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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**DRAFT JOINT OPINION ON AMENDMENTS
TO THE ELECTORAL CODE OF
THE REPUBLIC OF ALBANIA**

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

**on the basis of comments by
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I. INTRODUCTION

1. *This Joint Opinion on amendments to 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"). This opinion comments on the amendments that have been introduced to the Code subsequent to the Joint Recommendations on the Electoral Law and the Electoral Administration in Albania made by the OSCE/ODIHR and Venice Commission on 2 November 2004.²*

2. *The present opinion was elaborated following resolution 1320 (2003) of the Parliamentary Assembly of the Council of Europe, which invites the Venice Commission to formulate opinions concerning possible improvements to legislation and practices in particular member states or applicant countries.³*

3. *The present draft opinion will be submitted for final adoption at the 22nd Session of the Council for Democratic Elections (18 October 2007), and at the 72nd Session of the Venice Commission (19-20 October 2007).*

4. Subsequent to the 2004 opinion, the Code (Law No. 9087, dated 19 June 2003) has been amended by Law No. 9297, dated 21 October 1997, Law No. 9341, dated 10 January 2005, Law No. 9371, dated 14 April 2005, and Law 9676, dated 13 January 2007.

5. As this opinion only discusses the amendments adopted subsequent to the 2004 opinion and the extent to which they address previous recommendations, this opinion should be considered with earlier OSCE/ODIHR and Venice Commission reports.

6. In addition to the previous opinion, this opinion is based on:

- an unofficial English translation of the Electoral Code provided by the OSCE Presence in Albania (CDL-EL(2007)009);
- an unofficial English translation of 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);
- the OSCE/ODIHR Final Report on the 2005 Parliamentary Elections in Albania, 3 July and 21 August 2005;
- the OSCE/ODIHR Election Observation Mission Report on the 18 February 2007 Local Elections and
- the Code of good practice in electoral matters adopted by the Venice Commission, including the Guidelines on Elections (CDL-AD(2002)023rev).

¹ Herein "the Electoral Code" or "the Code".

² Opinion no. 273/2004, CDL-AD(2004)017 (herein "the 2004 opinion").

³ Point 11.ii.b.

7. It is apparent from the amendments to the Code that the authorities in Albania have taken into consideration several of the comments and recommendations of the OSCE/ODIHR and Venice Commission and improved the Code as a result. However, there are recommendations that remain unaddressed and further improvement of the Code should be considered.

8. Although the Code has been improved and several recommendations adopted, election observation reports establish that even the improved Code has not had a significant impact on the problem of political polarisation of the election administration in Albania. This is a problem that requires resolution through the political will and good faith of political parties in Albania as the Code grants them a monopoly of control over all election processes to the exclusion of civil society elements and institutional structures.

9. This opinion is intended to assist the authorities in Albania to further develop and improve the legislative framework for the conduct of democratic elections and meet international standards. The OSCE/ODIHR and Venice Commission remain committed to provide assistance with this process. 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.

II. EXECUTIVE SUMMARY

10. Several of the recommendations from the 2004 opinion have been taken into account in amendments to the Electoral Code. Key improvements include:

- Detailed provisions for the complaints and appeals processes, both before the Central Election Commission and the Electoral College judicial body;
- More reasonable deadlines related to filing and adjudicating complaints and appeals;
- Greater transparency in election processes; and
- Extending the term of office of local governments from three to four years.

11. It was noted in the 2004 opinion that the Electoral Code provides an adequate basis for conducting democratic elections. These amendments build upon the existing framework and constitute continued and positive progress. The number of amendments adopted that address specific recommendations must also be viewed as a sincere effort to improve the Electoral Code.

12. However, shortcomings remain in the Electoral Code and there are unaddressed recommendations and concerns. Important areas of concern that have remained unaddressed are:

- Complex and problematic rules for the allocation of parliamentary mandates;
- Provisions that permit political parties and coalitions to change the order of candidates on a candidates list after elections;
- Provisions for appointment of members of the Central Election Commission that limit the prerogative of the appointing institutions established in the Constitution;
- Provisions for removal of members of lower election commissions that may hinder the professional and non-partisan performance of the election administration; and

- Provisions regulating referenda which seem to be at odds with the Constitution.

13. The recommendations provided in this opinion discuss the outstanding and problematic issues that remain.

III. DISCUSSION ON THE AMENDMENTS TO THE ELECTORAL CODE

14. Amendments to the Electoral Code are discussed thematically as they correspond to the comments and recommendations of the 2004 opinion. Further, this opinion is limited to the substantive recommendations of the 2004 opinion. The 2004 opinion also contained many recommendations related to technical drafting issues, which shall not be repeated.

A. ELECTION ADMINISTRATION IN GENERAL

15. The 2004 opinion expressed concern that the election administration is highly politicised in Albania and some Code provisions encourage a politicised election administration. The 2004 opinion noted that, although the Code should provide for a degree of political party representation, the Code should establish impartial, independent and professional election commissions that operate in a non-partisan and efficient manner, and in full respect of the law. The 2004 opinion also expressed concern that the election administration was dominated by the two major political parties at every level, coupled with *de facto* veto power at every level of election administration. The 2004 opinion counselled consideration of amendment of Article 154 of the Constitution, along with amendments to the Electoral Code, as part of a reform effort to develop an independent, professional, efficient, and non-partisan election administration.

16. Amendments have been made to the articles regulating election administration, including Article 154 of the Constitution. The amendments, in theory, do lessen the control of the two major political parties by increasing the size of election commissions and extending membership to other political parties.⁴

17. However, in practice, smaller parties were often not able to fulfil their number of nominees for election commissions' membership, as demonstrated during the February 2007 local elections. To the extent that these parties would informally surrender their nomination rights to the bigger ones, these new provisions might have affected the overall political balance within election commissions, in particular mid- and lower levels. In addition, the increase of membership of mid-level and lower-level commissions from 7 to 13 might also have resulted in additional costs, and, to some extent, lessened efficiency.

18. While the above mentioned amendments to the Code might have increased political pluralism in the election administration, the amendments do not address the problem of political and partisan conduct in election administration. **The OSCE/ODIHR and Venice Commission again recommend** that the Code be amended to require that the Central Election Commission develop a mandatory training course for all members of election administration. This training course should be comprehensive and cover all details of election administration, the Electoral Code,

⁴ Membership in the Central Election Commission has increased from seven to nine; that of the Zone Election Commissions, Local Government Election Commissions and Voting Centre Commissions from seven to thirteen members.

ethics, and other matters that the Central Election Commission deems important for the administration of elections in Albania.

19. The ability of political parties to control the actions of the persons they have appointed to election commissions, by virtue of the unlimited powers to appoint and remove members at will, significantly hampers the development of an independent and professional election administration that operates in a non-partisan and efficient manner. The Venice Commission's Code of Good Practice in Electoral Matters is quite clear on this point: "The bodies appointing members of electoral commissions must not be free to dismiss them at will."⁵ **The OSCE/ODIHR and Venice Commission recommend** that the Code be amended to provide that a member of an election commission can only be dismissed for failure to fulfil the member's legal duties imposed by the Code.

20. It is noted that in line with previous recommendations, the requirement for a qualified majority for a number of decisions by Local Government Election Commissions, Zone Election Commissions and Voting Centre Commissions was removed from the Electoral Code.

B. THE CENTRAL ELECTION COMMISSION (CEC)

21. Article 154 of the Constitution of Albania establishes a framework for the Central Election Commission to be appointed by three Albanian institutions - the Assembly (Parliament), the President of the Republic, and the High Council of Justice. Article 22 of the Code, however, gives full control of the nominating procedures to political parties. The 2004 opinion expressed concern that the Code appointment process was not consistent with Article 154 of the Constitution.

22. The concern expressed in 2004 remains. Article 22 of the Code expressly limits the number of candidates that can be considered by the three constitutional institutions when electing a member to fill a Central Election Commission vacancy. These provisions limit, in some instances, the appointing institution's constitutional prerogative to a list of no more than two candidates nominated by "non-Article 154 bodies" (i.e., political parties/groups).⁶ 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 appointing institution.

23. The involvement of non-Article 154 bodies in the selection process for the Central Election Commission might be acceptable, provided the overall process respects the constitutional structure and prerogative that rests with the three Article 154 institutions to elect members of the Central Election Commission. However, the procedures established by the Electoral Code significantly limit constitutional prerogatives and appear to be contrary to the structure established by Article 154 of the Constitution. **The OSCE/ODIHR and Venice Commission again recommend** that Article 22 of the Electoral Code be reformulated in order to ensure that the involvement of Article 154 institutions in the Central Election Commission membership election process includes a meaningful level of participation that respects their constitutional prerogatives.

⁵ See Code of Good Practice in Electoral Matters, II 3.1 f.

⁶ Furthermore, Article 22 uses terms, such as "left" and "right" as criteria to determine which political parties/groups have the right to make nominations. These criteria are not always readily capable of objective application. These are additional reasons that require that Article 22 of the Electoral Code be amended.

24. The 2004 opinion made recommendations that the Code include minimum requirements regulating the conduct of the Central Election Commission in order to increase public confidence and transparency. Many of these recommendations have been implemented by the Central Election Commission and some are addressed by its internal regulations. Although it would have been preferable to codify these practices in the Code as legal requirements, it is a positive development that the Central Election Commission has provided greater transparency in how it conducts its meetings, grants more access to its documents, and solicits public input to its meetings.

25. Article 23(6) of the Code had compelled a Central Election Commission member to vote for or against a proposal and prohibited abstention. The OSCE/ODIHR and Venice Commission previously expressed concern that this provision assumed that there will never be a situation where a member should abstain due to an actual or apparent conflict. In a positive response to the recommendation of the OSCE/ODIHR and Venice Commission, clause (6) of Article 23 has been deleted. An amendment to clause (4) of Article 23 also implements the recommendation that Article 23 should be amended to require a Central Election Commission member to vote "in accordance with the law".

26. The 2004 opinion expressed concern that Article 24 permits the parliament to dismiss a member of the Central Election Commission. Article 24 is of questionable constitutional validity as neither Article 154 nor those provisions of the Constitution devoted to the Parliament expressly grant this authority to the parliament.⁷ **The OSCE/ODIHR and Venice Commission recommend** that Article 24 be carefully reviewed and amended to ensure compliance with the Constitution.

27. There are provisions in clause (3) of Article 27 that cannot be clearly applied, which may be due to a scrivener's error or issue of translation. Sub-clause (a) of clause (3) references itself instead of another clause. The intended reference is likely sub-clause (a) of clause (1). **The OSCE/ODIHR and Venice Commission recommend** that Article 27 be clarified.

28. Article 30 requires that decisions on the declaration of election results and winners, decisions on invalidation of results, and decisions related to complaints on the declaration of the results by a Zone Election Commission or Local Government Election Commission are approved when no less than six members of the Central Election Commission 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. These provisions are a recipe for deadlock and, as a result, a *de facto* veto power has been given to each of the two main political parties on every significant issue.⁸ **The OSCE/ODIHR and Venice Commission** again underscore that the partisan approach to election administration, whereby party interests have often been placed above the common objective to deliver an election with integrity, is not conducive to the professional conduct of democratic elections, and **recommend** considering further streamlining Central Election Commission decision making mechanisms in order to avoid deadlocks that could be motivated by partisan interests.

⁷ 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.

⁸ The articles requiring qualified majority voting are Article 30 for the Central Election Commission, Article 38 for the Zone Election Commissions and Article 44 for the Local Government Election Commissions.

29. Amendments to Article 30 of the Code adopt previous recommendations concerning the conduct of Central Election Commission meetings. Recommendations concerning the public posting of agendas, scheduling of meetings, and reasonable time limitations on presentations have been adopted. Further, a provision in Article 30, which empowered the chairman and deputy chairman to suspend meetings for 24 hours without requiring a justification based on objective criteria, has been deleted in accordance with a previous recommendation.

30. Consistent with a previous recommendation, the Code has been amended to delete clause (10) of Article 30, which allowed the Central Election Commission to meet in private to discuss "Central Election Commission administration". It was pointed out that this provision was contrary to the general principle of transparency of all election processes since the term "administration" certainly encompasses administration of the election processes. Deletion of this clause is a positive response to the recommendation.

C. ZONE ELECTION COMMISSIONS (ZEC)

31. Zone Election Commissions are appointed in a similar, but not identical, fashion used for the formation of the Central Election Commission. In addition, the 13th member of each Zone Election Commission is assigned to the largest governing and opposition parliamentary parties on a fifty-fifty basis, determined by "random selection". The comments and recommendations stated above concerning formation of the Central Election Commission (Article 22) are also applicable to Article 34 regulating the formation of Zone Election Commissions.

D. LOCAL GOVERNMENT ELECTION COMMISSIONS (LGEC)

32. The comments and recommendations stated above concerning formation of the Central Election Commission (Article 22) and Zone Election Commissions (Article 34) are also applicable to Article 40 regulating the formation of Local Government Election Commissions.

E. VOTING CENTRE COMMISSIONS (VCC)

33. 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 Zone Election Commission. For local government elections, the Voting Centre Commission is composed in accordance with the manner and criteria provided by Article 40 for the Local Government Election Commission. Thus, concerns stated above regarding the formation of the election administration bodies also apply to voting centre commissions.

F. VOTER REGISTERS

34. Voter registers continue to be a source of controversy for elections in Albania. The controversy over voter registers extends not only to issues of accuracy of the registers, but also the identification documents used as a basis for registration. Due to the high level of distrust among the political actors in Albania, it is difficult to separate perception clearly from reality concerning the degree of "inaccuracy" of voter registers.

35. Although the degree of accuracy of voter registers is questionable, it is acknowledged that the authorities in Albania have attempted a variety of legal

solutions over the last decade. Both political will and the provision of human resources and adequate funding *well in advance of elections* are crucial to the creation of accurate voter registers. The OSCE/ODIHR and Venice Commission have made previous recommendations concerning specific text in the numerous legal provisions of the Election Code, which have existed at one time or another, regulating voter registration. Legal text, however, cannot overcome deficiencies that arise from a lack of political will, infrastructure and administrative capacity.

36. Despite the criticism of the accuracy of voter registers, amendments to the Electoral Code have improved the processes for voter registration since the 2004 opinion. This is particularly true regarding the civil registers that are used as a basis for citizen data relevant to establishing criteria for voting eligibility. There have been amendments clarifying terms and deleting old terminology. The provisions for voter registration are also quite detailed and can provide a basis for the establishment of voter registers with an acceptable degree of accuracy. **The OSCE/ODIHR and Venice Commission recommend** that the authorities in Albania muster all the necessary political will, human resources, and adequate funding needed for the creation and maintenance of accurate voter registers. *Further, the authorities in Albania must ensure that all government forms, registers, and data on citizens used as a basis for voter registration are adequately safeguarded and secured so that there is no threat of “systematic fraud” – either in reality or as perceived by the distrustful.*

G. OBSERVERS AND TRANSPARENCY

37. 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.

38. Although Articles 18 and 19 provide for broad observer rights, the 2004 opinion made specific recommendations concerning appointment of political party observers and deadlines for the submission of requests for accreditation to the Central Election Commission. These recommendations have been addressed in the amendments.

39. An amendment to Article 95/2, which is not in response to a specific recommendation, requires the Central Election Commission to decide whether recording cameras and monitors (screens) should be used to display ballots before their evaluation during the count. This amendment increases the possibility for enhanced transparency during the count of ballots.

H. ELECTION SYSTEM FOR THE PARLIAMENT

40. As noted in the 2004 opinion, Article 64 of the Constitution of Albania establishes an electoral system that uses both (i) single member electoral zones (100) and (ii) a nationwide constituency for the allocation of supplemental mandates (40) to political party and coalition lists. Article 64 also requires that the total number of deputies of a party or coalition shall be, to the closest possible extent, proportional to the valid votes won on the national scale in the first round of elections. This establishes a constitutional goal of proportionality to the greatest degree possible for the overall distribution of the 140 parliamentary mandates.

41. Political parties have been able to circumvent the constitutional goal of proportionality by applying various strategies in parliamentary elections.⁹ Although the strategies for the 2005 Parliamentary elections were different from the strategies employed in the 2001 Parliamentary elections, the goal of obtaining a disproportionate share of the mandates was the same.¹⁰ In both elections the allocation of mandates was controversial and subject to legitimate criticism. One factor that contributed to this controversy is the complexity of the allocation formula stated in the Code.

42. 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 amendments. In fact, the allocation formula has been made even more complex and difficult for a voter or observer to understand. The amendments have turned a complex system into a more complex one. The system even allows for a political party to have its own “formula for the final ranking of candidates”.¹¹

43. Elections are the mechanism by which parties and candidates present their views to the electorate and compete for their support within a clearly regulated framework. Elections form the basis for democratic governance, and are not games for the political parties to manipulate. The current electoral system has been abused by political parties. **The OSCE/ODIHR and Venice Commission again recommend that the Electoral Code be amended in order to establish a less complex electoral system that is transparent, easily implemented, and clearly and completely understood by voters.**¹²

I. ELECTORAL ZONES FOR THE PARLIAMENT

44. Electoral zones for parliamentary districts (single member constituencies) used to be regulated by Articles 70 through 75 of the Electoral Code. The 2004 opinion made specific recommendations concerning these articles.¹³ Amendments to the Code have abrogated Articles 70 through 75, and transitory provisions were adopted for drawing the zones for the 2005 parliamentary elections (Article 181), as well as a separate law formally establishing the zones for the 2005 elections. The recommendations stated in the 2004 opinion, to the extent they are not addressed in separate legislation, remain applicable. In addition, the temporary nature of the current arrangement needs to be clarified. Criteria, timeframe and modalities for drawing up zones’ boundaries on a regular basis need to be spelled out consistently in the code.

J. LOCAL ELECTIONS

45. In a positive amendment responsive to a previous recommendation, Article 109 of the Constitution has been amended to extend the term of the local councils and mayors from three to four years.

46. Observation of the February 2007 local elections showed some Local Government Election Commissions found it difficult to perform the seat allocation

⁹ The electoral system allows those parties which are able to form coalitions to split the votes of their voters between them and their allies, to obtain a disproportionate share of the seats.

¹⁰ See OSCE/ODIHR Final Report Republic of Albania Parliamentary Elections, 3 July 2005, pp. 4-5.

¹¹ Articles 16 and 87.

¹² The OSCE/ODIHR and Venice Commission welcome the opportunity to assist authorities in devising a less complex formula.

¹³ See paragraphs 55 through 58 of the 2004 opinion.

between candidates' lists in accordance with the provisions of the Electoral Code, at times leading to errors in the allocation of seats. **The OSCE/ODIHR and Venice Commission recommend** that the question of the modalities for performing seat allocation for local elections is reassessed.

47. An amendment to Article 87 permits the re-ranking of candidates on a list after the elections. This amendment goes against the fundamental principle according to which elected officials are actually elected by voters. OSCE/ODIHR and Venice Commission already expressed concern with a similar provision in Article 84 for parliamentary elections. **The OSCE/ODIHR and Venice Commission again recommend** that these articles be amended to ensure that there is no possibility for the order of candidates to be changed on a list after the list is submitted to the proper electoral authority.

K. REFERENDA

48. Referenda are regulated by Articles 118 through 132 of the Electoral Code. The 2004 opinion made five specific recommendations concerning these articles.¹⁴ There have been no amendments to these articles. The recommendations stated in the 2004 opinion remain applicable.

L. CANDIDACY RIGHTS AND NOMINATION PROCEDURES

49. The 2004 opinion expressed concern as to the degree of transparency for the awarding of list mandates to candidates. This concern remains as previous recommendations on this issue have not been addressed and one of the more recent amendments reduces transparency for the allocation of mandates in local elections even further.

50. Clause (4) of Article 84 permits a political party or coalition to have, separate from its submitted candidates list, an agreement that contains "the formula for defining the 'final ranking' of multi-name list candidates". There should not 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 Central Election Commission. Clause (4) of Article 84 allows for post-election changes in the order of allocation and the re-ranking of lists previously submitted to the Central Election Commission. Such a provision goes against the fundamental principles that "the will of the people... be the basis of the authority of government" and for "the free expression of the opinion of the people in the choice of legislature".¹⁵ This provision also raises questions with regards to its conformity with the Albanian Constitution, particularly Article 64.1, which provides that "the forty deputies are elected from multi-name lists of parties or party coalitions according to their ranking".

51. It is a basic democratic principle that a voter is entitled to know the consequences of his/her vote, and that a vote be counted for the candidate for whom the voter marks his/her ballot. When closed lists of candidates are used, this requires that a vote for the list first benefit the first ranked candidate on the list. These basic principles are also embodied in Paragraph 7.9 of the 1990 CSCE 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

¹⁴ See paragraphs 61 through 65 of the 2004 opinion.

¹⁵ Article 21.3 of the Universal Declaration of Human Rights; Article 25.b of the International Covenant on Civil and Political Rights; Article 3 of the Additional Protocol to the European Convention on Human Rights

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 international standards, including OSCE commitments.

52. The 2004 opinion recommended that Article 84 be addressed. The amendments have not addressed the problem of Article 84, but have extended the possibility for "final ranking formulas" to local government elections by amending Article 87 to include similar text for candidate lists in local government elections. **The OSCE/ODIHR and Venice Commission again recommend** that these articles be carefully reviewed and amended to ensure that there is no possibility for the party through any internal mechanism to re-rank candidates on a list after the list is submitted to the relevant electoral authority.

53. An amendment to clause (3) of Article 14 partially addresses the recommendation made in 2004 for improving the procedure for filling a vacancy in a single member electoral zone. This is a positive amendment. However, the amendment does not address the situation where there is no remaining name on a list to fill a vacancy occurring within the final six months of office of a political party or coalition deputy. Nor is it clear whether this amendment completely addresses an earlier Constitutional Court decision on the issue.¹⁶ **The OSCE/ODIHR and Venice Commission recommend** that Article 14 be further amended to address these concerns.

54. Articles 78 and 86 of the Code require the Central Election Commission and Zone Election Commission to verify the documentation submitted in support of candidacy, including supporting signatures. However, in past elections, the Central Election Commission has not adopted a decision regulating the procedures for verification of support signatures and this has resulted in inconsistent verification of supporting signatures. **The OSCE/ODIHR and Venice Commission recommend** that the Electoral Code be amended to provide a procedure for verifying signature support that must be applied in an objective and non-discriminatory manner.

M. ELECTORAL CAMPAIGN AND THE MEDIA

55. An amendment to Article 141 addresses the previous inconsistency between Articles 133 and 141 regarding the electoral blackout period. This amendment addresses a 2004 recommendation. Under Article 133, the Saturday prior to the election and on the date of the election until the closing of polls is the electoral blackout period. Article 141 has also been amended to include sanctions for an electoral subject whose conduct has resulted in a violation of the electoral blackout period. Although this amendment brings a positive response to another 2004 recommendation, Article 133 should be reviewed in order to take into account the possibility, which exists under Article 7, that local elections can be held on any day of the week.

56. Article 137 has been amended to clarify how political airtime of news broadcasts on the Public Radio and Television Broadcaster is allocated among parliamentary parties. This amendment addresses a previous recommendation that Article 137 should be clarified as its prior text was subject to different interpretations during the 2003 local government elections. This is a positive amendment.

¹⁶ Constitutional Court of Albania Decision No. 1, dated 30 January 2004.

N. ELECTION FINANCING

57. Article 145/1 of the Electoral Code has been added by the amendments to require the submission of financial campaign reports to the Central Election Commission and their subsequent publication. This is a positive amendment in response to a previous recommendation. However, the Code still does not regulate campaign spending limits. **The OSCE/ODIHR and Venice Commission again recommend** that regulation of campaign spending be included in a detailed provision in the Electoral Code.

58. An amendment to Article 145(1)(c) incorporates a recommendation that the Code establish a deadline for the distribution of public campaign funds to political parties. Under the amendment, public funding for qualifying political parties must be allocated no later than ten days after the President issues the decree setting the election date. This is a positive amendment.

O. VOTING PROCEDURES

59. An amendment to Article 90 addresses the problem in previous elections of having one ballot with two separate sections – one vote in each ballot section for a different election. This was problematic for some voters and the 2004 opinion recommended that the “double” ballot be reconsidered. The amendment to Article 90 addresses this recommendation by establishing two separate ballot papers. The amendments also incorporate two other recommendations concerning the security measures to be applied by the election commission to the back of the ballot (stamp instead of signature) and clarifying text on the marking of the ballot. These are positive amendments that respond to previous recommendations.

60. An amendment to Article 100 incorporates the recommendation that each voter be checked for special ink *before* receiving a ballot. This is a positive improvement in voting procedures.

61. An amendment to Article 100(2) clarifies the reference to a voter who is voting with a court decision in a specific voting centre. The amendment references a decision issued pursuant to Article 60. This is a positive amendment that responds to a recommendation for clarification.

62. The 2004 opinion expressed concern about Article 103, which regulates voting by a voter who cannot vote without assistance. Clause (6) of Article 103 requires the identification of such voters in official state documents “with the type and category of disability”. Although designed to permit adequate voting conditions be provided to voters with specific needs, the requirement for an official government label of “disability” in order to vote is not consistent with international standards. **The OSCE/ODIHR and the Venice Commission again recommend** that the issue be carefully reassessed.

63. The 2004 opinion expressed concerns that the Electoral Code did not provide clear distinctions concerning the activities of the Local Government Election Commission for the Tirana Municipality and the Local Government Election Commissions for the Tirana Municipal Boroughs. Several amendments address this issue, making a distinction between these Local Government Election Commissions.

64. The 2004 opinion made several recommendations concerning Articles 111 through 115, which governed a recount of ballots. Those articles have been

repealed. The possibility for a recount of ballots is now addressed by Article 158, which regulates the procedure for the Central Election Commission to examine materials when considering appeals from the decisions of Zone Election Commissions and Local Government Election Commissions. Under Article 158, the Central Election Commission can conduct a recount and/or re-evaluation of ballots.

65. Articles 64 and 107 regulate voting by military personnel and police forces. Military personnel should vote at their place of registered permanent residence whenever possible.¹⁷ The 2004 opinion recommended applying the rule of Article 107 (2) to all elections for military personnel. This recommendation has not been adopted by any of the amendments to the Electoral Code.

P. INVALIDATION OF ELECTIONS

66. The 2004 opinion, as well as the OSCE/ODIHR Final Reports on the 2001 and 2005 parliamentary elections, made recommendations for improving Article 117 of the Electoral Code, which governs invalidation of election results. The amendments are positive responses to these recommendations. The text of Article 117 has been clarified and can be applied more practically. Nevertheless, Article 117 section 1c provides that the elections shall be declared invalid “if the voting has not begun or has been suspended for more than six hours”. It is suggested to consider whether such time limit should be reduced. Furthermore, the provision of art.117.1a fails to specify whether the situation of “violations of the law” refers to the electoral code only or to other Albanian laws. More generally, the relationship between par. 1.a and par. 1.a/1 and 1.c is not absolutely clear.

Q. ELECTION COMPLAINTS AND APPEALS

67. The 2004 opinion noted that, in general, the Electoral Code provides adequate processes to ensure that citizens, candidates, and political parties can seek meaningful redress in the event of violation of their rights. However, the 2004 opinion did make some recommendations for improvement. Most of the recommendations, which are discussed in paragraphs 69 through 75 below, concern appeals to the Central Election Commission and Electoral College.

68. Most of the recommendations have been addressed by amendments to the Code. Further, some amendments go beyond the 2004 opinion and address recommendations from recent election observation reports. Examples of this are amendments unifying the procedures for invalidation requests with related complaints and creating more realistic investigatory and evidentiary procedures for the Central Election Commission. These are positive amendments.

R. APPEALS TO THE CENTRAL ELECTION COMMISSION

69. Amendments to Articles 146 and 148 adopt recommendations to clarify the deadline for filing an appeal to the Central Election Commission. An amendment to Article 146 also extends the deadline for appeals to the Central Election Commission from two to three days. This is also a positive amendment.

70. Amendments to Articles 147 and 149 adopt recommendations to clarify the deadline for the Central Election Commission to complete the preliminary verification

¹⁷ Venice Commission Code of Good Practice in Electoral Matters, point I.3.2.xii.

to ensure that the form of the appeal meets all legal requirements. These are positive amendments.

71. Amendments to Article 159 adopt recommendations to extend the time within which the Central Election Commission must make a decision on an appeal. The deadline has been extended to ten days, which appears to be more realistic in light of the high number of appeals that have been filed with the Central Election Commission in past elections. These are positive amendments.

S. APPEALS TO THE ELECTORAL COLLEGE

72. The 2004 opinion expressed concern over the Article 163 procedure for selecting judges on the Electoral College. Clause (3) gives each of four political parties the right to remove one of the judges selected by the initial lottery, in a secret manner. Although this may have been an acceptable interim provision, it should have been phased out as every effort should be taken to increase the independence of the judiciary.¹⁸ Further, this provision is unnecessary since a judge can be challenged and excluded from a case where justified by the facts.¹⁹ **The OSCE/ODIHR and Venice Commission again recommend** that Article 163 of the Electoral Code be phased out.

73. The 2004 opinion expressed concern that Article 162 limits the right to appeal a Central Election Commission decision to the Electoral College to “electoral subjects”. However, an “interested person” has the right to participate in proceedings before both the Central Election Commission and Electoral College. Article 162 does not expressly recognise the right of an interested person, who has been adversely affected by a Central Election Commission decision in a case in which the interested person participated, to appeal to the Electoral College. **The OSCE/ODIHR and Venice Commission again recommend** that Article 162 be amended to provide the right to appeal to voters and other electoral stakeholders (“interested persons”) who may have a legitimate interest in seeking appellate review.

74. An amendment to Article 170 addresses the recommendation from the 2004 opinion that the Code state how appeals are distributed among the judges of the Electoral College. Clause 2(b) of Article 170 provides that distribution of appeals is done by lottery. This is a positive amendment.

75. The 2004 recommendation concerning Article 164(1) of the Code has not been addressed. This article 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 are timely and properly trained. **The OSCE/ODIHR and Venice Commission recommend** that Article 164(1) be accordingly revised.

T. SANCTIONS AND ADMINISTRATIVE PENALTIES

76. Articles 175 through 179 contain sanctions for violations of the provisions of the Electoral Code. The 2004 opinion made a recommendation for rendering Articles 178 and 179 more consistent. Amendments to Article 178 address the recommendation in a positive manner.

¹⁸ See 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. See also Recommendation No. R (94) 12 of the Committee of Ministers of the Council of Europe on the Independence, Efficiency and Role of Judges; UN Basic Principles on the Independence of the Judiciary.

¹⁹ See Article 169 clause (2), Article 170 clause (2), and Article 171 clause (2).

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

77. The 2004 opinion contained several recommendations concerning technical drafting issues. Many of these recommendations are inapplicable due to the substantial changes in the provisions regulating voter registers and voting processes. However, the fundamental drafting principles stated in the 2004 recommendations are applicable to any future amendments that are considered by the authorities in Albania. These include the **recommendations of the OSCE/ODIHR and Venice Commission** that: (1) the structure of articles and clauses in the Electoral Code be harmonised so that all articles are presented in a consistent and uniform manner; (2) all deadlines in the Code be thoroughly reviewed and corrected as necessary; (3) definitions in Article 2 be carefully reviewed and considered to ensure that they cannot be misapplied and are used consistently in the Code.

IV. CONCLUSION

78. This joint opinion on the amendments to 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 in Albania.

79. The current text of the Electoral Code constitutes a significant improvement in comparison with prior versions, particularly regarding transparency and the processes for complaints and appeals. However, there are some outstanding concerns to be addressed, as indicated in the comments and recommendations given in this opinion.

80. 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 and Council of Europe commitments and other international standards for democratic elections.