



NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS

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MEMORANDUM

TO: The Honorable Peter Abnori
Chairman, The People's Assembly

FROM: Patrick Merloe, Senior Associate for Electoral Processes
Lisa C. McLean, Senior Program Officer

DATE: December 13, 1995

Dear Mr. Abnori:

As you know, a delegation from the National Democratic Institute for International Affairs (NDI) visited Albania in mid-July as part of NDI's pre-election activities in advance of Albania's parliamentary elections. The delegation held discussions with political party leaders, government officials, members of former election commissions and civic leaders. The discussions addressed the current Albanian election law, including the 1992 Law on Elections for the People's Assembly, the 1992 Law on Elections of the Local Power Organs and the 1994 Law on Referendums. During our meetings, many persons indicated that written comments on the law from NDI would be useful as the government and People's Assembly consider changes to the election system for the 1996 elections.

Below you will find comments on a few significant points for the consideration of government officials, political party leaders and leaders of civic organizations as amendments to the current law are deliberated. We also are prepared to provide a memorandum with an article-by-article technical analysis of the law that may prove helpful as amendments are considered. In order to be of assistance to all lawmakers, we have forwarded this communication to ministers, parliamentary leaders, several additional political party leaders and to the Society for Democratic Culture.

As you are well aware, there are a number of ways to structure an election system, and the Albanian election law compares favorably to those of neighboring countries. At the same time, every election system evolves over time, and there are a few changes that the Albanian government, People's Assembly, political parties and civic organizations may consider in order to eliminate ambiguities in the law, further ensure electoral fairness and promote transparency in the election procedures. NDI is pleased to have the opportunity to provide comments on the election law and does so in the spirit of continuing international cooperation. Also, we realize that there may be plans underway in Albania to introduce legislation that addresses issues raised below. We offer the following comments in hopes of assisting Albanian efforts to strengthen the structures necessary for free and fair elections and to promote participation and transparency, which are necessary for public confidence in the



election process and the resulting government.

COMMENTS ON THE ELECTION LAW

There are many positive provisions of the Albanian election law. Among such provisions are avenues for political party participation in the Central Election Commission, Zone Election Commissions and Voting Center Election Commissions as well as for party monitoring of the vote count (1992 Law for Elections to the People's Assembly, Articles 35, 37, 39, 64, 66, 72(b) and 75). There are provisions ensuring transparency through public meetings of election commissions and for the activity of Albanian and international election observers (Articles 36(f), 44, 89 and 90). There are also provisions for citizens to correct errors and omissions in voter lists as well as for the voters lists to be available to the political contestants (Articles 27 and 28). Provisions for secrecy of the ballot are strong (Article 66). There are also provisions against the military and state organs participating in campaign propaganda activities and provisions that provide opportunities for electoral contestants to espouse their messages and to obtain funding (Articles 52, 53, 54, 55, 57, 58 and 61).

Notwithstanding these and other positive provisions, several aspects of the election law warrant consideration in order to refine and improve Albania's election system.

1. Deadlines

A careful review of the election law reveals the need for developing an election calendar that more accurately reflects the real time necessary to prepare adequately for elections. Time is perhaps the most valuable resource for political contestants and election officials in fostering successful elections. This is especially important in Albania because there is not a permanent election commission that could have upgraded systems over the last four years and continuously updated voter lists. Further, adequate time should be provided to appoint, train and prepare election administrators at all levels for the important responsibilities they will exercise in the pre-election period and on election day.

As currently structured, the time lines and deadlines for organizing the electoral processes may prove logistically impossible to achieve, which could undermine efforts to promote citizen confidence in the elections and the resulting People's Assembly. The deadlines also present a serious challenge to providing candidates and political parties with sufficient time to present themselves to the voters and to providing voters with ample opportunity to learn about their choices as well as the mechanics of where and when to vote.

In particular, the election law and constitutional provisions state that the election machinery is to be activated just 35 days before elections (Article 29 and 35, also Article 7 of 1992 the local election law). In this period, all election commissions (central, zone and voting center) must be appointed and trained; all candidates must be registered; voter lists must be compiled and announced; voting centers must be designated and

announced; and numerous decisions about campaign media access and campaign financing must be made. In a country like Albania, where there have been significant levels of internal migration and emigration, compiling the voter lists alone will present a huge challenge.

Some of the deadlines and assigned responsibilities create specific complications for the Zone Election Commissions (ZECs). While these bodies are to be appointed 25 days before elections, they have a role in preparing the voter lists and establishing the voting centers, which are to be announced, respectively, 25 days and 20 days before election day (Articles 37, 38(c)-(d); also Articles 25 and 26 of the 1992 local election law). In addition, the newly appointed ZECs are faced with the need to review candidate registration forms and lists of signatures from each of the candidates within five days of assuming their jobs (Articles 13, 14 and 38(f)).

Moreover, while the 35-day official campaign period begins once elections are announced, candidates are not registered in the single-member constituencies until approximately 15 days before election day, and there is no specific deadline for announcement of the national party lists (Articles 15, 16 and 19). Campaign finance and media access are distributed based on candidates being registered and therefore may not be available until the last two weeks of the campaign (Articles 51, 53, 54 and 58). As written presently, the law presents the possibility that the political contestants could have less than 15 days to present themselves to the voters. Even when political parties are well established and elections are anticipated well in advance of the official election campaign, 15 days is not likely to be sufficient for political contestants to present meaningful campaign messages and for prospective voters to make free and informed choice among the candidates.

For these reasons, it is advisable to consider creating a more extended election calendar (for example, one based on a 60- or 90-day preparation period), with more time for political contestants to receive financing, media access and other resources and more time for election commissions to undertake training and discharge of pre-election duties. Greater time allotted to preparing the elections can only benefit the electoral process by allowing election commissioners a more adequate opportunity to carry out their functions and by permitting voters to more thoroughly understand their choices and the procedures for voter registration and voting.

2. Voter Lists

The need to create accurate voter lists for the 1996 elections presents an area for careful analysis and possible modification of prior Albanian law and procedure in order to avoid the potential for voter disenfranchisement. This need is particularly evident when the shifts in Albania's population are considered. There have been significant internal shifts in population, including large numbers of persons living in illegally constructed housing. At the same time, large numbers of Albanians are presently living abroad.

As noted above, voter lists are to be announced 25 days before election day

(Article 21). According to discussions with officials at the Ministry of Interior, citizens who are living in illegal residences are unable to go to the municipality of their new residence and legally change their address registration. Ministry of Interior officials reported that such persons therefore will not be included on the voter lists in their new place of residence and that, most likely, voting centers will not be established in new localities made up of such residents. This implies that such citizens would have to return to their original place of residence -- sometimes hundreds of kilometers from their current residence -- in order to vote. At the same time, local government organs in the original places of residence may have learned that such prospective voters had moved and deleted their names from voter lists in their original places of residence. This creates a real and significant risk of disenfranchisement for large numbers of prospective voters.

Though we recognize the significant expenditure associated with undertaking a census, conducting a full population census prior to the elections is one possible solution to this problem. Another possible solution is to send out enumerators for the sole purpose of creating voter lists, with assurances made to the population that there will be no legal penalties for being included on the voter list if someone is residing illegally. Another possible solution is that a provision be included in the future election law to permit those without a legal address registration to be entered on voter lists for their current (illegal) residence upon the presentation of proof of residence at an office of the local government. When a person is entered on the voter list at the new residence, authorities would inform the respective organs of local government from the previous residence so that the person can be deleted from the voter list there.¹

Leaders of several political parties expressed concern to NDI about the ability of emigres to vote. Currently, the election law requires that Albanian citizens living outside the country but who are present on election day be placed on voter lists in their former place of residence (Article 23). An exact procedure for such voting, however, is not provided in the law. Apparently, during the local elections of 1992, emigre workers were required to return to the country at least two days before elections and express their desire to vote on election day. It is advisable that procedures be clarified before the next election with a goal of permitting maximum participation, while ensuring that the provisions do not permit multiple voting by one person. The possibilities for allowing voting abroad could also be considered.

3. Voter Identification, Tendered Ballots and Supplemental Registration

The current election law does not allow additions to the voter lists on election day. While this provides a check against multiple voting by one person, it may also serve to disenfranchise many prospective voters in the light of internal immigration and emigrant

voting considerations discussed above. If voter identification and qualification is established based on each prospective voter's unique identification number (see Article 65), election officials could control against multiple-voting by checking identification numbers after election day, while permitting maximum franchise on election day by using tendered ballot or supplemental list procedures.

Tendered ballots refer to votes that have been cast but are specially set aside for some specific reason (for example, the prospective voter's name did not appear on the voter list, their voter registration card was lost, etc.). Usually, a tendered ballot is segregated from other ballots by placing it in an envelope, which is then placed inside a second envelope along with available voter identification and registration information. The use of two envelopes helps ensure that the voter's ballot remains secret. Usually, the envelope will be marked with a number that corresponds to an identical number on a tendered ballot record compiled at the voting center.

In most cases, once a ballot is marked as tendered, it is sent to a higher authority for final determination. The determination may be made by the central election commission, a zone election commission or by a court, in the presence of political party representatives and observers. The ruling may be rendered on election day itself or in a short period thereafter (for example, within 48 hours). Tendered ballots are ruled valid when it is determined that the voter had the right to vote and sought to do so legally at a proper location. Tendered ballots ruled valid are added to election totals.

The system of tendered ballots is used to avoid holding up the process at voting centers, as well as to ensure that eligible voters are not disqualified because of a technicality, the whim of a local official or an error in the process. The tendered ballot system is also relatively easy to administer so that the benefits of its use usually outweigh the burden it places on electoral administration. Tendered ballots are used in a significant number of countries.

Another procedure to consider is the use of supplemental voter lists. Romania employed a procedure in its 1992 elections that permitted prospective voters who presented proper identification, but who were omitted from voter lists, to be added to special supplemental voter lists. These persons then cast regular ballots. This procedure allows a maximum number of persons to vote and can be combined with strong penalties for illegal voting in order to discourage multiple voting. The procedure, however, has a disadvantage because it is not possible to retrieve ballots cast if the prospective voter is found to have voted illegally.

4. Drawing Election Zone Boundaries

The election law calls for 100 election zones with almost equal numbers of residents (Article 29). In order to respect the international standard and the election law's principle of one-person one-vote, accurate information about population movements since the

last census will be important to drawing election zone boundaries. The law presently gives the sole authority for drawing election zone boundaries to the President of the Republic upon the proposal of the Council of Ministers (Article 29). Given the importance and politically sensitive nature of drawing such boundaries, it is advisable that a reliable mechanism be created to identify legal and illegal residences, as discussed above, and to include the participation of the political parties in the process of deciding upon appropriate election zone boundaries.

5. Candidate Registration

The election law provides for the registration of candidates in part upon the presentation of a list signed by a minimum number of voters (Article 13; also Article 55(c) of the local election law). The law also states that voters do not have the right to sign more than one candidate registration list (Article 14; also Article 55(c) of the local election law). The practice of allowing voters to sign only one candidate registration list is exceptionally restrictive compared to general international practice, which allows voters to sign applications for registration for an unlimited number of prospective candidates. It is generally held that restricting voters to signing registration applications for only one candidate confuses voters by leading them to think that, if they sign an application, they are committed to vote for that candidate on election day. It also increases the possibilities for coercion of voters during the candidate registration process, since candidates have an incentive to capture signatures, and could compromise secrecy of the ballot.

6. Potential Problems with Ballot Secrecy

While general provisions for ballot secrecy in the election law are strong, there are two areas that could be strengthened. Provisions are made for creating voting centers at a work place when it is more than three kilometers from the nearest voting center and when there are at least 50 voters there (Article 31). Provision is also made for creating voting centers in hospitals, detention centers and certain other institutions if there are more than 15 voters confined there (Article 33). Such provisions create two concerns. First, the environments at such facilities create possibilities for managers, guards or health workers to exercise undue influence or to violate secrecy of voting unless special precautions are added to the voting procedures to prevent this. Second, the small number of ballots cast in such facilities could compromise secrecy of the ballot or create the impression for voters that ballot secrecy might be compromised. This could be remedied if the law provided that ballots cast in such facilities would be transported in the presence of political party representatives and nonpartisan election monitors to the nearest voting center and be added to the ballot box there.

7. Independence of Election Commissions

The election law does not create a permanent, independent election

commission. The value of a permanent election commission to carry on important work between elections should be a topic for consideration in any deliberations concerning the election law. A permanent, independent election commission can develop regulations and procedures necessary to ensure uniform interpretation and application of the election law, present suggestions for electoral reform, carry out continuous updating of voter lists, prepare materials for and conduct training of election officials, conduct voter and civic education activities and administer political party finance and disclosure requirements, among other tasks. In addition, consideration should be given to amending provisions in the election law for removal of commission members so that good cause must be shown as a basis for removal (Article 42). This would reinforce the independence of the commissions.

8. Campaign Finance Disclosure Requirements

The election law provides for state financing of election campaigns (Article 58; also Article 49 of the local election law). The law does not prohibit the collection or use of other funds, nor does the law provide for disclosure of campaign contributions or expenditures. It is advisable to consider campaign finance disclosure requirements as part of any modifications to the election law. Such requirements are important in limiting corruption and attempts at electoral manipulation by political contestants.

9. Freedom of the Mass Media During the Election Campaign

The election law contains an important provision on the right of reply for candidates whose rights are violated by the mass media during the election campaign (Article 59). While it is appropriate to prohibit slandering a candidate, as the law provides, the law also prohibits "insulting" a candidate and provides a right of reply to any candidate whose dignity is attacked in any way (Article 59). These provisions are vague and could be the subject of confusion or abuse by candidates. They are particularly troublesome because a journalist or media outlet could incur liability by publishing a statement by one political candidate about another without endorsing the statement. In order to avoid potential liability under the vague terms in the election law, journalists and media outlets would be encouraged to apply stringent self-censorship as a prior restraint on such statements.

International standards disfavor prior restraints on freedom of expression. It is therefore advisable that these vague terms be removed from the election law. It is also advisable that the election law be clarified so that the right of reply is the only remedy available against journalists and the media except in cases where there are extreme circumstances or in cases where such statements are endorsed by the the journalist or media outlet.

In conclusion, we would like to reiterate that our comments address possibilities for improvements to a comparatively sound electoral structure. NDI's experience in conducting election programs in more than 50 countries around the world

confirms that elections are most successful when the electoral process is fully transparent, includes the opportunity for the political competitors and citizens to participate in shaping and monitoring the process and when the process provides for an appropriate period for campaigning, voter education and election administration preparation.

NDI remains available to provide further information and to bring election law experts to Tirana for more detailed consultations. In addition, we look forward to discussing these comments and related issues during our next visit to Albania in early 1996. In the interim, please do not hesitate to contact our Field Representative in Albania, Alicia Allison, if you would like additional information regarding these comments.