

## Building Representative Institutions in a Post-socialist Country. Electoral Reforms in Albania

PhD.C Juliana Marko

History and Philology Faculty, University of Tirana

### Abstract

From the first pluralistic electoral legislation to date Albania has made a considerable number of alterations in its election rules. The country reformed its electoral code 16 times since the downfall of communism in 1990. These changes have gone from constitutional reviews to bipartisan political agreements, but even today there persists a climate of doubt and dissatisfaction with the electoral operation. Albania still struggles with holding free and fair representation through a widely accepted democratic standard. The atmosphere of mutual distrust still characterizes the relations between political parties. This paper intends to offer a relative evaluation of two of the great Albanian electoral frameworks. The first and more important political choice in this change has affected the electoral formula, but there have been raised even more important questions about territorial and democratic representation, fairness of application of such framework in sensitive cases including media access, campaign financing, results publishing, etc. This topic becomes more interesting because of the multiple correlations between its subjects and dynamics, as the only fixed notion to date remains that the way we apply the law will be more important than its formal drafting and approval.

**Keywords:** *democratic transition, party system, electoral reform, electoral code, international observers.*

### Foreword

During the consolidation process within new democracies, often emerge a number of challenges which primarily consist in the urge for the new regime to distance itself from the undemocratic procedures of the past, as well as the need to avoid their reappearance in new forms. This transition toward a new order is often unstable as it continues to be characterized by the relation between authority and subjects (instead of citizens).

A democratic transition is considered fulfilled when there is overall agreement on the political procedures in constituting a new elected government, when the government comes to power as a direct result of the free and fair vote of the people, when this government has the de facto authority to produce new policies and when the executive, legislative and judiciary branches of government generated do not share their power with other organizations or individuals. The liberalization process may provide a series of social and political changes such as a declining censorship in the media, a space for independent organizations, introduction of any legal guarantees for individuals, a return to the freedom of a part of political prisoners and, most importantly, the tolerance of political opposition activity. Liberalization is a precondition to democratization, which in turn is a much broader and peculiar political concept. The democratization process requires holding free and competitive elections on the basis to determine who has the right to govern (Linz J., Stepan A., p. 3).

The role played by political leaders and the culture of political elites; The most valuable characteristics would be a supportive position toward democracy and the democratic Constitution as well as undertaking legal practices in any democratic decision making, avoiding any demagogic political behavior, any manipulation of the constitution as well as any other behavior which would lead to the loss of trust and support for laws and democratic norms (Simeon R., Turgeon L., p. 81).

There have been continuous discussions in academia regarding what systems features are more contributory to the democratic governing. In the contemporary literature the following conclusions are broadly agreed; firstly, the role of the political parties is critical in the establishment and consolidation of the democracy, and secondly, the institutionalization of

political parties as well as of the party system is increasingly becoming more important (Markowski, 2000) (Sartori, 1976) (Ware, 1996). According to Randall and Svasand party institutionalization is considered as one of the criteria which have encountered the most emphasis in the process of democratization (Vicky Randall and Lars Svasand, 2002, p.5-29).

Electoral systems in general and electoral formulas in particular are carefully analyzed by researchers of political systems, mainly because of the direct impact they have on representation and participation in the democratic party system, the political institutions and their stability, etc. This impact becomes even more pronounced in the case of new democracies or political systems in a transition process from a totalitarian/authoritarian regime to a liberal democratic form of government.

There is a causal relation between the specific legal framework of an electoral reform and the above mentioned characteristics of a functioning political system, although there is a tendency to overestimate this causality, which is not unilateral: the cultural features of the political system are, among others, important factors in the shaping and the implementation of the electoral legal framework.

### **Crucial electoral reform**

From the first pluralistic electoral framework until today, the Republic of Albania has made a considerable number of changes in the electoral rules (sixteen reforms of the electoral code in the period from 1990 to 2008), trying to adopt different territorial partitions, electoral formulas, legal institutions and guarantees, constitutional amendments, as well as political agreements.

Two of the most comprehensive and influential reforms in the Albanian electoral framework were introduced with the entry into force of the Electoral Code of 2003 (Law No. 9087/2003) and the Electoral Code of 2008 (Law no.10019/2008 amended by Law no. 74/2012). The Electoral Code of 2003 would further transform the Electoral Code of 2000. The main innovation was the fact that the uninominal vote in 100 areas no more required an absolute majority, but just a relative one to be elected member of the Albanian Parliament. The Article 65 of the Election Code of 2003 reportedly stated that the remaining 40 mandates would be assigned according to "the proportionate share of votes received from the plurinominal lists" (Qendra e Publikimeve Zyrtare, 3003, p. 60). According to article 67 of the Electoral Code, if the number of mandates (according to the majority system) won by a party or coalition exceeds the number of all mandates that would have been assigned if all of the 140 mandates had been assigned proportionally, then the party or coalition in question would not participate in the distribution of the 40 additional mandates (Qendra e Publikimeve Zyrtare, p. 62).

According to the 2003 Code, the parliamentary elections in Albania have been guaranteed by an electoral administration consisting in three entities: the Central Electoral Commission (CEC), 100 Zonal Electoral Commissions (ZEC) and 4764 Polling Stations Commissions (PSC), established in 2005. The CEC is a permanent body composed of seven members. The political parties have had the most important role in the formation of this body, as they have the right to propose its members. On the basis of a 2004 political agreement between the two main parties, changes have occurred in the political balance of the CEC, as the Socialist Party renounced to one of its five commissioners in favor of the opposition.

Based on the recommendations of OSCE / ODIHR and Venice Commission, the Electoral Code was amended in January 2005. Since then the sessions of the CEC were to be considered valid if there were present at least four members and most of the decisions would be taken by a majority of four member votes. As a reinforced rule, a majority of five votes would be necessary for the final certification of the election results, for the declaration of invalidity of the elections and in the appeals against decisions of the Polling Stations Commissions in relation to the electoral results. Every PSC was composed of seven members appointed by the CEC based on combinations of proposals from the three biggest parties in both sides of the political spectrum. Before this amendment was introduced, The Socialist Movement for Integration did not have the right to appoint members of ZEC or PSC, regardless of its electoral weight. The Democratic Party and the Socialist Party had the right to appoint the seventh member of every commission, based on distribution equality and random

selection. The Socialist Movement for Integration voiced its criticism, considering this practice as a two-party monopolization that left little or no opportunity for the other parties to impact and control the decision-making processes of the Central Election Commission.

However, some of the Electoral Code's main characteristics performed against the goal of proportional representation of the popular will, as stipulated in the Constitution of the Republic of Albania: the number of additional mandates was set and unchangeable while the number of seats proportionally allocated was relatively small (40). Using different strategies and within the legal framework, it was possible for the political parties to get around the electoral system's intention and make the main parties also benefit from the mandates distributed proportionately. These strategies, according to the OSCE / ODIHR presented a number of problems: a) they significantly reduced the effectiveness of article 67 of the Electoral Code with regard to the compliance with the constitutional spirit of proportional representation; b) weakened the link between the two electoral formulas, transforming the process somehow similar to "parallel elections"; c) scale back the number of seats won by parties that did not follow the same strategy; d) downplayed the differences between political parties and thus could cause perplexities among the voters; e) made it impossible for the electorate to understand how the expressed votes would translate into legislative mandates (OSCE/ODIHR, 2003, p.23).

The Constitution of the Republic of Albania was amended by the National Assembly on April 21<sup>st</sup> 2008, through a qualified majority vote on a number of constitutional amendments presented in the form of the draft law "On some amendments to the Constitution". The draft included a series of changes, the most important among them were the radical change in the electoral formula and the election of the President of the Republic by the National Assembly with a simple majority in the fourth and fifth round (Qendra e Publikimeve Zyrtare, 2008, p.7618).

The electoral law ceased to be a corrected majoritarian. The number of MPs remained the same (140), but all of the mandates would be determined applying a proportional system on a regional basis. There was a subdivision of the territory in 12 regions, with each of them expressing a different number of MPs. The lists are closed, the electors cast a vote for a single list. They may not choose individual candidates or alter the order of such lists. There is an entry threshold of 3% for electoral subjects involved in a pre-election coalition and 5% for other subjects. For the distribution of electoral mandates has been chosen the D'Hondt method for parties and the Sainte-Laguë for the coalitions.

### **Reform Assessment**

Though it was initially left on a second plan during the public discussions, one of the law's direct consequences was the power increase of the political parties' leadership in the choice of candidates to fill in the blocked lists. Taking in review the internal party democracy in Albania, Afrim Krasniqi and Ardian Hackaj argue that the lack of democratic traditions and the misconceptions about a dominant political culture which considers the political parties as the root for power and privileges, increases the expectations of the people from parties, and contributes in giving to the latter the monopoly of decision-making while excluding the civil society active participation (Afrim Krasniqi, Ardian Hackaj, 2015).

To further protect the leaders exclusive right of decision-making, the current Code stipulates that they are the only authority that has the right to compile the party lists in each of the twelve electoral zones. This particular privilege, according to the Venice Commission report is in flagrant contradiction with the fundamental principle of equality, according to Art. 26 of the International Covenant on Civil and Political Rights and non-discrimination (Art.2 of the International Covenant on Civil and Political Rights).

The constitutional amendments also reinforced the powers of the Prime Minister at the expense of the President. The latter can no longer dissolve the Parliament. This power now would belong to the head of government and this would greatly complicate voting on a motion of no confidence. Moreover, it was also provided that the election of the President by the National Assembly no longer would require a three-fifths majority, but only the votes of 71 deputies out of 140 (Balkan Insight, 2008).

In compiling lists, even though it has already been a reviewed system, there was noticed a tendency to ignore the spirit of the law through the interpretation of its letter. Given the poor representation of women in decision-making bodies in Albania, positive action measures, such as electoral quotas, have been included in the Electoral Code to address the present gender imbalance. For example, Article 67 of the electoral code established that in the general elections for the National Assembly, for any of the twelve regions, "at least 30 per cent of the plurinomial blocked party list and/or one of the first three names in these lists must belong to each of the two sexes" (Qendra e Publikimeve Zyrtare, 2010, p. 62). According to this article, being women the less represented gender, there would be female candidates either in one of the first three positions, or in 30% of the party lists. In each case, it was opted for the second alternative, so the women quota was formally respected, but they were hopelessly relegated in the last positions of the blocked lists. Several studies have shown that even when the candidate lists did not meet the quota requirements and were consequently rejected by the CEC, the parties made arrangements adding more women candidates at the bottom of their lists. In Albania, a party can be technically in accordance with the quotas, without any women in winning positions within the party lists (ACER and Aset, 2009). As a matter of fact, the monitoring report of OSCE stressed that theoretically, with just 30 % of the women listed in the less favorable positions, a list could regularly qualify to run.

Given the increased centrality of the party leadership decisions, it is very important to assess the internal democracy procedures and party statutes. In the Statute of the Socialist Party (Art. 41) it is stated that all the members of the party have the right to nominate candidates or to reject the candidates proposed. In the Article 8 of the Statute is established the right of party members to be nominated for MP candidates in the electoral lists. Article 40 provides that the decision-making process is approved by the party leadership forums and gets applied to all of the party hierarchy levels. The decision for the individual candidacy is made in a closed voting process. The statute of the Socialist party does not specify whether the party leaders pre-select the nominees, nor if the party leader must approve the choices (The Statute of the Socialist Party, 2011). In the Statute of the Democratic Party, it is stated that the candidacy for local elections must be discussed and consulted with all the party membership, but the presidency of the local branches decides for the local candidacies. For the most important municipalities the list of the candidates for town counselors must be approved by the Democratic Party Presidency. According to the Article 14 of the statute the members of the party have the right to nominate and to be nominated for. The Democratic Party Statute gives the right to the party presidency to veto the candidates which are nominated. It is determined that the party presidency proposes to the council the candidatures for the representatives of the legislative and executive positions (The Statute of the Democratic Party, 2005). In practice, inside both of political camps there have always been internal criticising voices that have raised perplexities about the implementation of the statutes and the lack of true internal democracy.

The overall assessment of the 2008 Electoral Code from the OSCE and the Venice Commission observers has been positive, although there are areas in which further changes were advised. These areas include: a) the special privileges of political party leaders in compiling lists; b) requirements concerning the supporting signatures for lists of non-parliamentary parties; c) confusing requirements in compiling lists in respect of gender equality; d) media coverage rules and non-discriminatory rules for political campaign advertisement and the political parties financing; e) rules and procedures for the appointment or dismissal of lower commissions members (OSCE/ODIHR, 2009).

Compared to previous elections, there has been a reduction in the number of parties (from 57 to 34) participating in the 2009 elections, with parties maximally grouped in pre-election coalitions, in perfect coherence with the logic of a regional proportional system. Leaving aside any exception, most of the trends are in accordance with the formula of regional proportional with blocked lists and variable regional electoral threshold: there can be observed a reduction of the number of parliamentary parties balancing the outcome between two coalitions, more opportunities of representation for subjects with a regionally concentrated electorate, etc.

As a direct result of the establishment of the proportional regional law in 2008, a number of small parliamentary parties were blocked from entering the legislative body. It can be stated that, while damaging the principles of the competition,

which in the case of the non consolidated democracy as Albania is a very important issue in order to hamper the authoritarianism of the biggest political parties in the country (Hoxhaj, 2011), .

Bledar Kajsii, expresses that Albanian political pluralism has lost its meaning as a result of conceptual monism, and the democratic value is not established (Kajsii, 2009).

In the last decades, Albania has a history of constitutional reviews and legislative activity that often has presented problems in the implementation phases. The bureaucracy remains a critical institution because it is both a core institution in a democracy as well as the indispensable instrument of the state.

"The market economy is just as much in need of a "strong state" as a nonmarket economy. The state is needed to set norms and regulations by which society can function. In effect, the state has a modernizing role to play. Consequently, a revitalized and reoriented state capacity is crucial to the success of both market-oriented reforms and consolidation of democracy. The habits of communist bureaucracy run counter to Weberian principles such as the rule of law, meritocracy, or professionalism," writes Jacek Kochanowicz (Kochanowicz, 1994, p. 202). It is quite interesting to observe how the post-communist regimes continue to struggle with their pasts direct consequences. Albania has found it very difficult to build a professional bureaucracy that transcends political loyalty and distances itself from any aspect of a spoils system.

### **Conclusions**

The discussion on electoral reforms and their impact (or lack thereof) on the political institutions is very vivid, but certainly the implications are much deeper and often deal with different visions regarding representative democracy. The central criteria and purpose of selecting between a proportional or plurality/majoritarian system remains the trade-off between a strong and responsible executive on the one hand and inclusion and minority representation on the other. Surely the absolutely best choice doesn't exist, even considering different political and social features. In the case of societies that are characterized by ethnic or religious cleavages, the proportional system could be a more inclusive solution, but in perspective it could affect the deepening of these divisions. For the countries that have already experienced very centralized regimes, plurality/majoritarian electoral systems provide the government from the need to expand the coalition or executive responsibilities. The Republic of Albania has made no exception from other former communist countries, which originally opted for proportional systems to shape the political pluralism after the experiences one party regimes and later switched to plurality/majoritarian formulas to ensure a higher degree of governance and stability (Birch, S, 2003, p.5). The studies on the electoral systems in transition countries are scarce, as the effects of these systems crystallize clearer in time and with the development of a democratic tradition. The slow and steady remodeling of culture and particularly of the political culture could be the key to the full consolidation of new democratic regimes. Offe supports the idea that "the specific nature and unprecedented process of transformation in Eastern Europe mainly stems from the fact that there should be given an answer to the fundamental questions of who they are and what they aim for, consequently positioning themselves on their identity, citizenship, as well as on territorial borders and socio - cultural aspects of the nation-state" (Offe, 1991, p. 47).

As the analysis of the electoral system determines frequent changes in the electoral law before each parliamentary election, it is evident that the party system in Albania continues to be characterized by instability. On the other hand, the high volatility among the political parties also does affect the stability of political system negatively. Electoral systems are based on electoral frameworks, and their consistency provides stable competition for the parties. Frequent changes in the electoral system can produce unexpected consequences, and it can also provide uncertainty and weaken the strategies of the political actors.

It is also very important to have a political elite that is prepared and ready to make the necessary compromises in playing a stabilizing role. This becomes quite evident in the Albanian case as it has already been crystallized the dominant power of the party headquarters in shaping the political system: the main political parties increasingly are the protagonists, which

by their agreements or disagreements have produced reforms, codes and rules of democratic competition. The construction and stabilization of mutual trust between the main political actors remains a crucial precondition for achieving the standard of free and fair elections and, above all, the certification of their uncontested results.

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