

Abstract

In light of recent EU expansion and the eventual proposed accession of western Balkans countries to the EU, the case of Albania has come to the forefront of dialogue in respect to eventual integration of the country. Throughout numerous reports, the EU has noted that the beginning of Albania's accession dialogue is contingent upon the upcoming national elections in July 2006 being "free and fair". The main purpose of this study is to demonstrate how the mismanagement of elections can create an obstacle for elections in a country to function in a free and fair way. More specifically, the study explored in what ways the mismanagement of elections infringed upon the democratic principle of the "integrity of the vote" during the 2003 Albanian local government elections. The conclusion reached was that there were numerous cases in which the integrity of the vote was compromised through a lack of independence of election management bodies, as well as overt political interference throughout the election.

Keywords: Albania, democratic legitimacy, integrity of the vote, free and fair elections, election management

Table of Contents

1 INTRODUCTION.....	3
1.1 Purpose of the Study	4
1.2 Theories and definitions	5
1.2.1 Democratic legitimacy and consolidation of democracy	5
1.2.2 Election management: a subfield of elections studies	7
1.3 Method and material	8
1.3.1 Case study and constructivism.....	8
1.3.2 How to measure the threshold between democratic and undemocratic	9
1.3.3 Material.....	10
2 THEORETICAL FRAMEWORK.....	11
2.1 Definitions	11
2.1.1 What constitutes legitimacy of governance?.....	11
2.1.2 How governments gain legitimacy according to norms and principles of democracy.....	12
2.1.3 How the application of political equality through representation can undermine the principle of “one person – one vote”	13
2.2 Theoretical perspectives	13
2.2.1 Dahl’s polyarchy: the 7 political institutions of a representative democracy ..	13
2.2.3 Schedler’s conditions for “free and fair” elections.....	14
2.2.4 Integrity of the vote.....	15
2.2.5 The impartiality of election management.....	16
2.2.6 The three levels of electoral governance.....	16
3 ELECTION MANAGEMENT IN ALBANIA: THE CASE OF THE 2003 ELECTIONS.....
3.1 Rules Making: Rules of electoral competition and rules of electoral governance: 19	
3.1.1 Formula	19
3.1.2 District Magnitude and district boundaries	23
3.1.3 Assembly size.....	23
3.1.4 Electoral time table	24

3.1.5 Franchise	24
3.1.6 Voter Registration	25
3.1.7 Party and candidate registration	26
3.1.8 Campaign financing and regulation	27
3.1.9 Election observation.....	28
3.1.10 Ballot design	28
3.1.11 Polling stations	29
3.1.12 Voting, counting and tabulating	29
3.1.13 Election management bodies	30
3.1.14 Dispute settlement authorities	31
3.2 Rule application.....	32
3.2.1 Registration of a) voters, b) candidates and parties	33
3.2.2 Registration of election observers	34
3.2.3 Voter education	34
3.2.4 Electoral organization	34
3.2.5 Voting, counting and reporting.....	35
3.3 Rule adjudication	37
3.3.1 Admission of complaints.....	37
3.3.2 Processing of cases	38
3.3.3 Publication and implementation of rulings.....	39
4 CONCLUSION.....	39
4.1 Cases where the management of election demonstrated a lack of non-partisanship due to political reasons.....	39
4.2 Cases where the management of election demonstrated a lack of non-partisanship due to technicalities	40
5 BIBLIOGRAPHY	43

1 Introduction

In light of recent EU expansion and the eventual proposed accession of western Balkans countries to the EU, the case of Albania has come to the forefront of dialogue in respect to eventual integration of the country. Just twelve years ago, Albania was the most isolated country in Europe. Early efforts to introduce democracy and to build a market economy in the beginning of the 1990's were severely damaged by the lawlessness and economic collapse, which followed the failure of the pyramid schemes in 1997. In 1999, it bore a huge burden during the Kosovo crisis; at the height of the crisis, Albania was host to over 460, 000 refugees.

In 1999 the EU proposed a new Stabilisation and Association Process (SAP) for five countries of South-Eastern Europe, including Albania. The relations between the EU and Albania are since 2001 anchored in the SAP. The SAP involves various instruments to help the countries undergo a political and economic transition, which prepares them for a new form of contractual relationship (Stabilisation Association Agreements, SAAs) i.e. progress towards closer association with the EU.¹ One of the main objectives of the EU's SAP in Albania is to help the Albanian authorities in consolidating democracy and implementing the rule of law. Especially, the EU has noted that Albania should concentrate on ensuring free and fair electoral processes (SAA Report 2004 p. 2). Throughout numerous reports, the EU has noted that the beginning of Albania's accession dialogue is contingent upon the upcoming national elections in July 2005 being "free and fair" A step in the right direction would be to follow the recommendations in the OSCE national election reports – specifically in regards to the conduct of the last elections in 2003 (OSCE/ODIHR 2004). The conduct of the local elections in October 2003 did not meet international standards. More specifically, the OSCE reports have highlighted the gross shortcomings in election management as a fundamental issue affecting the legitimacy of election results (ibid).

This paper shares the conviction with the EU that holding free and fair elections should be a minimum criteria for any European country that claims to have a political system building on the ideal of democracy – one of the corner stones of the EU. While there are few (if any) countries that can wholly fulfill the criteria of free and fair elections (as established by Freedom House for example), there must be a minimum requirement of real institutions and implementation of democratic norms in the practice and governance of the political system and in the minds of the people, if democracy is not to remain an empty aspiration or an ideal only. Although the OSCE election reports on Albania cover all the elements of the election process carefully,

¹ The instruments are the following: an assistance programme (CARDS), technical advice, trade preferences, co-operation in fields such as justice and home affairs, and political dialogue.

they fail to demonstrate what impact the failure of electoral management to live up to democratic standards has upon the logic of the principle of “one person – one vote;” this principle is crucial for developing sustainable support to a democratic regime among the citizens. The steadily declining number of people voting in elections in Albania could indeed be interpreted as broad indicator of the electorates’ lack of confidence in the integrity of the vote.

1.1 Purpose of the Study

The main purpose of this study is to demonstrate how the mismanagement² of elections can create an obstacle for elections in a country to function in a free and fair way.³ More specifically, the purpose of this study is to explore in what ways the mismanagement of elections can infringe upon the democratic principle of the “integrity of the vote” through a case study of the 2003 Albanian local government elections.⁴

The reasons why such a demonstration is of relevance are numerous. Firstly, increasing empirical knowledge stemming from organizations that have assisted new democracies in the organization of elections over the years has shown that the management of elections has a direct impact on the way in which elections in the developing world and their outcomes are regarded not merely by international observers, but also by domestic actors such as voters, parties, and media etc. (Elklit and Reynolds 2000 p. 1). Still, most scholars tend to focus on the traditional “basic framework” that includes the electoral systems and electoral rules of competition of a country and what political consequences they have among the parties in terms of representation (Mozaffar and Schedler 2002 p. 7). Yet, research on how the management of elections affects democratization in new democracies has been limited and thus this study will provide a contribution to this sub-field.

The overall ambition of Albania to join the EU and recent EU expansion is of further relevance to the purpose of this study. As Albania (and other countries) strive to enter the EU, they must meet the Copenhagen Criteria established in 1993 to enter into pre-accession Stabilization and Association Agreements (SAA). One of the main

² “Mismanagement” is defined as where election management authorities demonstrate a lack of independence or lack of non-partisanship.

³ “Election management” in this paper is operationalized through the analytical model “electoral governance” invented by Mozaffar and Schedler and could be described as “...*the wider set of activities that creates and maintains the broad institutional framework in which voting and electoral competition take place.*” (Mozaffar and Schedler 2002 p. 7).

⁴ “Integrity of the vote” is considered the minimum condition in the realization of free and fair elections. Without “integrity of the vote”, the voters’ ideas of democracy and the purpose of elections are violated, thereby weakening the democratic legitimacy of the government.

conditions of an SAA is respect for democratic principles; holding “free and fair elections” has been repeatedly noted by the European Commission in Albania as an issue impeding progress towards joining the EU (SAA Report 2004 p.1).

1.2 Theories and definitions

1.2.1 Democratic legitimacy and consolidation of democracy

The EU’s conception that the establishment of regular free and fair elections in Albania will provide the government with democratic legitimacy stems from the analytic model of “democratic transition” (Carothers 2002 p. 8).⁵ One of the model’s core assumptions is that free and fair elections promote democratization in the country as they provide democratic legitimacy to the government in two ways. Firstly, they have a functional role as the popular mandate of the legislative makes the governance democratically legitimate. Secondly, they play a key generating role over time as they build up commitment and support for the democratic regime, which furthers democratic reforms (ibid).

The approach to legitimacy used in this paper stems from the category of democratization literature that is concerned with “democratic consolidation” and is conceptually different from the model of transition. A transition results in the creation of a new democratic regime, whereas a consolidation results in the stability and persistence of that regime (Boussard 2003 p. 49).⁶ Historically, since the “third wave” it has been clear that transitions from authoritarian rule can lead anywhere, not only to the establishment of democracy, but also to new forms of authoritarianism that do not fit into our classical categories of non-party, military, or personal dictatorship (Schedler 2002 p. 36; Diamond 2002 p. 33). These regimes hold elections and tolerate some pluralism and interparty competition, but at the same time violate minimal democratic norms so severely and systematically that it makes no sense to classify them as democratic (ibid.). Thus, a successful transition is no

⁵ The model of democratic transition was initially embraced by the American democracy-promoting community of policy-makers, donor community and scholars who were concerned with democratic development during the 1980s. It derived principally from their own interpretation of the pattern of democratic change taking place in the world – the initial parts of Huntington’s “third wave” – democratization in Southern Europe, Latin America, and a few countries in Asia (especially the Philippines) It also derived from the early work of the emergent academic field of “transitology”, the work of Guillermo O’Donnell and Philippe Schmitter in particular (Carothers 2002 p. 6).

⁶ A transition could be defined as “*the interval between one political regime and another*” and contains two different processes: liberalization and democratization. Liberalization is the process wherein civil rights are being redefined and extended. Democratization is the process wherein democratic institutions and procedures that embrace competitive elections, in which the winner gets control over the government are established (Boussard 2003 p. 38).

guarantee that a new democracy will survive.⁷ A new academic field has emerged as a consequence of this, concerned with strengthening and stabilizing, or consolidating, of new democracies (Boussard 2003 p. 49).⁸ One field within this category of democratization literature is concerned with “legitimacy.” Lipset has formulated a highly influential definition: “*Legitimacy involves the capacity of a political system to engender and maintain the belief that existing political institutions are the most appropriate or proper ones for the society*” (Lipset 1959 p. 86). Legitimacy in this sense is an attitudinal support for the democratic system, which is considered very important for new and fragile democracies (Boussard 2003 p. 65).

According to research conducted by Jorgen Elklit and Andrew Reynolds, the development of legitimacy and principled commitment to democracy, especially in newly established democracies is affected by how the sense of political efficacy develops in individual citizens in a number of fields related to the conduct of elections, and the election management especially (2000 p. 5). They show that irrespectively of the electoral system of the country, the legitimacy of the election process in the perception of the voters and parties can be used as a reliable variable to measure the quality of the election management. The management of elections thus has an impact upon the process of legitimation, and through that a further impact on the processes of consolidation in new and emerging democracies (ibid. p. 32).⁹

From the perspective of a political philosopher, however, definitions of legitimacy that regard legitimacy as subjective rather than an objective phenomenon, (i.e. legitimacy as citizens’ perceptions of, and belief in legitimacy) are highly problematic as they transform the issue of legitimacy from a question about the actual characteristics of a system of power into one concerning the beliefs people hold about it (Beetham 1991 p. 9). As the concept of legitimacy is emptied of any objective reference or moral content, it means that a democratic regime does not have to perform well to be defined as legitimate (Boussard 2003 p. 64).¹⁰ From this aspect, this paper’s analysis of democratic legitimacy is closer to the one of moral philosophers’ according to whom “legitimate” is what is morally justifiable or rightful (Beetham p. 5).¹¹ The analysis of the democratic legitimacy of the

⁷ Krastev provides in his article “The Balkans: Democracy without choice” criticism of the transition paradigm as it has been applied in political studies and policy of the international community in the Balkans, and also in Albania (2002 p. 43).

⁸ For an overview of this literature see page 49 – 56 in Boussard 2003. For an overview of theory building within and differences between the concepts of democratic transition and democratic consolidation see L. Munck 2001 p. 123-130.

⁹ The quality of an election in their regard is conceptualized as the extent to which the entire electoral process is seen as legitimate and binding by political actors (Elklit and Reynolds 2000 p. 1).

¹⁰ This is typical for the way in which most social scientists in the twentieth century have followed Max Weber in defining legitimacy as the “*belief in legitimacy*” e.g. on the part of the relevant social agents, and they way these scientists consider power relations as legitimate where those involved in them, subordinate as well as dominant, believe them to be so. Governance is not considered legitimate because people believe in its legitimacy, but because it can be *justified in terms of* people’s beliefs (Beetham 1991 p. 9).

¹¹ Of concerns for such scientists are the relations of power, of dominance and subordination and how they ought to be arranged; the rules that determine access to positions of power or the means of

government in Albania will not be defined through an examination of the beliefs of the voters, the parties and the citizens, but by examining if the elections that give a popular mandate to the legislature in the country can be considered “rightful” according to ideals of democracy. The perspective of the voter, however, is still in focus as the “integrity of the vote” is considered the minimal condition, and thus the most crucial requirement that has to be fulfilled for the elections to be considered free and fair.

1.2.2 Election management: a subfield of election studies

The study of electoral systems is a field of comparative studies of democratization that has resulted in causal explanations - for example that counting rules for votes matters to the outcome of the election and also that different players are advantaged or disadvantaged by various counting rules. The emergence of new democracies, particularly in the 1990s gave new impetus to the practical applications of knowledge developed by this literature and provided an opportunity to engage in “constitutional engineering” and the crafting of electoral rules in order to produce some desired outcome, usually measured in terms of the number of parties (Bowler, Carter and Farrell 2001 p. 1). Horowitz, Lijphart, Sisk and Reynolds are established academics within this tradition that have conducted studies of different electoral systems to show how it can be used in mitigating conflict within divided societies.

Studies of electoral systems, however, have focused almost exclusively on the political consequences of the rules of electoral competition (such as formula, district magnitude and boundaries, assembly size etc.) to tell about how “fair” different counting rules are in comparison to each other (Bowler, Carter and Farrell 2001 p. 6; Mozaffar and Schedler 2002 p. 7). Since the late 1980s, a network of national and international organizations active in election monitoring and democracy assistance has emerged, whose practical relevance and analytical import has not been incorporated in the study of democratization (Mozaffar and Schedler 2002 p. 6).¹² A reason for this could be attributed to their findings; such findings are generally considered normative as their discussion have focused on developing evaluative criteria to assess deviations from preconceived and often somewhat idealized notions of democratic progress (ibid.). The theory used in this paper of “electoral governance” as defined by Mozaffar and Schedler draws upon the aforementioned practical experience of the organizations (ibid. p. 7).

exercising it, should themselves be morally justifiable. Thus, “legitimacy” entails the *moral justifiability or rightfulness* of power relations (Beetham 1991 p. 5).

¹² Such organizations include: The International Institute for Democracy and Electoral Assistance (International IDEA), The Administration and Cost of Elections (ACE) Project, and numerous others. The findings of these two organizations are utilized throughout this study.

1.3 Method and material

1.3.1 Case study and constructivism

This paper utilizes a case study of the Albanian 2003 elections to demonstrate how the mismanagement of elections can create an obstacle for elections in a country to function in a free and fair way. To explore this concept I first examine the function of elections – namely to create democratic legitimacy. Democratic legitimacy is defined as the integrity of the vote as expressed through the minimum voluntary consensus on behalf of the electorate. In the second part I show that the reason why we aim for free and fair elections is to guarantee the very functions of elections. To guarantee the function of elections you must fulfill the minimum condition – namely integrity of the vote. From another perspective, the creation of democratic legitimacy is dependent upon the function of elections as well as the very aim of free and fair elections. Integrity of the vote is thus a means to create democratic legitimacy as well as an end result.

The reasoning behind this paper is “circular” and does not provide any causal explanations; this is not a weakness of the analysis, rather a reflection of its utilization of constructivist theories. Constructivism offers a way to understand the development of democratic institutions whose form may appear to be universal, but whose legitimacy is dependent upon how external ideas and norms articulate with particular contexts (Magnusson p.6). Constructivism does not provide “...substantive explanations or predictions of political behavior until coupled with a more specific understanding of who the relevant actors are, what they want, and what the content of social structures might be” (Finnemore and Sikkink 2001, p.393).

More specifically, the creation of democratic legitimacy of the government is dependent upon on the two interacting variables described above. Firstly, it depends on the function of the elections e.g. to what extent they bring democratic legitimacy to the popular mandate from a normative point of view through its institutions and rules (the creation of political equality through representation). Second, to what extent it actually aims at guaranteeing this function of the elections in practice (the management of elections). Methodologically, I measure democratic legitimacy through the study of whether or not the management of elections is respecting the integrity of the vote. This is operationalized as the interaction between different institutional levels of the elections as well as between different governmental (to various degrees) authorities.

1.3.2 How to measure the threshold between democratic and undemocratic

Democratic legitimacy in this paper is defined as *political equality through representation*. This definition is developed through a combination of David Easton's idea of what brings legitimacy to the governance of a political system from an effective point of view, and Robert Dahl's research on the development of the democratic ideal of governance. Of course, in reality, the political systems with representative democracy must involve majority decision-making and minority influence in the governance to create democratic legitimacy (Hinnfors and Oskarson 2004 p. 14). However, from a voter's point of view, this does not make sense if the principle of "one person-one vote" is not guaranteed from the beginning to the end of the election process. This study however notes that we should study the quality of elections not as a measure of democracy writ large, but as a partial regime that is likely to vary in its democratic quality (Lindberg 2004 p. 5).

The threshold between democratic and undemocratic effects is thus hard to define and its exact position may vary over time and across cases (Schedler 2002 p. 38). There is much room for nuances and ambivalence when determining what is democratic or not. In the end, the thin line between what is a democratic and undemocratic may have to be decided upon case by case. The approach of this paper is to establish a definition of "democratic legitimacy" in terms of an "either/or" dichotomy, and not a graded degree.¹³ This approach draws upon Schedler's theories; namely, Schedler wants to identify the ways in which the political system combines democratic and undemocratic features (Schedler 2002 p. 37). His theory of the "Menu of manipulation" is constructed from the conception of democracy as a compromise between an "either/or" (dichotomy) approach and a graded approach, because most regimes are a mix of democracy and authoritarianism to one degree or another (Schedler 2002 p. 37).

This paper's approach is to define democratic legitimacy as contingent upon the integrity of the vote; indeed, integrity of the vote is the minimum criteria to enable democratic legitimacy. To understand this in reality, I examine the elements present under Mozaffar and Schedler's three levels of electoral governance in light of the 2003 elections in Albania to see if integrity of the vote is preserved.

¹³ For further information on the debate on substantive versus procedural conceptualizations of democracy, and the dispute of whether the non-democracy and democracy divide is better understood as a dichotomous or a graded phenomenon see D. Collier and R. Adcock 1997.

1.2.3 Material

The material that is used for the empiric analysis in this paper consists of secondary material in form of reports and best practices. More precisely, the information and the data that the analysis is made on consist of thee reports mainly. The first one is the OSCE/ODIHR Election Observation Mission Report for Local Government Elections 12 October 2003 – 25 January 2004. The second one is a [recommendation of the European Commission for Democracy through Law \(Venice Commission, Council of Europe\) and the Office for Democratic Institutions and Human Rights \(ODIHR\) of the OSCE with recommendations on the electoral law and the electoral administration in Albania](#). The third one is a [paper from the Venice Commission on the Constitution and the electoral process in Albania](#). These international organizations are well established in the field of assistance and guidelines and recommendations to newly established democracies. OSCE/ODIHR: The Organization for Security and Cooperation in Europe and the Office for Democratic Institutions and Human Rights is the principle body for promoting human rights within the OSCE. The European Commission for Democracy through Law, better known as the “Venice Commission”, is the Council of Europe's advisory body on constitutional matters. All Council of Europe member states are members of the Venice Commission. Established in 1990, the commission has played a leading role in the adoption of constitutions that conform to the standards of Europe's constitutional heritage: democracy, human rights and the rule of law.

Also, throughout the paper, information from the Administration and Cost of Elections (ACE) Project will be used. ACE Project has got an electronic publication and represents the first-ever attempt to provide a globally accessible information resource on election administration. Three leading international organizations (The International Foundation for Election Systems (IFES), the International Institute for Democracy and Electoral Assistance (IDEA) and the United Nations Department of Economic and Social Affairs (UNDESA)) worked together to produce the materials.

2 Theoretical Framework

2.1 Definitions

2.1.1 What constitutes legitimacy of governance?

“What distinguishes political interaction from all other kinds of social interactions is that they are predominantly oriented towards the authoritative allocation of values for a society” (Easton 1979 p. 50). In this paper, the field where this authoritative allocation of values for a society is decided upon and sanctioned is considered the political system of a country. This system includes actors (individuals and groups within the society) and institutions (forum and contexts) involved in the process (Hinnfors and Oskarson 2004 p. 12).¹⁴ Under certain circumstances, citizens consider themselves bound by the decisions taken by the government: *“An allocation is authoritative when the persons oriented to it consider that they are bound by it”* (Easton 1979 p. 50). The circumstances under which citizens consider themselves “bound” can be democratic to various degree, or wholly undemocratic: The state monopoly of violence is one way of “binding” citizens to the government’s decisions. However, a political system, where the only reason for the citizens to consider themselves bound is the threat of violence, is not a long-term solution. There must at least be a minimum voluntarily consensus around what to make decisions on, who will decide and how to do it for the political system to be effective. It is this *minimum voluntary consensus of governance* that brings legitimacy to the government in the political system (Hinnfors and Oskarson 2004 p. 12).

Historically, legitimacy of the government has been gained in two ways: In non-democratic political systems, in accordance with references to God, to particular cultural and social classes or ethnicity etc. In democratic political systems, legitimacy is gained in accordance with the will of the people (ibid.). In politics authority generally refers to the ability to make laws, independent of the power to enforce them, or the ability to permit something. People obey authority out of respect, while they obey power out of fear (Beetham 1991 p. 10). For example, "the congress has the authority to pass laws" vs. "the police have the power to arrest law-breakers". Authority need not be consistent or rational; it only needs to be accepted as a source of permission or truth. Questions as to who have what authority often lie at the heart of political debates, and answers to those questions normally stem from practical or

¹⁴ “Institutions” could be further defined as a “regularized pattern of interaction that is known, practiced, and accepted (if not necessarily approved) by actors who expect to continue interacting under the rules sanctioned and backed by that pattern” (O’Donnell 1996 p. 36)

moral considerations, from prior practices and from theories of criminal justice or of the just war. The dominant usage comes from functionalism and follows Weber in defining authority as power which is recognized as legitimate and justified by both the powerful and the powerless (ibid.). This paper however is only concerned with how government can gain legitimacy according to norms and principles of democracy (also see part 1.2.1).

2.1.2 How governments gain legitimacy according to norms and principles of democracy

In the previous part I defined legitimacy of government as the ‘minimum voluntary consensus of governance’. The question of this part is how legitimacy is gained in accordance with norms and principles of democracy? As this part will show, both the method through which democratic legitimacy of governance is gained has changed through history, as well as the very principle of it.¹⁵

Democratic legitimacy of the governance in ancient Greece was created from the ideal that everybody should have the same chance to govern, according to the principle of “one person – one vote”. In practice, people were elected through a lottery to govern in the city-state.¹⁶ Thus, democratic legitimacy was created through the logic of political equality (Hinnfors and Oskarson 2004 p. 14).

This democratic ideal and practice went through a gradual transformation, affected by the ideas of the enlightenment and before that, by the shift away from its historic locus in the city-state to the vaster domain of the nation, country, or nation state. Dahl calls this the “second democratic transformation”(Dahl 1989 p. 16). In order to apply the logic of political equality on the larger scale of the nation state, the direct democracy of citizens’ assemblies had to be replaced (or at least supplemented) by elected representative governments that involved a separation between the people and their representatives (Dahl 1989 p. 16). A balance between the two ideals of governance as “through” the people and “by” the people was established (Hinnfors and Oskarson 2004 p. 14). Or with references to governance *for* the people; e.g. governance in accordance with the *preferences* of the people – later used by Abraham Lincoln (ibid. p. 13). Thus, the minimum voluntary consensus was brought through an application of political equality through representation and a form of representative democracy was born.

¹⁵ From a methodological point of view, this part is inspired by an article of Barkin and Cronin, which shows how definitions of populations and territories within international relations (sovereignty) have altered the notion of legitimate authority inherent to sovereignty. Thus, the concept of sovereignty should not be view as static and fixed definition (1994).

¹⁶ In reality, these forms of “popular governments” were submerged in imperial or oligarchic rule and slaves and women were excluded from the citizens that had the right to participate (Dahl 1989 p. 213)

2.1.3 How the application of political equality through representation can undermine the principle of “one person – one vote”

Broadly, the dimension of representativity utilized to achieve political equality today allows for sitting governments and/or political parties in power to undermine the logic of political equality. This can be done for example through designing the country’s electoral system in a way that sitting governments or political parties can take advantage of it. For example as Schedler notes “...’redistributive’ rules can keep an eventual loss of votes from turning into a loss of power (Schedler 2002 p. 45).¹⁷ The function of the electoral system is basically to determine how votes are translated into seats in parliament (Sartori 1997 p. 3). From another perspective they are also the counting rules for elections, which tell us about how “fair” different counting rules are in comparison to each other (Bowler, Carter and Farrell 2001 p. 6). These rules can be designed so that in reality it means that votes are not weighted equally – thus, undermining the principle of “one person – one vote”. The relationship between seats and votes is, obviously an important one from the perspective of democratic legitimacy, as general ideas of representation and fairness are affected by how this is played out. The seats a party gets in the parliament should be in proportion to the votes cast for the party, to the largest possible extent (Bowler, Carter and Farrell 2001 p. 1). Thus, the parliament represents what Schedler deems to be the “aggregated preferences” of the electorate (Schedler 2002 p.39).

2.2 Theoretical perspectives

2.2.1 Dahl’s polyarchy: the seven political institutions of a representative democracy

The political systems in the world based on representative democracy have developed different models to elect their representatives due to different social, economic and political settings in the countries as well as different values and traditions in the societies. This has resulted in a myriad of political systems ranging from presidential and semi-presidential to parliamentary. Still there is a set of political institutions that, taken together distinguish modern representative democracy from all other political systems, whether non-democratic regimes or earlier democratic systems. Dahl calls it “polyarchy” and describes them as a set of political institutions necessary for a

¹⁷Schedler states that “... *In Mexico under the Institutional Revolutionary Party, Zimbabwe under Mugabe, and Croatia under Franjo Tudjman, majoritarian electoral rules proved effective at minimizing the parliamentary weight of opposition parties*” (Schedler 2002 p. 45).

country to reach the “*highest feasible attainment of the democratic process in the government of a country*” (ibid. p. 222). “Democracy” according to Dahl, should be reserved for political systems that are totally responsive to all their citizens (Boussard 2003 p. 30). As “democracy” is in fact not perfectly realized anywhere, even in advanced democracies, these countries are instead named “polyarchy”. The institutions are: 1) elected officials; 2) free and fair elections; 3) inclusive suffrage; 4) the right to run for office; 5) freedom of expression; 6) alternative information; and 7) associational autonomy (Dahl 1989 p. 221).

In any representative democracy, elections can serve to legitimating rule: the will of people; and provide alternation in the governing coalitions and ruling elites (Reynolds and Sisk 1999 p. 15-16). Elections allow people through the cast of their votes to give mandate to the legislature/parliament and to control it through the possibility to cast their vote differently in the next elections (Hinnfors and Oskarson 2004 p. 20). It is the popular mandate of the legislative that provides the government with democratic legitimacy, e.g. that brings the minimum voluntary consensus of the governance (Hinnfors and Oskarson 2004 p. 20). Thus elections in a representative democracy can be understood as the primary function in providing the government with democratic legitimacy. For elections to create democratic legitimacy at their full potential however - with Dahl’s words “*at the highest feasible attainment of the democratic process in the government of a country*” - they must be “free and fair”. Dahl’s institution number 2 “free and fair elections” involves that: “*Elected officials are chosen in frequent and fairly conducted elections in which coercion is comparatively uncommon*” (Dahl 1989 p. 221)¹⁸.

2.2.3 Schedler’s conditions for “free and fair” elections

Proceeding from the same normative ideal of democracy as Dahl, Andreas Schedler has formulated seven conditions that should be fulfilled by the elections in a country to be considered “free and fair”. The conditions are the following: 1) Empowerment, 2) Free supply, 3) Free demand, 4) Inclusion, 5) Insulation, 6) Integrity, 7) Irreversibility (2002a p. 40). The conditions taken together are more demanding than Dahl’s second institution (free and fair elections), but still covering less than all of Dahl’s seven institutions.

Schedler considers that as long as the electoral process does not break any of the conditions, the political system could be considered an “electoral democracy”; e.g. the elections could be considered “free and fair”(Schedler 2002 p. 37). A fulfilling of all the conditions could be considered minimum criteria for free and fair

¹⁸ If one wants the elections not only to be free and fair, but also inclusive and competitive - institution 1, 3, and 4 also have to be involved. Institution number 5 – 7, are the political and social freedoms that are minimally necessary not only during, but also between elections as a condition for elections to be fully free, fair and competitive (O’Donnell 1996 p. 35).

elections - but *not* enough to form a “liberal democracy”.¹⁹ To be considered a liberal democracy, the country must also manage to institutionalize other vital dimensions of democratic constitutionalism, such as the rule of law, political accountability, bureaucratic integrity and public deliberation (ibid.). (My interpretation is that Schedler’s liberal democracy is more or less the same as Dahl’s polyarchy). Schedler says “*together, these conditions form a metaphorical chain, which like a real chain, holds together only so long as each of its links remains whole and unbroken*”(Schedler 2002 p. 40). If it breaks, the elections become not less democratic, but simply *undemocratic*.²⁰ Schedler’s idea of democratic elections is that they are “*mechanisms of social choice under conditions of freedom and equality*”. Thus, the “chain” could be seen as basic norms linked together into a unified whole, by the logic of democratic choice (ibid. p. 39-41).

2.2.4 Integrity of the vote

Each condition of Schedler’s chain can be considered important in the realization of free and fair elections. However, as this paper is particularly concerned with the preservation of the logic of political equality through representation, the condition of “integrity” is crucial (Schedler 2002 p. 41). The reason for this is that elections are only sustaining the logic of political equality applied through representation under condition that the votes are weighted equally. As noted previously, it is this minimum voluntary consensus of governance that brings legitimacy to the government in the political system (Hinnfors and Oskarson 2004 p. 12). Without preserving the integrity of the vote throughout the entire electoral process, the aggregated result of election could be considered unfair. Indeed, integrity of the principle of “one person – one vote” is the very foundation of the “voluntary consensus” described previously.

However, even if the citizen gives free expression to his/her will at the polls, the democratic idea of one person-one vote will not be wholly achieved if there is no competent and neutral election management that provides for an equal weight of the votes (Schedler 2002 p. 41). Thus, an intersection exists between people believing in the integrity of the vote, and the institutions that manage the elections and whose impartiality thereby provide the basis for the electorate’s belief in such integrity.

¹⁹ Albania has a very poor record of holding free and fair elections. Except for the 1992 parliamentary and local races, and the 1994 referendum, the results of all post-Communist elections have been contested or boycotted by one of the parties involved. Freedom House Index (FHI) 2004).

²⁰ Among undemocratic elections, however, there are many variations. The school of “authoritarian subtypes” that has developed focus on the competitiveness of the elections, especially giving a privileged role to opposition parties in the process of democratization of a country. Limited multiparty politics are considered to be the main explanation to why some authoritarian regimes do not turn into true democracies, and do not manage to pass the threshold of holding democratic elections. Schedler for example presents a scale of authoritarianism with four different degrees moving between the two symmetrical categories: liberal democracy and authoritarianism (Schedler 2002 p. 37). For an overview of the literature within this field see Diamond 2002.

2.2.5 The impartiality of election management

The “level of impartiality” of election management is hard to assess in reality, as the necessary evidence is only rarely available for public scrutiny (Elklit and Reynolds 2000 p. 7). Another complicating fact is that in theory, the term is used interchangeably with the notions “independence” and “non-partisanship”.²¹ This paper is following the guiding principles of ACE Project that breaks down “impartiality” into two principles: *independence* and *nonpartisanship* (ACE-Project 2003). Though the ACE Project subscribes to a narrower definition of election management than this paper, their approach is still useful as it builds on years of practical experience of electoral assistance throughout the world.²² ACE comments on “independence” as follows: “...*the EMB (electoral management body) can never be wholly independent of any party and of the sitting government, because it will be reliant on the legislature for the approval of funding and possibly the appointment of its key personnel*”. “Nonpartisan” implies that “*the EMB should not care about who wins or loses the election it is administering. Its interest should be in establishing a level playing field on which candidates and parties may compete, in giving all voters sufficient information so they can cast their vote in a reasonably informed manner, and in adding up votes and declaring results without prejudice toward any party or candidate.*” It is not enough, however, to examine solely the EMB as the guarantor of integrity in elections. Indeed, a wider scope must be examined, as EMBs authority generally does not extend to *all* aspects of election management. Such scope can be provided for through Mozaffar and Schedler’s three levels of electoral governance: rule making, rule application, and rule adjudication as illustrated in the table below (Mozaffar and Schedler 2002, p.8).

2.2.6 The three levels of electoral governance

Mozaffar and Schedler avoid the use of the terms “election management” and “election administration” as they believe it evokes an idealized image of organization of elections as a bureaucratic routine and mechanical execution of coherent sets of known and tested rules. The term employed by them - “electoral governance”, implies that the organization of elections in fact involves a power struggle between different imperatives, which creates a strong dynamic of change, especially in new democracies. In this paper, the term “election management” and “electoral governance” is used interchangeably. In transitional regimes and newer democracies the organization of elections is often a highly complex task that requires the participation of a multitude of actors, each with different roles and agendas. Also, the

²¹ Elklit and Reynolds analytical approach for example seems to combine independence and non-partisanship under on single term: “independence”, leaving out the term “impartiality” completely (2000 p. 6).

²² The definition use by ACE Project stems from their more practically oriented analysis of election management as synonymous with the key electoral management body – the EMB – of the country.

legislation and the institutions administering the elections may still be developing and subjected to intense criticism and scrutiny from all sides (Mozaffar and Schedler 2002 p. 8). Thus, electoral governance is a process that takes place on three levels: Rule making, rule application and rule adjudication (ibid.)(See Table 1).²³

Table 1. The Three Levels of Electoral Governance

Level	Element
<p>1. Rule Making: Choosing and defining the basic rules of the electoral game</p> <p>a). Rules of electoral competition</p> <p>b). Rules of electoral governance</p>	<ul style="list-style-type: none"> - Formula - District Magnitude - District Boundaries - Assembly Size - Electoral Timetable - Franchise - Voter Registration - Party and Candidate Registration - Campaign Financing and Regulation - Election Observation - Ballot Design - Polling Stations - Voting, counting, tabulating - Election Management Bodies - Dispute Settlement Authorities
<p>2. Rule Application: Organizing the electoral game</p>	<ul style="list-style-type: none"> - Registration of voters, candidates and parties - Registration of Election Observers - Voter Education - Electoral Organization - Voting, counting, and reporting
<p>3. Rule Adjudication: Certifying election results and resolving disputes</p>	<ul style="list-style-type: none"> - Admission of Complaints - Processing of Cases - Publication and Implementation of rulings

For the analysis of this paper especially, it is worth highlighting that the election commission of a country (the EMB) is an institution that is both affecting,

²³ Above the first level, the “meta-game” of constitutional rule making defines who possesses the authority for defining the rules of electoral governance. In democratic transitions, struggles for changing rules are often intertwined with struggles for changing meta-rules (Mozaffar and Schedler 2002 p. 7).

and subjected to the electoral governance of the political system.²⁴ Further, that the authorities involved in electoral governance on the three levels are primarily responsible to ensure that the activities and policies executed are not infringing upon the integrity of the vote.²⁵

²⁴ This is why the study of election commissions (EMBs) is considered methodologically complicated: the institution (which in itself is already a composite variable) is both a dependent and independent variable in the underlying causation model of what creates democratic legitimacy of a regime (Elklit and Reynolds 2000 p. 3).

²⁵ Authorities in this analysis can be defined according to the description offered in Part 2.1.1.

3 Election Management in Albania: The Case of the 2003 Elections

Moving from theory to practice, I will in this part examine the election management in respect to Albania's most recent election in 2003 to assess whether election management authorities demonstrate either a lack of independence or lack of non-partisanship (the two elements of impartiality) and if so, what the impact is upon integrity of the vote.²⁶ "Election management" is in this empirical analysis operationalized as the three levels of electoral governance. A brief description from a technical perspective of each element under the three levels of electoral is provided, followed by description of how the electoral authorities choose to implement the elements in Albania during the elections of 2003. While an election management authority can never be wholly independent²⁷ it can operate to a degree of independence representing the best interest of the voter. In the conclusion it will be noted in what specific cases the election management did not provide for the integrity of the vote because of an absence of either independence or non-partisanship within the elements of the three levels of electoral governance; if such cases exist, the impact upon the integrity of the vote will be illustrated.

3.1 Rule Making: Rules of electoral competition and rules of electoral governance:

3.1.1 Formula

What Mozaffar and Schedler call "formula" is here understood as the instruments that establish the rules for the electoral systems and thus for the political game; e.g. the constitution including the electoral law (Sisk and Reynolds 1999 p. 3-4). A written

²⁶ The local government elections were held on 12 October 2003 throughout Albania. They were held under a new Electoral Code (EC), (the old EC was invalidated in its entirety). The EC was adopted by Parliament on 19 June 2003. The result of the elections marked a reduction in the share of the vote won by the Socialist Party (SP) in the 2000 local government elections and the 2001 parliamentary elections, although it is notable that the Democratic Party (DP) did not improve on its proportional support in the 2001 parliamentary elections. For elections results, see FHI 2004.

²⁷ It will as a minimum be reliant on the legislature for the approval of funding and possibly the appointment of its key personnel (see Part 2.2.6)

constitution as the basis of a country's governmental structure provides the foundation for key elements of its electoral framework. The authority responsible for the choice and definition of these basic rules is the constituent Assembly or the Legislature exercising its constituent powers (IDEA 2002 p. 13). Provisions related to the management of elections should be incorporated into parliamentary legislation (to allow for a flexibility that is not possible under the Constitution), and administrative and procedural matters should be left to administrative rules and regulations, to be issued by subsidiary bodies, including through instructions and directives of the EMBs (ibid.).²⁸ The Legislature is responsible for choosing and defining the national election legislation – the Electoral Code, which normally requires a simple majority to amend (IDEA 2002 p. 12).

The establishment of a pluralistic system in Albania 1992, and the need to guarantee human rights and freedoms, set forth the essentialness of drafting democratic legislation and creating an appropriate infrastructure for the practical realization of these rights. The basic constitutional principles related to elections are enshrined in art. 1, 2 and 9: Albania is a parliamentary republic; Governance is based on a system of elections that are free, equal and periodic; The people exercise sovereignty through their representatives or directly.²⁹ Amongst the basic principles stands art. 9 that provides about freedom of political parties and transparency of their financial sources. Strictly related to political parties freedom, are individual freedoms and especially freedom of expression and freedom of the media in art. 22 (CoE 2004 p. 2).

Art. 64 to 67 relate to the election of deputies to the Assembly and their mandate term. The electoral system of Albania is considered complex and difficult for a voter or observer to understand as it is using an allocation formula with “composed multi-name lists” and “joint-multi-name-lists” instead of a single list of candidates presented by a political party or coalition (See Part 3.1.4 Assembly size)(CoE and OSCE/ODIHR 2004 p. 17).³⁰

Local Government units are Communes, Municipalities and Regions. Representative organs of those units are the councils. The voters who have a permanent residence in the territory of the respective local unit elect Communes and

²⁸ In reality, however, to keep the electoral administrative system adopted and the institutions that develop to manage that administration purely “technical” – e.g. separated from the electoral politics and policy-making bodies, have often proved to be very difficult. For example, in many systems, the election policy body creates the EMB and hires its staff. And in some systems, a decision has been made to have politically balanced electoral policy and EMBs. In these cases, both bodies are staffed on the basis of political affiliation and ability to protect the interests of their party (ACE-Project 2003).

²⁹ These principles are consistent with international instruments as Democratic elections and representative government are recognized as international human rights standards since the 1948 Universal Declaration of Human Rights. To varying extents, these principles were upheld under the International Covenant on Civil and Political Rights, and European Convention for the Protection of Human Rights and Fundamental Freedoms. Political rights and freedoms are protected by art. 45 through 48 of chapter III in the Albanian Constitution.

³⁰ Of the 50 parties registered for the elections, only 39 fielded candidates or multi-name lists. Eleven parties were elected to parliament in the last parliamentary elections (OSCE/ODIHR 2004 p. 5).

Municipal councils every three years, by general direct elections and by secret ballot. A general and direct election by the same voters is also provided for the Mayors. Municipal and Commune delegates form regional councils. Members of Municipal and Commune councils are elected on the basis of a proportional representation system that requires political parties and coalitions to submit candidate lists (art. 77).

According to art. 153 of the Constitution, the CEC is a permanent body that prepares, oversees, directs and verifies all aspects related to elections and referenda and announces their results. Art. 154 of the Albanian Constitution establishes that the CEC is composed of seven members, each with a seven-year mandate. Two members are appointed by the Assembly (Parliament), two by the President of the Republic, and three by the High Council of Justice (HCJ). The Article contains no limitation on the nominee choices or the Constitutional prerogative of these three appointing institutions when electing members to the CEC.³¹ The composition of the CEC is regenerated every three years. The previous EC gave the three institutions wide discretion in selecting members of the CEC, with the aim of assuring an independent and non-political body (CoE and OSCE/ODIHR 2004 p. 8). Under the previous Code, LGECs and voting Centre Commissions (VCCs) were composed of representatives of the seven largest parties with the largest vote-share in the previous local government elections (OSCE/ODIHR 2004 p. 5). As this led to the under-representation of the opposition, these provisions were amended in the new EC (CoE and OSCE/ODIHR 2004 p. 5).

Art. 22 of the EC says that the “President of the Republic appoints two members of the CEC, based on the respective proposals of the two largest parties of the government and the opposition” and that the “HCJ elects three CEC members according to the following procedure: Two members of the CEC are approved between two candidates proposed respectively by each of the two largest parties. With regard to the third candidate, the HCJ shall pursue the following procedure: “The two largest parliamentary groups propose four candidates who are lawyers by profession. Each of the parliamentary groups selects two of the four candidates of the other group. The four selected candidates are submitted to the HCJ to vote on not later than 48 hours after their submission. This political balancing of the CEC provides for a “party-oriented formula” for the composition CEC (Jaho 2003 p. 11). This formula for appointment of members of election commissions was based on a protocol agreement between the SP and DP in May 2003, to assure that there is no single, dominant force in control of election administration by creating a numerical “balance” on every commission. In previous elections there were numerous instances where the commissions acted in a highly politicized manner, particularly in the favour of incumbents (OSCE/ODIHR 2004 p. 8).³²

³¹ The drafters of the rules of the Constitution were seeking to create a CEC that would have the capacity of an independent, unbiased and politically free constitutional body (Jaho 2003 p. 10).

³² An informal comment submitted to the Laws Committee of the Parliament by an OSCE/ODIHR senior legal expert, prior to the approval of the law in June 2003, raised concerns about inclusion of qualified majority voting and increasing signature requirements, stating that they “*lay a foundation for deadlock, obstruction and inability*”

From a technical point of view, the political balancing that article 22 of the EC seeks, could not have been implemented because of the following reasons: As some members of the CEC had been elected according to the invalidated Code, their mandate for 7 years could not be interrupted only because, according to this article, political balance had to be reached (Jaho 2002 p. 11). Party proposals cannot force the President of the Republic in appointing the members of the CEC, and the same goes for the HCJ, which is an independent constitutional body that takes decisions collegially (ibid.). HCJ elected a CEC member from among those not proposed by the opposition but from among those proposed by the government. As this went counter to an agreement between the DP and SP, people accused the HCJ for contradicting the law (ibid. p. 12).

Due to the composition of the Parliament at the time, the appointment process made it possible for the SP and the DP to control the election of two parliamentary appointees, although the law requires them to be proposed by the smaller parliamentary parties, one from the “left spectrum” and the other from the “right spectrum” (OSCE/ODIHR 2004 p. 8). In practice, this limited the number of candidates from which the three appointing constitutional institutions can make their selection, limiting the candidates to a list of no more than two candidates (even just one) nominated by non-Article 154 bodies (“political parties/groups”)(OSCE/ODIHR 2004 p. 5).³³ In sum, these provisions may be contrary to the Constitution in the excessive restriction they impose on the prerogative of the three appointing bodies, (CoE and OSCE/ODIHR 2004 p. 8).

The appointment procedures for LGEC members were established by a similar new formula in the EC. Of the seven members, the SP and DP were entitled to appoint two members each. The Social Democratic Party (SDP) and the Republican Party (RP) were also represented by one member each on the basis that the EC provided representation to the two political parties that respectively placed second from both the “right” and “left” nationwide in the 2000 local government elections. Further, the SP held the right to appoint the seventh member in half of all LGECs and the DP held the right to appoint the seventh member in the other half. An identical formula was followed for the appointment of VCC members.

The EC also establishes a similar procedure for determining the chairperson of LGECs and VCCs. The right to appoint the chairperson was held by the same political party that had appointed the seventh member, with the other political party then holding the right to appoint the deputy chairperson and the secretary of the commission³⁴. The CEC conducted a public lottery for assigning the seventh members and Chairs of LGECs to the DP and SP (VCC composition mirrors the

to make necessary decisions during the elections” and indicating that they enhanced the possibility that the electoral process would again be protracted, litigious, fragmented and uncertain (OSCE/ODIHR 2004 p. 6).

³³ However, the EC fails to define adequately those political parties with the legal right to nominate the members of the CEC as well as lower election commissions and, instead, uses vague terminology that attempts to describe the ideologies of current political relevance (CoE and OSCE/ODIHR 2004 p. 9).

³⁴ The CEC intervened on the proposal of the DP with an instruction assigning the right to nominate the Secretary to the party holding the position of Deputy Chair (OSCE/ODIHR 2004 p. 9).

membership structure of the respective LGEC) and all interested parties accepted the result (OSCE/ODIHR 2004 p. 9).

3.1.2 District Magnitude and district boundaries

In this part I chose to follow the category of IDEA, which does not make a distinction between “district magnitude” and “district boundaries” calling it “boundary delimitation” simply (IDEA 2000 p. 27). This legal framework which is generally part of the Constitution, defines how constituencies or an electoral unit being represented (sometimes called “voting-districts”)(ibid.). Since it is considered a politically very sensitive exercise, the EMB in most countries is not directly involved, but a special commission consisting of representatives from the political parties, judges, and experts instead undertakes the exercise. The result of the boundary delimitation is of course depending on the electoral system of the country but still, there are three dimensions that should be taken into account if this exercise is not to undermine the equality of voting power for each vote: Representativeness, equality of voting-strength and reciprocity and non-discrimination (IDEA 2000 p. 28). The first one signifies that electoral units should be composed of communities of interests. The second one signifies that each voter casts a vote of equal weight to the greatest degree possible. The third one signifies that the redistricting process is non-partisan and acceptable to all major political parties and participants in the process (ibid.). The legal framework should require that electoral units be drawn in such a way that each electoral unit has approximately the same population in order to ensure equal suffrage to the maximum possible degree.

The EC is lacking requirement of establishment of polling unit boundaries (CoE and OSCE/ODIHR 2004 p. 15). Art. 70 governs the composition of the Electoral Zone Boundary Commission, which establishes the boundaries of the 100 single member electoral zones for the Parliament. The Commission involves political parties in the appointment of the additional members. The deadlines in Art. 70 and 75 for establishment of electoral zones do not ensure that zones are established in a timely manner before an election and allow for constituencies to be established shortly before elections (CoE and OSCE/ODIHR 2004 p. 18). This means less opportunity for political parties and candidates to engage in preliminary planning for the election campaign.

3.1.3 Assembly size

As mentioned previously, the electoral system of Albania is considered complex and difficult for a voter or observer to understand as it is using an allocation formula with “composed multi-name lists” and “joint-multi-name-lists” instead of a single list of

candidates presented by a political party or coalition. It is also considered non-transparent and hard to implement (CoE and OSCE/ODIHR 2004 p. 17). Art. 64 to 67 of the Constitution relate to the election of deputies to the Assembly and their mandate term. The Assembly consists of 140 deputies: 100 are elected in single member electoral zones, and 40 in a nation-wide constituency based on party or coalition lists, with a barriers of 2,5% for political parties and 4% for party coalitions. A unique feature of the Constitutional system is that the overall representation compounded both of deputies elected in single member zones and deputies elected on multi name lists, has to be as proportional as possible to the votes cast for each electoral subject: The total number of deputies of a party or a party coalition shall be, to the closest possible extent, proportional to the valid votes won by them on the national scale in the first round of elections³⁵. The way through which such a result is achieved is detailed in the EC art. 67 through the allocation of 40 “compensatory mandates”. In order to have a proportional overall representation, the EC provides for the initial deduction of the number of seats won in single-member zones, from the number of seats allocated to each party or coalition according to the votes received. The Assembly is elected for four years (art. 65), but it is dissolved ahead of time if it cannot agree on electing the President of the Republic, after 5 ballots (art. 87.7); or if it fails to elect a new Prime Minister (art. 96.4).

3.1.4 Electoral time table

Local government elections were held on the 12 October 2003 for councils and mayors in 65 municipalities (including Tirana), 11 municipal sub-units of Tirana and 308 communes. In a number of units they have to be repeated, with the result that the process was not concluded until the 20 February 2004 announcement of final results by the CEC. This eventually led to a decision by the Electoral Collage to re-run elections in one third of the voting centres in the city (OSCE/ODIHR 2004 p. 2). In all, elections were repeated on five different dates – 16 November (in the communes of Dejes and Lure), 7 December (in the communes of Gruemire and Vergo), 28 December 2003 and 25 January 2004 (both times in Tirana). In an overall perspective, however, electoral time table was not an issue, and has never been in Albania (ibid. p. 22).

3.1.5 Franchise

The guarantee of universal and equal suffrage to each adult citizen in terms of active and passive suffrages are levelled by the Constitution as to the age limit: every citizen

³⁵ Thus, the Constitution establishes a type of mixed member proportional representation system that contemplates an overall proportional distribution of mandates (CoE and OSCE/ODIHR 2004 p. 17).

who has reached the age of 18 has the right to vote and to be elected. Active suffrage is granted even to convicts serving a prison sentence and may only be withheld by a final court decision in case of mental incapacity. Passive suffrage is limited in the cases provided by art. 69 of the Constitution (the ineligibility of candidates holding a number of state or public positions) and, for candidates to local government organs, by the requirement to be domiciled in the respective electoral unit provided by the Electoral Code (art. 13 EC).

3.1.6 Voter Registration

The legal framework of voter registration protects the right of qualified citizens to register. It is there to facilitate for a person registering to vote, as normally a person who is not registered cannot legally vote. The final responsibility for the voter registration generally lies with a local or central state authority or the EMB (IDEA 2002 p. 45).³⁶

Voter register has been a major concern during each election in Albania, also during the local government elections in 2003. In virtually every election, opposition political parties have charged ruling parties with manipulating the voter registers to their advantage (OSCE/ODIHR 2004 p. 11).³⁷ During the local government elections in 2003, the DP argued that the voters' list in Tirana had been manipulated with to exclude its voters (which was later denied by the OSCE/ODIHR after a thorough investigation)(ibid. p. 23).

The option of the Albanian system according to the EC is that of a general and permanent electoral register, regularly updated, under the responsibility of the public service (CoE 2004 p. 5).³⁸ Preliminary voter registers must be made public according to the Code to allow for individual voters, political parties and "other interested institutions" to appeal to add or subtract names from the preliminary list. The EC allows political parties, as well as individuals, to petition to have a voter's name included or excluded from the provisional voter lists prepared by LGECs. The final responsibility for approving the preliminary voter registers rest with the LGECs (OSCE/ODIHR 2004a p. 12). Appeals from LGEC decisions on these applications

³⁶ The legal framework may provide that the responsibility to register lies either with the individual – *passive voter registration* where the individual voter has the responsibility to approach the registration authorities to get herself/himself registered – or within the state – *active voter registration* where the state, the EMB or other authorized body sends its official enumerators from house to house to register voters. In some cases the responsibility may be a combination of both active and passive voter registration (IDEA 2002 p. 45).

³⁷ Still, the Venice Commission of the Council of Europe states that the Electoral Code of Albania could be considered very open towards the goal of achieving a good voter list, to the best extent possible (CoE 2004 p. 5).

³⁸ For a register to live up to "regularly updated" in practice, they should reflect the actual population movements, new voters, births and deaths and should be made regularly as opposed to registers that are periodically created anew for each elections (UNDP 2004 p. 12).

are heard by the local district court, which must render a decision within two days. The court's decision is final.

The EC fails already on the first step to set up requirements for verification of the accuracy of voter registers as well as requirements for the establishment and publication of polling unit boundaries and voting centre locations (CoE and OSCE/ODIHR 2004 p. 16). Art 56 of the Code provides that the LGEC organizes the notification of every voter to inform about where he or she is registered to vote (their polling unit allocation) - or, it does not stipulate how (ibid.). Further art 62 of the Code stipulates that voter registers for special institutions must be delivered to the ZEC or LGEC two days before the election, or it is not clear how the register is to be compiled and how to check for double registration in the last two days before the elections – or how any double registrations can be removed (ibid.).

3.1.7 Party and candidate registration

The legislative framework for party and candidate registration provides for the right of all individuals and groups to establish, in full freedom, their own political parties or other political organizations with legal guarantees to enable them to compete with each other on a basis of equitable treatment before the law (IDEA 2002 p. 49). Once registered, each category of political parties is supposed to be treated equitably for the purpose of access to the ballot.³⁹ Similarly, the right of individuals to run as independent or non-affiliated candidates must be protected (ibid.).

According to the Electoral Code, candidates and lists require supporting signatures from between 50 and 300 voters, depending on the size of the municipality or commune, for their nomination to be approved by a LGEC (OSCE/ODIHR 2004a p. 13). There are exemptions for sitting mayors, independent councillors and those parties already represented in parliament or council assemblies. The deadline for registration precedes the start of the official campaign (ibid.).

Article 84 allows for coalition party members to change the order of allocation and re-order the ranking of lists previously submitted to the CEC (CoE and OSCE/ODIHR 2004 p. 20). This is problematic as it means that the principle that a voter is entitled to know the consequences of his/her vote is undermined and also that the vote is not counted for the candidate for whom the voter marks his/her ballot (ibid.).

³⁹ The legal framework should differentiate between the registration of political parties in general and the rules governing ballot access at election time (ibid. p. 49).

3.1.8 Campaign financing and regulation

The legal framework should ensure that each political party and candidate enjoys the right to freedom of expression and freedom of association, and has access to the electorate, and that all stakeholders in the election process have an equal chance of success (IDEA 2002 p. 55). The legal framework should also assure that they are equitably treated by legal provisions governing campaign finances and expenditures (ibid. p. 65).

Article 137 requires that during political airtime for news broadcast, the Public Radio and Televisions Broadcaster must apply an equal time ratio for all parliamentary parties that in the previous parliamentary elections have obtained up to 20 % of the seats in the Parliament. For those parties that have obtained more, the airtime is doubled. This article was interpreted wrong during the elections 2003 giving parties with more than 20 % in the Assembly twice the airtime of all other parties together (CoE and OSCE/ODIHR 2004 p. 22).

Article 145 of the Code only regulates the funding of political parties, but not their campaign spending and financial disclosure in sufficient detail in the Constitution and the Law on Political Parties, which SP and DP have committed themselves to review before the next parliamentary election (ibid.).

Article 154 does not establish a deadline for the distribution of public campaign fund to political parties. Public funding is of little benefit if it is distributed after the electoral campaign (CoE and OSCE/ODIHR 2004 p. 22). Public funding for the campaigns of registered political parties was released only during the third week of the campaign. The delay was caused by the failure of the government to determine and approve the funds for allocation by the CEC well before the start of the campaign (OSCE/ODIHR 2004 p. 14). Many local branches of political parties informed EOM observers that they received no funds at all. Thus, incumbent parties and candidates with private funds had a significant advantage over other candidates. Smaller opposition parties claimed that the delay was deliberate and restricted their opportunity to campaign (ibid.). Several candidates, many of whom were businessmen, funded their own campaigns or relied heavily on private contributions (ibid.). Numerous complaints were received that incumbent candidates used public office to benefit their campaigns. In addition, opposition parties alleged that the SP took full advantage of its control of national government to promote the campaigns of its local candidates. EOM reported several incidents where incumbents appeared to benefit from the advantages of public office. This generally related to the use of buildings and transport and were used to the advantage of both the SP and the DP (ibid.).

3.1.9 Election observation

The legislative framework for election observation provide for the presence of observers, both domestic and foreign, as well as NGOs and public associations, in addition to representatives of the media, political parties and candidates. Their presence tends to bring credibility and legitimacy to the electoral process, being observed and serves to detect overt acts of electoral fraud, especially during the polls (IDEA 2002 p. 89). The law should clearly state the rights to inspect of the observer as well as the “do’s and don’ts” that should be respected and also define how observers can obtain corrective relief when he/she is refused accredit (ibid). Concerning international election observers, as there is yet neither a right nor a recognized international standard providing for that, international and regional agreements are governing this relationship. The legislative framework has to make appropriate provisions for the observers and also state when and by whom such election monitors are to be invited (IDEA 2002 p. 91).⁴⁰

The organization of the registration of election observers during the local government elections in 2003 was steered by the he OSCE/ODIHR Election Observation Mission (EOM), established in response to an invitation form the Ministry of Foreign Affairs (OSCE/ODIHR 2004 p. 1).

The Electoral Code provides the same rights to Albanian observers as to international observers (OSCE/ODIHR 2004 p. 18). Articles 18 and 19 of the Code provide broad rights for observers, including the right to examine electoral material and documentation. The 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 an election administration (CoE and OSCE/ODIHR 2004 p. 16). The Code is contradictory concerning “political party observers” as they are not included in art. 18 or 19, but still suggested in art. 97. The sum of this is that the Code recognizes “political party observers” without specifically stating the rights and duties of them (ibid.). The Code lacks a provision for the deadline on how early requests can be submitted, as well as a provision for the right to attend all meetings of election commissions and observe all election processes (ibid.).

3.1.10 Ballot design

The legal framework should assure that polling stations are available; that there is accurate recording of ballots and that the secrecy of the ballot is guaranteed (IDEA 2002 p. 71).

⁴⁰ The legal framework must contain a provision for representatives nominated by parties and candidates contesting the election the election, to observe all voting processes. The rights and responsibilities of candidate and party representatives in polling stations should also be defined in the framework (see IDEA 2002 p. 83-87)

The provisions in the Code regulating the design of the ballot and the determination of ballot validity were of concern during the elections. Art. 90 states that the ballot consists of two separate sections and that the voter has a vote for each ballot section. The absence of clear regulations on how to separately count the votes on each ballot paper led to serious problems at the counting (see part 3.2.5) (OSCE/ODIHR 2004 p. 7).

An inconsistency in art. 91 and 109 also presented a significant problem concerning the validity of a ballot: Art. 91 states that a failure to sign the ballot by the chairman or the vice chairman of the VCC does not delay the voting process. However, art. 109 states that a ballot is considered “irregular” if any of the required signatures are missing. Thus, although the voter will be given an unsigned ballot, so that the process is not delayed, the ballot will ultimately be determined to be invalid – which is equivalent to denying the voter the right of suffrage (OSCE/ODIHR 2004 p. 7).

3.1.11 Polling stations

4,684 polling stations were set up in Albania with a Voting Centre Commission (VCC) set up in everyone. However, the legislative framework for this is to a great extent lacking as the accuracy of the voter lists is problematic and there has been a failure to establish provisions that require fundamental building blocks like mapping and establishment of polling station areas and voting centre locations (CoE and OSCE/ODIHR 204 p. 15). As a consequence, merging or division of polling station areas created confusion on Election Day when voters were not notified that the voting centre to which they are assigned had been changed. This was furthered also by the intensive internal migration and emigration in combination with a widespread lack of street addresses, in particular in major cities as Tirana, Durrës and Shkodra (OSCE/ODIHR 2004 p. 11).

3.1.12 Voting, counting and tabulating

There are shortcomings of the provisions and procedures for voting, counting and tabulating which are described in detail in the Council of Europe and OSCE/ODIHR report page 22 – 25. In general, the procedures for counting votes established by the EC are unnecessarily complicated and allow too much time for the transfer of results from a voting centre to the relevant LGEC (CoE and OSCE/ODIHR 2004 p. 22).

Further the Code establishes vague and unworkable procedures for the tabulation of votes by LGECs and does not distinguish between preliminary results and final results (OSCE/ODIHR 2004 p. 7). There are no legal requirements for LGECs or the CEC to provide preliminary results, although an early and comprehensive publication of results by voting centres is technically feasible. The

time frame specified for tabulating results and declaring results is lengthy, allowing up to two days after the elections (ibid. p. 21).

The Code also contains unclear provisions regulating vote recounts, as well as many inconsistencies and ambiguities in terms and definitions (ibid.).

3.1.13 Election management bodies

Some countries locate election organization responsibility within a government portfolio like the interior or home affairs ministry, while other situate their responsibility within other institutions of governance, such as the public record office, tax department or even the postal service.⁴¹ The EC normally provides legislation of the structure of the administration of the EMB, for the size, composition and membership tenure of the EMB, as well as for the appointment and removal of members (IDEA 2000 p. 16).⁴² Most election laws allow for the EMB to issue instructions to further clarify issues connected to the election process, as long as it is consistent with the provisions of the existing election legislation. Thus, a balance should be created between the EMB rules and regulations with enough flexibility for it to deal with unforeseen practical problems and the Legislature's role as responsible for the national election legislation (ibid.). The EMB rules and regulations are under the responsibility of the concerned government department (executive), and subject to possible confirmation or veto by the legislature. The EMB in turn, is responsible for its own instructions and directives, which it changes to achieve desired objectives (ibid.).

There is a three-tier level of election administration in Albania: the CEC, 384 LGECs in each of the municipalities or communes, and 4,688 VCCs in each polling station. All commissions consist of seven voting members, plus a secretary without voting rights. Each political party and coalition contesting the elections is entitled to have a non-voting representative attend meetings of all election commissions before elections (that "electoral subjects" appoint representatives to the CEC - art. 154 of the Constitution), while mayoral candidates are allowed similar representation at LGEC and VCC meetings. This created a virtually uncontrollable forum for "non-voting representatives of parties" to attempt to inject chaos and confusion into election administration and obstruction of the political processes during the election process of 2003 (CoE and OSCE/ODIHR 2004 p. 7).

⁴¹ A 2000 review of 148 countries found that 53% had their elections organized by independent electoral commissions; 27% conducted elections under the supervision of an independent electoral authority; and 20% had their elections run exclusively by the executive branch (UNDP 2004 p. 11).

⁴² Most "old" Western European democracies, have developed an administrative model where the responsibility for the management of the elections rests with the central state, with the Ministry of the Interior usually executing that responsibility under the supervision of either a judicial or a multiparty body (Lehoucq 2002 p. 30). Most "new" democracies, however, with exceptions of some Eastern European and francophone African countries, have chosen to remove the responsibility from the executive's control and instead to establish independent election commissions (ibid.).

Art. 30 stipulates that normative acts, registration of the candidates and subjects, declaration of election results and winners, and decisions related to complaints on the declaration of the results are approved when no less than five (out of seven) members of the CEC vote in favour (CoE and OSCE/ODIHR 2004 p. 12). 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 and by all the members that are willing to sign (which during the elections were both representatives from SP and DP).

The provisions of the EC have *de facto* given an extremely dominant role at the SP and DP at every level of the commissions and resulted in an election structure consisting of numerous “electoral security councils”, where SP and DP had the power to veto any decision on a significant issue (CoE and OSCE/ODIHR 2004 p. 9). On September 4, the HCJ appointed Ms. Deshira Subashi as a new member of the CEC, replacing an existing member whose mandate had expired. The SP proposed Subashi, and her nomination gave the party an absolute majority (five out of seven members) in the CEC (FHI 2004). To achieve a politically balanced CEC, a representative of the DP should have been appointed instead. Despite objections by the opposition and calls by the president for a politically balanced CEC, Subashi’s appointment was not withdrawn (ibid.).

Also, art. 30 which permits “when, due to various reasons, the meeting cannot proceed normally, the chairman and deputy chairman have the right to suspend its continuation for up to 24 hours” was subject to abuse as it permitted delay on decisions where the chairman or deputy chairman realized that he or she was going to be on the losing side of a vote on a decision (ibid. p.12).

Another concern is that the Code lacks provisions and standards of certification of election officials, to ensure that qualified individuals are appointed to the commissions on all levels (CoE and OSCE/ODIHR 2004 p. 6). This has resulted in that individuals have been appointed solely on their ability to obstruct and hinder the election processes (ibid.). Concerning the rights and duties of a CEC member, he or she is not permitted, according to art. 23 to abstain due to an actual or apparent conflict in order to maintain the appearance of propriety (CoE and OSCE/ODIHR 2004 p. 11).

Art. 25 concerns the advise of the CEC Chairman of a vacancy in membership. Art. 30 allows the CEC to meet in private to discuss “CEC administration”. This provision is contrary to the general principle of transparency of all election processes as all meetings must be open to the public (CoE and OSCE/ODIHR 2004 p. 12).

3.1.14 Dispute settlement authorities

Electoral legislation should provide for effective mechanisms and remedies for the enforcement of electoral rights, and assure that every voter, candidate and political

party has the right to lodge a complaint with the competent EMB or court when infringement of electoral rights is alleged to have occurred (IDEA 2002 p. 93). The law must provide the right of appeal to an appropriate higher level to review and exercise final jurisdiction in the matter. Further, the decision of the court must be issued promptly. Therefore, the legal framework should provide for timely deadlines but still allowing to flexibility taking into account the level of EMB or court, and the nature of the complaint and the electoral urgency. However, certain types of dispute can only be raised by means of an election petition after the electoral process has concluded (ibid.).

An addition to the new EC was the introduction of a complaints and appeals process for the resolution of electoral disputes. Previous legal framework provided that electoral stakeholders could seek remedies against alleged electoral violations through different legal routes. The new Code established a single, hierarchical, route for decisions of election commissions to be challenged and resolved within clear timeframes (OSCE/ODIHR 2004 p. 6). Decisions of the CEC can be appealed to the Electoral College at the Court of Appeals of Tirana within two days from the date the decision was taken.

Art. 146 through 179 of the EC provide processes to ensure that citizens, candidates and political parties can seek meaningful redress in the event of violation of legal rights (CoE and OSCE/ODIHR 2004 p. 26). However, there are two overarching concerns: The deadlines for taking decisions on complaints and appeals are not realistic; and the EC does not enough specify all procedural provisions that apply to these processes, instead letting the Administrative Code take precedence (CoE and OSCE/ODIHR 2004 p. 26).

3.2 Rule application:

3.2.1 Registration of a) voters, b) candidates and parties

a) Registration of voters. The organization of the registration of voters involves the process of collecting in a standardized format specific information from individual voters, and then collating and distributing this data in a form that can be used at election time, in order to ensure that only eligible voters participate in the process and also to guard against multiple voting, impersonation and the like (UNDP 2004 p. 12).

The method for updating and revising voter lists has long been a problem in Albanian elections (OSCE/ODIHR 2004 p. 6). This time, an agreement was reached in December 2002 at a round table attended by representatives of political parties, that the updating of the 2001 voter registers should continue, although limited

improvement would be possible in advance of the 2003 local government elections. This was considered a transitory provision only, as the civil register should be the sole source for voter registers in the future system, expected to be implemented in time for the 2005 parliamentary elections (OSCE/ODIHR 2004 p. 12). However, finally a decision was taken by the Parliament not to adopt the transitory provisions, which in turn compelled the CEC (the responsible of supervising LGECs and municipal authorities when they revise and implement the registration lists) to bridge the legislative gap with an instruction based on the previous Code and issued while it was still in force, thus the method for updating the lists was in large measure that of the previous Code (ibid. p. 6).

In accordance with the EC (see part 3.1.7 Voter registration) in key contested constituencies such as Tirana, Durres and Shkodra, the DP and SP came up with list of hundreds or thousands of voters that were presented to the LGECs without the documentation required by law (CoE and OSCE/ODIHR 2004 p. 12). The CEC instructed the LGECs to send multi-party verification teams door to door to verify whether the voters actually lived in the constituencies where the parties claimed they lived. This was a time consuming and difficult process of questionable credibility and had the effect that the CEC chose to ignore the deadline for finalizing preliminary voter registers (ibid.). Thus, the rules in Article 57 and 58 of the Code, with the provisions over required documents the voters have to bring when registering, and the personal request of the voter that is necessary for changes to the voters register, were not respected during the revisions and implementation of voter registers (CoE and OSCE/ODIHR 2004 p. 15).

b) The organization of the registration of candidates and parties. Around 1,750 candidates were registered for the 384 mayoral first-past-the-post contests. Thirty-nine political parties, including one coalition, were registered by the CEC to participate in the proportional races for council assemblies, which between them had over 4,516 multi-name lists approved by the separate LGECs (OSCE/ODIHR 2004 p. 13).⁴³ The organization of the registration of candidates and parties generally proceeded smoothly and there was a marked decrease in the number of complaints on decisions of the LGEC comparing to previous years, where the process caused controversy over its often-partisan nature (ibid.). There were fewer complaints regarding refusal by an LGEC to register a candidate or party list to the CEC, and all were addressed in accordance with the law (ibid.).

⁴³ The coalition was composed of the DP, Republican Party and Liberal Union Party (OSCE/ODIHR 2004 p. 13).

3.2.2 Registration of election observers

The organization of the registration of election observers was steered by the OSCE/ODIHR Election Observation Mission (EOM) for the local government elections; in response to an invitation from the Ministry of Foreign Affairs (OSCE/ODIHR 2004 p. 1). The Mission was headed by Ambassador Robert L. Barry (USA), and began work on 10 September 2003 and remained in Albania until 24 October 2003. Twenty-nine election experts and long-term observers from 19 OSCE participating states were deployed in the capital and seven regional centres (ibid. p. 3). The EOM was joined by a delegation from the Council of Europe to form an International Election Observation Mission (IEOM) with a total of 220 observers from 25 OSCE participating States deployed as short-term observers by the OSCE/ODIHR over the Election Day period along with nine observers from the Council of Europe. The international observers visited 1,064 of the 4,684 voting centres in Albania (ibid.).

3.2.3 Voter education

Voter education is aimed at potential voters and focuses largely on the mechanics of Election Day – why to vote, how to vote, where to vote etc. In most countries there are identifiable groups such as the poor, women, indigenous people and others that collectively tend to under-participate as voters and be under-represented as candidates and elected representatives at elections. Education can be targeted directly to these groups, by providing them with information (UNDP 2004 p. 13).

Voter education spots broadcasted on TV encouraged women's participation in voting and the political life before the elections (OSCE/ODIHR 2004 p. 18). Civil society organization played an active role in this. Voter education measures aimed at encouraging minority participation, especially Roma and Egyptians in the elections was inadequate (ibid.).

3.2.4 Electoral organization

The CEC in its overall supervisory role was generally well organized and functioned openly and transparently (OSCE/ODIHR 2004 p. 9). However, the effectiveness of the CEC and the middle and lower level election commissions was significantly compromised by delays in the decision-making process of the CEC, resulting in decisions taken later than deadlines established by the EC. The major factor contributing to this was the manner in which its sessions were conducted (see part 3.1.14 Election management body). The absence of any clearly defined rules of procedure for the CEC permitted indiscipline and endless political discussions. As a

result, a number of crucial procedural instructions were taken too late in the process, for example delaying the production and dissemination of training materials, delaying the adoption of the instruction on the counting of votes until three days before elections etc. (ibid. p. 10).

The organization of election by the LGECs failed to meet the legal deadlines for the revision of voter lists and establishment of voting centres. Also, many of the centres were reluctant to intervene in electoral disputes or rule on alleged violations and tended to refer complaints immediately to the CEC for determination without taking a formal decision. Some LGEC secretaries were openly partisan, and in a small number of cases the LGEC secretary was also a candidate for local office (OSCE/ODIHR 2004 p. 10).

As Election Day approached, a number of LGECs ceased to function because of disputes amongst members along partisan lines. The CEC did not intervene on the assumption that instructions from political party headquarters would resolve them. Often, they were, but in two instances they were not and voting did not take place on Election Day (ibid.)

Many of the members of VCCs were appointed late by LGECs, mostly because of delays in their nomination by the four political parties entitled to representation. In accordance with their rights under the EC, some political parties replaced their nominees after their appointment, which limited the opportunity to provide training for VCC members on their responsibilities. A failure made worse by the late dissemination by the CEC of information packs, which did in most cases not reach the VCC members until the eve of the elections (ibid. p. 11).

Overall, the members of the LGECs and VCCs were not sufficiently knowledgeable of either the EC or CEC instructions and lacked training. Further, many commission members gave precedence to instructions from the political parties which nominated them, rather than to the Code (ibid. p. 11).

3.2.5 Voting, counting, and reporting

Voting was assessed positively in the vast majority (88 per cent) of voting centres visited by international observers (OSCE/ODIHR 2004 p. 19). A number of innovations to improve the electoral process were adopted by the CEC, including more secure ballot boxes. Police acted in conformity with the amended Law on State Police, and stayed away from voting centres during the voting process, which had a positive effect, as there were much fewer allegations of police interference in the electoral process on Election Day than in the past (ibid.). Overall, IEOM observers reported significantly reduced numbers of unauthorized persons inside voting centres (ibid. p. 20).

Voting was delayed or disrupted in a number of voting centres around the country because of the following reasons: the ballot boxes provided were not large enough to accommodate all ballot boxes and insufficient number of ballot papers –

leaving some voters unable to vote (in Tirana), last-minute replacements of VCC members representing the DP (in Durres) (ibid.).

There were significant procedural errors in the counting of votes because of confusion and disputes over the validity of ballot papers in 45 per cent of voting centres observed, resulting in 15 per cent of ballot papers declared invalid (OSCE/ODIHR 2004 p. 20).

Up to as much as in 10 per cent of vote counts observed, reported the falsification of results. In 19 per cent, more ballot papers were found in the ballot box than the number of voters recorded as having voted (ibid.). The counting after the elections was undertaken in a transparent manner being visible to VCC members, party representatives and observers in 97 per cent of the visited voting centres (ibid.). In 40 per cent of the VCCs there were serious problems in the completion of result protocols (ibid.). VCCs often did not know how to deal with ballots on which a vote was validly cast on one ballot section but not on the other. IEOM observers noted that in the voting centres they visited, this contributed to a relatively high proportion (up to 15 %) of ballot papers being declared invalid (OSCE/ODIHR 2004 p. 7). At a late stage in the process, the CEC issued restrictive instructions on what was to be considered a valid vote.

The tabulation of results was generally undertaken in an appropriate manner, with the majority of the LGECs completing their duties within the 48-hour deadline (OSCE/ODIHR 2004 p. 21). However, the announcement of results is subject to delay due to the requirement for a qualified majority decision and the signatures of chairman and deputy chairman on the LGEC protocol to validate results. Tabulation by the Tirana LGEC did not start until 16 October, three days late, and were finally announced by the CEC on 13 November.⁴⁴ A total of 54 requests for recounts of municipality and commune results were submitted to LGECs following the initial approval of tabulated results (ibid.).

The transparency of the electoral process was enhanced by the presence of representatives of political parties and candidates in 83 per cent, and domestic non-partisan observers in 33 per cent, of the voting centres visited by IEOM observers (OSCE/ODIHR 2004 p. 20).

The failure to require that LGEC is responsible for notifying every voter on the voter registers (see part 3.1.7 Voter registration) and their polling unit allocation etc. appears to be one of the problems that lead to the “perception of exclusion” for many voters, as they were not aware in which counting centre they were registered (CoE and OSCE/ODIHR p. 15). On Election Day, problems with the voters’ lists

⁴⁴ The primarily reason for this was political obstructionism by LGEC members who despite their legal obligation to process results quickly, intentionally sought to create disputes in order to delay their tasks. Also the CEC was reluctant to enforce the legal deadlines for the completion of the tabulation process. In Durres, tabulation was completed within the deadline but the result protocol was not approved with the required qualified majority. An appeal was made by the SP to the CEC for a decision to certify the results, as a counter-claim to DP that wanted to invalidate the elections in the city. The Electoral Collage upheld the CEC decision (OSCE/ODIHR 2004 p. 21).

appeared to be extensive as a considerable number of voters were unable to find their names on the registers, especially in Tirana, Durres and Shkodra (OSCE/ODIHR 2004 p. 1).⁴⁵ Election authorities resorted simply to urging voters to find out for themselves where to vote.

3.3 Rule adjudication

3.3.1 Admission of complaints

The new system of complaints and appeals outlined in the EC generally worked well when used (OSCE/ODIHR 2004 p. 16). However, some shortcomings in the legal framework remain.

Decisions of the CEC can be appealed to the Electoral College at the Court of Appeals of Tirana. However, art 147, concerning appeals to the CEC, does not clearly state all the steps to be taken from the moment the appeal reaches the CEC to the moment the CEC takes and/or announces its decision (CoE and OSCE/ODIHR 2004 p. 27). Also, art. 162 does not provide for the right to appeal to voters and other electoral stakeholders who may have a legitimate interest in seeking appellate review, as it is only mentioning “electoral subjects” (ibid.). Article 159, concerning the deadline for the CEC final decision, does not provide sufficient time for due process to all parties and the meaningful protection of legal rights (ibid. p. 27).

3.3.2 Processing of cases

Complaints were generally handled by the CEC in a fair and transparent manner and very few decisions of the CEC were appealed to the newly instituted Electoral College of the Court of Appeals of Tirana (OSCE/ODIHR 2004 p. 16). Despite the large number of complaints and appeals (the CEC received 455 in relation to alleged irregularities on Election Day and during post-election process), the CEC undertook time-consuming preliminary verification procedures of most (ibid. p. 17). However, most of the decisions were postponed and addressed beyond the three-day deadline required by the Code (OSCE/ODIHR 2004 p. 10). The Electoral College adjudicated those that were appealed (around 100 decisions of the CEC in the post-election

⁴⁵ For the 28 December partial re-run elections in Tirana, individual voters were notified of the voting in centre in which they were to vote and use of mobile telephones was banned in voting centres during counting and tabulation (OSCE/ODIHR 2004 p. 9).

period) in an expeditious and efficient manner while maintaining principles of due process (ibid. p. 16).

The concept of filing formal complaints appeared not to have been accepted or understood among political parties and candidates in the pre-election period as they tended to address complaints informally to the international community or straight to the CEC regardless of whether the complaints was within its area of responsibility (OSCE/ODIHR 2004 p. 16).

3.3.3 Publication and implementation of rulings

After the election result was declared, the CEC of Tirana, dominated by DP members, refused to accept the vote count and declared the opposition candidate the winner. The national CEC, however, declared the SP the winning party and the ruling was made with five votes for and two against (FHI 2004). The DP took the CEC decision to the Electoral College, which on December 3 ordered repeat elections in almost one-third of the city's voting centres. It was the first time in Albania's post-Communist history that the judiciary decided against the ruling party in a matter of such political importance.

4 Conclusion

The main issues raised in this paper centered upon whether election management authorities in the Albanian elections of 2003 demonstrated either a lack of independence or lack of non-partisanship. Through the elements of electoral governance established by Schedler, I examined specific cases to illustrate whether the election management did or did not provide for the integrity of the vote.

The dimension of representativity will always be a potential “tool” to undermine the integrity of the vote. Schedler mentions two ways of doing this, which both completely undermine the integrity of elections, thereby calling into question the logic of political equality through representativity: redistributive election management (electoral fraud) and redistributive electoral rules (institutional bias)(Schedler 2002a p. 39). Vote fraud can be very complicated, shadowy and slippery to discover.

The Council of Europe also write that it must be recognized that no formal or technical solution for the formation of election commissions can be a remedy for lack of political will on behalf of the major election stakeholders (CoE and OSCE/ODIHR 2004 p. 6). The new framework can guarantee an inclusive, transparent and independent electoral process only in the presence of sufficient political will to respect the popular vote and the law.

The misuse of veto power in the absence of sufficient political will on both sides to respect the popular vote and the law, proved to be a major problem in the elections of 2003. These requirements lead to deadlock in CEC decision-making on several occasions during the elections. The 5-2 voting requirement permits a “militant” commission member to block the electoral process and bring democratic processes to a complete halt, placing in limbo the suffrage rights of voters (*ibid.*). Delaying the vote permits the losing side to apply pressure through other means and disrupts attempts to observe decision-making of the CEC. Democratic legitimacy of the governance, is a crucial part of a political system based on a liberal democracy that entails integral substantive rights and freedoms, because the lower legitimacy of the citizens for the system, the closer we get to the point where the only forcible means available to make people abide by the law is the threat of state violence (Hinnfors and Oskarson 2004 p. 13).

4.1 Cases where the management of election demonstrated a lack of non-partisanship due to political reasons

The Albanian election commission is independent according to the Constitution, but has chosen a party-oriented formula for the composition of its members. If provisions require that EMB membership must include party representatives or judges, who are

ultimately appointed by the incumbent party, it will obviously impact on the independence and the impartiality of the EMB. Art. 22 of the EC gave *de facto* full control of the nominating procedures for the seven appointees to political parties in accordance with parliamentary representation. Legal experts of Albania considered this contrary to the Constitution art. 154, in the excessive restriction they impose on the prerogative of the three appointing bodies. However, an investigation of the issue from a technical point of view, made by the Council of Europe, concluded that the EC procedures for the appointment of CEC members in art. 22 appear reasonable and a balanced implementation of Constitution. There was in fact not reason why they should be considered as infringing it (CoE 2003 p. 5). The reason for this is that “impartiality” of an EMB can be achieved both through the appointment of impartial members or through a balance of politically representative members. In the latter case, the impartiality of the body will be the result of the balance of different political positions (CoE 2004 p. 5). CoE states, “...A party-oriented formula for the composition of electoral commissions may be a solution available, but the examiner must apply particular scrutiny to its actual consequences. The views of any opposition forces, if available, can obviously help to identify the practical consequences and weaknesses of a particular arrangement” (ibid. p. 6).

The CEC has not managed to keep the impartiality even within its own structures: This *institutional bias* might seem small, but implies in fact a breach of the integrity of the election results on an aggregated level, as these self-serving rules of representation grants the two biggest parties a decisive edge in the commission, for the following seven years (Schedler 2002a p. 45). The provisions in the Electoral Code regulating the appointment of the members of the commission have been of concern: The small parties claim that the independence of the commission would be lost through appointment procedures which give the political parties, in practice - the ruling party and the biggest opposition party, a bigger opportunity than other parties, to get their candidates elected to the commission. This reduces the number of political parties represented on the commission.

Qualified majority voting requirements in election commissions are not per se problematic. However, this has proved to be an unworkable solution for Albania (CoE and OSCE/ODIHR 2004 p. 9). The provisions of the EC have *de facto* given an extremely dominant role at the SP and DP at every level of the commissions and resulted in an election structure consisting of numerous “electoral security councils”, where SP and DP had the power to veto any decision on a significant issue (CoE and OSCE/ODIHR 2004 p. 9).

If a party-oriented formula is chosen, the legal framework should assure that the appointment procedures of EMB members are impartial and that the appointed members should disclose any conflict of interest, in advance (IDEA 2000 p. 23). Abuse of the membership of the CEC delays were made on decisions where the chairman or deputy chairman realized that he or she was going to be on the losing side of a vote on a decision. Some LGEC secretaries were openly partisan, and in a small number of cases the LGEC secretary was also a candidate for local office. As

Election Day approached, a number of LGECs ceased to function because of disputes amongst members along partisan lines. The CEC did not intervene on the assumption that instructions from political party headquarters would resolve them. Often, they were, but in two instances they were not and voting did not take place on Election Day.

The rules in Article 57 and 58 of the Code, with the provisions over required documents the voters have to bring when registering, and the personal request of the voter that is necessary for changes to the voters register, were not respected during the revisions and implementation of voter registers (CoE and OSCE/ODIHR 2004 p. 15). In the 2003 elections, up to 10 per cent of vote counts observed reported the falsification of results. In 19 per cent, more ballot papers were found in the ballot box than the number of voters recorded as having voted.

4.2 Cases where the management of election demonstrated a lack of non-partisanship due to technicalities

If the legal framework adopts a party-oriented formula, then it should address how and when changes in commission membership should occur when there are changes in the strength and membership of parties or changes to the EC. The new EC in Albania does not do this, which was used by the SP and DP in order to get rid of the “old” members of the CEC and replace them with their own candidates, through the new law.

The Venice Commission of the Council of Europe states that from a technical point of view, the EC of Albania could be considered very open towards the goal of achieving a good voter list, to the best possible extent (CoE 2004 p. 5). In virtually every election, however, opposition parties have charged ruling parties with manipulating the voter registers to their advantage. This was several times the case during the local government elections in Albania 2003. For example, the DP argued that the voters’ lists in Tirana had been manipulated with to exclude its voters. However, this was later denied by the OSCE/ODIHR after a thorough investigation.

Article 137 requires that during political airtime for news broadcast, the Public Radio and Televisions Broadcaster must apply an equal time ratio for all parliamentary parties that in the previous parliamentary elections have obtained up to 20 % of the seats in the Parliament. For those parties that have obtained more, the airtime is doubled. This article was interpreted wrong during the elections 2003 giving parties with more than 20 % in the Assembly twice the airtime of all other parties together (CoE and OSCE/ODIHR 2004 p. 22).

Each political party and coalition contesting the elections is entitled to have a non-voting representative attend meetings of all election commissions before elections (that “electoral subjects” appoint representatives to the CEC - art. 154 of the Constitution), while mayoral candidates are allowed similar representation at LGEC and VCC meetings. This created a virtually uncontrollable forum for “non-voting

representatives of parties” to attempt to inject chaos and confusion into election administration and obstruction of the political processes during the election process of 2003(CoE and OSCE/ODIHR 2004 p. 7).

5 Bibliography

- ACE Project - Administration and Cost of Elections Project (2003)
<http://www.aceproject.org/>
- Barkin, Samuel, J and Bruce, Cronin (1994) “The state and the nation: changing norms and the rules of sovereignty in international relations”, *International Organizations*, vol. 48, no. 1, winter, p. 107-30.
- Beetham, David (1991) *The Legitimation of Power*. Basingstoke: Macmillan.
- Boussard, Caroline (2003) *Crafting Democracy. Civil Society in Post-Transition Honduras*. Lund: Department of Political Science Lund University.
- Bowler, Shaun, Carter Elisabeth and Farrell, M. David (2001) “Studying Electoral Institutions and their Consequences: Electoral Systems and Electoral Laws”, *Centre for the Study of Democracy University of California Irvin*,
<http://repositories.cdlib.org/csd/01-05>, or www.democ.uci.edu, 2004-11-19.
- Carothers, Thomas (2002) “The End of the Transition Paradigm”, *Journal of Democracy*, vol. 13, no. 1, January: 5-21.
- Collier, David and Robert, Adcock (1999) “Democracy and Dichotomies: A Pragmatic Approach to Choices about Concepts”, *Annual Review of Political Science*, vol. 2, p. 537-65.
- Council of Europe, European Commission for Democracy through Law (Venice Commission): www.venice.coe.int
- Council of Europe (Venice Commission) and the OSCE/ODIHR (2004) “[Joint Recommendation on the Electoral Law and the Electoral Administration in Albania](#)”,
[http://www.venice.coe.int/docs/2004/CDL-AD\(2004\)017-e.asp](http://www.venice.coe.int/docs/2004/CDL-AD(2004)017-e.asp), 2004-11-22.
- Council of Europe (Venice Commission) (2004) “The Constitution and the Electoral Process in Albania”, *paper from international conference in Tirana, 26-27 November*, [http://www.venice.coe.int/docs/2004/CDL-JU\(2004\)037-e.asp](http://www.venice.coe.int/docs/2004/CDL-JU(2004)037-e.asp), 2004-11-22.
- Dahl, Robert (1989) chapter 15 in *Democracy and Its Critics*. New Haven: Yale University Press.

- Diamond, Larry (2002) "Elections Without Democracy: Thinking About Hybrid Regimes", *Journal of Democracy*, vol.13, no. 2, April: 21-35.
- Easton, David (1979) *A Framework for Political Analysis*. Chicago, 1979.
- Elklit, Jorgen and Reynolds, Andrew (2000) "The Impact of Election Administration on the Legitimacy of Emerging Democracies: A New Research Agenda", *working paper*, no. 281, September.
- Freedom House Index (FHI)(2004) "Nations in Transit 2004. Albania", *Nations in Transit*: <http://www.freedomhouse.org/>
- Finnemore, Martha and Sikkink, Kathryn (2001) "Taking Stock: The Constructivist Research Program in International Relations and Comparative Politics", *Annual Review of Political Science*, vol. 4 p. 391-416.
- Hinnfors, Jonas and Oskarson, Maria (2004) "Introduktion till studiet av utländska politiska system" s. 13-14 in Lindahl, Rutger (ed.). *Utländska Politiska System*. Stockholm: SNS Förlag.
- Huntington, S.P. (1991) *The Third Wave: Democratization in the Late Twentieth Century*. Norman, OK: University of Oklahoma Press.
- IDEA – International Institution for Democracy and Election Assistance (2002) *Guidelines for reviewing the legal framework of elections*, Guidelines series: http://www.idea.int/publications/pub_electoral_main.html, 2004-11-22.
- Lehoucq, Fabrice, E. (2002) "Can Parties Police Themselves? Electoral Governance and Democratization", *International Political Science Review*, vol. 23, no. 1, p. 29-46.
- Lindberg, Staffan, I (2004) "The Democraticness of Multiparty Elections in Africa: Participation, Competition, and Legitimacy", forthcoming, *Journal of Commonwealth and Comparative Studies*.
- Jaho, Niazi (2003) "Electoral Code 2003 (Critical Overview)", *paper by legal adviser of the Albanian Helsinki Committee*.
- Krastev, Ivan (2002) "The Balkans: Democracy without choices" *Journal of Democracy*, vol. 13, no. 3, July: 39-53.
- Lipset, Seymour Martin (1959) "Some Social Requisites of Democracy: Economic Development and Political Legitimacy", *American Political Sciences Review*, vol. LII, no. 1, p. 69-105.
- Magnusson, Bruce. A () chapter 6 "Transnational Flows, Legitimacy, and Syncretic Democracy in Benin" in Tilley (ed.). *Institutional Development and Democratic Legitimacy*.
- Mozaffar, Shaheen and Schedler, Andreas (2002) "The Comparative Study of Electoral Governance – Introduction", *International Political Science Review*, vol. 23, no. 1, 5-27.
- Munck, Gerardo L. (2001) "The Regime Question. Theory Building in Democracy Studies", *World Politics*, vol. 54, October: 119-44.
- O'Donnell, Guillermo (1996) "Illusions About Consolidation", *Journal of Democracy* vol. 7, no. 2. p. 34-51.
- OSCE/ODIHR (2004) "Republic of Albania. Local Government Elections 12 October 2003 – 25 January 2004", *OSCE/ODIHR Election Observation Mission Report*, Warsaw, 25 February 2004.

OSCE/ODIHR: The Organization for Security and Cooperation in Europe and the Office for Democratic Institutions and Human Rights: www.osce.org

Reynolds, Andrew and Sisk, Timothy, D. (1999) *Elections and Conflict managing in Africa*. Washington D.C: United States Institute of Peace Press

Schedler, Andreas (2002) "Elections without Democracy: The Menu of Manipulation", *Journal of Democracy*, vol.13, no. 2, April: 36-51.

Sartori, Giovanni (1997) *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes*. (Second edition) London: Macmillan.

SAA Report, Commission of the European Communities (2004) Albania Stabilization and Association Report 2004, *Commission Staff Working Paper*.

UNDP – United Nations Development Programme (2004) *Electoral Systems and Practices*. UNDP Practice Note, 2004.