



Office for Democratic Institutions and Human Rights

THE REPUBLIC OF ALBANIA

REFERENDUM ON THE CONSTITUTION

22 NOVEMBER 1998



1 February 1999

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I. EXECUTIVE SUMMARY

Upon invitation from the Albanian Government on 5 October 1998 and following the Needs Assessment Mission undertaken from 12 to 16 October 1998, the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) established an observation mission in Albania for the 22 November referendum on the constitution.

The referendum on the constitution was held under difficult circumstances and followed a campaign characterized by political polarization. The leading opposition party, the Democratic Party (DP), decided not to take part in the process, and called for a boycott of the referendum. In a sense this jeopardized the secrecy of the vote, since participation in the vote could be seen as supporting or opposing a political party. The boycott shifted the emphasis from the substance of the constitution to the referendum as such.

Despite the Democratic Party's decision to call on voters to boycott the actual poll, all the parties concerned – including the DP -- fulfilled their role in voting commissions at local level.

The referendum followed an open and transparent drafting process in which advice on the constitution was accepted from many sources, domestically as well as internationally.

The security situation in Albania is still precarious and raises concerns. In a few geographical areas, law enforcement is extremely difficult. Serious incidents occurred in the weeks leading up to the referendum. Overall, in spite of these circumstances, the referendum was carried out in a peaceful manner throughout the country. During the vote, only isolated incidents of violence were reported, and these were not election related. Despite security considerations, observers were deployed throughout the country.

As in earlier elections the lack of accuracy in the voter lists was still a problem. The discrepancy between legal provisions for the right to vote and the modality for updating the voter lists should be remedied. The right of an individual to be registered as a voter and provisions to remove a person from a voter list should be clearly defined, in particular for citizens living abroad, and all ambiguities in the process be removed. Accurate voter lists should be more easily extracted from a central civil register based on actual residency.

The politicized environment resulting largely from the boycott and related actions, made fast and effective decision-making in the Central Voting Commission (CVC) impossible and hindered the organization of this referendum. In particular the protracted discussion on the educational TV broadcasts brought the work of the CVC to a standstill for some time.

Disinformation on the substance of the constitution, misrepresentation of the role of international representatives and unfounded allegations regarding the constitutional process by the Democratic Party are regrettable.

Under the prevailing conditions and despite the above-mentioned shortcomings, this referendum shows progress over previous elections. Observers found that on 22 November

the voting procedures for the referendum were generally carried out in a correct manner, for which voters and election officials should be commended. However, the tabulation procedure did not allow for a proper scrutiny of the count. Each election commission based its protocol on the level below, and mistakes committed at polling station level were sometimes not corrected on higher levels.

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II. INTRODUCTION

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Ms. Tana de Zulueta, Vice President of the OSCE Parliamentary Assembly and Senator of Italy, was designated by the OSCE Chairman-in-Office as Special Co-ordinator to lead the short-term OSCE Observation Mission for the constitutional referendum in Albania.

Mr. Kåre Vollan was appointed by the ODIHR as the Head of the ODIHR Observation Mission, and Ms. Siri Skåre as Deputy Head upon being seconded by the Government of Norway.

This report is based upon the collective findings of observers from 27 countries, including parliamentarians and public officials representing the OSCE Parliamentary Assembly, the Council of Europe Parliamentary Assembly and the European Parliament, observers seconded by the OSCE participating States, officials from local Embassies, representatives from international organizations present in Albania such as the OSCE Presence in Albania and the European Community Monitoring Mission, as well as representatives of international non-governmental organizations. In total, 200 short-term observers and 23 long-term observers and core staff members were deployed throughout the Republic of Albania.

The ODIHR Observation Mission would like to thank in particular the OSCE Presence for its invaluable assistance during the mission, both in providing long term as well as short-term observers, and for its substantive and logistical support.

III THE LEGISLATIVE FRAMEWORK

III.1 General

According to the constitutional provisions of 1991 and 1992, the Peoples' Assembly of the Republic of Albania (the Parliament) has the power to adopt a constitution by a qualified majority vote in Parliament, with the option of submitting the constitution to a referendum. Since the failed 1994 referendum, all parties have agreed that new constitutions need to be approved by referendum. Therefore, after the 1998 constitution was adopted during its third reading in Parliament on 21 October 1998, it was also submitted to a referendum. The referendum was called for 22 November by a presidential decree issued on 21 October 1998.

The 1998 referendum was governed by Law No. 7866 on Referenda of 6 October 1994, last amended on 12 October 1998. One of the amendments removed the requirement for a fifty per cent turnout for a valid vote. There is no set international standard for a minimum turnout requirement. Moreover, difficulties in establishing reliable voter lists made a turnout threshold difficult to implement. However, the late date of the amendment was unfortunate and raised allegations that the rules were changed to ensure the approval of the constitution.

III.2 The Constitutional Drafting Process

The drafting of the constitution was done by a parliamentary commission. The Democratic Party (DP) did not participate in the drafting process at all. The DP Members of Parliament have boycotted parliamentary sessions since July 1998, despite the recommendations of the Tri-Parliamentary Mission (from the OSCE Parliamentary Assembly, the Council of Europe Parliamentary Assembly and the European Parliament) which visited Albania twice in 1998. A broad civic input to the drafting process was organized by the Administrative Centre for the Co-ordination of Assistance and Public Participation (ACCAPP) of the OSCE Presence. Comments from international organizations were submitted mainly by the Council of Europe's Venice Commission. The DP submitted its full comments on the constitution only on 8 November 1998 and centred its campaign on procedures and matters of a narrower political nature.

III.3 Some Legal Issues

III.3.1 The Campaign and Voter Education on Public TV

The campaign was governed by Articles 41 to 48 of the Law on Elections to Local Government. Article 42 regulates time allocation for campaigning between the government and the opposition parties. This provision has not been controversial.

Article 43 of the Law on Elections to Local Government states that the Central Voting Commission (CVC) "shall organize unbiased programmes on Albanian radio and television to educate the Albanian population about the elections". The Democratic Party has interpreted this as giving the CVC an exclusive right to produce all voter education material on public TV, claiming that all information on the substance of the constitution as well as on the referendum process has to be approved by the CVC. Furthermore, DP members of the CVC refused to allow the broadcast of some voter education programmes because they considered them to be in support of the referendum vote.

Article 39 of the Law on Media obligates public TV to air unbiased informational programmes free of charge on issues of great interest to the general public. A series of TV programmes was broadcast informing the public about the substance of the constitution, in which politicians and experts who had participated in the drafting process explained its content. Due to the participation of government members in those broadcasts, the DP alleged that these broadcasts were biased.

Despite acceptance of a reasonable code of conduct, agreed to by all political parties after consultation with the OSCE Presence, the DP walked out of CVC sessions a few days before the day of referendum, hence hindering the work of the CVC.

It is any person's or party's right not to participate in the referendum. Political parties were free to advocate for a boycott in the time allocated for their campaign. On the other hand, it could not be expected that public TV should air information on the boycott option in its voter education programmes. In fact, these programmes provided neutral information on how to exercise one's

democratic right to vote.

III.3.2 The Voter Lists

The turnout figure for the referendum became a contentious political issue in so much as the opposition wanted to show an effective boycott, while the Government wanted to demonstrate good support for the constitution. Thus, the accuracy of the voter lists became a political issue. More attention should have been devoted to ensuring that all eligible voters were able to exercise their right to vote.

According to Article 4 of the Law on Referenda, "all citizens who by election day have reached the age of 18 years and above have the right to vote". Those who have lost their civic capacity are excluded from this right.

According to Article 8, the organs of local government shall compile the lists of eligible voters. Article 9 states that the lists shall be posted in public places not later than 15 days before voting date.

Further details are given in the Law on Elections to Local Governments, to which the Law on Referenda refers. Article 10 of the Law on Election to Local Governments states:

"Voter lists shall be drawn up under the responsibility of the mayor of the municipality or commune and the secretary of the council concerned. Once signed by them, voter lists shall be sent to the responsible prefectures. The prefect shall then verify them and, if necessary, settle any disputes involving them. The prefect shall inform the Office of the State Secretary for Local Government on the number of voters in each zone at the latest 2 days after publication of the voter lists.

Voter lists shall be kept permanently at the registry office."

Article 16 states: "If a citizen dies, is registered twice, is not registered at all, does not have the right to vote, or is outside the territory of the Republic of Albania, the organ that published the voter list may decide to change it accordingly, but no later than 48 hours before the election starts."

In Decision No. 640 of 19 October 1998, the Government provided a procedure for groups of three persons, organized by the municipality, to compile voter lists by going from house to house to register voters with temporary or permanent residency.

Decision No. 3525 of the Ministry of Local Government of 21 October 1998, Section 2, states inter alia: "Citizens that are currently abroad should not be registered. If there are persons who are out of the country, but who will return in the meantime and will be present on voting day, they have the right to register themselves, but not later than 48 hours prior to voting."

The 14 November 1998 Decision No. 4500 of the same ministry provides for the procedure to change voter lists and states that specific protocols should be designed to record the name of those persons "I. Deleted because they were deceased; II. Deleted because they were abroad;

III. Deleted because they had moved to another place; IV. Added to the lists”.

The CVC issued a Decision on 19 November, allowing voters to register at the courts even on the day of the referendum, if their name was left out by mistake. The late date for adopting such a decision was unfortunate and made uniform implementation difficult. However, the decision did enable a number of voters, who otherwise would have been left out, to exercise their right to vote.

Two main concerns were raised regarding these arrangements:

The right to vote and the voter registers

The right to vote in Albania is a very liberal one. There are no restrictions linking place of residence to the right to vote. However, in maintaining the voter registers, the law provides for the possibility of deleting from the lists those citizens who are not resident in the country. The criteria for such deletions are not clear.

On the one hand, it is to a large extent left to the discretion of local authorities and the multi-party canvassing groups to decide on voters' registration; on the other hand, the right of citizens to be included in civil registers is not defined by this procedure.

It is fully legitimate to restrict the right to vote according to residence, or to include criteria for registration for citizens living abroad. Nonetheless, the procedures for citizens living abroad to be registered to vote should be maintained in an ongoing and consistent manner, and should not be left to voters' initiatives a couple of weeks prior to an election.

The process of establishing the voter lists

The procedure for drawing up the voter lists by canvassing is not clear. On the one hand, it is anticipated that the lists are kept on a permanent basis at the registry office. In this case, the canvassing should provide for changes only to the permanent lists. On the other hand, it has also been anticipated that the canvassers totally recreate the voter lists, starting with a blank sheet. This option is unrealistic given the short time provided from 21 October until the publication of lists on 7 November. Moreover, the criteria for changing/creating the lists based upon formal or actual residence are far from clear. The requirements for documentation when a person is deleted, are equally unclear.

It has been argued that the municipalities could delete those living abroad only after first publishing the full registers. However, this is not reasonable, when the canvassing has provided sufficient evidence to include or exclude voters from the list. In any event, the law should be more precise on this issue.

The authority of the prefect in relation to voter lists has been an issue. Many prefects issued orders to add and delete names from the lists only during the two last days before the referendum. However, the opposition argued that this could only be done prior to publishing the lists, 15 days before the referendum. The opposition did not appeal their interpretation of the Law to the Constitutional Court.

III.3.3 Control of Ballot Papers

In many countries strict accounting of the number of printed ballot papers, their distribution, their use, and the return of unused ballot papers, is required. During this referendum, such accounting was maintained partly in the protocols of the Commissions, partly in other official documents. According to the law, the number of received and used ballot papers should be recorded in the protocols, but the detailed format of the protocols did not in fact include all of these figures. A full review of the control of ballot papers is recommended.

III.3.4 Polling Station Procedures

The reconciliation procedure requires that the number of ballots given to the voters should match the number of ballots found in the ballot box. However, this rule does not differentiate between:

- a situation where voters given ballot papers decide not to cast them in the box, and leave the station without returning the ballot papers to the commission;
- a situation where more ballot papers are discovered in the box than the number of signatures on the voter lists.

Obviously, the latter should be regarded as a serious violation. Moreover, the instructions are not clear as to what actions should be taken if the figures do not tally, and the reconciliation process described in the protocol is not clear. This situation led in many instances to commission members deciding to fill in figures that apparently tallied, instead of performing an actual reconciliation.

III.3.5 Scrutiny and Publishing of Results

Polling Station Commissions shall complete the protocols within 24 hours after the closing of polling stations, District Election Commissions within two days, and the CVC within four days. These deadlines provide a limited amount of time to conduct a scrutiny of the results. Justified doubts were raised in higher level commissions, regarding the results presented in the protocols of the lower level commissions. But time did not permit a systematic scrutiny of these results. Therefore, protocols were based on the ones from the immediate lower level only, and comments made by lower level commission members were not addressed appropriately. A possibility for the future would be to maintain a short deadline for the publication of provisional results based upon protocols from the level immediately below. A second deadline could then be introduced, for the CVC to perform a proper scrutiny of the results, by addressing all formal complaints and auditing lower level results.

In addition to procedural shortcomings, the actual working conditions of the CVC also contributed to the inability to perform an efficient scrutiny, since valuable time was lost on internal conflicts and lack of confidence did not allow for even envisaging serious verification.

A provision similar to the one for parliamentary elections to publish the full tabulation of results

from polling station level to the CVC should be included in the Law on Referenda and Local Government Elections, and should actually be implemented in order to enhance transparency.

III.3.6 The Composition of Commissions at Lower Levels

The Law on Referenda, Article 16, states that the four members of polling station, commune and municipality commissions should consist of two representatives of the ruling party and two from the opposition; and that “the members shall be appointed by the political subjects with higher representation in the commune and municipality councils.” The DP interpreted this provision to mean that both opposition members should have been taken from the biggest opposition party, whereas the Government maintained that they should be taken from the two biggest parties. This ambiguity should be clarified before future elections.

IV THE ELECTION ADMINISTRATION

The Government established a Special Government Group, including some of the key ministers, for the co-ordination of inter-ministerial activities with the Central Voting Commission for the Referendum.

The immediate responsibility for the referendum logistics rested with the Ministry of Local Government. The Government's representatives across the country, the 12 prefects, oversaw the voters' registration process and the physical location of the polling stations.

The prefects worked with the 36 district councils and the levels below, the municipalities and communes where voter registration commissions have been established. At polling station level, a three-person team undertook the registration exercise.

The Central Voting Commission for the Referendum headed a four-tiered hierarchy of election commissions. The levels were:

- 1) The Central Voting Commission - CVC
- 2) The District Election Commissions (36) - DEC
- 3) The Municipality Election Commissions (65) or the Commune Election Commissions (309)
- 4) The Polling Station Commissions (approx. 4,600) - PSC

By decision of Parliament, the CVC was the same Central Election Commission as the one formed during the local by-elections earlier this year. The CVC consisted of a chairman, vice chairman, secretary and 14 members. The chairman was from the ruling party, the vice chairman from the biggest opposition party, the secretary was appointed by the Government, and the 14 members were from the parties in Parliament, seven from the governing parties and seven from the opposition.

The DEC's consisted of a chairman, vice chairman, secretary and one representative from each

of the parties represented in the district council. The total number varied from 7 to 11 members. The chairman was nominated by the biggest ruling party, whereas the vice chairman was from the biggest opposition party. The secretary was appointed by the prefect. If this resulted in an even number, one extra member was appointed by the prefect.

At the third and fourth levels, the commissions consisted of a chairman, vice chairman, Secretary and two representatives from the ruling parties and opposition blocks represented in the municipal or commune councils. Again the chairman came from the ruling party and the vice chairman from the opposition, whereas the secretary was appointed by the prefect.

The politicized composition of the CVC led to a number of deadlocks, in particular when DP representatives on the CVC did not sign decisions and then contested their legality. Much time was lost in CVC debates over how best to handle some of the contentious issues in the organization of the referendum, such as media issues and updating of voter lists.

V VOTER AND CIVIC EDUCATION

General information regarding the substance of the constitution was provided throughout the drafting process and campaign period, by the Parliamentary Commission, the Albanian NGO community, and the Administrative Centre for the Co-ordination of Assistance and Public Participation (ACCAPP) of the OSCE Presence. Each of these entities sponsored public discussions throughout the country on specific provisions of the constitution and produced various educational publications for broad dissemination. More than 120,000 copies of the constitution and more than 150,000 educational pamphlets on specific constitution-related topics were distributed. In addition, portions of the draft were reproduced in newspapers, broadcast on state TV and state radio in the weeks preceding the referendum.

These positive efforts, combined with the recent emergence of private TV and radio, allowed for a more extensive dissemination of information. However, voter education was affected by the following constraints:

- X general lack of communication infrastructure nation-wide which hampered the distribution of educational materials;
- X the short duration of the campaign period;
- X a general lack of voter interest in the debate.

In addition, the Democratic Party's decision to boycott the referendum unfortunately led it to equate any voter education on the content of the constitution or the voting process with the "pro-constitution" campaign. This stance resulted in a significant delay in the CVC carrying out its mandate to produce voter education spots on state TV. After much contentious debate, the programmes were aired only two and a half days before the campaign ended. Further difficulties included:

- X DP insistence that content-oriented presentations on state TV and radio by members of the Parliamentary Drafting Commission or the Parliamentary

Commission for the Constitution Campaign be counted as political party time, allocated according to the Platform on Media approved by the CVC. In the alternative, the DP insisted that politicians on such programmes be replaced by legal experts proposed by the political parties;

- X The CVC decision to disallow any civic education spots by NGOs on state TV;
- X Criticism of the OSCE Presence in Albania for assisting the civic education process - training local level commissions in co-operation with the Ministry for Local Government and producing and disseminating generic voter education materials.

Despite these difficulties, voter education was relatively effective. Educational programmes about the voting process, particularly the casting of ballots was clearly presented by both state and private TV. Education about the registration process was less persuasive, particularly given the confusion regarding voter lists. Private TV and radio provided an additional means for NGO-sponsored voter education spots. For example, one domestic observer NGO which was denied permission by the CVC to air its programmes on state TV, was able to broadcast them instead on private television stations.

VI VOTER REGISTRATION

As mentioned above, turnout figures for voter participation, and hence for voter registration, became a contentious political issue.

The accuracy of voter lists has been a matter of concern in previous Albanian elections. The high degree of internal and external migration, and the lack of a reliable civil register have contributed to the low quality of the voter lists. To improve the accuracy of existing lists, to remove earlier mistakes such as double entries, registration of deceased people, and to register voters where they actually reside, the Government introduced a procedure of house to house registration by groups of three persons representing both the Government and the opposition.

The deadlines for establishing, posting and correcting voter lists were extremely constrained, and were not met in many areas. The canvassing represented a fair effort to correct the lists, but with little chance of succeeding in the end. The possibility introduced at the last minute to allow voters to register even on the day of referendum, did enable a large number of eligible voters to participate in the poll.

To remedy once and for all the problems with voter lists, a centralized civil register must be established, possibly in combination with the organization of a census. In the meantime, it is all the more important that clear criteria for registering voters - both in the country as well as abroad - be formulated.

VII THE PRE-ELECTION CAMPAIGN

In general, the campaign environment was fair and allowed for all sides to express their views.

The referendum campaign officially began with the President signing the referendum decree on 21 October 1998 and continued until 24 hours before the voting began. Campaign positions were drawn largely in support of either a "Yes" vote on the referendum advocated by the government coalition together with the opposition grouping led by the Republican Party, or in support of a boycott of the referendum supported by the opposition Democratic Party. While some of the smaller right-wing parties advocated a "No" vote, the two main political groupings - the government coalition and the opposition Democratic Party - dominated the campaign.

The government coalition emphasized public education on the substance of the constitution rather than directly advocating for a "Yes" vote. It managed to adhere to this strategy in most cases. While the opposition Democratic Party decided on 29 October to boycott the vote, its representatives nonetheless stayed in the election commissions. This decision shifted the emphasis of the campaign from the substance of the constitution to the referendum as such and voter turnout percentages, on the assumption that a low turnout generally would weaken the Government.

The campaign environment allowed for all sides to publicly advocate their position. Opponents of the referendum were able to hold public rallies and demonstrations and their position was widely disseminated through a variety of media. Democratic Party rallies to commemorate the life and death of Party leader Azem Hajdari took on an anti-government and anti-constitution tone. The DP campaign did not focus on the substance of the constitution. The tone of the campaign was highly rhetorical and at times misleading to the public. Nationalist speeches which included attacks against international organizations and misrepresentations of views expressed by international representatives including of the OSCE Presence, regrettably increased in the closing weeks of the campaign.

The government coalition campaign included public meetings throughout the country, where leading Parliamentarians and legal experts involved in the drafting process provided educational information to the public about the content of the constitution. Campaign themes highlighted the necessity of building a stable society based on democratic rules and state institutions, and focused upon western support for the constitution and the referendum process. The Speaker of the Parliament was harshly criticized by the opposition for his leading role in this campaign.

Incidents of violence in the weeks preceding the vote also affected the tone of the campaign. However, it is not clear whether several bombing incidents in Tirana, including one against the home of the Chairman of the Constitutional Court, shooting incidents, and the destruction of power lines and water mains in parts of the country were events related to the election campaign. In any event, fear that some forces may disrupt the voting process, especially the week before the referendum, may have contributed to voters' lack of interest and participation on the day of voting. Indeed, the general public was not widely engaged in this campaign, partly as a result of the polarized and aggressive political environment.

VIII THE MEDIA

General

The referendum was widely reflected in mass media. Voters had access to a broad range of views on both state TV and radio (RTVSH) and through a variety of private media outlets, including TV, radio and newspapers. Opponents of the referendum were entitled to time on the state television (although some of the programmes were aired very late in the evening) and had access to private TV stations.

The recent growth of private radio and TV stations, particularly in the Tirana / Durrës area, gave the public a diversity of viewing options previously non-existent in Albania. While state radio and TV were still the only ones with nation-wide broadcasting capacity, there were also several private televisions broadcasting news programmes.

Initially, the referendum campaign was relatively low key, but during the last week, and particularly during the last four days before the vote, the attention given to the constitution and the referendum grew significantly, both in electronic media and newspapers.

The Observation Mission recorded the state TV (TVSH) daily, for 8 hours a day from 15.45 to 23.45 hours, and prepared a daily analysis of the main editions of the news (at 16.00, 20.00 and 23.00 hours), special broadcasts on the referendum and all programmes of particular interest (such as roundtables, political broadcasts, etc). In addition, three private TV channels (*TV Arberia*, *TV Klan* and *TV Shijak*) were monitored and programmes recorded on a sample basis five days a week, a different channel every day, from 15.30 to 23.30 hours, and an analysis of the news and the political programmes broadcast within those eight hours was prepared. Finally, five main newspapers (*Koha Jonë*, *Gazeta Shqiptare*, *Shekulli*, *Zeri i Popullit* and *RD*) were analyzed six days per week (not published on Mondays).

State TV

The rules for broadcasting on state TV are governed by Article 42 of the Law on local Elections. The CVC adopted a specific Platform (directives) on 4 November, on the use of special TV programmes for party campaigning dedicated to the referendum.

From the start of the campaign, TVSH broadcast the text of the constitution and a spot stating that the constitution represents the basic law of the State and the future of the State depends on it. TVSH also broadcast programmes to explain the substance of the constitution, with contributions by experts and politicians who participated in the drafting process. The latter programmes had an explanatory character and did not favour any of the options opened to voters.

Time was allocated for information on the referendum and for the positions of political parties during news editions and a special program called *A*The political parties in the constitutional referendum campaign (20 minutes per day). In addition, TVSH broadcast other special programmes, such as an interview with Venice Commission expert, La Pergola, and an appeal to vote, aired 48 hours before the referendum.

The tables below represent the results of the media monitoring undertaken by the Observation Mission:

TVSH (times in minutes)	All program- mes	News	Information on constitution	Time for Parties	Spots on constitution	Spots on referen- dum	Party Spots
Total	1300	336	342	334	117	161	10
“Yes” Vote	331	150	0	181	0	0	0
“No” Vote	215	59	0	146	0	0	10
Neutral Information	754	127	342	7	117	161	0

From the above, it is apparent that TVSH was reasonably balanced in its programming on the referendum. However, it must be noted that, during the last days of the campaign, TVSH gave more space to the government position, particularly in the news programmes. The Platform (directives) approved by the CVC on 4 November 1998 was, as a whole, adhered to.

The private channels

In general, TV Klan was quite balanced; however, the same bias as above was apparent between news and other programmes.

In the news, the “Yes” campaign was given 8% of the time, “No” 24% and information 68%. In other programmes: “Yes” 37%, “No” 22% and information 41%. In total: “Yes” 29%, “No” 23% and information 48%.

TV Shijak supported the position of the Democratic Party, without giving any space to the position of the Government Coalition. In all the programs broadcast, the “No” had 54%, information 46% and time allocated in favour of approval was 0%.

TV Arberia, according to the figures, was the most balanced of the three private channels. Time was divided about equally between information on the one side and the “Yes” or “No” campaigns on the other side. Moreover, “Yes” and “No” options were given an equal amount of time, particularly in the news: “Yes” 22%, “No” 24% and information 54%.

Newspapers

The print media also devoted considerable space to the constitution and the referendum campaign and a wide range of views were reflected. Newspapers from all sides provided paid advertising space for the publication of articles on the constitution. Some newspapers provided free space for educational advertisements on both the substance of the constitution and on the voting process.

In general, political party publications reflected the tenor of the respective party's campaign. The Democratic Party's newspapers were more aggressively anti-government and nationalist in tone, while the Government coalition newspapers aimed to strengthen their position by showing international support for the constitution and the referendum process. Independent publications

were generally more balanced, giving more space to information about the referendum and the constitution.

From the five newspapers monitored by the Observation Mission, RD, the official newspaper of the Democratic Party, gave most space to the referendum, and in support of the boycott position. Zeri i Popullit, the Socialist Party newspaper, campaigned in favour of the constitution but dedicated overall less space to the referendum. The three independent newspapers had generally a balanced position focussing on information about the referendum and the constitution.

Newspapers	RD	Zeri i Popullit	Gazeta Shqiptare	Koha Jone	Shekulli
Total in cm²	72822	49289	34794	32876	23236
“Yes” Vote	1%	42%	16%	23%	27%
“No” Vote	76%	3%	79%	10%	7%
Neutral Information	23%	55%		67%	66%

IX OBSERVATION ON THE DAY OF REFERENDUM

Overall, the voting on the day of referendum was carried out in a peaceful manner throughout the country. Incidents of violence were very few. Due to the provision for voter registration even on the day of the referendum, the number of disenfranchised voters was reduced. However, the implementation of this provision was not consistently implemented throughout the country.

The Democratic Party (DP) boycott led to something of a de facto breach in the secrecy of the vote: turning up at a polling station already showed which voters were not following the DP’s call not to participate. In addition, since the voter’s identity papers are stamped at the polling station, participation can be checked after the referendum.

The 24-hour campaign silence prior to the referendum was violated by both sides: both the Socialist Party and the Democratic Party published campaign articles in their newspapers in that period.

The Vote

Referendum day procedures were overall carried out in a peaceful manner throughout the country. However, despite some improvement in comparison with the general elections in 1996

and 1997, many shortcomings remained. In particular, the inaccuracy of the voter lists was again obvious.

In addition to the ordinary voter lists, published before referendum day, “supplementary lists” included those names added to the lists and those deleted either because of death, migration or change of address. Moreover, the prefects had established a separate list, which included changes to the ordinary and “supplementary” voter lists. The status of these lists was unclear to many polling station commission members and caused confusion and acrimonious debates. In some cases, the prefects’ list arrived late, although the legal deadlines for these lists were not clear. The DP commission members justifiably objected when some of these lists only became available on referendum day. However, they never filed a complaint to the Constitutional Court, which could then have provided an official interpretation of the otherwise unclear provisions and timeframe of the law. In addition, some DP commission members also claimed, unjustifiably however, that the prefects’ lists were illegal as such. Compounding these problems, the voter lists were not in alphabetical order, which increased voter processing time.

The provision to register voters on referendum day was not known to all polling station commission members or to all voters. The DP complained against this on referendum day and claimed the provision contradicted the referendum law.

Before the polling station opened, the chairman, vice chairman and the secretary were required to stamp and sign all the ballot papers. In quite a few instances this was not done and led to problems throughout the day. In some cases, the vice-chairman left the polling station for a period of time. The voters were then given a ballot paper with only two signatures. During the count, these ballot papers were considered invalid.

Many of the polling stations opened late, some more than one hour after the official opening hour.

In all polling stations observed, both the ruling party and the opposition were represented in the commissions.

In almost five per cent of the polling stations observed, voter IDs were not properly checked. Some commissions allowed people to vote without an ID, some did not stamp IDs and, in some instances, IDs without a photograph were accepted. In some cases, commissions accepted family identification papers (an ID for a whole family with no photographs). The Law on Referenda is clear that each voter should present an ID with a photograph.

In cases when the ID of a voter was not stamped after casting the ballot, in theory, such a person could vote more than once. One could vote in the polling station where he/she was registered, then go to the district court and obtain the certificate and vote in another polling station. However, the Observation Mission does not have evidence of such multiple voting.

In more than forty per cent of polling stations observed, some people were not allowed to vote. However, in most cases this was justified by the fact that the voter was not on the voter list or did not have a proper ID. It is impossible to determine whether the person was registered in

another polling station or whether the person was not registered at all. With the provision to register on referendum day and given the low number of complaints from people not allowed to vote, most problems seem to have been resolved in the end.

There was also evidence of heads of family signing for the whole family. Moreover, family or group voting is still common and occurred in almost thirty per cent of polling stations observed. Proxy voting and open voting occurred in about two per cent of polling stations observed.

Local police were required to keep order and safety outside polling stations. They could be invited into the polling station by the chairman of the polling station commission or by simple majority of the polling station commission members. In fifteen per cent of the polling stations observed, police were inside the polling station. In most cases this was justified, but there were also some instances where there was no apparent reason for them to be inside.

Persons with no obvious duty were present in many polling stations, but no evidence of intimidation was observed.

It was encouraging to note that domestic non-partisan observers were present in a fairly large number of polling stations. The CVC had accredited 1450 such observers from the Society for Democratic Culture and 52 from the Albanian Human Rights Group.

In most polling stations, co-operation between polling station commission members was reported to be satisfactory.

X OBSERVATION OF COUNTING

The count

The count took place at polling station level immediately after the voting was completed. According to the Law on Referenda, unused ballots and the actual number of voters who cast ballots should be established before the ballot box is opened. In a significant number of cases, this was not done.

There was also controversy about invalid ballots. According to observers, a significant number of ballots were declared invalid by polling station commissions, whereas the intention of the voter was clear. Yet, the latest amendments made to the Law provided that these ballots be considered as valid. Overall, however, the number of invalid ballots was lower than for the last elections. This could partly be explained by the fact that a referendum ballot is simpler than the ballot for, e.g., parliamentary elections, but also the above-mentioned change in the referendum law helped in reducing the number of invalid ballots. It is commendable that the authorities have realized that previous rules for valid ballots were too strict.

Almost all protocols in polling stations observed were signed by the chairman, vice-chairman and secretary. In some cases, objections and complaints were included in the protocols. In fifteen per cent of the polling stations observed, formal complaints were entered by commission members.

Still, in most cases, the protocols were signed. At higher levels, however, some commission members did not sign the protocols.

The protocol instruction required that the number of signatures in the voter lists and the number of ballots found in the ballot box should match. However, there were no instructions regarding discrepancies. As a result, instead of taking appropriate action in case of discrepancies, a large number of observers reported negotiated results to make the protocols tally. This observation was also confirmed by a sample check of protocols by the Observation Mission after the referendum.

In addition, higher level commissions did not consider it their duty to exercise control over the work of the commissions at lower levels. As long as the protocols were signed by the commission members, few questions were asked. Thus, safeguard mechanisms foreseen to ensure the proper handling of election materials were often not implemented.

XI AGGREGATION AND VERIFICATION OF RESULTS

A large number of complaints were filed by the Democratic Party. The proper procedure for processing such complaints should have been the use of the judicial system. Based upon investigations by observers, the following can be stated:

The procedures were inadequate for a proper scrutiny of the vote count. Each commission level based its protocols on the level below. Deadlines were inadequate to scrutinize the protocols from top to bottom or to perform a detailed tabulation from polling station to the central level. A two-step procedure should be considered: publishing preliminary results based on the protocols, then within one week, a thorough scrutiny of all complaints, including an analysis of doubtful protocols.

In some districts, there was hesitation in looking into complaints, when polling station protocols had been signed by all parties. Some Chairmen claimed that they could not challenge the protocols from lower level commissions. This is not a reasonable interpretation of the law. Even in cases of hundred per cent turnout, or where the number of ballots found in the box was different from the number of ballots handed out, such scrutiny was not deemed necessary by the district or municipality election commission chairman. Upon spot checks, observers found that polling stations in Elbasan and in Kavaje had invalid signatures, often entered by the head of family. In one polling station (Rruse in Elbasan) where all 200 registered voters were reported to have voted, it was clear that the signatures were entered by a few individuals.

The turnout figures were calculated based on the number of signatures on the voter lists, and not on the number of ballots found in the ballot box. In some cases, observers found a hundred per cent turnout, whereas the number of ballots found in the box was fewer. This was the case in the Commune of Luz e Vogel in the Kavaje district where there were 4,396 registered voters, 4,396 signatures on the voter list and 2,323 ballots found in the ballot boxes. In addition, polling station No. 4 in the Commune of Rropodine, and polling stations Nos. 2, 3, 6, 7, 8, 9, 11, 12 and 13 of the Commune of Helmës had hundred per cent turnouts according to the protocols. The protocol

from Helmës No. 7 was not signed by the vice-chairman of the polling station commission for the reason of hundred per cent turnout, and a complaint was recorded in the protocol. This complaint was not addressed at higher levels. The explanation the observers received was that voters came to the polling station, signed the voter list, received a ballot and then left the polling station with the ballot paper in their pocket. It is obvious that this could not have happened on a large scale in one commune and hardly at all in other communes or municipalities.

However, no complaints were filed with the Constitutional Court after the referendum.

XII RECOMMENDATIONS

The following recommendations may be considered for the benefit of future elections:

- X All political forces in Albania should make a good-faith effort to improve the general confidence in political institutions and to normalize the political climate in the country.
- X A reliable civic register must be established as a matter of high priority, which would facilitate the extraction and maintenance of voter lists. This must be undertaken in conjunction with a nationwide census.
- X The criteria for voter registration should be clearly defined. In particular, clear rules for maintaining the right to vote for citizens living abroad should be formulated.
- X The laws on elections and referenda should be reconciled, preferably by drafting a single law on referenda and elections, in which each type of election and referendum is addressed, in a separate section. This would improve the continuity of election administration, and remove the need for last minute changes to laws and regulations.
- X The Central Election Commission should devote more time and effort to technical aspects of the election, rather than political debates. The new provisions for a permanent Central Election Commission in the constitution could be an important step in this direction.
- X The accounting of voting material, especially ballot papers, should be included in standard protocols at all levels.
- X Clear instructions should be formulated for the reconciliation of results entered in the

protocols, including the procedures to be followed in case of discrepancies. Such discrepancies should be properly addressed and documented, not by merely changing the figures. Commission members should be trained to conduct a proper scrutiny of results, and clearly instructed to examine the results of the levels below.

- X The timetable for publishing results should provide for the early publication of preliminary and partial results, and for a proper scrutiny by the Central Election Commission before publishing the final results.
- X A provision similar to the one for parliamentary elections to publish the full tabulation of results from polling station level to the Central Election Commission should be formulated for all elections and referenda. Such tabulation should be published promptly and made available to the public.
- X Any ambiguity in the composition of polling station, commune and municipality commissions should be removed before future elections.
- X The referendum provisions for simplified ballot forms and for considering ballots valid if the intent of the voter is clear, should be included in the laws governing all elections.
- X The voter lists should be organized systematically (alphabetically or geographically) to improve the process at polling stations.
- X Voters must sign the voter lists in person, and the secrecy of the vote should be maintained. If the provision for stamping ID documents is maintained, the stamps should be applied upon a voter receiving the ballot and not after voting. An alternative could be to retain the ID document and return it with the stamp after the voter has cast his/her ballot.

1 February 1999