

Constitution Watch

A country-by-country update on constitutional politics in Eastern Europe and the ex-USSR

Albania Preparations for the October 2000 local elections dominated the Albanian political scene during the past few months. The international community has stressed repeatedly the importance of holding free and fair polls as a prerequisite for Albania's further integration into European structures. The last local elections, in October 1996, took place in a highly charged atmosphere. Coming on the heels of parliamentary elections (held May 26, 1996), the local ballot—which the then-ruling Democratic Party (DP) won by a large majority—was widely criticized for severe irregularities. (See Albania Update, *EECR*, Vol. 5, No. 4, Fall 1996.) Although circumstances have changed dramatically since then, and political passions have dissipated, friction still exists between the two main political camps, the ruling Socialist Party (SP) and DP, the largest opposition party.

The simmering hostility between these two parties became evident when parliament (the Kuvend) attempted to reach an agreement on a new electoral code. Since the beginning of March, five representatives of the governing coalition, five representatives of the opposition (including two from DP), and international experts from the Council of Europe, the OSCE, and the International Federation of Electoral Systems convened for daily meetings at OSCE offices. The meetings, which were fraught with tensions, lasted a month. Without the intervention of the international community, the drafting and approval of the electoral code would have dragged on even longer.

Among the issues surrounding the forthcoming elections, the composition of the Central Electoral Commission (CEC) was a particular object of contention. According to Art. 153 of the Constitution, the CEC is a “permanent organ that prepares, supervises, directs, and verifies all aspects that have to do with elections and referenda and announces their results.” Article 154 defines the commission's makeup, which consists of seven members elected for seven-year terms; two members are elected by parliament, two by the president, and three by the High Council of Justice. Controversy erupted when the president, parliament, and the High Council of Justice named their CEC members (parliament naming one, with the other to be designated by the opposition), even though legislative work on the law regulating the commission's activities

was still unfinished. DP and other opposition parties denounced the appointments as unconstitutional. Opposition leaders insisted that the parliament, president, and High Council should have considered nominations for CEC members made by all political parties as well as by representatives of civic organizations before making their decisions. The opposition sought to gain equal representation both in the CEC (one possible arrangement would have allowed for three members of the ruling coalition, three from the opposition, and a neutral chairman) and in lower-level electoral commissions, which actually have more power since they are responsible for tallying votes. As DP stressed, a compromise would have been consistent with recent precedents in Albanian politics; the Law on Local Elections (1996) and the amendments to the electoral code (1997) provided for parity in the composition of electoral commissions. The leaders of the ruling coalition pointed out, however, that past compromises were forged in emergency situations, and that the time had come to turn the CEC from a “political body,” dominated by politicians, into a permanent, nonpolitical organ staffed by experts. As the controversy intensified, two of the newly appointed CEC members resigned (one from the president's quota and one from the High Council of Justice's). The High Council of Justice replaced the member who resigned.

The resignations hardly placated the opposition. Arguing that the parity principle had been violated, DP and its allies boycotted the last round of OSCE-sponsored meetings. The draft of the electoral law was completed in the absence of opposition representation and was adopted by parliament in mid-May. Immediately after passage of the law, DP chairman Sali Berisha attacked both the SP government and the OSCE, alleging that OSCE representatives had been duped by SP's political machinations. Some of the other small, opposition parties ultimately accepted the code, and the opposition National Front even nominated a lawyer to serve on the CEC (he was subsequently appointed by the president to replace the presidential nominee who had resigned). One of the CEC seats remains vacant. It was widely assumed that the seat would be offered to a DP candidate, but Berisha's party has yet to submit a nomination to parliament. Legal observers note that parliament cannot ignore its constitutional duty to name the member, and several of the

other opposition parties seem to be considering submitting a nominee for the “opposition” seat. Meanwhile, the CEC has begun operations with only six members.

The newly adopted electoral code is perhaps one of the better legislative achievements in recent years, partly because of substantial cooperation between local jurists and international experts. The Council of Europe has approved it as a whole. The law contains important innovations, such as provisions regarding any recount of votes, determining the validity of elections, and protecting the nonvoting members of lower electoral commissions. New, more-efficient procedures for voter registration have also been introduced. Finally, a special commission charged with drawing the boundaries of electoral districts was set up. This commission will have to reduce the number of electoral districts from 115 to 100 and ensure that the rampant gerrymandering that occurred during the 1996 general elections is not repeated.

A foreign-funded Electoral Assistance Program has been established to help with these projects. Vice Prime Minister Makhbule Ceko was named head of the program, and the Ministry of Local Government is in charge of maintaining contacts with the international community. Berisha opposed this project, at first, even accusing foreign officials of criminal activities. And he ordered the DP-controlled local governments to embark on a parallel registration of voters. But, eventually, he backed down, perhaps under heavy international pressure or realizing the impracticability of such a project. Preparatory work for the approaching elections—in which local politicians, governmental and opposition officials, and international monitors are actively involved—is still under way; it is too early to assess the success of these projects.

Throughout the entire electoral process—from the drafting of the code to the CEC’s election to all aspects of the registration process—Berisha has continued to hold open-air meetings in Tirana’s public squares, calling for early elections and the cabinet’s resignation. Lately he has extended his efforts to other parts of the country, and, most importantly, to Vlora, the center of the revolt against his government that engulfed the country in 1997, when the financial pyramids collapsed. (See Albania Update, *EECR*, Vol. 6, Nos. 2/3, Spring/Summer 1997.) There was a significant police presence during Berisha’s rally in Vlora’s main square, where daily demonstrations against him had occurred scarcely three years before. Seemingly exhausted, Berisha spoke for only a few minutes and then left the city, refusing the government’s offer of a helicopter to take him back to Tirana.

Berisha also planned a trip to Kosovo in May, and his followers staged a mass demonstration at the north-east border of Albania, near the city of Kukës. Some demonstrators even entered Kosovo, but Berisha

himself was stopped at the border by KFOR troops under orders from Bernard Kushner, head of the UN Mission in Kosovo (UNMIK), who stated that Berisha’s presence in Kosovo posed an unacceptable security risk. Berisha returned angrily to Tirana, denouncing UNMIK and hinting that its members had criminal associations. SP Chairman Fatos Nano had also planned a trip to Kosovo, several months before, and was similarly advised not to visit the province; subsequently, Nano dropped his plans for a Kosovo visit.

Changing government ministers seems to have become almost routine. In his nine months in office, Prime Minister Ilir Meta has replaced the heads of six ministries, including the minister of privatization and the minister of state (without portfolio). (See Albania Update, *EECR*, Vol. 9, Nos. 1/2, Winter/Spring 2000.) In May, Minister of Transport Ingrid Shuli tendered her resignation; she was widely criticized for failing to carry out important road-construction projects, many of which have been funded by the European Union. Another series of cabinet changes was announced on July 5. The minister of public works, Arben Demeti, was fired, and personnel changes occurred at the Ministry of Justice and the Ministry of Defense.

This last wave of changes has been generally well received. They are seen as an attempt to bring more-competent officials into government. The impending elections will undoubtedly reshape the political scene even further. The Party for Democratic Action and the Union of Human Rights, both members of the governing coalition, have indicated they will field their own candidates in the local elections. So far, at least, the other two coalition members, the Social Democratic Party and the Agrarian Party, are sticking closer to SP. Berisha seems determined to retain a firm grasp on DP, although the group of reformers headed by Genc Pollo continues to receive foreign encouragement and support.

On May 25, three days before the new Electoral Code was to go into effect, the SP-dominated Council of Ministers took advantage of a provision in the 1996 electoral law and appointed its own candidate to replace the absent DP mayor of Lushnjë, a city in central Albania. According to the new law, however, when a mayoralty is vacant and local elections are less than six months away, the local council (which DP controls in Lushnjë) elects a temporary replacement. Acting in accordance with the new law’s provisions, the local council proceeded to elect another acting mayor. Thus, there are now two acting mayors in the city. Local officials refuse to cooperate with the SP-named acting mayor or with the Electoral Assistance Program, and this has seriously hindered the process of voter registration. The Association of Municipal Mayors brought a complaint against the central government’s action to the Constitutional Court. On June 19, however, a

three-member panel of the Court announced it would not forward the petition to the full Court for a hearing, thus effectively denying it. The panel claimed that Art. 115 of the Constitution, which was the basis of the association's complaint, only gives standing to the discharged mayor himself, who must then bring the complaint within 15 days of his discharge, in which case the termination by the Council of Ministers is suspended until the Court's decision. (The article states: "A directly elected organ of a local government unit may be dissolved or discharged by the Council of Ministers for serious violations of the Constitution or the laws. The dissolved or discharged organ may complain, within 15 days, to the Constitutional Court, in which case the decision of the Council of Ministers is suspended. If the right to complain is not exercised within 15 days, or if the Constitutional Court upholds the decision of the Council of Ministers, the president of the Republic sets a date for elections of the respective local unit.") Since the former mayor is now in Italy, he cannot file a complaint with the Court. It bears emphasizing, however, that although the Constitution clearly states that only the discharged mayor may bring a complaint, the association's action was not really about the discharge but rather raised the more important issue of who is authorized to appoint a new mayor.

On July 3, the Lushnja City Council filed a complaint about the same case with the Constitutional Court, based on Art. 131.c ("The Constitutional Court decides on the compatibility of normative acts of the central and local organs with the Constitution and international agreements"). This article does seem to be directly applicable, given the contradiction existing between the council's own decision of May 30 (which elected a temporary mayor) and that of the Council of Ministers five days earlier. It may also be argued that, in contrast with the mayors' association, the local council has standing to initiate the case. It remains to be seen whether the Court will once again evade making a decision on the case's merits.

The underlying issue is whether the 1997 amendments, or part of them, had been overridden by the new Constitution (which came into force in November 1998). Article 178.1 of the Constitution provides that laws approved before the Constitution's adoption will remain in force until repealed. Repeal can be by parliament, as with the Electoral Code, or by the Constitutional Court, on a complaint. Article 4.3 of the Constitution, which states that the Constitution's provisions are directly applicable unless otherwise provided for, has been construed as a kind of exception to this rule; if a provision is absolutely clear and there is no indication to the contrary in the Constitution, it can be applied directly. It is not immediately clear whether constitutional provisions related to local

governments' autonomy may be construed to mean that, under the new Constitution, the Council of Ministers no longer has the power to appoint temporary mayors. Furthermore, there is no question that the new Electoral Code had not gone into effect at the time the Council of Ministers acted.

The three-judge screening panel that made this decision is an institutional device created by the new Law on the Constitutional Court (March 31, 2000). In addition to detailing the procedures for cases brought under Art. 131 of the Constitution, the new law also provides an independent basis for requests for general "interpretations of the Constitution." In this way, parliament has considerably expanded the scope of the Court's prerogatives. In light of this new provision, the justices have issued a number of interpretations of the Constitution. Given this general activism, it is a bit odd that the Court has taken a very strict view of its limited competencies in important cases like the Lushnja case. Apparently, the scope and functions of judicial review in Albania remain murky.

Belarus The controversial constitutional referendum that allowed President Alexander Lukashenka to prolong his term in office and disband parliament took place four years ago, and the country will soon face the test of a parliamentary election. Balloting for the 110-member rubber-stamp National Assembly (Nacyianalny Skhod, or parliament) is scheduled for October 15. In preparation, the Minsk-based OSCE consultative group has sponsored negotiations between the opposition and the government. So far, the negotiations have come to naught. The OSCE and the opposition set forth four preconditions for participation in the elections: that the electoral code be amended to make it democratic and transparent; that parliament be given meaningful functions; that the opposition receive free access to state media, including radio and television; and that all political prisoners be released and all harassment of political activists stopped.

Instead, Lukashenka's government offered a "broad public dialogue." Over 100 different organizations were invited to the "dialogue"; major opposition parties ignored the invitation. On June 22, Lukashenka's handpicked parliament unanimously approved a number of changes in the electoral code, some of which were heralded as an important result of this "public dialogue." These changes clarified some rights of electoral observers, called for candidates to declare their income, and added some formalities to the early voting process. The OSCE mission, the EU, and other international organizations called these changes insufficient. The opposition was especially concerned that its most important demands were ignored, including, in particular, a mixed system of voting that