

# SOME CHANGES IN THE ELECTORAL CODE BY ELECTORAL REFORM AND THEIR INFLUENCE ON ELECTIONS.

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**Abstract**

*After the establishment of the new democratic system based on political pluralism and free elections, the first multi-party elections and democratic elections in our country took place in 1991. Until now held seven general elections. But elections in our country have been introduced in any case many problems which are due to the failure to recognize the election result made by parties who have lost them. In elections are displayed quite numerous irregularities and violations of obvious. Even in the last parliamentary elections in 2009 were observed many irregularities. Opposition that emerged from these elections boycotted parliament for a period of almost six months. Irregularities of fraud appeared in the last elections for local government in 2011. For consistency OSCE ODIHR recommended revised election law (Election Code). Created parliamentary committee on electoral reform, which recommended changes in the electoral law for the preparation of the 2013 elections.*

*This paper will be subject to some changes in the election law and some issues presented in the election law after the completion of the electoral reform.. The main problems that will handle the paper that will be referenced in this section conference laws are: 1.Election period and the determination of the date of the election. 2.Acts of the Central Election Commission (CEC). 3.Regulation of decision making of the Central Election Commission. 4.Representatives of elective subjects in the Central Election Commission. 5.Voter and the voter lists. Content, drafting and adoption of the list of voters. The paper also includes recommendations for regulations to be made on these issues in the election code. These adjustments make the election law to be easily applicable and that the election be less contested by political parties*

**Keywords:** *general elections, election law, voters, electoral reform, elective subjects*

In Albania elections are designated as the only means through which the government of the country realized. This country, which have elections in our country, is in line with the position, that elections have, and the role that play elections, in all advanced democratic countries. In this context, in Albania, the main international acts are adopted for the elections, approved and are in force, a general legal acts, regulating elections. Major international acts for elections in general, and international laws governing the right of election, that Albania has adopted are: the UN Charter, European Convention of Human Rights and acts of the European Court of Human Rights. The main internal legal acts, regulating elections, are constitution and electoral code.

After the fall of communism in our country, as well as a variety of other countries in Eastern Europe, settled a democratic political system, which is based on political pluralism and freedom the election. The first elections, democratic pluralistic, took place in 1991. Since 1991, in our country, there have been seven general elections to elect the governing bodies.<sup>1</sup>

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<sup>1</sup> March 31, 1991, March 22, 1992, May 26, 1996, June 29, 1997, June 30, 2001, June 26, 2005, June 29, 2009.

Elections held in our country, have introduced, in any case, numerous problems, which are made due to not recognizing of the election results by the parties, who have lost them. The reason is that elections in our country, have been associated with many irregularities and numerous violations of the the obvious. Irregularities and violations were observed in the recent parliamentary elections, which were held in 2009. Left opposition that emerged from these elections, boycotted parliament for a period of almost six months, because of numerous irregularities and violations that were observed in these elections. Many irregularities and manipulation emerged in the last elections for local government in 2011, especially in the election of Tirana mayoral. This condition, which was created to elections in our country, there was consequently the need to revise of the election law (Election Code). Obligation, to revise of the election law was defined in the recommendations of the OSCE-ODIHR elections held in Albania in 2009.<sup>2</sup> In fulfillment of this obligation was created and developed its activity a parliamentary committee on electoral reform, which recommended appropriate changes to the electoral law, to prepare the legal basis for the next elections in 2013.

In this paper I will object a number of changes that were made in of the election law by commission on electoral reform, and a number of problems, which are presented in the election law after the reform.

### *1. Election Period and the determination of the election date.*

Code stipulates that the period of the elections in our country, extends in two seasons: spring-summer season, from 15 March to 30 June and the autumn season, from 15 September to 30 November. Code has provided for and defined three problem dealing directly with legal regulation, law, election time in our country: first, the code has defined the act, which set the election date; Secondly, the code has defined the subject, that has the right to set date of the election; thirdly, the code is determine for head of state setting time of the date of the election.<sup>3</sup> It should be noted that the legal regulation of the date of the election code is determine in a very complex way. The legislator, in the Code, has provided six points, which determine the procedure for determining of the date of the election, making quite intricate meaning of this provision in the code.<sup>4</sup> The simplest, most obvious at the same time, it would be that in this provision, 2,3,4,5,6 points are summarized in a single point at which to determine, in case of the premature delivery assembly, the president to assign the election date 24 hours after its dissolution. Specifically, should be only one point, with the following wording: *President of the Republic shall issue a decree for determination the election date, not later than 24 hours after the dissolution of the Assembly.*

### *2. Acts of the Central Election Commission (CEC).*

For the administration of elections, and to run the election process, created and operate bodies elections, which are: the Central Election Commission (CEC), Zonal Commissions of Election (ZEC) Voting Centre Commission (VCC). Main election body that administers

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<sup>2</sup> OSCE ODIHR recommendations for the 2009 elections and 2011 p.

<sup>3</sup> Election Code, Article 9, paragraph 2, the President of the Republic decrees of election to the Assembly no later than 9 months before the expiration of the term of the Assembly.

<sup>4</sup> Electoral Code Article 9, points 1,2,3,4,5,6.

elections, is Central Election Commission (CEC). CEC, as a central administration and management of elections, in the exercise of functions, has the authority to issue some kind of acts. Main acts, by which CEC exercises its powers, are decisions and instructions. Besides these two types of acts that are common acts that uses CEC central election body has the authority to issue the normative legal acts. These are acts, to establish general rules for elections, and extend their power throughout the territory. In common, normative acts of the CEC, enter into force after their publication in the official gazette. However, the electoral code stipulates the cases, that a normative act CEC takes effect immediately. The normative acts, shall take effect immediately, are dictated by circumstances. In these circumstances, that normative act enter into force, the first condition is that the body provide at content of the act, the fact that this act takes effect immediately. Second, the central election authority has a legal obligation that, in the content of the act, to explain the circumstances which necessitate immediate entry into force of the act. Third, determine legal obligation of notification immediate entry into force of the normative act through at least two public media, the public radio and television and the official website of the CEC.<sup>5</sup> The normative acts, of central election authority, because create a general rule, be binding on all, and the effect on the entire territory, are in the process of adopting similar laws. For this reason, the adoption of normative acts are subject to the rules, which proceeded to enact a law, approved / voted in principle, approved / voted on article by article and approved / voted on as a whole.<sup>6</sup>

Normative acts are acts that, create a new rule, and as such, they are in effect until their repeal, after the adoption of a new normative act, which repeals or opposes them. At the same time, at Electoral Code, is defined legal relationship of regulations issued by the central election authority, with the law. Having established this report, explicitly, code predicts that normative legal acts of the CEC, are under the law / down the law, that is, they, therefore, are acts under law. As such, the laws of the CEC can not oppose the law. For consistency, the central electoral body (CEC), has a legal obligation to abolish all normative acts that are contrary to the provisions of the election law changed.<sup>7</sup>

### *3. Decision by the Central Election Commission (CEC).*

Electoral reform changed the provisions of the Electoral Code, which regulate the decision of the central election. Code, reformed, specify the types of acts that this body there is at competence. Code provides for two types of acts or decisions of the CEC: a-acts and decisions adopted by qualified majority, b-common acts that adopted by the simple majority. Acts adopted with qualified majority are the most important acts of the election.<sup>8</sup>

In code, set which categories of acts and decisions of the CEC to seek their approval a qualified majority. For the adoption of such decisions and the acts required by the CEC vote with five votes. Such, are acts and decisions on: a) the allocation of seats for each electoral zone; b) accept the appeal against the decision to approve the summary table for the outcome of elections constituency, decisions on appeals against decisions of the ZEC to outcome of local government elections; c) requirements for the invalidation of elections in some polling stations or d) the invalidation of the election in election zone or across the country, and their repetition; d) acts of a

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<sup>5</sup> Electoral Code Article 23

<sup>6</sup> Electoral Code Article 23, paragraph 3

<sup>7</sup> Electoral Code Article 23, paragraph 4

<sup>8</sup> Elections Code Article 24 "CEC decision-making" point 1

normative nature that are intended regulating matters relating to elections; f) motion to dismiss a member of the CEC; e) approval of the organizational structure of the CEC and CEC rules of operation; h) allocation of seats for each electoral zone; f) determining the areas of election administration.<sup>9</sup>

#### 4. Political party representatives in CEC

Elective subjects,<sup>10</sup> according to the electoral code, are: political parties, coalitions and individuals (independent candidates) or candidates presented by a group of voters.<sup>11</sup> In this sense, the election law provides for the right of every electoral subject, to be represented at the central election authority. *"Representatives of the electoral subject" is a person authorized by an electoral subject, to represent their interests, and to participate in meetings of election commissions, the name, and on behalf of the electoral subject.*<sup>12</sup>

However, the electoral code, makes a kind of differentiation between the parliamentary parties and non-parliamentary parties, in connection with the representation of electoral subjects at central election authority. Pursuant to this, the code provides special status representation for parliamentary political parties and coalitions, providing for these elective subjects, permanent representative to the CEC.<sup>13</sup>

Code, simultaneously, provides at its provisions, the procedures for determining the representatives and the rights enjoyed by these representatives. According to the Electoral Code, parties, or political coalitions, appoint their representatives to the CEC, with a *autroizim* issued by top executives of them.<sup>14</sup> Representatives of electoral subject shall have the right to participate in all meetings organized by the CEC.<sup>15</sup> Political party representatives of parliamentary parties and parliamentary coalitions, have the right to participate in all meetings that develops CEC.<sup>16</sup> The representatives of non-parliamentary parties' election subjects or non-parliamentary political coalitions have the right to participate at meetings of the central election authority, that developed during election. However, the code is explicitly specified, the following subjects representative of the electoral commission, no have the right to vote, that is, have no access to decision-making.<sup>17</sup>

However, these representatives have a number of rights: a) to speak and discuss the CEC meeting b) to submit requests and proposals to the CEC; c) take copies of acts of the CEC d) be recognized and to receive copies of the election documents, approved by the CEC; d) be recognized and receive information on all aspects of the electoral process, without affecting the activity of the CEC, or other structures election.

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<sup>9</sup> Electoral Code Article 24, paragraph 1, a. b. c. d. e. ð. f.

<sup>10</sup> Electoral Code Article 2 point 20 *"Electoral subjects" are political parties, coalitions and candidates proposed by the voters,*

<sup>11</sup> Electoral Code Article 3, paragraph 3. *"Candidate presented by a group of voters" is a candidate for deputy ... not supported by any political party and that proposed by the voters in accordance with this Code.*

<sup>12</sup> Electoral Code Article 3 point 14 *"Representative of an electoral subject" is a person, entity authorized election to represent their interests and to participate in meetings of election commissions, in behalf of the electoral subject "*

<sup>13</sup> Electoral Code Article 26, paragraph 2.

<sup>14</sup> Electoral Code Article 26, paragraph 1

<sup>15</sup> Electoral Code Article 26, paragraph 2

<sup>16</sup> Electoral Code Article 26, paragraph 2.

<sup>17</sup> Electoral Code article 26 paragraph 3 *"Representatives of the CEC parties have not the right to vote. "*

In Electoral Code, is defined legal relationship and accountability of actions that perform party representatives, at central election authority. All actions carried out by representatives of parliamentary and non-parliamentary parties, deemed to be conducted by the respective parties, in their capacity as the electoral subjects.<sup>18</sup> To be singled out, in this case, is that the relevant provision, titled political party representatives to the CEC, which regulates the status of legal rights and obligations of these representatives, there is no mention of the right of representation in the CEC, independent the electoral subjects or the electoral subjects determined by the voters. In the election code, does not emerges directly, if independent entities have the right to appoint representatives to the CEC, and what is their status at the rights.

*5. Voters and voter lists. Content, drafting and approval of the list of voters.*

To exercise the right to vote, as a fundamental political right of citizens provided by the constitution, the electoral code provides also establishes provisions, to regulate, ensure and guarantee the exercise of this right. The condition for exercising the right to vote, is the registration of voters in the electoral rolls. Furthermore, the electoral code stipulates that voter registration lists in elections is a positive obligation on the state. This means that the state has a legal obligation to register voter.

Voters must be registered in the voter lists by state bodies, which are foreseen by the electoral code. Voter lists are lists that define and include all Albanian nationals, who have the right to elect.<sup>19</sup> Thus, the lists of voters included, all Albanian citizens who have reached eighteen years, even on election day. but, in these lists, so determined as provided in the Constitution, are not included or excluded, individuals or persons who have been declared mentally incompetent by a court decision final.<sup>20</sup>

Drafting and approval of election lists is a legal obligation of the state, whereby the state gives citizens the opportunity to exercise this right the political. For consistency, the state should develop accurate electoral list, so that should not affect this right for any citizen who enjoys it as right as provided by the constitution. So, that exclusion without eligible of citizens from the list of choices, from the legal standpoint, will be considered a violation of the right to vote, and is unconstitutional. Therefore, the electoral code, also criminal law, have provided extra special provisions that protect the right of election. For ensure inclusion of voters in the election lists, code, provides direct respective provisions, that discipline the, drafting and adoption of the electoral lists. Provisions of the Electoral Code, in connection with the voter lists, explicitly define a-criteria to be applied by national authorities, for inclusion of voters in the voter lists b- election ingredients for each voter.

- *criteria for inclusion of voters in the voter lists are:*

a) Albanian citizenship, b) age 18 years, if even on election day, c) not be declared by judicial decision of final as the capacity to act; d) be registered in the National Register Civil d) have registered residence in the territory of one of the zones of voting, f) be registered elector to list just a voting center.

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<sup>18</sup> Electoral Code Article 26, paragraph 4

<sup>19</sup> Constitution Article 45, paragraph 1

<sup>20</sup> Constitution Article 45, paragraph 2

- *Election components:*

Two problems are that are treated in connection with the electoral components: a-problem of electoral components b-problem of elements elections of components, included in the voter lists, which are used in the centers, where voters vote. (Voting Centers). Electoral components that are specified in the standard of election code include the eight elements.<sup>21</sup> This means, if one of these elements is missing, the individual, in this case, the voter, can not also not be included in the voter list.

To identify a voter we address to the National Civil Registry to identify compounds election every voter. A person is a voter, if it has identified eight compounds election: name, fatherhood, motherhood, surname, date of birth, personal identification number, citizenship, and residence code.

The second problem has to do with the election components, which are listed and identified voter in the polling lists. In this case, use only four ingredients election: name, surname, date of birth, personal identification number.<sup>22</sup> This simplification of the elements of the components election at the final list voting, has legal consequences for voters, and can bring consistency to confuse the polling area for the voters as and may be due not a very correct identification of voters.

In this case, create possibility for the acquisition of the right to vote, by other individuals. It should be noted, in this case, the right to vote is a personal right, and exercised only themselves personally by the voters. The right to vote can not be delegated or exercised by any other person. The vote personal is one of the basic constitutional principles, which are the basis for regulating the exercise of this right by the voters, who possess this right.<sup>23</sup>

### *Conclusion*

Recent electoral reforms made many changes and adjustments in the law of elections in our country. It is obvious that adjustments and changes made, had a groping - improving the law, to ensure a more secure legal basis for elections in Albania. From the overview, made to the electoral code, it appears that changes are numerous, and that these changes will be positive effect on elections.<sup>24</sup>

The present paper only treated a small fraction of them. On examination it seems clear that remain, that the effectiveness of these changes is confirmed by elections to be held. However, the paper highlights the fact that any adjustment made to the code, is defective and needed to be reviewed and adjusted adapting specifications elections in our country. But it will be objection, together with conclusions that will emerge from the next election. There will be new elections, which will raise before lawmakers, the new arrangements, which should and could be further electoral code, in order to improve code and with purpose the code to be closer to the democratic standards that have laws on elections.

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<sup>21</sup> Electoral Code Article 45, paragraph 1.

<sup>22</sup> Electoral Code Article 45, paragraph 2.

<sup>23</sup> Constitution Article 45, paragraph 4. "The vote is personal ..."

<sup>24</sup> The study shows that are redesigned and changed 115 provisions of the total.

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