11. Articles of the Electoral Code are not discussed in the order in which they appear. Rather, articles are discussed as they are relevant to the major issues that should be addressed in an election law. This approach facilitates evaluation as to the degree to which the Electoral Code is in line with OSCE commitments and other international standards for democratic elections.

A. ELECTION ADMINISTRATION IN GENERAL

12. It must be recognized that no formal or technical solution for the formation of election commissions can be a remedy for lack of political will on behalf of the major election stakeholders. The rules for the elections must be respected and electoral participants and stakeholders must act in good faith throughout the election processes.

13. A fundamental problem with the Electoral Code is that some of its provisions encourage a politicized election administration dominated by the two major political parties at every level. This politicized environment, combined with qualified majority voting requirements in all commissions on any issue of consequence, has given *de facto* veto power to each of the two major political parties on every significant issue at every level of the election administration.¹⁰ While such veto power may be perceived as a protection for the minority not to be excluded from the decision making process, it in fact has a negative impact on the process when used by members of election commissions who view their work in a political rather than technical manner and who are subject to political party interference throughout the process. The current Electoral Code provisions for election administration must be improved. While permitting political party representation on commissions before elections,¹¹ the Code should establish impartial, independent, and professional election commissions that operate in a non-partisan and efficient manner.

14. Authorities in Albania should consider amendment of Article 154 of the Constitution, along with amendments to the Electoral Code, as part of the reform effort to develop an independent, professional, efficient, and non-partisan election administration. Additionally, the CEC and all election commissions may wish to consider extended membership possibilities for representatives of political parties before an election, specifically whether they have voting rights or not. The primary goals in this reform effort should include: (1) creating a transparent process for appointing the CEC and other election commissions so that it is not a simple matter of Institution A or Political Party B appointing a certain number of members and, as a result, a “win or lose” situation for those who have a stake in the elections; (2) developing an independent, professional, efficient, and non-partisan election

¹⁰Qualified majority voting requirements in election commissions are not per se problematic. See Venice Commission Code of Good Practice in Electoral Matters, point II.3.1.h. However, this has proved to be an unworkable solution for Albania.

¹¹Recommended by the OSCE/ODIHR Final Report on the 2001 Parliamentary Elections.

administration that is not subject to political party or government manipulation; (3) ensuring political party confidence with the appointment of extended members to commissions before an election. The sole reliance on political parties to administer elections may impede the development of an independent, professional, efficient, and non-partisan election administration. It must be finally noted that any reform *must provide adequate transitory provisions* as such reform would constitute the third appointing scheme for election commissions in Albania since 2000. Adequate and detailed transitory provisions are critical for the appointment of members to the CEC in particular.

15. Another problem with the Code is its lack of provisions to ensure that qualified individuals are appointed to election administration structures. This has resulted in the appointment of individuals based singularly on their ability to obstruct and hinder the election processes. It has also resulted in the appointment of individuals who simply do not have the necessary skills to administer elections. In order to address these problems, **The OSCE/ODIHR and Venice Commission recommend** that the Code be amended to require that the CEC develop, no later than 180 days before an election, a training course for members of ZECs, LGECs, and VCCs. This training course should consist of a minimum of eight hours training in election administration, the Electoral Code, ethics, and other matters that the CEC deems important for the administration of elections in Albania. This training course should be offered free of charge to persons who meet the requirements to vote and should be offered throughout Albania as frequently as necessary to ensure that there exists a sufficient pool of trained election administrators. At the completion of the training course, a test should be administered and those individuals who obtain a satisfactory score shall be “certified” as election administrators. Only individuals with certification would be eligible for appointment to ZECs, LGECs, and VCCs. As an incentive to attract individuals to obtain certification, the Government of Albania should consider paying an appropriate monetary amount to those who obtain certification. The CEC should also have the power to revoke certification where an individual violates the law.

16. An additional problem with the Code is that Articles 33, 35, and 41 have created a virtually uncontrollable forum for “non-voting representatives of parties” to attempt to inject chaos and confusion into election administration. Although Article 154 of the Constitution provides that “electoral subjects” appoint representatives to the CEC, there is no constitutional requirement that “representatives of parties” be given a political forum at every level of election administration to engage in obstruction of the political processes. **The OSCE/ODIHR and Venice Commission recommend** that Article 33 of the Code be amended to meet the narrow requirements of Article 154 of the Constitution. Further, Articles 35 and 41 should be amended to ensure that they are also narrowly drawn for consistency with Article 33. Finally, regardless of whether an intervention occurs at the CEC, ZEC, or LGEC, the relevant election commission should limit the time for interventions, taking into consideration other items on the agenda and the number of requests for intervention. **The OSCE/ODIHR further recommends** that Articles 30, 38, 44, and 47 be amended to specifically state that an election commission shall at all times conduct meetings in a manner that ensures professional, efficient, and dignified consideration of the public’s interest in and right to genuine democratic elections.

17. Finally, it must be noted that many of the deadlines in the Code, particularly those related to the preparation of voter registers, designation of voting centres, and registration of political parties and candidates are not realistic for professional and efficient election administration. A proper election requires preparation. Preparation takes time. Most of the deadlines in the

Code are simply too compressed and **all** deadlines in the Code require review. **The OSCE/ODIHR and Venice Commission recommend** that all deadlines in the Code be reviewed and adjusted as necessary to ensure there is adequate time to prepare for all election processes.

18. As it cannot be assumed that there will be a comprehensive reform of election administration in Albania, specific comments are offered below to improve existing articles regulating the CEC and lower election commissions.

B. THE CENTRAL ELECTION COMMISSION (CEC)

19. Article 154 of the Constitution of Albania establishes that the CEC is composed of seven members, each with a seven year mandate. Two members are appointed by the Assembly (Parliament), two by the President of the Republic, and three by the High Council of Justice. Under the previous legal framework, these three institutions were given wide discretion in selecting members of the CEC, with the aim of assuring an independent and non-political body.¹² The new Electoral Code, however, in Article 22, gives full control of the nominating procedures to political parties, with the result that three members come from the two major parties/political groups on the governing side, three come from the two major parties/political groups on the opposition side, and one member is consensually proposed by the major parties on the governing and opposition sides.¹³

20. The new provisions for the appointment of members to the CEC are of concern. These provisions expressly limit the number of candidates that can be considered by the three constitutional institutions when electing a member to fill a CEC vacancy. These provisions limit the appointing institution's constitutional prerogative to a list of no more than two candidates

¹²Article 154 of the Constitution contains no limitation on the nominee choices or the Constitutional prerogative of these three appointing institutions when electing members to the CEC.

¹³This is the text of Article 22:

“The Assembly of Albania elects two members of the CEC upon the respective proposals from the left and right spectrum of its political composition, excluding the largest political party of either political spectrum. The number of candidates presented to the Assembly of Albania shall not be more than two for each vacancy. The candidacies within the groups are selected with consensus or according to the number of supporting votes of the deputies belonging to the same spectrum as the proposing party, excluding the largest political party of the respective spectrum. A deputy cannot support more than one list of candidates. The proposed candidates are presented to the Assembly by the Speaker.

The President of the Republic appoints two members of the CEC upon the respective proposals of the two largest political parties of the majority and the opposition. The number of the proposed candidates is not higher than two for each vacancy in the CEC.

The High Council of Justice selects three members of the CEC according to this procedure:

- a) *two members of the CEC are approved from among two candidates for each vacancy proposed respectively from the two largest parties;*
- b) *the third candidate is selected by the High Council of Justice according to this procedure: the two largest parliamentary groups propose four candidates who are jurists by profession. Each of the parliamentary groups selects two of the four candidates from the other group. The four selected candidacies are voted on by the High Council of Justice no later than 48 hours after having been deposited;*
- c) *the High Council of Justice decides with two-thirds of the votes of all its members; in the case that none of the candidates obtain the required majority, a second round takes place on the same day, between the two candidates who received the highest number of votes in the first round; if, in the second round as well, no candidate obtains two-thirds of the votes of all members of the High Council of Justice, a third round takes place on the same day, between the candidates of the second round. In the third round, the candidate who obtains 50% plus one of the votes of all members of the High Council of Justice wins.”*

nominated by non-Article 154 bodies (“political parties/groups”).¹⁴ The phrase “no more than two” compounds constitutional concerns as it permits the list to be limited to a single name, thereby completely abrogating the constitutional prerogative of the three appointing institutions. This transforms these three constitutional institutions into mere “rubber stamps” for the Article 154 CEC appointment process. The OSCE/ODIHR has previously expressed concern about attempts to limit the Article 154 constitutional prerogatives granted the Assembly, President, and High Council of Justice for electing CEC members.

21. The involvement of non-Article 154 bodies in the election process of the CEC might be acceptable, provided the overall process respects the constitutional structure and prerogative that rests with the three Article 154 institutions (Assembly, President, and High Council of Justice) to elect members of the CEC. However, the procedures established by these new provisions in the Electoral Code significantly limit constitutional prerogative and, thus, appear to be contrary to the constitutional structure established by Article 154 of the Constitution. **The OSCE/ODIHR and Venice Commission recommend** that Article 22 of the Electoral Code be reformulated in order to ensure that the involvement of the constitutional Article 154 institutions in the CEC membership election process includes a meaningful level of participation that respects the constitutional prerogatives of these institutions.¹⁵

22. In addition to the constitutional issue presented, the new provisions are problematic as they permit the two main parliamentary parties, through their representatives on the CEC, to block decision making. This is due to the requirement of qualified majority voting in the CEC on every issue of significance.¹⁶ As a result, a *de facto* veto power has been given to each of the two main political parties on every significant issue.¹⁷ **The OSCE/ODIHR and Venice Commission recommend** that Article 30 of the Code be amended to provide that a decision is approved when a simple majority of all members votes in favour of the decision.¹⁸ This should apply to voting in all election commissions, including the CEC, on all issues.

¹⁴Furthermore, Article 22 is ambiguous and does not state in clear language which political parties/groups have the right to make nominations to the CEC. Article 22 uses terms, such as “left” and “right”, which are not always readily capable of objective application for determining which political parties have the right to nominate members for the CEC. Although Albanian parliamentarians may believe that these phrases will always be easily capable of being applied in an objective manner, voters and observers quite likely might disagree. Which legal institution has the final say on whether Party A is “left” or “right”? Indeed, other than self-imposed labels, it is likely that most political parties in Albania extol the same common goals of European integration, economic development, improved education, and a better standard of living for citizens. Moreover, what about “moderate” or “centrist” political parties? It appears that they are excluded from the appointment process. What happens if moderate and centrist parties constitute 90% of the deputies in Parliament? Is the appointment process controlled by the 10% constituting the “left” or “right”? Nor should it be assumed that a perpetual political polarization between “left” and “right” will exist forever in Albania. It must also be noted that the term “group” could be interpreted to apply to “groups” of MPs as well as to “groups” of political parties. These are additional reasons that require that Article 22 of the Electoral Code be amended.

¹⁵It is also questionable whether it is permissible in Article 20 to create criteria for membership that is beyond the minimum constitutional requirements for membership. Regardless, clause (3) of Article 20 should be revised as it currently requires that a member meet each of the six fields of experience instead of any one of the six.

¹⁶The articles requiring qualified majority voting are Article 30 for the CEC, Article 38 for the ZECs, Article 44 for the LGECs, Article 47 for the VCCs and Article 71 on procedures for establishing zone boundaries.

¹⁷The new provisions have resulted in an election administration structure that consists of numerous “electoral security councils” where the SP and DP each have the power to veto any decision on a significant issue.

¹⁸Qualified majority voting requirements in election commissions are not per se problematic. See Venice Commission Code of Good Practice in Electoral Matters, point II.3.1.h. However, this has proved to be an unworkable solution for Albania.

23. The constitutionally questionable CEC appointment process and qualified majority voting requirement appear to have resulted from a lack of confidence in the CEC running so deep that the two major political parties deemed the new provisions essential for the conduct of future elections. In order to strengthen confidence in the CEC and increase CEC transparency, **The OSCE/ODIHR and Venice Commission recommend** the following points, to the extent that they are not already expressly stated in clear language in the Electoral Code, be specifically codified in the text of the Electoral Code: (1) the CEC shall publish written regulations governing its work, including how meetings will be conducted, no later than 120 days before an election; (2) *all* meetings of the CEC shall be public; (3) the CEC shall, no later than twenty-four (24) hours before a meeting, publicly post at the main entrance to its office and all of its offices in Albania a notice for each CEC meeting, and the notice shall include an agenda of all items and matters to be considered at its meeting; (4) any person has the right to be included on the agenda of the CEC to discuss electoral issues, suffrage rights, or any other matter relevant to the conduct of elections, but such a request must be made at least forty-eight (48) hours in advance of a meeting and the CEC may limit the time for presentations, taking into consideration other items on the agenda and the number of requests for discussion; (5) during the entire time period after an election date has been set and until final certification of the election results, the CEC shall meet regularly at 9:00 a.m. every day and the CEC will hold additional meetings as necessary during this period; (6) the CEC shall thoroughly and completely consider all matters presented to it and, when reaching a decision, the CEC shall first attempt to make a decision by consensus and, should it be impossible to reach a decision by consensus, the CEC shall take a formal vote and the decision is approved when a simple majority of all members votes in favour of the decision; (7) every decision of the CEC, whether by consensus or formal vote, shall within twenty-four (24) hours be memorialised in a written form and signed by the Chairperson of the CEC, and a copy of the written decision shall be maintained in the office of the CEC Secretariat and available for public inspection and copying, and, as soon as the written decision is signed by the Chairperson, it shall be forwarded to the Secretariat where it shall be immediately recorded in the Secretariat's records with a notation of the date and time received by the Secretariat where, after noting the date and time received, the Secretariat shall provide a notated copy to all members of the Commission, each person, candidate, or political party affected by the decision, the Secretary General of the Assembly, and any person who requests a copy of the decision; (8) every member of the CEC shall publicly take an oath administered by the President of the Republic, where the member affirms to: (i) promote conditions conducive to the conduct of free, fair, and democratic elections, (ii) ensure that the secrecy and integrity of the vote are respected, (iii) refrain from politically influencing any voter, (iv) perform all duties and functions with care, competence, honesty, and courtesy, (v) maintain strict impartiality in carrying out duties and functions and do nothing by way of action, attitude, manner or speech to give any other impression, (vi) not commit or attempt any act of crime or conflict of interest (including the commission or omission of an act in the performance of or in connection with one's duties in exchange for money, gift or promise of reward from any candidates, political party, or any representative or agent of a candidate or party), (vii) shall make every effort to oppose or combat any act of crime or conflict of interest that is discovered in the course of their duties, (viii) shall make every effort to attend meetings, training classes or workshops that are set up to facilitate the carrying out of CEC functions, and (ix) shall safeguard all election material entrusted to the member and assist all observers and candidate and political party representatives engaged in legal observation activities.

24. Article 23 should be clarified concerning the rights and duties of a member of the CEC. Clause (6) compels a member to vote for or against a proposal and prohibits abstention. This provision is likely included due to the new 5-2 voting requirement on some issues. However,

this provision assumes that there will never be a situation where a member should abstain due to an actual or apparent conflict. This assumption is erroneous. The possibility exists that a member of the CEC may have a relationship with a candidate or complainant that requires the CEC member to abstain in order to maintain the appearance of propriety. This is especially true since Article 24 provides that a member may be dismissed for any behaviour or act that “discredits the position and the image of the CEC member”. **The OSCE/ODIHR and Venice Commission recommend** that clause (6) of Article 23 be amended to permit a CEC member to abstain, provided the member explains the reason for abstention and the reason is due to an actual or apparent conflict.¹⁹ Further, clause (4) of Article 23 should be amended to require a member to also vote “in accordance with the law” and not merely “following his convictions”.

25. Article 24 provides eight separate grounds that would permit the Parliament to dismiss a member of the CEC. Article 24 is of questionable constitutional validity as it establishes the right of the Parliament to dismiss members of the CEC where Article 154 of the Constitution does not expressly grant this authority to the Parliament and this power is not expressly granted in the constitutional articles regulating the Parliament.²⁰ **The OSCE/ODIHR and Venice Commission recommend** that Article 24 be carefully reviewed and amended to ensure compliance with the Constitution.²¹ .

26. Article 25 provides in the first sentence of clause (2) that the CEC Chairman advises of a vacancy in membership. The second sentence of the same clause suggests that it can be either the CEC Chairman or Deputy Chairman who advises of a vacancy in membership. Furthermore, it is not clear what is meant in clause (2) with “the respective competent body” or how this body should publicly announce the vacancy. **The OSCE/ODIHR and Venice Commission recommend** that Article 25 be clarified.

27. The provisions in clause (3) of Article 27 are confusing and cannot be clearly applied. Sub-clause (a) of clause (3) references clause (3), which makes no sense. It is likely intended to reference sub-clause (a) of clause (1), except that there should only be six ballots instead of seven since the Chairman supposedly has already been elected. **The OSCE/ODIHR and Venice Commission recommend** that Article 27 be clarified.

28. Article 29 sets forth that the CEC declares the result of elections at a national level. However, according to Articles 37 and 43 the results are declared by the ZECs and the LGECs in their respective areas. According to Article 153 of the Constitution the declaration of any election results appears to be the prerogative of the CEC. Thus, the question arises as to when the result is final. **The OSCE/ODIHR and Venice Commission recommend** Articles 29, 37, and 43 be amended so that they are consistent.

29. Article 30 stipulates in clause (5) that normative acts, registration of the candidates and subjects, declaration of election results and winners, and decisions related to complaints on the

¹⁹*The OSCE/ODIHR and Venice Commission recognize the concern that the possibility to abstain can create the opportunity to thwart action. However, the harm to public confidence when a member must vote on an issue where the member clearly has a conflict outweighs the need for action. No action may be worse than action that the public perceives to be motivated by self-interest, conflict, or corruption.*

²⁰*This conclusion is supported by the legal reasoning in Decision No. 212 of the Constitutional Court of Albania, dated 29 October 2002. This case is reported in Constitutional Court, Collection of Decisions 2001-2002, published in 2003.*

²¹*It should also be noted that the last sub-clause of clause (1) of Article 24 requires dismissal of a member of the CEC if the member fails to meet the residency requirement of Article 20. However, there is no residency requirement in Article 20.*

declaration of the results are approved when no less than five members of the CEC vote in favour. Every other decision is taken by a majority of the members present. Further, all decisions must be signed by the chairman and the deputy chairman and by all the members that are willing to sign. These requirements led to deadlock in CEC decision making on several occasions during the 2003 local government elections. The 5-2 voting requirement permits “militant” commission members to block the electoral process and bring democratic processes to a complete halt, placing in limbo the suffrage rights of voters. Also in clause (5) it is stipulated that decisions of the CEC must be signed by the chairman and the deputy chairman. However, it may be the case that either one is ill or cannot attend the meeting for other reasons. During the 2003 local government elections, the CEC functioned without a deputy chairman. **The OSCE/ODIHR and Venice Commission recommend** that clause (5) of Article 30 be amended to provide that a decision is approved when a simple majority of all members of the CEC votes in favour of the decision and that this voting requirement apply to all issues, and that the dual signing requirement be deleted.²²

30. Clause (9) of Article 30 permits “when, due to various reasons, the [CEC] meeting cannot proceed normally, the chairman and deputy chairman have the right to suspend its continuation for up to 24 hours”. This provision is not only vague, but is subject to abuse as it permits delay on a decision where the chairman or deputy chairman realizes he or she will be on the losing side of a vote on a decision. Delaying the vote permits the losing side to seek to apply pressure through other means and disrupts attempts to observe decision making of the CEC. **The OSCE/ODIHR and Venice Commission recommend** that clause (9) of Article 30 be deleted from the Code. A CEC meeting should continue until all agenda items that can be addressed have been addressed, and then the meeting should be adjourned until the next scheduled meeting, which will have a new agenda that is made available publicly and which may include matters that could not be concluded at the prior meeting.

31. Clause (10) of Article 30 allows the CEC to meet in private to discuss “CEC administration”. This provision is contrary to the general principle of transparency of all election processes. The term “administration” certainly encompasses administration of the election processes.²³ All meetings of the CEC must be open to the public. Transparency is a critical cornerstone for free, fair, and genuine democratic elections. **The OSCE/ODIHR and Venice Commission recommend** that clause (10) of Article 30 be amended accordingly.

C. ZONE ELECTION COMMISSIONS (ZEC)

32. The new Electoral Code has significantly changed the method for forming lower election commissions.²⁴ Under the new Code, six members are appointed in a similar, but not identical, fashion used for the formation of the CEC.²⁵ In addition, the seventh member of each lower election commission is assigned to the largest governing and opposition parliamentary parties on a fifty-fifty basis, determined by “random selection”.

²²*Qualified majority voting requirements in election commissions are not per se problematic. See Venice Commission Code of Good Practice in Electoral Matters, point II.3.1.h. However, this has proved to be an unworkable solution for Albania.*

²³*The OSCE/ODIHR was highly critical of the CEC in the 2001 Parliamentary Elections when it met behind closed doors to discuss disputed protocols with a Zone Election Commission and refused the requests of observers to attend.*

²⁴*The lower election commissions are the Zone Election Commissions (ZEC), the Local Government Election Commissions (LGEC), and the Voting Centre Commissions (VCC).*

²⁵*The text of Article 34, clause (1) is:*

“A ZEC is composed of seven members, who are appointed according to the following procedure:

33. With the exception of the constitutional issue on the formation of the CEC, the comments and recommendations stated previously concerning formation of the CEC (Article 22) are also applicable to Article 34 regulating the formation of Zone Election Commissions. A qualified majority voting requirement on significant issues also applies to the ZECs (Article 38). **The OSCE/ODIHR and Venice Commission recommend** that Articles 34 and 38 be amended to loosen two party domination of the ZECs and avoid deadlock on decisions.

D. LOCAL GOVERNMENT ELECTION COMMISSIONS (LGEC)

34. The comments stated above concerning formation of the CEC (Article 22) and ZECs (Article 34) are also applicable to Article 40 regulating the formation of Local Government Election Commissions. A qualified majority voting requirement on significant issues also applies to the LGECs (Article 44). **The OSCE/ODIHR and Venice Commission recommend** that Articles 40 and 44 be amended to loosen two party domination of the LGECs and avoid deadlock on decisions.²⁶

E. VOTING CENTRE COMMISSIONS (VCC)

35. Article 45 provides that for parliamentary elections the Voting Centre Commission is composed in accordance with the manner and the criteria provided by Article 34 for the ZEC. For local government elections, the VCC is composed in accordance with the manner and criteria provided by Article 40 for the LGEC. Thus, concerns stated above concerning formation of the ZEC and LGEC are also applicable to formation of the VCC. **The OSCE/ODIHR and Venice Commission recommend** that Article 45 be amended to loosen two party domination of the VCCs.

36. Clause (7) of Article 45 states that a non-voting representative of a political party in a VCC has the rights specified in Part Seven of the Code. However, clause (8) does not contain a similar provision for the representative of an independent candidate. **The OSCE/ODIHR and Venice Commission recommend** that clause (8) be amended to state that the representative of an independent candidate has the same rights specified.

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- a) *Two of the members are proposed by the main governing party, two members are proposed by the main party of the parliamentary opposition and two members are proposed respectively by the second party of the governing political spectrum and by the second party of the opposition political spectrum;*
 - b) *The seventh member of half of the ZECs is proposed by the main ruling party, while the seventh member of the other half is proposed by the main party of the parliamentary opposition. The respective ZECs are established by the CEC according to objective criteria based on:*
 - i. *random selection;*
 - ii. *equal distribution in the electoral territory.**The chairman and deputy chairman of the ZEC are selected by the CEC upon the proposal of the ZEC. In those ZECs where the seventh member belongs to the main governing party, one of the members of the ZEC representing the main ruling party is elected chairman, while the chairman of the other half is elected from the members of the ZEC representing the main party of the parliamentary opposition. The deputy chairman is of the opposite political affiliation to that of the chairman."*

²⁶Further, the English text of sub-clause (a) of clause (1) of Article 40 is not be capable of objective application: "Two of the members are proposed by the main ruling party, two members are proposed by the main party of the parliamentary opposition and two members are proposed respectively by the second party within the ruling political spectrum based on the number of votes obtained during the last local governmental election and by the second party within the political spectrum of the opposition based on the number of votes obtained during the last local governmental election".

37. A qualified majority voting requirement also applies to the VCCs (Article 47). Thus, the comments and recommendations stated previously concerning qualified majority voting on the CEC (Article 30), ZECs (Article 38), and LGECs (Article 44) are also applicable to VCCs.²⁷ **The OSCE/ODIHR and Venice Commission recommend** that Article 47 be amended to avoid deadlock on decisions.

38. Clause (3) of Article 47 provides that if the “VCC fails to reach a decision, the case is sent immediately for examination to the ZEC or, as appropriate, the respective LGEC”. The practicality of such a requirement is questionable since the VCC will make several decisions concerning the validity of ballots. Further, it allows the VCC to refuse to make decisions. **The OSCE/ODIHR and Venice Commission recommend** that Article 47 be amended to provide that, where the commission is deciding a request or complaint, if a decision is not approved by the necessary number of votes, then the initial request that gave rise to the issue shall be considered denied, and this decision of denial may be subject to any review provided by the complaints and appeals process. This recommendation is also applicable to similar “immediate” requirements in Articles 38 and 44, as it concerns ZECs and LGECs. Obviously, however, some refusals to make a decision, such as the declaration of results, cannot have such a default provision and will require a decision by the higher election commission.

39. Clause (3) of Article 48 appears to be inconsistent with clause (2) of Article 93. **The OSCE/ODIHR and Venice Commission recommend** that one of these clauses be amended to ensure that it is clear what is the deadline for delivery of voting materials to VCCs.

F. VOTER REGISTERS

40. Voter registers have been a source of controversy in recent elections in Albania. There have been various efforts to improve the registers, but all have been less than satisfactory and before the 2003 local government elections there remained a lack of confidence in the accuracy of the registers on the part of some political parties. The bipartisan committee discussed the issue in some detail in 2003 and decided that, while the existing voter register should be used as the basis for the 2003 local government elections, civil registers should be the sole source for voter lists in the 2005 parliamentary elections. This agreement was reflected in the amendments to the Electoral Code. However, the Code should include some transitory contingency provisions to address the possibility that civil registers may not be adequately updated in time for the 2005 parliamentary elections.

41. Although the Electoral Code reflects a consensus agreement on voter registers, there remain problems with the current articles regulating voter registers. First, the text does not present the process for verifying the accuracy of and correcting voter registers (“updating”) in a chronological order that is *based on the first required step of publishing the boundaries of polling units and the physical locations of voting centres within polling units*.²⁸ The Code does not sufficiently include these fundamental building blocks in the “updating” process. The accuracy of voter registers is directly tied to the fundamental building block of the polling unit. In fact, it is simply impossible to verify the accuracy of the voter registers

²⁷Article 47 requires five votes in favour, as with the CEC, while for the ZEC and the LGEC it speaks of two thirds qualified majority, which is five votes since there are seven members.

²⁸The Code is confusing as to which election commission establishes polling unit boundaries. Clause (4) of Article 94 states: “A polling unit is established by the ZEC or the LGEC, but as much as possible, the ZEC should keep the polling unit boundaries established by the LGECs in its zone”. It is not clear which election commission has the ultimate responsibility for establishment of polling unit boundaries. This should be clarified.

without the prior establishment of polling unit boundaries, and a voter cannot ascertain correct registration without knowing the boundaries as well. Regrettably, although the Code recognizes the need to establish polling units (Articles 73, 94, and 95), the Code fails to require the establishment and publication of polling unit boundaries and voting centre locations as a critical first step in verifying the accuracy of voter registers.

42. As stated in the report of the Congress of Local and Regional Authorities of the Council of Europe on the 2003 local elections, last minute amendments to the registers should be avoided. However, as long as the accuracy of the registers is problematic, mechanisms should be introduced for reducing the number of potentially disenfranchised voters and enabling eligible voters whose names are not on the voter's registers or are spelt incorrectly to vote. One possibility would be to enable those voters to register on a supplementary list on election day provided they present to VCC members a valid certificate, issued by the relevant civil status office, showing that they have registered in the particular locality for an appropriate period, for example 60 days before election day, and have deregistered from their previous permanent residence. As noted in Paragraph 84 herein, these are matters that require clarification.

43. It is critical that the next set of amendments address these fundamental building blocks, such as mapping and establishment of polling station areas including administrative addresses (street names or numbers and house numbers), when addressing the voter registration and updating process, and provide *details* for all voter registration and updating processes. Further, they must be addressed early in the process, in a fully transparent manner, so that voters and election officials involved in updating do indeed know whether a voter is, as stated in Article 58, "registered in the wrong voting centre".²⁹ **The OSCE/ODIHR and Venice Commission recommend** that the Code be amended to require the establishment and publication of polling unit boundaries and voting centre locations as a critical first step in verifying the accuracy of voter registers.³⁰

44. The Code should state all details for voter registration and updating so that voters, political parties, candidates, and observers can verify that the law has been followed. The Code should clearly specify what document must be presented to change registration of permanent (and/or temporary) residence, including from whom it must be obtained and to whom it must be given, and within what period of time. **The OSCE/ODIHR and Venice Commission recommend** that the Code be amended to provide every necessary detail for voter registration and updating.

²⁹*This appears to be one of the problems that led to the "perception of exclusion" for many voters on 12 October 2003 in the local government elections. Many people were not aware in which voting centre they were registered. One other factor was that the rules in Articles 57 and 58 for the revision of the voter registers were not adhered to in many instances – in particular changes were made without the required documentation and personal requests of the voters concerned.*

³⁰*This does not mean that polling unit boundaries are set in stone and cannot be changed. It is recommended that the text include a requirement that the boundaries of polling units and locations of voting centres are established in such a manner as to accommodate an unanticipated increase in the number of voters in order to minimize subsequent changes in polling unit boundaries and voting centre locations after their initial determination. The text should also provide that the relevant election commission may change, no later than seven (7) days before an election, the location of a voting centre if it determines that the location is not appropriate to accommodate voters. In the event of such a change, the commission should be required to give written notice to all voters affected by the change and also publish notice of the change in newspapers located in the geographical area of the affected voting centre.*

45. Article 56 provides that the LGEC organizes the notification of every voter, an important new instrument for providing voters with information on the voter registers and their polling unit allocation, the lack of which was a major defect of the previous system. It does not, however, stipulate how such notification has to take place. **The OSCE/ODIHR and Venice Commission recommend** that this be clarified and notification implemented uniformly across the relevant constituency or areas where the election is to occur.³¹

46. Article 62 stipulates that voter registers for special institutions must be delivered to the ZEC or LGEC two days before the election. It is not clear how the voter register is to be compiled and how a check for double registration can be performed in the last two days before the elections – or how any double registrations can be removed. This opens a potential for abuse of the system. **The OSCE/ODIHR and Venice Commission recommend** that clause (1) of Article 62 be amended to address these concerns.³²

G. OBSERVERS AND TRANSPARENCY

47. Articles 18 and 19 of the Electoral Code provide broad rights for observers, including the right to examine electoral material and documentation. The Electoral Code also provides that a complaint can be filed when an application for observer accreditation is refused, but makes clear that domestic and international observers must not violate the secrecy of the vote or hamper the process of voting and election administration.

48. Articles 18 and 19 do not include representatives of political parties or candidates as “observers”. This may be due to the fact that political parties and candidates have the right to appoint a “temporary representative” to the CEC (Article 33), ZEC (Article 35), LGEC (Article 41), and VCC (Article 45). However, it is not clear that the “temporary representative” provided in these articles are the same as the Article 97 “representatives of the electoral subjects”. The text of Article 97 suggests that there might be a category of “political party observer” that is distinct from the “temporary representative”. If this is the case, and as Articles 18 and 19 do not address the rights of a “political party observer”, there is the possibility that the Code recognizes a “political party observer” without specifically stating the rights and duties of such an observer. Additionally, neither article addresses the issue of whether an observer can ask questions to the members of the Commission. This omission could unduly be considered by a commission chairman as a reason to ask an observer to leave even when he/she does not hamper the process of voting and the administration of the election (Article 19(d)). At any rate, this last clause should be interpreted according to the principle of proportionality. **The OSCE/ODIHR and Venice Commission recommend** that these matters be clarified in Articles 18 and 19.

49. Clause (3) of Article 18 implies, in the English text, that one must meet the requirements for being a voter in Albania in order to be an observer. Although this may be an acceptable requirement for domestic observers, it presents an obvious problem for foreign observers who cannot meet the requirements for being a voter in Albania. **The OSCE/ODIHR and Venice Commission recommend** that this be clarified.

³¹For the 28 December re-runs in Tirana the CEC experimented with the provision of such information including an approximate map of the polling unit boundary and the voting centre location. The CEC claims to have distributed this information to over 80% of voters and the measure appeared to have helped in decreasing confusion over voter registers.

³²During the 2003 local government elections, it was alleged that this provision was used in a special voting centre to influence the result of the elections in the respective LGEC. Allegedly, the voter register for that special voting centre contained many more names than those present in the institution concerned.

50. Clause (4) of Article 18 sets a deadline for the submission of requests for accreditation to the CEC. The clause should also provide a deadline on how early requests can be submitted. **The OSCE/ODIHR and Venice Commission recommend** that Article 18 be amended to provide that an application for accreditation can be submitted as early as 45 days before an election. This time frame is not too early as observer organizations should be engaged early in the process in order to observe all election processes. For similar reasons, clause (1) of Article 19 should be expanded to include the right to attend all meetings of election commissions and observe all election processes. The current phrase “preparation and conduct of elections” could be applied to limit observation of the presentation of complaints in election commissions and resolution of such complaints in election commissions. **The OSCE/ODIHR and Venice Commission recommend** that Articles 18 and 19 be accordingly amended.

H. ELECTION SYSTEM FOR THE PARLIAMENT

51. Article 64 of the Constitution of Albania establishes five constitutional principles regulating the electoral system for the Parliament:

- the Parliament consists of 140 deputies;
- one hundred deputies are elected directly in single member electoral zones;
- forty deputies are elected from multi-name lists of parties or party coalitions according to their ranking;
- the total number of deputies of a party or a party coalition shall be, to the closest possible extent, proportional to the valid votes won by them on the national scale in the first round of elections; and
- parties that receive less than 2.5 per cent, and party coalitions that receive less than 4 per cent, of the valid votes on the national scale in the first round of elections do not benefit from the respective multi-name list.³³

52. Thus, Article 64 of the Constitution of Albania establishes a type of mixed member proportional representation system that contemplates an overall proportional distribution of mandates.

53. In the 2001 Parliamentary elections, the allocation of mandates was extremely controversial and subject to legitimate criticism. One factor that contributed to this controversy is the complexity of the allocation formula stated in the Electoral Code.

54. The complexity of the allocation formula stated in Articles 65 to 68 of the Code has not been addressed in a positive manner by the 2003 amendments. In fact, the allocation formula has been made even more complex and difficult for a voter or observer to understand. The 2003 amendments have turned a complex system into a more complex one that uses “composed multi-name lists” and “joint multi-name lists” instead of a single list of candidates presented by a political party or coalition. **The OSCE/ODIHR and Venice Commission recommend** that the Electoral Code be amended in order to establish a less complex electoral system that is in

³³There are two references in Article 64 of the Constitution to “first round” of elections. Thus, the 2003 amendment to the Electoral Code removing the requirement of a second round of voting in the event no candidate in a single member zone won an absolute majority of valid votes in the zone might raise a constitutional issue.

conformity with all requirements of Article 64 of the Constitution, transparent, easily implemented, and clearly and completely understood by voters.³⁴

I. ELECTORAL ZONES FOR THE PARLIAMENT

55. Article 70 governs the composition of the Electoral Zone Boundary Commission, which establishes the boundaries of the 100 single member electoral zones for the Parliament. This article has been amended to expand the number of members on the commission and involves political parties in the appointment of the additional members. This is a positive amendment which should help the impartial drawing of boundaries.³⁵

56. The deadlines provided in Articles 70 to 75 for the establishment of electoral zones do not ensure that zones are established in a timely manner before an election. It is important that electoral constituencies be established sufficiently in advance of elections. This is necessary to ensure that political parties and prospective candidates have the opportunity to become familiar with the demographics of constituencies in order to determine the viability of competing in a particular constituency and to engage in preliminary planning for the election campaign. The timeframe stated in these articles allows establishment of constituencies relatively shortly before an election. From a practical point of view, it would be more reasonable to redraw constituencies every ten years. **The OSCE/ODIHR and Venice Commission recommend** that the Code provide that all constituencies must be established and published at least six months before an election.

57. Article 73, which governs the criteria for the designation of electoral zone boundaries, should be clarified. The first sentence of Article 73, in the English text, provides that the basis for determining the boundaries of electoral zones is the number of voters “who have taken part in voting in each electoral unit in the most recent elections prior to the meeting of the Commission”. However, the next sentence in the article appears to use a different principle, based on “the average number of the voters at a national level”. This would suggest that the basis for determining the boundaries of electoral zones is the number of registered voters, regardless of voter turnout in the most recent elections. **The OSCE/ODIHR and Venice Commission recommend** that Article 73 be reformulated so that the principle that is the basis for determining the size of electoral zones is consistent throughout the article.

58. Article 74 provides that the Assembly can either accept the final report of the Electoral Zone Boundary Commission or return the report to the Commission for reconsideration. The Commission is then required to submit a second report for the Assembly to examine. However, Article 74 does not state whether the Assembly has any discretion when considering the second report or if it must approve the second report. **The OSCE/ODIHR and Venice Commission recommend** that Article 74 be clarified to state what discretion the Assembly has, if any, when considering the second report.

J. SYSTEM OF LOCAL GOVERNMENT ELECTIONS

59. Article 77 provides that the mayor of the commune or municipality is the candidate who receives a majority of the valid votes cast. Members of municipal and commune councils are

³⁴The OSCE/ODIHR and Venice Commission welcome the opportunity to assist authorities in devising a less complex formula.

³⁵Venice Commission Code of Good Practice in Electoral Matters, point II.2.2.vii.

elected on the basis of a proportional representation system that requires political parties and coalitions to submit candidate lists.³⁶ However, Article 77 does provide that independent candidates may stand in elections to the organs of local government and addresses the manner of allocation of mandates when an independent candidate obtains the necessary quota of votes.

60. According to Article 109 of the Constitution, the local councils and mayors are elected every three years. This short term – much shorter than in most European countries where it is four to six years – could be considered, since new mayors and local councillors sometimes need to get acquainted with the work and they do not always have enough time to implement efficiently their projects before it is time to start campaigning again.

K. REFERENDA ELECTIONS

61. Article 119, clause (6) sets 15 March of each year as the deadline for the completion of all legal procedures for a request for a referendum election. However, Article 127, clause (2) establishes the period between 1 January and 30 November as the time period for submitting the 50,000 supporting signatures required for a referendum election. Articles 128 and 129 provide procedures related to the request which might require up to 195 days, thereby greatly exceeding the 15 March deadline established in Article 119, clause (6). **The OSCE/ODIHR and Venice Commission recommend** that the relevant deadlines and inconsistent references related to referenda elections be corrected.

62. Article 126 (3) of the Electoral Code recognizes the right to abrogate *parts* of a law through a general referendum. This appears to conflict with Article 150 of the Constitution as the latter grants the right to abrogate a law- not the right to rewrite portions through selective referendum abrogation.³⁷ **The OSCE/ODIHR and Venice Commission recommend** that Article 126 be amended in order to comply with Article 150, clause (1) of the Constitution.

63. Article 125 (4) provides that constitutional amendments submitted to referendum according to section 5 of Article 177 of the Constitution are rejected if more than half of all voters registered in the National Registry of Voters vote against them. This makes the rejection very difficult, particularly when the inaccuracies in the voter lists are considered.

64. It is not clear what is the rationale behind Article 127 clause (2). It appears to imply that the referendum concerned can only be held in December of each year since the signatures for such referendum have to be deposited in the period January-November of each year. **The OSCE/ODIHR and Venice Commission recommend** that this be clarified.

65. Clause (3) of Article 129 grants the President of Albania the power to “decide that a referendum requested should not be held” and, after making such a decision, “advises the CEC in writing of his reasons, which the CEC transmits to the initiators”. This is tantamount to granting the President power to overrule the Constitutional Court’s decision under clause (2) and empowering the President to quash the constitutional rights of the 50,000 citizens who initiated the referendum. **The OSCE/ODIHR and Venice Commission recommend** that Article 129

³⁶*It should be noted, however, that the text of Article 77 is not nearly as complex as the text of Articles 67 and 68 of the Electoral Code.*

³⁷*This conclusion is supported by the legal reasoning in Decision No. 31 of the Constitutional Court of Albania, dated 19 November 2003.*

be amended in order to comply with Articles 150 and 152 of the Constitution.³⁸ It should also be noted that clause (2) of Article 129 stipulates that the Constitutional Court decides whether a request for a referendum is formulated in accordance with clauses (3) and (5) of Article 126. However, it appears that the Constitutional Court should also decide whether a request for a referendum contains the data specified in clause (4) of Article 126. **The OSCE/ODIHR and Venice Commission recommend** that this be clarified.

L. CANDIDACY RIGHTS AND NOMINATION PROCEDURES

66. There are several provisions in the Code that raise concern as to the degree of transparency for the awarding of list mandates to candidates. There is also concern that ambiguity in Code provisions would permit political parties and coalitions to change the order of candidates on a list after elections.

67. Clause (4) of Article 84 permits political parties who are members of a coalition to enter into an agreement that contains “the formula for defining the ‘final ranking’ of multi-name list candidates”. It does not seem possible that there should be a formula for “final ranking”, as the “final ranking” should be the order of the names on the multi-name list that is submitted to the CEC. However, this concern is reinforced by clause (3) of Article 86, which provides that the “names on the multi-name lists that have been certified may not be changed.” However, since clause (3) of Article 86 fails to state that the “order of names” may not be changed, and as clause (4) of Article 84 recognizes a “formula” for defining the “final ranking” of multi-name list candidates, the concern is raised that these articles allow for coalition party members to change the order of allocation and re-order the ranking of lists previously submitted to the CEC. This concern is reinforced by the fact that Article 77 (local government elections) specifically states that “the candidates of parties or coalitions are elected to the local councils according to the order of the respective multi-name list” and Article 68 (compensatory mandates for Parliament) does not have a similar requirement.

68. It is a basic democratic principle that a voter is entitled to know the consequences of his/her vote. It is also a basic democratic principle that a vote be counted for the candidate for whom the voter marks his/her ballot. When closed lists of candidates are involved, this requires that a vote for the list first benefit the first ranked candidate on the list. These basic principles are embodied in Paragraph 7.9 of the 1990 OSCE Copenhagen Document: “candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures”. To the extent that clause (4) of Article 84 would permit a re-ranking or “final” ranking of candidates to occur after a voter casts the ballot, then Article 84 would be contrary to OSCE commitments and international standards. **The OSCE/ODIHR and Venice Commission recommend** that these articles be carefully reviewed and amended to ensure that there is no possibility for the order of candidates on a list after the list is submitted to the CEC.

69. Clauses (2) and (3) of Article 14 assume that every deputy vacancy can be filled by the next candidate on a multi-name list. However, this will not always be the case as a political party has the right to present a single candidate in a single electoral zone without submitting a multi-name

³⁸Although Article 152 of the Constitution grants the President some discretion in setting the election date for the referendum election, this article does not empower the President to decide that the referendum should not be held.

list. **The OSCE/ODIHR and Venice Commission recommend** that Article 14 clauses (2) and (3) be amended to address this problem.³⁹

70. Article 15 clause (1) is not consistent with the Article 3 principles of freedom of elections and non-discrimination, as it places an obligation on selected parties and coalitions. This provision is also contrary to OSCE commitments and other international standards concerning non-discrimination.⁴⁰ **The OSCE/ODIHR and Venice Commission recommend** that Article 15 be amended to be consistent with other principles in the Electoral Code and to respect OSCE commitments.

71. Articles 78 to 89 describe the steps to be taken for nomination of candidates, including their possible substitution. The system for nomination and registration of candidates is relatively clear and simple. Candidates and lists require signatures of voters for their nomination to be approved, depending on the kind of elections, and with exemptions for sitting mayors, independent councillors and those parties already represented in the parliament or the council assembly. In a welcome amendment, the deadline for registration now precedes the start of the official campaign.

M. ELECTORAL CAMPAIGN AND THE MEDIA

72. Articles 133 and 141 are not consistent with each other. According to Article 133 “the electoral campaign starts 30 days before election date and ends 24 hours before the beginning of voting”. Considering that voting starts at 07:00 hours, the electoral campaign therefore ends at 07:00 hours on the morning before election day. However, according to Article 141 there is an electoral blackout “during the last 24 hours before Election Day”. That means that effectively no electoral campaign can be held as from 00:00 hours the day before election day. Furthermore, both articles leave open the possibility to campaign on election day itself – the law implies that it is not allowed but it does not explicitly state so. **The OSCE/ODIHR and Venice Commission recommend** that Articles 133 and 141 be amended so that they are consistent with each other and expressly prohibit campaigning on election day and the day before.

73. Clause (2) of Article 41 establishes sanctions for media outlets which violate the electoral blackout provisions, but fails to establish any sanction for the electoral subject whose action initiated this legal violation. **The OSCE/ODIHR and Venice Commission recommend** that this provision be expanded to address this concern.

74. Article 137 requires that, during political airtime of news broadcasts, the Public Radio and Television Broadcaster must apply an equal time ratio for all parliamentary parties that in the previous parliamentary elections have obtained up to 20% of the seats in the Parliament. For those parties that have obtained more than 20% of the seats, the airtime, which is allocated equally, is doubled. This text in clause (1) led to problems during the 2003 local government elections. It was interpreted in such a way that the main parties were given twice the air time of all other parties together, while the text appears to indicate that parties with more than 20% in the Assembly are entitled to twice the amount of airtime that is allocated to each smaller party

³⁹There is also a constitutional concern with clause (3) of Article 41, which the Constitutional Court determined was unconstitutional in Decision No. 1, dated 30 January 2004.

⁴⁰See Paragraphs 7.3 and 7.5 of the OSCE 1990 Copenhagen Document; Article 2 of the Universal Declaration of Human Rights; Article 26 of the International Covenant on Civil and Political Rights; Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

individually.⁴¹ **The OSCE/ODIHR and Venice Commission recommend** that Article 137 be clarified so that it is clear that the latter interpretation is the legal principle codified in the law.

75. Article 140 provides that the electoral campaign on private radio and television stations is conducted pursuant to a number of parameters stipulated in the Code. The comment on Article 137 for public broadcasters also applies to the airtime allocated to the different parties by private broadcasters, as set forth in clause (4) of Article 140. **The OSCE/ODIHR and Venice Commission recommend** that Article 140 also be clarified.

N. ELECTION FINANCING

76. Article 145 of the Electoral Code regulates public funding of political parties for the electoral campaign. It, however, does not regulate public funding of independent candidates. **The OSCE/ODIHR and Venice Commission recommend** that Article 145 be amended in order to also include independent candidates.

77. Furthermore, this Part of the Code only regulates the funding of political parties, but not their campaign spending and financial disclosure. Campaign spending and financial disclosure are regulated, but not in sufficient detail, in the Constitution and the Law on Political Parties, which the SP and DP have committed themselves to reviewing jointly before the next parliamentary election.⁴² **The OSCE/ODIHR and Venice Commission recommend** that regulation of campaign spending and financial disclosure be included in a detailed provision in the Electoral Code to ensure the transparent financing and campaign spending of political subjects taking part in the elections.

78. Article 145 does not establish a deadline for the distribution of public campaign funds to political parties. Public funding is of little benefit if it is distributed after the electoral campaign. **The OSCE/ODIHR and Venice Commission recommend** that Article 145 be amended to require the timely distribution of public campaign funds to electoral contestants.

O. VOTING PROCEDURES

79. According to Article 90, the ballot consists of two separate sections and the voter has a vote for each ballot section. This can lead to problematic situations, as was experienced during the 2003 local government elections. In particular during the counting process, Voting Centre Commissions often did not know how to deal with ballots on which a vote was validly cast on one ballot section but not on the other ballot section.⁴³ **The OSCE/ODIHR and Venice Commission recommend** that the “double” ballot be reconsidered; and that the Electoral Code should describe in detail how the Voting Centre Commission is to count a ballot that contains one valid vote and one invalid vote.

80. Article 91 provides that failure to sign the ballot by the chairman or the vice chairman of the Voting Centre Commission does not constitute a reason not to begin with the voting process. The intent of this provision is not clear. Further, under Article 109 clause (1)(dh)(i), a ballot is

⁴¹A complaint on this issue was lodged at the CEC. The CEC followed the aforementioned interpretation of the Media Monitoring Board, although the text of the law appears to indicate otherwise. The CEC decision concerned was not appealed to the Electoral College.

⁴²SP-DP Protocol (17 May 2003).

⁴³During the 2003 local government elections it was reported in many instances by ODIHR election observers that this contributed to a relatively high proportion of ballot papers being declared invalid.

considered “irregular” if any of the required signatures is missing. Giving a voter a ballot that will later be considered “irregular” is equivalent to denying the voter the right of suffrage. **The OSCE/ODIHR and Venice Commission recommend** that Articles 91 and 109 be amended and all inconsistencies in the two articles corrected, and that under no circumstance should the Code permit a ballot to be given to a voter that will be considered “irregular” when it is counted.

81. Article 92 provides that the names of candidates “are placed on the ballot according to the alphabetical order of their name.” Empirical studies have shown that some voters simply vote for the first name on the ballot without considering the rest of the names on the ballot. Thus, a candidate whose name begins with a letter found at the beginning of the alphabet has an advantage over a candidate whose name begins with a letter found at the end of the alphabet. **The OSCE/ODIHR and Venice Commission recommend** that Article 92 be amended to provide that the order of candidates on the ballot be chosen by lot instead of by alphabetical order. Article 92 (4) provides that “the voter marks *in* the special place”. The word “in” has led in other countries to fraud when a ballot is declared invalid if the voter’s mark was not precisely inside the “special place” or is beyond the limit of the “special place”. **The OSCE/ODIHR and Venice Commission recommend** that this wording be changed to allow for more freedom in determining the validity of the ballot and thus the political choice of the voter.

82. The voting procedure is quite simple apart for the double signature and the stamping of the rear side of the ballot papers. Simple, transparent and accountable voting procedures help to avoid fraud. However, the manner in which the signature is made or the stamp applied to the back of the ballot could enable one to identify a voter during the vote count. **The OSCE/ODIHR and Venice Commission recommend** that the requirement for the double signature and stamping be reconsidered and weighed against the need of protecting the secrecy of the ballot.

83. Clause (5) of Article 100 requires that a voter be marked on the left hand with a special ink prior to receiving a ballot. However, there is no requirement that each voter be checked for special ink. If the use of special ink is intended to be more than a “message” to voters and is intended to be a true measure against double voting, then the Code must also require that each voter be checked for special ink prior to receiving a ballot. **The OSCE/ODIHR and Venice Commission recommend** that Article 100 be amended accordingly.

84. Article 100, clause (6) states that a voter who is in possession of a court decision to vote in a specific voting centre is allowed to vote even if the voter is not on the voter register. It is not clear if the court decision foreseen in clause (6) of Article 100 refers to a district court decision on a LGEC decision during the revision process (clause (6) of Article 57), or if this is an additional mechanism to ensure the right of suffrage. **The OSCE/ODIHR and Venice Commission recommend** that clause (6) of Article 100 be clarified and, if this is an additional mechanism, then the clause should identify the competent court for issuing the decision and what procedures and deadlines are to be applied.

85. Article 103 regulates voting by a voter who cannot vote without assistance. A significant problem is presented in this article, since it requires the identification of such voters in official state documents (voter registers) “with the type and category of disability”. The labelling of voters as having a specific disability is contrary to international standards and serves to discourage disabled voters from exercising the human right of suffrage. **The OSCE/ODIHR strongly recommends** that the second sentence of clause (6) of Article 103 be deleted in its entirety.

86. It is not clear what is meant in Article 105 clause (3) with “an observer for a candidate” who is not an accredited representative. **The OSCE/ODIHR and Venice Commission recommend** that this be clarified.

87. Article 109 in clause (1) under (c) stipulates that the Voting Centre Commission must ensure that the number of ballots used corresponds to the number of voters who voted according to the register. However, the article does not regulate what the commission should do if these numbers do not correspond, as happened regularly in the 2003 local government elections. **The OSCE/ODIHR and Venice Commission recommend** that this be clarified.

88. Clause (1) under (i) of Article 109 gives the Voting Centre Commission a lengthy period of time to deliver the ballot box and the envelope containing the official records to the higher level of election administration, where the results of the different voting centres are to be tabulated. The relevant material should be delivered as soon as possible after the count, with an exception for the hours of the night. **The OSCE/ODIHR and Venice Commission recommend** that Article 109 be amended accordingly.

89. The law does not make a clear distinction between normal LGECs and Tirana Municipal Borough LGECs.⁴⁴ As was evidenced during the 2003 local government elections, this can lead to confusion at both the LGEC and VCC level. The OSCE/ODIHR and Venice Commission recommend that the Electoral Code, and in particular the Part on LGECs, describe clearly the different steps to be taken by LGECs and VCCs in Tirana for the different elections.

90. Clause (1) under (b) of Article 110 describes that the ZEC or LGEC must check the contents of the ballot boxes it receives. In the summing up the seal of the Voting Centre Commission (not to be confused with the seal on the ballot box that is recorded in the official records) is missing, while according to Article 109 clause (1) under (gj) the seal must be placed in the ballot box. **The OSCE/ODIHR and Venice Commission recommend** that Article 110 be amended accordingly.

91. Pursuant to Articles 111 and 114, a recount can be requested in elections for deputy or for mayor, but not in elections for local councils. It is unclear why no recount would be allowed for local council elections. **The OSCE/ODIHR and Venice Commission recommend** that Article 111 and 114 be amended in order to allow for recounts in all local council elections.

92. Further, Article 111 stipulates who can request a recount and in which situation. It however fails to stipulate that in case of such a request the relevant ZEC or LGEC has to conduct a recount – instead of having a discretionary authority. As a result, at the 2003 local government elections, in at least one case a validly requested recount was denied by the relevant LGEC. **The OSCE/ODIHR and Venice Commission recommend** that Article 111 stipulate explicitly that the relevant election commission must conduct a recount in case of a request in accordance with clause (1).

93. Although it may be reasonable for general elections, the 150 votes margin for requesting a recount (Article 111) can lead to a substantial number of recounts for local government elections, as occurred during 2003 local government elections. In small communes where the

⁴⁴*This issue was ignored by the CEC in the preparation of the 2003 local government elections, resulting in substantial confusion when the ballot boxes had to be delivered by the VCCs - one to the main Tirana LGEC and one to the relevant Tirana municipal borough LGEC.*

number of voters is low, the 150 votes margin can constitute a significant margin of victory, while for the sake of the legal provision, second ranked candidates may request a recount. **The OSCE/ODIHR and Venice Commission recommend** that Article 111 be amended to provide that, instead of the number 150, a “sliding scale” based on the population of voters in a local government unit, or a fixed percentage, be the legal standard used for determining when a recount is appropriate.

94. Article 113 clause (2) stipulates that before the recount the ZEC or LGEC must check whether the seal on each ballot box is the same as the one recorded in the official register, and that if a seal is not the same, the ballot box concerned should not be opened. However, it does not describe what then has to happen with those ballot boxes that remain closed. Does this mean that the votes inside are not recounted and are therefore not included in the result? **The OSCE/ODIHR and Venice Commission recommend** that this be clarified.

95. Article 115 stipulates that “decisions taken during a recount of ballot papers are final, while the results announced can be appealed”. It is not clear what this means. Does this mean that ballots can no longer be examined by the CEC or the Electoral College at a later stage? **The OSCE/ODIHR and Venice Commission recommend** that this be clarified.

96. The Electoral Code does not distinguish between preliminary results and final results. **The OSCE/ODIHR and Venice Commission recommend** that the Code be amended to specifically require: (1) LGECs and ZECs to undertake and publish an immediate preliminary tabulation of the results contained in each VCC results protocol before commencing official verification of election materials; and (2) publication of preliminary results broken down by voting centre by LGECs and ZECs within 12 hours after receipt of the last VCC protocol, and by the CEC within 24 hours after receipt of the last LGEC or ZEC protocol.

97. Furthermore, due to past experience, **the OSCE/ODIHR and Venice Commission recommend** the introduction of more precise and strong rules in order to avoid “family voting” and to ensure the individual right to vote for women.

98. Military personnel should vote at their place of registered permanent residence whenever possible.⁴⁵ **The OSCE/ODIHR and Venice Commission recommend** applying the rule of Article 107 (2) to all elections for military personnel. Conscripts could vote at the nearest civilian polling station for national elections if they cannot go to their place of permanent residence. In that case, they should be given a sufficient leave (6-8 hours) to be able to go and vote. Their names could be inserted in the voter lists of the polling station to which they are assigned, not as a block of names but respecting the alphabetical order.

99. For local elections, **the OSCE/ODIHR and Venice Commission recommend** separating the different ballot papers for the election of mayors and those for the election of the local councillors, with each type of ballot to be a different colour, in order to facilitate the vote counting as well as increasing clarity for the voters. This will also require review of all provisions relating to ballot papers, which should also be amended as necessary to be consistent with this recommendation..

P. INVALIDATION OF ELECTIONS

⁴⁵*Venice Commission Code of Good Practice in Electoral Matters, point I.3.2.xii.*

100. Article 117 provides for the invalidation of elections in certain voting centres, election units, or in the whole territory of the Republic of Albania. However, Article 117 fails to take into account the use of two ballot sections in elections and would appear to permit partial rerun elections for one ballot section but not the other ballot section cast in a voting centre.⁴⁶ Article 117 is too vague and does not provide details on how or which “elections (ballot section)” are to be declared “invalid”. **The OSCE/ODIHR and Venice Commission recommend** that Article 117 be amended to provide all details for determining invalidity and that there be no possibility for rerun elections on one ballot section but not all ballot sections cast in a specified voting centre.

101. Clause (4) of Article 117 states that “a CEC decision to invalidate the elections in certain voting centres, election units, or in the whole territory of the Republic of Albania” may be appealed “at a competent court”. However, Article 162 provides that a CEC decision is appealed to the Electoral College of the Court of Appeals of Tirana. **The OSCE/ODIHR and Venice Commission recommend** that Article 117 be amended to be consistent with Article 162.

Q. ELECTION COMPLAINTS AND APPEALS

102. Articles 146 through 179 provide adequate processes to ensure that citizens, candidates, and political parties can seek meaningful redress in the event of violation of legal rights. These articles are a significant improvement over the legal framework that existed before adoption of the Electoral Code. However, these articles can be improved and recommendations are accordingly made below.

103. The Electoral Code should be amended to provide more realistic deadlines for taking decisions on complaints and appeals. Due account should be taken of the requirement that an effective system of complaints and appeals must produce results expeditiously. Further, the Electoral Code should specify all procedural provisions that apply to the complaints and appeals process and these provisions should take precedence over the procedural provisions of the Administrative Code. These procedural provisions should require that a complaint be supported with the necessary documentation⁴⁷, *ab initio*, if it is to be considered by the ZEC, LGEC, CEC and Electoral College, thus permitting decisions to be made within the deadlines provided in the law.

R. APPEALS TO THE CEC

104. Clause (1) of Article 146 states that an appeal can be lodged “within two days from the date the decision was taken”, while Article 148 clause (1) speaks of “within 48 hours of the date the decision was announced”. There could also be a difference between the date the decision was taken and the date a decision is announced. **The OSCE/ODIHR and Venice Commission recommend** that Article 146 and/or Article 148 be amended, as appropriate, to ensure consistency.

105. According to Article 147 clause (3), the CEC will make a preliminary verification of an appeal “within two days from its registration”. Article 149, however, provides that the CEC will

⁴⁶A voter will have two ballot sections in parliamentary elections. The voter will have one ballot section for the single member electoral zone and one for the national proportional representation list.

⁴⁷Or a sufficient written explanation of why it is not possible to support the complaint with the necessary documentation at the time the complaint is filed.

make a preliminary verification “no later than 24 hours from the moment the appeal was deposited”. These provisions are, assuming that registration takes place at the same time as the deposit of the appeal, inconsistent. It is also confusing that both concepts of registration and deposit are used next to each other and, apparently, to describe the same action. The law should state very clearly all steps to be taken from the moment the appeal reaches the CEC to the moment the CEC takes and/or announces its decision. **The OSCE/ODIHR and Venice Commission recommend** that this be clarified.

106. Article 159 clause (1) stipulates that the CEC takes a final decision on an appeal within three days from its registration. However, this is not consistent with the deadlines in Articles 147 clause (3) and 151 clause (3). The deadlines in these articles add up to three days (if the two days in Article 147 clause (3) are fully used) before a hearing can be held, and then a decision still has to be taken. Furthermore, a deadline of three days is not in all circumstances realistic if at the same time the CEC wants to make an informed judgment and uphold principles of due process. **The OSCE/ODIHR and Venice Commission recommend** that Article 159 be amended to ensure consistency in deadlines and that all deadlines provide sufficient time for due process to all parties and the meaningful protection of legal rights.

107. Article 162 limits the right to appeal a CEC decision to the Electoral College to “electoral subjects”. This is too limited and presents a problem as it limits access to appellate review to this select group. Article 162 also conflicts with Article 117, which permits certain CEC decisions to be appealed by an “interested person”. **The OSCE/ODIHR and Venice Commission recommend** that Articles 117 and 162 be reconciled and amended as necessary to provide the right to appeal to voters and other electoral stakeholders who may have a legitimate interest in seeking appellate review.

108. Clause (2) of Article 171 provides that the Electoral College adjudicates appeals in a judicial panel consisting of five judges. Article 171 further provides that appeals are distributed among the judges “according to the procedures of this Code”. However, there are no provisions in the Electoral Code that explain how appeals are distributed. **The OSCE/ODIHR and Venice Commission recommend** that the Code be amended to expressly state how appeals are distributed.

S. APPEALS TO THE ELECTORAL COLLEGE

109. Article 163 provides the procedure for selecting judges on the Electoral College. Clause (3) gives four political parties each the right to remove one of the judges selected by the initial lottery, in a secret manner. Although this may be an acceptable interim provision to foster confidence of political parties, it should be phased out as every effort should be taken to increase the independence of the judiciary.⁴⁸ The absence of such a provision should not be problematic as a judge can be challenged pursuant to Article 169 clause (2) and Article 170 clause (2) and excluded from participating in the adjudication, in accordance with the procedure in Article 171 clause (2). **The OSCE/ODIHR and Venice Commission recommend** that Article 163 of the Electoral Code be reconsidered and that it may be more appropriate to include this provision as a transitional one.

⁴⁸See Paragraphs 5.12 and 5.13 of the OSCE 1990 Copenhagen Document and Paragraphs 19.1 and 19.2 of the OSCE 1991 Moscow Document.

110. In particular, it should be made clear that the renewal of the Electoral College takes place after and not before the Parliamentary Elections, in order that the members of this body be timely and properly trained. **The OSCE/ODIHR and Venice Commission recommend** that Article 164 (1) be accordingly revised.

T. SANCTIONS AND ADMINISTRATIVE PENALTIES

111. Articles 175 through 179 contain sanctions for violations of the provisions of the Electoral Code. Article 179 clause (1) stipulates that certain violations are an administrative offence “when these violations have not affected the election result”. This implies that if those violations would have affected the election result, they would not be considered administrative offences but criminal offences. The same applies to the text of Article 178 clauses (1) and (2). **The OSCE/ODIHR and Venice Commission recommend** that this be clarified.

U. TECHNICAL DRAFTING CONCERNS WITH ORGANIZATION, DEFINITIONS, AND CONSISTENCY OF THE ELECTORAL CODE

112. The Electoral Code does not contain a consistent and uniform system for the numbering of paragraphs, sub-paragraphs and clauses. For example, Article 1 lists clauses with alphabetical identifiers, while Article 2 lists clauses with numerical identifiers. **The OSCE/ODIHR and Venice Commission recommend** that the structure of articles and clauses in the Electoral Code be harmonized so that all articles are presented in a consistent and uniform manner. Further, there are clearly omissions of needed references in the text.⁴⁹ **The OSCE/ODIHR and Venice Commission recommend** that the Code be thoroughly reviewed and amended to ensure technical drafting consistency and the correction of omitted text.

113. In some instances the Code contains conflicting provisions for deadlines. For example, the deadline in clause (1) of Article 146 is not consistent with the deadline in clause (1) of Article 148. **The OSCE/ODIHR and Venice Commission recommend** that all deadlines in the Code be thoroughly reviewed and corrected as necessary.

114. The definitions in Article 2 should be carefully reviewed and considered to ensure that they cannot be misapplied and are used consistently in the Code. Particular attention should be given to the use of terms such as “permanent residence” and “registered residence”. Article 2 and clause (1) of Article 58 suggest that a voter can vote within the geographical area where a voter has registered his “residence” even if it is not the same as the voter’s “permanent residence”. Article 76, however, suggests that a voter can only vote in his “permanent residence”. Finally, it must be noted that the Code is confusing in its use of terminology as it relates to political parties. The terms “electoral subject”, “political party”, and “coalition” are not used consistently throughout the Code. **The OSCE/ODIHR and Venice Commission recommend** that all instances in the Code where important terms are used be carefully reviewed and corrected as necessary.⁵⁰

⁴⁹An example is clause (2) of Article 79, which should include a reference to Article 81 as well as to Article 80.

⁵⁰Another example is the Article 2 definition of “partial election”. It is defined as an election “to the seat of an independent candidate”. This definition assumes that every political party that presents a candidate in a single member electoral zone will always submit a multi-name list and that any political party candidate vacancy can be filled through the multi-name list provisions of Article 14. However, a political party has the right to present a single candidate in a single electoral zone without submitting a multi-name list. Thus, “partial election” should not be limited to a vacant seat of an independent candidate. Another example is the clause (3) Article 76 reference to “joint candidate”. The concept of “joint candidate” has been deleted from Article 2.

115. Articles 2 and 5 incorporate definitions from the Civil Code of Albania. Ideally, the Electoral Code should be able to answer all questions about the electoral process since voters, candidates, election commission members and others may not be familiar with the Civil Code. Further, an amendment to the Civil Code may not be consistent with the principles and goals of a term as used in the Electoral Code. It would be better for the Electoral Code to provide its own definitions without referring to other laws. **The OSCE/ODIHR and Venice Commission recommend** that Articles 2 and 5 be amended accordingly.

116. Article 7 contains rules for the setting of the election date and in clause (2) it refers to “a CEC decision at a national level of election results for local government organs”. It is, however, not clear whether this means a nationwide declaration of results by the CEC for the local government elections, or whether this refers to the “acceptance” by the CEC of an election result declared by a Local Government Election Commission (LGEC) for the relevant constituency. The latter would lead to different expiry dates for mandates of organs of different constituencies, which could lead to the problematic situation of local government elections in different constituencies on different dates – since clause (8) of Article 7 stipulates that elections are to be held within 60 to 30 days before the end of the mandate of the existing local organs. **The OSCE/ODIHR and Venice Commission recommend** that Article 7 clause (2) be clarified, taking into account the provision of Article 7 clause (8).

117. Clause (3) of Article 7 mentions “general elections” while these are not defined. Although it appears this refers to elections for the Assembly (Parliament), it would be advisable to state this explicitly. **The OSCE/ODIHR and Venice Commission recommend** that Article 7 clause (3) be accordingly amended or that a definition of general elections be included in Article 2.

118. In clause (4) of Article 7 reference is made to Article 87 of the Constitution. However, it would also be appropriate to include a reference to Article 65 of the Constitution as well. **The OSCE/ODIHR and Venice Commission recommend** that Article 65 be referenced as well.

119. The time span of 60 days in clauses (5) and (6) of Article 7 appears to contradict Article 65 clause (2) of the Constitution, prescribing elections to be held within 45 days after the dissolution of the Assembly. **The OSCE/ODIHR and Venice Commission recommend** that clauses (5) and (6) of Article 7 be harmonized with the Constitution.

120. Clause (5) of Article 180 regulates the contents of the ballot boxes to be sent to the CEC by the ZECs and LGECs following the declaration of results. Clause (5) fails to include the ballot stubs which, under Article 110(1)(b) and clause (6) of Article 180, should be in the ballot boxes as well. **The OSCE/ODIHR and Venice Commission recommend** that clause (5) of Article 180 be amended accordingly.

IV. CONCLUSION

121. This assessment of the Electoral Code is provided with the intention of assisting the authorities in their stated objective to further improve the legal framework for democratic elections, and to bring the Electoral Code more in line with OSCE commitments and other international standards for the conduct of democratic elections.

122. The OSCE/ODIHR and Venice Commission recognize that the current text of the Electoral Code constitutes a significant improvement in comparison with the previous code, in particular

regarding complaints and appeals and the creation of better conditions for equal campaigning. The new provisions on media coverage, the articles implementing the general principle of the inviolability of elections, and move to voter lists generated by the Civil Status Offices are welcomed. However, a number of outstanding concerns remain to be addressed, as indicated in the comments and recommendations given in this assessment.

123. The OSCE/ODIHR and Venice Commission 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 conformity with OSCE commitments and other international standards for democratic elections.