

# The integrity of elections in Albania as a duality between the law and their administration.

Electoral management body in the circle of cause – effect for elections performance

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## Abstract

It is important to note that at the end of the election process there is a question laying before to all stakeholders: Did these elections meet the international standards of electoral integrity? Countries around the world have a challenge in common. They are challenged to meet international standards of electoral integrity. There are no standards met in elections if the main stakeholders fail to be successful in their commitments or fail to commit themselves in meeting their responsibilities. Especially if the body which is in charge of administering the election process, such as the Central Election Commission, faces challenges to act in full “engine”, the probability to fail is higher.

Albania held in June 2013, general political elections under the new proportional – closed list system, being implemented for the second time following June 2009 elections. The Central Election Commission was reformulated following extensive amendments to the Electoral Code.

Was this Body capable to keep in consideration the constitutional right/universal right of people to vote periodically in order to elect their representatives freely, without interference?

What is important to note, is that despite challenges, the body in charge of the administration of the voting process showed integrity and willingness to respect the law and universal suffrage rights, answering to the key question: Did these elections met the international standards of electoral integrity?

**Keywords:** elections; stakeholders; decision-making; electoral process; electoral procedure; central case approach

## Theoretical Framework

Most of the stakeholders/institution that influence the electoral process are the political parties. The formal electoral rules are grouped in three divisions such as constitutional structure, electoral system and electoral procedure,<sup>1</sup> Norris 2004. This subgroup, the last, deals with a set of rules, codes, guides, distribution of voting centers, voting documentation, drafting of the ballot, the counting process, regulations on political party financing and media coverage. Recently scholars, analysts, politicians and academics are focused on a new emerging subfield of electoral process, which is The Electoral Integrity.

The intellectual and methodological foundations for understanding electoral integrity are starting to crystallize, although studies remain somewhat fragmented and scattered across several distinct subfields<sup>2</sup>.

There is no standardized definition of 'Electoral integrity'. It is perceived to refer to "agreed international conventions and global norms, applying universally to all countries worldwide throughout the electoral cycle, including during the pre-electoral period, the campaign, on polling day, and its aftermath. Conversely, electoral 'malpractice' is used to refer to first and second-order violations of these global norms"<sup>3</sup>.

This concept emphasizes four distinct features:

- (i) global norms are grounded in multilateral agreements, international conventions, treaties and international laws (rather than the principles of liberal democracy);
- (ii) a distinction between first and second-order malpractices, according to the severity of their potential consequences;
- (iii) shared standards applying universally to all countries and types of regimes; and
- (iv) the notion of an electoral cycle, where a range of electoral malpractices occur at any stage in a sequential process<sup>4</sup>, Norris 2013.

The cycle involves all stages in the process of elections: "from the design and drafting of legislation, the recruitment and training of electoral staff, electoral planning, voter registration, the registration of political parties, the nomination of parties and candidates, the electoral campaign, polling, counting, the tabulation of results, the declaration of results, the resolution of electoral disputes, reporting, auditing and archiving"<sup>5</sup>.

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<sup>1</sup> Electoral Engineering: Voting Rules and Political Behavior, Pippa Norris, Cambridge University Press, Feb 9, 2004

<sup>2</sup> Concept of Electoral Integrity Revised 10 May 2013, Pippa Norris, pg. 3

<sup>3</sup> The Concept of Electoral Integrity Revised 10 May 2013, Pippa Norris, pg. 4

<sup>4</sup> Concept of Electoral Integrity Revised 10 May 2013, Pippa Norris, Pg. 4-5

<sup>5</sup> Concept of Electoral Integrity Revised 10 May 2013, Pippa Norris

In this cycle a crucial role is played by Electoral Management Body (EMB). These bodies have a crucial role at stake in order to preserve the electoral integrity. Whereas a UNDP financed project indicates that EMB in recent years have been classified in different countries according to differing criteria. One is their recruitment. EMBs are said to follow a “governmental approach” when elections are run by regular civil servants; a “judicial approach” when judges are selected to administer elections; a “multi-party approach” when party representatives compose the electoral body; or an “expert approach”, when political parties designate by consensus a group of experienced individuals renowned for their independence (Garber, 1994; Harris, 1997)<sup>6</sup>. The last is the approach applied in Albania. In this paper we will focus on this step, and how EMB co-opt is explained further.

### **Electoral Management Body & Albanian Elections**

The electoral management bodies (EMB) are the one having the legitimacy to enforce rules and assure fairness with the cooperation of political parties and citizens since the electoral systems are the primary vehicle for choice and representational governance.

The elections of June 2013 in Albania were held in a challenged environment, but at the end it proved to be successful because the EMB acted in a professional manner and with integrity. The key to this success was a well balanced behavior from EMB towards key stakeholders involved in the process. Central Election Commission, the electoral management body, which worked in a challenging environment managed to conduct successful elections. Legal regulations of the Elections in Albania & Elections Management approach were the definition for successful elections which were appraised by international observers. The “expert approach” proved to be successful besides political rhetoric to gain influence in CEC.

What was the key for this highest ranking evaluation?

To answer to this question we shall see the role that every actor played. On one hand we have the changes in election law which had its improvements (Formal electoral rules), on the other hand the Central Election Commission role in this process. *The transparency by maintaining positive relations with observers, NGO-s, mass media, public on one hand; and on the other side transparency with political parties as well as international community.* In previous elections although CEC (Albanian Central Election Commission) was the epicenter of the attacks and disbeliefs from the political parties (mainly of that in opposition) the end result was refusal from the losers to recognize final counting outcome. These deepened the reliance on CEC and made the electoral commission’s work seemed as biased, despite its professionalism and commitment to conduct free and fair elections.

<sup>6</sup> Electoral Management Bodies as Institutions of Governance paper, *Professor Rafael López-Pintor*, UNDP Edition, Page 20

The 23 June parliamentary elections were widely viewed as an important test for Albania's democratic development and its aspirations towards European Union accession<sup>7</sup>. Along its professional conduct and management of the elections, another positive introduction was the changes on the election law. The political environment inherited in these elections had been tense since the last parliamentary elections in 2009 that resulted in near equal representation of the two main coalitions.

The Central Election Commission is the highest permanent state body charged with the administration of elections in accordance with the rules defined in the Electoral Code. It has seven members, all appointed by parliament. Three members are nominated by the parliamentary majority and three members by the opposition. CEC members serve six-year terms, while the chairperson is appointed for a four-year term following an open recruitment process<sup>8</sup>. This composition and recruitment process establishes de facto "*an expert approach*" for EMB functioning. In the Electoral Code of Albania all members under oath are obliged to respect the law and shall maintain impartiality<sup>9</sup>. Two members of the CEC were women, including the chairperson. After the ensuing resignation of the three opposition-nominated CEC members in mid-April following the SMI-nominated member's dismissal, CEC operated with only four members<sup>10</sup>. Parliament and political parties failed to find a solution to resolve the situation, which challenged the administration of the entire electoral process and the ability of the CEC to fully exercise its authority over its subordinate bodies.

Some of the CEC competences are issuance of decisions and instructions with the general legal applicability throughout the entire territory of the Republic of Albania, based on the law and for the purpose of implementing it, within its sphere of jurisdiction. Makes decisions to unify electoral practices, approves the boundaries of Electoral Administration Zones, etc. Some of the decisions are forced to be taken with a qualified majority such as allocation and assigning of seats, organizational structure, acceptance of a complaint against a decision on the approval of an aggregate table of election result of a constituency zone, normative acts, etc<sup>11</sup>.

The technical preparations for the elections were assessed to be adequate, facilitating the elections outcome<sup>12</sup>. CEC standing in between political rhetoric from both sides, maintained its tranquility by establishing a "*central case approach*". Looking the electoral situation and the recognition of the existence of certain universal rights, for

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<sup>7</sup> Albania, Parliamentary Elections, 23 June 2013: Final Report OSCE/ ODHIR

<sup>8</sup> Articles 14 and 15 of Law No. 10 019, dated 29 December 2008, and amended by Law No. 74/2012, dated 19 July 2012 "The Electoral Code of The Republic of Albania".

<sup>9</sup> Par. 4, Article 13 of Law No. 10 019, dated 29 December 2008, and amended by Law No. 74/2012, dated 19 July 2012 "The Electoral Code of The Republic of Albania".

<sup>10</sup> Albania, Parliamentary Elections, 23 June 2013: Final Report OSCE/ ODHIR

<sup>11</sup> Albania, Parliamentary Elections, 23 June 2013: Final Report OSCE/ ODHIR

<sup>12</sup> Albania, Parliamentary Elections, 23 June 2013: Final Report OSCE/ ODHIR

the people to express their free will in electing their representatives and government, CEC constructed a situation in which the people/voters will, shall be read as it is. By minimizing the influence of the political parties to the maximum extent as possible, CEC argued to have at stake people's will by reading it properly. It constructed a situation in which those rights are applied, a standard to provide a clear reading of voters rights and their will despite legal challenges happening in a highly rhetoric environment.

There is a hierarchy of conceptualizations, from the specific practical administrative guidelines used by electoral management bodies to abstract philosophical ideals. But global norms of electoral integrity are not necessarily deeply rooted in idealized and abstract democratic theories, nor can they be reduced to these principles<sup>13</sup> (Norris 2013).

### **Optimization of the Law**

Albania has a 140-member unicameral Assembly (parliament) which is elected for a four-year term under a regional proportional system within 12 electoral districts that correspond to the country's administrative regions or counties. Political parties, coalitions and independent candidates could contest the elections, with closed candidate lists submitted by parties for each district. Parties that receive at least three per cent and coalitions that receive at least five per cent of valid votes in a district qualify for seat allocation.

The legal framework provides a sound basis for the conduct of democratic elections<sup>14</sup>. The elections were regulated by a comprehensive legal framework, primarily consisting of the Constitution, most recently amended in 2008, and the 2008 Electoral Code, amended in 2012.

The Constitution guarantees the fundamental rights and freedoms thus creating the necessary basis for democratic elections<sup>15</sup>. Other relevant legislation includes the Law on Political Parties, the Law on Demonstrations, and the Criminal Code. The Administrative Procedures Code and Civil Procedures Code are applicable to proceedings of election commissions and courts, respectively. The Law on Gender Equality in Society includes provisions on ensuring equal gender representation in election administration bodies and parliament. The legislation is supplemented by regulations and decisions adopted by the CEC and the MoI.

The changes on the law reflected previous suggestions from OSCE-ODHIR addressing key issues which also enhanced the overall outcome of the results, following a

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<sup>13</sup> The Concept of Electoral Integrity Revised 10 May 2013, Pippa Norris, pg. 15

<sup>14</sup> Albania, Parliamentary Elections, 23 June 2013: Final Report OSCE/ ODHIR

<sup>15</sup> Law No. 8417, dated 21.10.1998 Constitution of Albania, amended by Law No. 9675, dated 13.1.2007, Law No. 9904, dated 21.4.2008, and Law No. 88/2012 (dated 18.09.2012), Art. 1, Art. 45,

broadly inclusive consultation process. The electoral code was extensively and substantively amended in 2012 and supported by major political parties. The changes improved the electoral overall framework which was primarily informed by previous recommendations of the OSCE-ODHIR and the Council of Europe's Commission for Democracy through Law (Venice Commission). The amendments addressed a number of the recommendations, such as key revisions to the selection process for election commissioners, a revised process for voter list compilation, a simplified process for candidate registration, and more equitable access to media and public campaign funds. A new requirement for the automatic removal of voters over 100 years old from voter lists was also included. In line with OSCE commitments, the law provides for the right of independent candidates to stand for election. All these mechanism improved the CEC performance, as EMB, even in "bad weather".

### **Information & Transparency**

During 2013 elections there were several improvements towards public transparency providing official information to the public on real time basis. These were the first elections in which the information and final results trend was clearer and faster. The general elections in 2013 and sporadic early local elections held by the end of the year, were a milestone for the improvement of elections results information processing. The information was processed and broadcasted on real time basis to Information datacenter in CEC HQ and also to the mass media. Following general elections of June 2013, CEC elaborated further the advantages of assisting technologies. There were two pilot projects which were deployed in Korca Municipality and Karbunara Commune earlier elections held on November 3-rd, 2013. The first project receiving the information on voters' participation directly from Polling Stations and broadcasting it live.

CEC established rules of procedure for the implementation of this project. Data Entry Operators at CEC Operational Hall were assigned to contact by phone each PS (Polling Station) secretary in order to receive Voters Turnout information every three hours at the moment station is opened. The information received included voters gender, and real time information was transmitted dynamically through spokesperson and CEC website. At the end of voting process according to information received during the day voters turnout was in Korçë Municipality and Karbunar Commune respectively 30,92% and 51,14% from 29,86% and 51,36%, which were cornfirmed later upon submission of the official documents. Voters turnout classified in gender female and male was respectively for Korçë Municipality 47,66% and 52,34% and in Karbunarë Commune 44,50% and 55,50% of those who partecipated in the elections.

The second project scope was to broadcast live in the Media Center and CEC website, the evaluation, counting and tabulation of ballots from each counting table in every

counting centers. In Albania there is a camera system installed by CEC in each counting table which enables the counting process being displayed in a screen monitor. In the previous elections CEC enabled camera interconnectivity of Counting Centers with CEC media Center, but in these early elections on November 2013 in Korçë and Karbunarë, was enabled the broadcasting throughout the entire counting process in all six counting tables in Korça and two counting tables in Karbunar. In this way whomever was interested was able to check from his/her own PC the evaluation and counting process even for a selected counting table. This was a further step in increasing the transparency for the evaluation and counting of ballot papers.

### Overview of legal concepts

In this section there are different legal/concepts definitions from recognized authors, whose definitions are embraced from most of scholars/researchers, and give a clear view of the entire electoral cycle.

Birch,<sup>16</sup> emphasized that more technical and subtle forms of malpractice, through the strategic manipulation of the legal framework governing elections, occur well in advance of polling day, and these may also be the least visible to observers. This can include (Norris 2013) designing overly restrictive or cumbersome nomination requirements for gaining ballot access, patronage appointments eroding the independence of broadcasting regulatory bodies and the management of state-controlled television channels, the partisan gerrymandering of constituency boundaries to favor incumbents, or the passage of restrictive voter registration laws, discouraging turnout<sup>17</sup>.

According to Pippa Norris “Several disciplines offer alternative approaches to conceptualizing the idea of electoral integrity and identifying a framework of normative standards, including those based more narrowly on domestic laws, administrative criteria, and democratic values. Each has certain important limitations, however, making them less suitable for comparative studies than a more comprehensive overarching framework derived from global norms”.

### Legal conceptions of electoral fraud

Perhaps the most common legalistic approach to integrity has focused upon electoral ‘*fraud*’, implying illegal acts, especially those associated with the final act of casting and counting ballots (Young 2009, Donsanto 2008, Alvarez, Hall and Hyde 2008, Minnite 2010, Vickery and Shein 2012)<sup>18</sup>.

<sup>16</sup> Electoral reform BP 05/11, Sarah Birch, I.DCR, 2012

<sup>17</sup> The Concept of Electoral Integrity Revised 10 May 2013, Pippa Norris

<sup>18</sup> The Concept of Electoral Integrity Revised 10 May 2013, Pippa Norris



## **Electoral maladministration**

This is a term conventionally referring to more routine flaws and unintended mishaps by election officials, although there are no internationally agreed standards of maladministration. These problems can arise from managerial failures, inefficiency, and incompetence, and lack of bureaucratic capacity, exemplified by the existence of excessively long lines at polling stations, inaccurate or dated electoral registers, the lack of security ink, the insufficient provision of ballot papers, the misplacement of ballot boxes, the breakdown or technical inaccuracy of electronic voting machines, or mathematical errors during the vote count<sup>19</sup>.

The concept of maladministration also assigns primary responsibility for any problems with electoral officials, rather than other actors, such as the leaders of political parties or community groups who use heightened rhetoric and claims of fraud triggering electoral violence, etc. private corporations which bribe politicians or provide one-sided TV broadcasts, or repressive acts conducted by the security forces<sup>20</sup>.

Equally importantly, perhaps, there are no internationally-agreed standards of 'maladministration' which would allow the quality of elections to be benchmarked, compared and evaluated. Thus while some Election Management Bodies prefer paper ballots, on the grounds of efficiency, transparency, and security, others opt for electronic voting machines, advancing the same reasons (IDEA 2006). Some studies assume that the independence of Election Management Bodies from executive agencies is important for their impartiality (IDEA 2006), while others suggest that pluralistic partisan composition can prove equally effective (Birch 2011). There is no universal performance standard used as international instrument<sup>21</sup>.

## **Democratic values and principles**

Elections which fail to reflect the values of transparency, inclusiveness and participation can be seen as lacking integrity. The most ambitious approach has been proposed by Birch (2011), who defines electoral malpractices as the manipulation of electoral processes and outcomes so that personal or partisan benefits are substituted for the public interest. Birch develops a comprehensive theoretical framework which proposes that elections meet democratic principles where they are inclusive, facilitating policy-directed voting, and allowing effective aggregation<sup>22</sup>.

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<sup>19</sup> The Concept of Electoral Integrity Revised 10 May 2013, Pippa Norris

<sup>20</sup> The Concept of Electoral Integrity Revised 10 May 2013, Pippa Norris

<sup>21</sup> The Concept of Electoral Integrity Revised 10 May 2013, Pippa Norris

<sup>22</sup> The Concept of Electoral Integrity Revised 10 May 2013, Pippa Norris



## Conclusions

Positive achievements: The positive side of these elections was the fact that suffrage was conducted in a calm environment because of the transparency of EMB and non interference practices by central government. The entire process, although initially draw the attention of the international community because of highly rhetoric environment, was considered to be in compliance with OSCE commitments and other international standards for democratic elections as well as national legislation. The OSCE concluded that “The 23 June elections were competitive with active citizen participation throughout the campaign and genuine respect for fundamental freedoms”. In this way considering the above elements, in general spectrum, as well as based on the above definition of electoral integrity, Albania met electoral integrity standards, despite some negative elements noted in the elections. Indeed further research shall be focused on scattered elements of this subfield, in order to measure how much impact has certain elements on the general output (i.e. malpractice, etc)

Negative results: In these elections were observed several negative effects such as political influence on several process mechanisms. The behavior of the political parties against EMB, made this body in charge of the administration of the elections to refer to international legal norms, and put into a challenge this institution by accusing it for political motivated decisions. Although the decision-making process was transparent and information was accessible, reliable and on real time basis, some international observers noted down that EMB in few cases was not in compliance with the electoral code and/or was politically motivated.

## Recommendations

The Electoral Code shall be amended to these dispositions where it is affected “the expert approach” in order to maintain the impartiality of EMB commissioners from political interference or partisan attitude. The new dispositions shall give to CEC more authority in order to prevent or take actions against malpractice from political parties, by requesting tools to prevent strategic manipulation of the legal framework from political parties. The changes shall produce a legal framework to enforce EMB to all political stakeholders and maintain to the minimum extend the strategic malpractice of political parties.

At the end the election cycle shall be deemed as a game where all players build their strategies, including malpractice, and a third component “the referee” shall judge and act where the standards are compromised.

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