

THE DRAFTING PROCESS FOR THE 1998 ALBANIAN CONSTITUTION

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INTRODUCTION

With its adoption of a new constitution in 1998, the Republic of Albania joined the ranks of other Central and East European nations who have now adopted democratic constitutions. For Albania, the new constitution provides a historic foundation upon which to forge an independent, democratic future. Throughout recent history, Albania has endured domination and rigid control at the hands of regional powers, and even when independent, the country has suffered under autocracy. The most egregious example of the latter, the Stalinist dictator, Enver Hoxha, led post-World War II Albania into 45 years of exile from the international community. With its adoption of a democratic constitution, Albania took a significant step towards solidifying its democracy and joining the community of nations who rely on constitutions to structure and safeguard their democratic systems of government.

While the history of domination and isolation does not fully explain Albania's delay in the adoption of a new constitution, it does shape the context in which constitutional reform developed. In particular, it helps to explain the lack of constitutional materials in the Albanian language, the lack of familiarity and experience with modern democratic institutions and human rights, and both international and local agreement on the necessity for extensive foreign input.

The introduction of a new constitutional system or structure necessarily entails challenges. Even a completely tried and tested system or structure may fail when introduced into

a new environment. The process of legal transplantation is a delicate one, and the host state can reject the introduction of foreign legal concepts for a variety of reasons. Legal and political traditions can serve as both foundations upon which to graft new structures and obstacles to their implementation.

The Republic of Albania's efforts to develop a democratic constitution provide a classic illustration of the challenges that legal, political, and social traditions pose to persons advocating substantial systemic change. The tumultuous events preceding, and during, the 1997-98 drafting process challenged local and international actors to devise new methods for engaging politicians and the public in the Constitution drafting process. The drafting and approval of the 1998 Constitution is a milestone, if for no other reason, in that it represents a novel and sustained effort to incorporate public participation, both local and international, in all aspects of the drafting process.

Prior to World War II, Albania enjoyed an introduction to constitutionalism. The period concluded with the self-proclaimed King Zog ceding power to occupying Italian Fascist forces. During the war, Albania was administered by Italian appointees, and the constitution was suspended. Immediately following World War II, Enver Hoxha and his Partisans secured control over Albania. On January 11, 1946, a Constitutional Assembly declared Albania to be a "People's Republic," and two months later on March 14, 1946, the Assembly adopted a new constitution.¹ This constitution, as amended, provided the structure for the socialist state over the next 30 years.

In 1972, the 6th Congress of the Albanian Party of Labour, issued the directive that a new constitution should be formed, and this effort culminated on 28 December 1976, with the

promulgation of a new constitution. In the words of Enver Hoxha, the new constitution was necessary to “complete the construction of socialism and the further development of our state of the dictatorship of the proletariat.”²

According to official state pronouncements, this new constitution was drafted with the benefit of public consultations. Over the course of “several months,” the draft was “submitted for study to the working masses all over the country.”³ Suggestions emerging from these consultations with the public were “recorded and studied,” and “[a]ll suggestions improving on the document” were adopted.⁴

Despite this encouraging rhetoric, the 1976 Constitution did not recognize the institutions of pluralist democracy, nor permit the formation of a market economy. Party dogma dictated that pluralism in the Western sense simply reflected “the multiplicity of groups with opposing interests in the ranks of the bourgeoisie.”⁵ The constitution provided for a highly-centralized state that emphasized collectivism in all aspects.

While some personal property was nominally permitted, the extent of state involvement in all aspects of economic and political life was so extensive that taxes and levies were abolished.⁶ In general, modern concepts of individual civil and political rights and the separation of powers were considered irrelevant. The will of the “masses” as expressed through the monolithic Party of Labour was to direct all organs and functions of the state “for the purpose of defending the victories of the revolution and strengthening of the socialist order.”⁷

In the 1990-91 period, the Party of Labour began to acknowledge that their vision of a monolithic socialist state was no longer viable, and gradually, party officials began work on the drafting of laws that would implement radical reforms in the system of government, introducing

political pluralism and modern democratic institutions to protect basic human rights. The result of this process was a set of laws commonly referred to as the Major Constitutional Provisions.⁸ Collectively, these laws established the basic framework for a modern democratic state and basic protections for individual human rights.

While these provisions represented a dramatic change from past, there remained a need and political commitment to move forward with the development of a permanent constitution. In acknowledgement of this fact, Albanian legal professionals opened a dialogue with the Venice Commission of the Council of Europe in November of 1991, seeking to benefit from their diverse pool of constitutional law experts.⁹ The Major Constitutional Provisions suffered from shortcomings and lacked clarity in certain areas, and Albanian legal professionals were interested in addressing these issues in a manner consistent with international best practices.

One area of political concern was the ease with which the Major Constitutional Provisions could be amended. A simple two-thirds vote of Parliament could amend any or all provisions.¹⁰ While such a standard was not per se unacceptable, a more deliberative process, perhaps including a referendum component, would have been more open and less subject to manipulation by political super-majorities.

In any case, these provisions were only intended to serve temporarily, for the Major Constitutional Provisions called upon the Parliament to establish a Constitutional Commission to control the drafting process. During 1993 and 1994, a Constitutional Commission worked on a draft text and various versions were developed. The various texts generally all contained the basic provisions necessary to establish a fully-functional parliamentary democracy.¹¹

In the summer of 1994, under the leadership of the President, Sali Berisha, a select group of draftsmen were encouraged to finalize a draft, which would be put to a popular vote in a referendum. President Berisha's initiative was viewed by those excluded as having placed political considerations above the established drafting process. Of particular concern was the proposed ratification process. Lacking the necessary two-thirds majority to approve a replacement text under the Major Constitutional Provisions, the governing coalition passed a referendum law with a simple majority on October 6, 1994, providing an alternate method of approving a permanent constitution.¹² The opposition Socialist Party protested publicly, challenging the constitutionality of the referendum law in the Constitutional Court.

As the November 6, 1994, referendum date approached, there was concern that the Constitutional Court had not yet heard the case. When pressed for a response, the Constitutional Court announced the Socialist Party complaint had been misplaced, causing a delay. Directly prior to the referendum, three of nine members of the Constitutional Court resigned in protest.¹³ Given the Constitutional Court's *sua sponte* review authority¹⁴ and the gravity of the complaint, failure to review the matter prior to the referendum created the distinct appearance of further political interference.

Without the benefit of a Constitutional Court review, the referendum proceeded. Voting was relatively calm and uneventful, and the final tally resulted in an unequivocal defeat for the proposed draft,¹⁵ surprising many in the local and international communities. Interestingly, the Venice Commission had completed a review of the proposed draft the week before, finding it "unfortunate that the protection of human rights...[does] not form part of the fundamental principles of the Constitution."¹⁶ However, the role of the Venice Commission was not widely

understood, and it is unlikely that their evaluation had any impact on the outcome of the referendum. The issue of a permanent constitution languished thereafter for several years.

The next national election was the parliamentary election of 1996. In contrast to the 1994 Referendum, this election was fraught with manipulation and intimidation. International criticism followed, and the landslide re-election of the ruling majority was understood to be of questionable legitimacy at best.¹⁷

The government further jeopardized its dubious position with its refusal to take legal action to halt the rapidly expanding pyramid schemes in the later part of 1996.¹⁸ Allegations that the governing majority was involved in the schemes arose. Tensions within the country increased as the year drew to a close and the schemes began to collapse.

Beginning in November 1996 and continuing through March of 1997, the majority of the pyramid schemes collapsed with their leaders disappearing in some cases. Slowly, thousands of citizens began to realize they had lost much, if not all, of their life savings. Government institutions reacted clumsily, sometimes acting to curtail citizen rights, as opposed to protecting them. In a particularly outrageous example, the President of the Tirana District Court rejected all civil actions against the pyramid scheme operators.¹⁹ The government's impotence, combined with an ongoing refusal to fully address the crisis, enraged large segments of the population. Street protests against the government emerged. Most corrective actions were viewed as too little too late, and the governing coalition sought to reassert public confidence and order through coercive tactics.

In a style reminiscent of the prior communist period, the government derided the protesters, imposed martial law, denied responsibility for the crisis, and re-elected their leader as

president.²⁰ Meanwhile, the largest pyramid scheme remained untouched, reminding the general public of its powerful position on a daily basis through its private, extra-legal television station.²¹ A nationwide crisis that would have toppled any other Western parliamentary government seemed to embolden the ruling coalition.

Public outrage mounted, and widespread unrest emerged outside the capital of Tirana. The institutions of government buckled, and civil order disappeared. As chaos descended over much of the country, faith in the constitutional order evaporated. People began to flee the country or lock themselves indoors, fearing the loss of property and life. Looting occurred, particularly in establishments owned and operated by the pyramid schemes.²² Following days of upheaval, the government finally conceded its inability to govern. On March 6, 1997, leaders of the majority party reached an agreement with opposition leaders and formed a technical government in anticipation of new elections in the summer of 1997.²³ To support a stable transition and avert a humanitarian crisis, the Italian government volunteered to organize and lead Operation Alba, resulting in the rapid deployment of troops from NATO countries throughout Albania.²⁴

STRUCTURE OF THE PROCESS

Complementing the security forces of Operation Alba was the international political commitment of the Organization for Security and Cooperation in Europe (OSCE). On March 4, 1997, the OSCE Chairman in Office appointed Dr. Franz Vranitzky as a personal representative to Albania, and directly thereafter, on March 27, 1997, the Permanent Council – the OSCE’s governing body – established the OSCE Presence in Albania. The OSCE mandate was broad and included “assistance in democratization” and serving as a “coordinating framework for the

work of other international organizations.”²⁵ With this commitment in mind, the OSCE Presence in Albania rapidly began work with a variety of domestic, multilateral, and bilateral actors on the preparations for new parliamentary elections.

The April-June 1997 period consisted of an intensive period of political negotiations, leading ultimately to a political compromise and revision of the electoral law, which permitted the elections to proceed in June and July. The elections resulted in a clear defeat for Berisha’s Democratic Party, which received approximately 25 percent of the vote. The Socialist Party received over 50 percent of the vote. With this majority, the Socialist Party joined several center-left parties to form a governing coalition.²⁶

A major concern of the 1997 elections was the need to re-establish civil order. Within this context politicians focused on steps that could be taken to restore public confidence in the institutions of government. In particular, politicians focused on the adoption of a new constitution as a symbolic step necessary to instill faith in Albania’s future as a modern Western democracy.

Within two months of its formation, the new Parliament approved Decision 339 providing a general framework for the process of drafting a new constitution.²⁷ This decision established a 21 member parliamentary commission and a set of guiding parameters. In terms of the latter, Decision 339 notably defined public participation, both local and international, as a clear priority,²⁸ and the decision set forth five substantive groupings around which the Parliament expected the drafting process to be organized:

- *Legislative*: The composition, formulation, and administration of legislative powers.

- *Judicial*: The composition, formulation, and administration of judicial powers.
- *Executive*: The composition, formulation, and administration of central executive powers.
- *Local Government*: The composition, formulation, and administration of local government powers.
- *Human Rights*: The definition and protection of human rights.²⁹

Primary responsibility for organizing the process was assigned to the newly-created Ministry of Institutional Reform and Relations with the Parliament (Ministry of Institutional Reform). Pursuant to this mandate, the Minister invited three lawyers outside of government to develop a proposal for coordinating assistance and public participation in the constitutional drafting process. These lawyers, two Albanian and one foreign, had a number of years experience designing legal reform initiatives in Albania. After a short period of negotiation, these lawyers obtained sponsorship from the United States Agency for International Development (USAID), the German Technical Cooperation Agency (GTZ), and the OSCE.

PUBLIC PARTICIPATION IN THE PROCESS

On October 15, 1997, the Administrative Center for the Coordination of Assistance and Public Participation (ACCAPP) opened in offices provided by the OSCE Presence in Tirana.³⁰ The team of lawyers assembled by the Ministry of Institutional Reform designed ACCAPP.³¹ While ACCAPP enjoyed the cooperation and support of both the Ministry and the OSCE, ACCAPP was designed as a “quasi non-governmental organization” administered by its directors and financially supported by various NGOs and foreign governments. ACCAPP

operated independently of both the OSCE and Albanian Ministry of Institutional Reform. ACCAPP worked with Albanians and the international community to facilitate technical assistance, collect and distribute information, provide training, and organize polls and civic education initiatives. Throughout its existence, ACCAPP remained independent and did not represent the interests of any particular party or government.

The primary function of ACCAPP was to serve as a liaison between and among Albanian and international participants in the constitutional drafting process. The goal of this process was to ensure that all interested parties would be able to participate fully and avoid duplicative and conflicting initiatives. ACCAPP actively solicited assistance from Albanian NGOs and international donors to provide materials, training for constitutional commissioners and interested citizens, and other assistance. Also, working sessions were held with NGOs and international donors to develop strategies and action plans for organizing assistance and promoting public participation in the constitutional drafting process. The ACCAPP Newsletter reported on these activities, in English and Albanian, on a regular basis to ensure increased coordination.³²

Among Albanian participants in the constitution making process, the involvement of NGOs and citizens was considered essential to promote informed citizen participation in the drafting of a new constitution and ownership on the part of citizens in the final constitutional product. As described below, ACCAPP worked with the Ministry to ensure that NGOs and citizens took part in commenting on all the basic categories described in Decision 339 of the Parliament.

Development of a National Program of Public Participation

From December 1997 through September 1998, the Constitutional Commission of the Albanian Parliament, the Ministry of Institutional Reform, and ACCAPP worked together to implement a national program of public participation. The program was designed to collect input into the drafting of the Constitution and submit draft provisions to the public for review and comment, Phases I and II, respectively.

Phase I of the plan consisted of more than a dozen forums and symposia where constitutional issues were discussed and public input gathered. The results of these forums provided Commission members and their technical staff with a basic outline of the issues that the public considered important. International donors and local NGOs worked together to organize the Phase I meetings. The initial stage called for a series of meetings consisting of “NGO Forums”, each followed by “Focused Discussion Groups”.

The three national NGO Forums brought together various NGO representatives to discuss the five basic categories specified in Decision 339: Legislative Power, Executive Power, Judicial Power, Human Rights, and Local Government. At these forums, NGO representatives worked in small groups using “brainstorming” techniques to produce recommendations and identify issues requiring further discussion. Albanian has a relatively vibrant NGO community, and invitations to the forums were essentially open, asking each interested organization to designate one or two representatives to participate. In this early phase of the process, civil society was used as a proxy for wide-open public participation, because of the desire to commence drafting quickly with some sense of the public’s concerns; participation in the later public hearings was more broadly citizen-based.

After each forum, donors and local NGOs organized a total of four Focused Discussion Groups designed to review in greater detail the issues identified in the NGO Forums and to gather more specific recommendations and suggestions. A combination of legal experts, NGO representatives, government officials, and politicians attended the various “Focused Discussion Groups”. The results of all the Forums and Discussion Groups were recorded, and detailed written summaries of the main points, including recommendations, were prepared and provided to all Commission members.³³

In May of 1998, the results of this civil society input process were used as a basis for a broad-based discussion at the Three Powers Symposium, sponsored and organized by the American Bar Association Central East European Law Initiative (ABA/CEELI) and GTZ, in coordination with ACCAPP. As the name indicates, the Symposium was structured to focus on the three classic constitutional themes of legislative, executive, and judicial powers.

The Symposium provided an opportunity for Albanian leaders involved in the constitution drafting process to hear the comments and suggestions of Albanian and foreign experts on the issues identified by Albanian NGOs during the series of activities mentioned above. Participation in the Symposium was broad, including members of the opposition Democratic Party, as well as individual citizens. Following the Symposium, ABA/CEELI, ACCAPP, and Albanian state television produced a three-part television series, which summarized the discussions in prime time for Albanian viewers nationwide.

While Phase I was in progress, the Commission began drafting a text, finishing a complete draft text in June of 1998 and approving a revised text in its entirety on August 5th. Phase II was then initiated consisting of a broad-based review of the August 5th text by

individuals and organizations within and outside of Albania. This public review of the draft text was in addition to the drafting consultations provided by foreign experts. Throughout all phases of the drafting process, foreign constitutional experts were consulted for an independent analysis of the technical substance of the various provisions.

In this regard, the Venice Commission of the Council of Europe (CoE) was the dominant foreign expert influence. However, extensive consultations also took place with other American and European constitutional experts, and the Constitutional Commission maintained an inclusive, open approach to foreign advice.³⁴ ACCAPP facilitated this process wherever possible, providing up-to-the-moment translations of new provisions and coordinating consultations. Consequently, the participation of international experts became an integral component of the drafting process, extending public participation and input beyond the strictly national context.

Domestically, for the Phase II public review the Constitutional Drafting Commission, ACCAPP, and international assistance providers organized a series of public hearings, designed to solicit public comments on the proposed draft, open to anyone who wished to attend and involving several hundred participants. The public hearing schedule was designed to cover major population centers throughout the country.³⁵ A diverse cross section of Albanian experts, citizens, politicians, and NGO representatives attended these meetings, and ACCAPP collected suggestions and comments, which were submitted to the Commission for consideration. The draft also was published, with public comment invited.

Despite repeated attempts to bring Democratic Party members into the hearing process, their participation remained low generally. On a number of occasions, interested Democratic

Party members were instructed from party leadership that they could not participate. However, there were notable exceptions such as the contribution of the former head of the Central Election Commission.³⁶ When these persons intervened, they were treated with respect and their comments were incorporated fully into the process.

ACCAPP indexed and organized all the public comments according to subject matter to assist the Commission and its Technical Staff in the review process. Hundreds of suggested changes to the draft were considered, and more than 50 proposed changes affecting more than 45 (of 183 total) articles were accepted. Altogether, the Commission amended approximately 25% of the draft articles on the basis of specific suggestions from the public. The nature of these amendments varied widely, and touched on some high-profile subjects such as property restitution. Most important, though, each changed represented something important to a broad range of individuals and interest groups and, once accepted, bolstered the legitimacy of the social contract. On September 30, 1998, the Commission completed this process, approving the final text.

During the period October 5-20, the Albanian Parliament conducted a review of the text proposed by the Constitutional Commission. This review consisted of an intense mixture of committee review and plenary session debates. In terms of committees, each of the following reviewed the draft: Public Order and National Information Service; Industry, Public Affairs and Trade; Agriculture and Food; Foreign Affairs; Health and Environmental Protection; Economy, Finance and Privatisation; and Human Rights and Minorities. These review sessions were open, with journalists, local experts, and the Representative of the Venice Commission participating

freely. The final draft approved on October 21, 1998, included virtually all the public suggestions that the Constitutional Commission incorporated in their final September 30th draft.

Civic Education Initiatives

Given the anticipated involvement of the public in the drafting process, Albanian leaders considered it important to provide civic education on constitutional issues prior to the public consultation phases. ACCAPP worked with a host of local NGOs, the Constitutional Commission, and citizens to develop these types of activities. While the list of contributors and participants is extensive, certain Albanian NGOs, such as the Society for Democratic Culture,³⁷ took standout, leadership roles. Not only did they educate the public on substantive constitutional issues, but also they demonstrated the important role of civil society in the democratic process. As a result, the educational process itself became an example of the processes that must underlie the establishment of a successful constitutional democracy.

Throughout the drafting process, ACCAPP, NGOs, and the Constitutional Commission developed and executed a variety of civic education initiatives. Among other things, these initiatives included: 1) issue forums, including TV broadcasts and telephone call-ins; 2) radio programs, including telephone call-ins; 3) pamphlets on particular constitutional issues, process, and definitions; 4) newspaper serials on constitutional issues; 5) constitutional papers prepared by experts for study and review by citizens; and 6) essay writing contests.

The need for education on constitutional issues was a priority recognized by the international community before the referendum, and international representatives agreed that it should remain a priority for the foreseeable future in order to encourage understanding of the constitution and ownership in the social contract. After the conclusion of the constitution making

process, ACCAPP's local staff was absorbed by the OSCE Presence with the understanding that they would continue to devote time and resources to education on constitutional issues. In the years following, the OSCE Presence's legal unit has continued to play a significant role in rule of law education and promotion, publishing a two-volume transcription of the Constitutional Commission debates.

DEMOCRATIC REPRESENTATION

With its adoption of Decision 339, the Albanian Parliament decided to use the vehicle originally envisaged in the Major Constitutional Provisions, a Constitutional Commission, as the official body for producing a draft constitution and receiving public comment. The Parliament concluded that the Constitutional Commission should be composed of parliamentary representatives from all parties and that the distribution of seats should reflect generally the proportionate voting blocks extant in the parliament. While this distribution gave a somewhat disproportionate influence to smaller parties, it was nevertheless endorsed, ensuring that certain minorities, ethnic and otherwise, were officially represented.

Overall, Parliamentary Decision 339 provided a one-seat majority for the Socialists and their coalition partners, and this slim majority provoked an aggressive and militant response from the Democratic Party and, for the most part, their allies. In the fall of 1997, the Democratic Party and its Union for Democracy (the Democratic party and a group of center-right satellite parties, which owed their parliamentary seats in many cases to the Democratic Party's efforts) initiated a boycott campaign that was to last throughout the majority of the constitution drafting process. The international community immediately reacted to try to calm political tensions and

re-engage the Democratic Party in the political process. Common sense dictated that a new constitution should be forged with a consensus of all political parties.

Initially, the Democratic Party's main objection to the Constitution drafting process appeared to center on the fact that the Parliament had excluded them from the chairmanship of the Constitutional Commission. Instead, the Parliament had given the chairmanship to two minority parties, the Republican Party and the Democratic Alliance Party.³⁸ The governing coalition countered that the exclusion of both major parties, the Socialist Party and the Democratic Party, fostered an open and inclusive approach towards minority parties. Furthermore, the governing coalition and the United Right invited the Democratic Party and its affiliated Union for Democracy to take their seats on the Commission to discuss this and other issues.

The offer was refused and the Union for Democracy called for a Constitutional convention to handle all constitutional drafting issues. Under their proposal, new elections would be immediately organized to select delegates to the convention. The Democratic Party maintained that they enjoyed the support of the majority of the population, and these elections, if free and fair, would vindicate their position. They later relinquished their call for a convention, but they insisted upon having a "blocking minority" or veto power within the Constitutional Commission.

While the Democratic Party had pledged to accept the results of the 1997 Election,³⁹ they focused on the language in the OSCE Election Monitoring report that referred to the election results as "acceptable, given the prevailing circumstances."⁴⁰ They maintained that this

marginal result combined with new “attacks” on their membership and “democracy” justified their boycott.

The political atmosphere was particularly supercharged following a couple of controversial Constitutional Court decisions. On November 13, 1997, the Constitutional Court struck down a legal provision that permitted government-appointed administrators to take charge of pyramid scheme assets.⁴¹ The provision had been drafted in consultation with the IMF, and its invalidation raised concerns about the ability of the new government to finish the closing and liquidation of the pyramid schemes. The Parliament reacted immediately, amending a Constitutional provision and re-enacting the contested provision.⁴² In an openly confrontational manner, the Constitutional Court *sua sponte* issued a decision rejecting this Parliamentary remedy.⁴³

Asserting supremacy in constitutional matters, the Constitutional Court in effect denied the Parliament’s authority to amend the Constitutional provisions in response to Court decisions. As noted previously (in a sharply contrasting political environment), the Major Constitutional Provisions allowed for amendments with relative ease and a paucity of public dialogue. Nevertheless, the Constitutional Provisions literally permitted such an amendment, and the Parliament was clearly acting within their collective authority. Domestic and international criticism of the Constitutional Court followed. The Venice Commission of the Council of Europe unequivocally condemned the action: “The Constitutional Court therefore overstepped the limit of its authority and entered into a political dispute with the People’s Assembly, which can only be to the detriment of the functioning of both organs.”⁴⁴

The Parliament further politicized tense relations with the Constitutional Court by issuing a decision requiring the Court to execute the constitutionally-required rotation of membership. The Democratic Party decried the act, claiming that the Constitutional Court, consisting of members appointed by the prior Democratic-controlled Parliament, was simply exercising its independent constitutional function.

In the midst of this turmoil, the Constitutional Commission commenced its work cautiously. At the end of 1997, several official meetings were convened, and in each instance, the 7 members of the Union for Democracy boycotted. Though work proceeded on a draft of the Commission Internal Operating Rules, the Co-Chairmen Sabri Godo and Arben Imami prudently avoided moving substantive decisions to a final vote, and the Co-Chairmen noted that final decisions should be postponed until later meetings where all members might be in attendance.

While these initial meetings were substantively limited, they did provide both planned and unplanned benefits. In terms of the former, ACCAPP enjoyed an adequate opportunity to work with the Commission on a realistic public participation program. Moreover, the specter of a boycott ironically increased the influence of public participation as a concept because, for the Commission to be able to proceed with broad public legitimacy, it became obvious that they would need to reach out to the public in a direct and demonstrable manner. Lastly, by demonstrating that genuine local efforts had been tried and exhausted, the repeated good faith attempts by the commissioners who had taken their seats to bring in the Union for Democracy substantially bolstered the case for international assistance to mediate the political dispute. This assistance in turn set the stage for the ongoing international involvement that characterized the bulk of the drafting process throughout 1998.

TIMING AND SEQUENCING OF THE CONSTITUTION-MAKING PROCESS

With the chaos of early 1997 as the backdrop, a number of influential Albanian leaders considered a permanent constitution to be an urgent priority for the restoration of order. Initially, Decision 339 proposed an expedited timeline with a late winter to early spring 1998 completion date. However, this date soon became at best unlikely and, at worst, unwise.⁴⁵ The immediate and persistent objections of the Union for Democracy made it clear that more time was necessary to explore their concerns fully, not to mention the concerns of the public at large. To maximize the participation of the Union for Democracy and the general public, both local politicians and international actors comprehended the need for a deliberate, inclusive process, characterized by public outreach.

Central to this outreach effort was the full participation of the relevant actors in the international community. The tensions between the two major political blocks were evident, and both looked to the international actors to serve as brokers to various disputes. Moreover, in the media, the citizenry frequently was confronted with polarized political charges. Given the fact that the press was heavily structured around party affiliations, it was often difficult to discern the underlying facts and issues. This situation gave further weight to the pronouncements (in the form of formal declarations, statements to the press, and interviews) of the international community communicated to the grassroots level via local media.

The domestic political conflict and the substantial role to be played by the international community necessitated a substantial revision of the original target date. The President of the Republic eventually settled on November 22, 1998, for the popular referendum.⁴⁶ With this date, the Constitutional Commission, ACCAPP, and others in the drafting process were provided

with sufficient time to develop viable schedules and allocate the necessary resources. Though the timing remained tight--particularly given the ongoing political disagreements--the drafting process was nevertheless able to proceed in a considered, professional manner.

However, the process of ratification via referendum proved to be a more significant challenge in terms of resources, logistics, and timing. Upon completion of the drafting process at the end of October, additional challenges faced the administrators engaged in the referendum process. The major challenges included civic education of the voters regarding the referendum process and the draft text, along with the actual technicalities involved in referendum administration. Complicating these inherent difficulties was the Democratic Party decision to encourage voters to boycott voting in the referendum.

Regarding the administration of the referendum, voter lists have been historically problematic in Albania. Consistently, OSCE-ODIHR has cited the Government of Albania for inadequate voter lists,⁴⁷ and government officials were particularly concerned that the Democratic Party might capitalize on voter list problems to defeat the approval of the constitution in the national referendum. The 1994 Referendum Law required an absolute majority of registered voters to pass a measure.⁴⁸ However, if the voter lists are not accurate, it becomes difficult, if not impossible, to accurately calculate what constitutes such a majority. Given the large number of Albanians working outside Albania, the registration issue posed a logistical problem and a potential source of continuing dispute. With these and other considerations in mind, the ruling coalition amended the law, allowing for a measure to pass if it receives a majority of those voting.⁴⁹ The Democratic Party protested, decrying the amendments

as politically motivated. The ruling coalition responded that either approach to tallying referenda is acceptable in a democratic system.⁵⁰

With final passage of the Constitution in the People's Assembly on October 30th, and the referendum date of November 22nd, preparations were forced into a very tight timeline.⁵¹ The Ministry of Local Government and the Central Election Commission (CEC) with the assistance of the OSCE, ACCAPP, the International Foundation for Election Systems (IFES) and the European Union (EU), engaged in a nationwide effort to distribute information to voters on how to register to vote, how to vote, the provisions of the constitution, and the constitutional drafting process. Information was distributed in the form of written materials, television, and radio. With this international support, thousands of pages of materials, posters, and copies of the draft constitution were distributed nationwide, and educational television spots, developed in conjunction with the CEC, were aired.

Typically, a referendum campaign focuses on the issues involved in the referendum with different politicians taking different positions. Parties frequently do not take party positions, leaving members to vote their conscience. Certain issues draw broad coalitions from across political spectrums, and campaigning in favor or against an issue may unite traditional political opponents in common cause. However, the political polarization, which characterized Albanian politics prior to the referendum campaign, intensified during the referendum campaign, limiting the debate and further destabilizing the fragile, democratic process. Both the majority and minority spent a relatively limited amount of time on the substantive issues. The minority Democratic Party sought to make the referendum a re-run of the elections, discussing personalities more than issues.

The Democratic Party's decision to boycott the referendum and the manner in which they conducted their campaign presented several substantive problems. First, the boycott itself raised the specter of intimidation. With the recent political violence fresh in mind, there was fear that Democratic Party personnel would note who had entered polling stations to target them for later reprisals--thereby intimidating people from freely going to the polls. Second, the Democratic Party construed all voter education to be political campaigning. Since the Democratic Party was in favor of a boycott, they argued that encouraging voter participation amounted to a vote in favor of the constitution.⁵² Democratic Party personnel attacked all efforts to encourage citizens to exercise their right to vote, and their representatives at the CEC even suggested that the CEC should educate citizens in their right not to vote. Finally, in November, when the Democratic Party engaged in a debate on the substance of the constitutional draft, their approach consisted of a distorted, misinformation campaign characterized by tactics from the communist period.⁵³ The distortions were so severe in some cases that international groups were compelled to issue corrective pronouncements.⁵⁴

In contrast, the campaign of the ruling coalition was relatively innocuous and limited in scope. Efforts from members of the ruling coalition were generally reactive, focusing much of their efforts on responding to various extreme accusations that issued from the Democratic Party. To the extent the ruling coalition pro-actively campaigned on substantive issues, it was limited generally to modest, peaceful campaign rallies and basic video spots.

Throughout the campaign period, CEC meetings were acrimonious and polarized along political lines. Democratic Party members made a number of complaints concerning referendum administration. Many were minor, but some involved major issues.⁵⁵ Consistent

with its previous practice in Albania, the OSCE served as a mediator on CEC impasses. Particularly significant were Democratic Party challenges to television programming. Democratic Party CEC members argued that Albanian law required that 1) only political parties could engage in constitutional programming--to the exclusion of NGOs and the state TV itself; 2) CEC had the right to censor all programming; and 3) any news segment involving a government official was by definition campaigning. The OSCE examined these legal issues in great detail and determined that these positions were not mandated under existing law and not required in keeping with generally accepted democratic principles.⁵⁶ However, the OSCE did assist the disputing parties in arriving at a code of conduct for the state television programming on the constitution. The principles that were agreed upon directed state television to develop balanced programming on the topic.

The OSCE was called upon to mediate in a variety of circumstances. In the final two weeks leading up to the referendum, attempts to mediate became progressively more difficult as the Democratic Party Deputy-Chairman of the CEC took more extreme positions. During the final period, the Deputy-Chairman issued physical threats to the Chairman of the CEC and the OSCE Ambassador, threatened walkouts, and was generally disruptive.⁵⁷

Responsibility for preparing for the administration of the referendum was assigned to the Ministry of Local Government.⁵⁸ This ministry was ideally suited for the task because it possessed a nationwide network of offices and an experienced professional staff.⁵⁹ Nevertheless, given the tight timeline for preparation and the scarcity of resources, the Ministry of Local Government turned to the OSCE and ACCAPP for assistance. OSCE and ACCAPP identified and secured funding for ballots, training, and other logistical needs; produced election

official training materials; and assisted in other aspects of preparation. Within two months, all basic preparations had been completed.

The day of the constitutional referendum, November 22, 1999, the weather was unusually poor. Ballots had to be helicoptered into remote snowbound areas. Despite the poor weather and the boycott, actual administration went relatively smooth. By the close of the polls, it was clear that the vote in favor of the Constitution was overwhelming with approximately 90% of the vote. A broad-based team of international observers from the Council of Europe, European Union, and OSCE issued a joint statement on November 23, 1999, in which they concluded: “The observers found on 22 November the voting procedures of the referendum were carried out in a correct manner, for which the voters and election officials should be commended.”⁶⁰

The observation missions also commented on the drafting process and Democratic Party’s political campaign. Regarding the former, they noted, “The referendum followed an open and transparent process where advice on the constitution was taken from many sources, domestically as well as internationally.”⁶¹ In terms of the latter, the observation team commented critically: “The disinformation on the contents of the constitution, the misrepresentation of international representatives and unfounded allegations against the constitutional process by the Democratic Party are to be regretted.”⁶²

THE ROLE OF THE INTERNATIONAL COMMUNITY

In terms of involvement in the constitution drafting process, several organizations and bilateral actors took leadership roles. Overall, the OSCE was the most influential multilateral actor, positioning itself as an information clearinghouse and general facilitator, a role that was accepted by the Albanian government. The government’s own lack of capacity to conduct the

constitution-making process provided one reason for its acceptance of a significant role for the OSCE. The country was on the verge of all-out civil war at the time, and the high level of instability concerned a broad range of actors. In the circumstances, domestic political actors had proven unable to deal with the situation peacefully and efficiently. The OSCE role complemented the CoE and EU, which emphasized their respective capacities to marshal legal and political expertise. As for bilateral actors, the United States predominated, with substantial assistance from EU counterparts, most notably Germany. While the sustained engagement of any one of these actors would have been remarkable, the constitution drafting process in fact benefited from the engagement of all of them, bearing witness to an extraordinary level of interest, cooperation, and support. Moreover, the involvement of the international community was unusually well-coordinated at both a high diplomatic level and an on-the-ground project level throughout the entire 18-month period of activity. This multilateral engagement was most notable on several distinct occasions during the visits of parliamentary delegations and a coup attempt.

Parliamentary Delegations

OSCE, in collaboration with ACCAPP, undertook an ambitious plan to bring political forces together both at the national and international level to forge a sense of common purpose and commitment to work together for the common good of Albania. OSCE recognized that the Democratic Party's antagonistic posture bordered on a rejection of the 1997 election results, which would constitute a substantial impediment to the consolidation of democratic institutions. Furthermore, the domestic political scene was very sensitive to international opinion because the international community had brought them back from the brink of civil war, and the OSCE saw a

need to coordinate efforts and ensure that all international actors obtained an objective view and analysis of the local situation. Given the political nature of the issues involved, the OSCE chose to involve experienced politicians.

In the middle of January 1998, the OSCE Presence, in cooperation with ACCAPP, organized an international parliamentary delegation to evaluate and counsel Albanian politicians on the political situation with a view to instilling a spirit of compromise and moderation. Local politicians had claimed international support for a variety of their positions, and the international community was interested in clarifying their positions on a number of these issues, in particular efforts to draft a new constitution. To ensure a broad, representative range of international views the OSCE invited parliamentarians from the OSCE, CoE, and the EU to participate.

During the last week of January, a senior group of parliamentarians, representing a range of political viewpoints, traveled to Albania.⁶³ The “Tri-Parliamentary Delegation” met with the entire spectrum of local politicians and diplomats and openly discussed the situation. At the conclusion of their meetings, they adopted and issued a declaration, the first Tri-Parliamentary Declaration.⁶⁴

The Declaration urged the government to increase efforts to promote democratic institutions, procedures, and values,⁶⁵ and at the same time rejected the Democratic Party boycott tactics.⁶⁶ In general, the Declaration focused on the constitutional drafting process, endorsing the need for a constitution, the legality of the current Parliament and Constitutional Commission, and the need for a public referendum on the Constitution.⁶⁷

Both the governing coalition and the Union for Democracy responded favorably to this counsel. The Union for Democracy returned to Parliament, and the governing coalition adopted

new rules of parliamentary procedure, improved actual parliamentary practice, enhanced the legal framework, and developed the new Magistrates School.⁶⁸

However, political turmoil affecting the constitution making process subsequently resurfaced. Most notably, the governing coalition summarily removed the President of the Constitutional Court, Rustem Gjata. Following an investigation under the Union for Democracy-authored lustration laws,⁶⁹ it was determined he had committed objectionable acts under the Hoxha regime. Pursuant to the provisions of the lustration laws, the Parliament removed the President, stating the removal had “nothing to do” with the issue of judicial immunity.⁷⁰ This action, along with other alleged “provocations,” led to the reinstatement of the Democratic Party boycott policy.

While the political forces made some progress following the first Tri-Parliamentary Mission, the international community remained concerned that insufficient progress had been made. In particular, the international community was concerned about the ongoing Democratic Party boycott of the Constitution drafting process. Though some Union for Democracy members appeared at select events, the major opposition party, the Democratic Party, had failed to officially engage.

During the last week of June 1998, a second senior group of parliamentarians, including some from the previous mission, traveled to Albania to re-evaluate the situation and urge compromise. As before, the delegation met a full range of local politicians and diplomats and openly discussed the situation. At the conclusion of their meetings, they issued a second Tri-Parliamentary Declaration.

Again, the Declaration attempted to provide a balanced set of recommendations addressed to all sides. However, in terms of the Constitution drafting process, it generally applauded the Constitutional Commission's efforts, citing its transparency and commitment to public participation, and it rejected Union for Democracy demands for veto powers on the Commission.⁷¹ The Union for Democracy, which had refused to participate in a meaningful way, was “[c]all[ed] upon to participate...”⁷²

Over the next week, a quiet dialogue with members of the Democratic Party leadership indicated a willingness to join the process. However, in a surprise move, Democratic Party Chairman, Sali Berisha, on July 7, 1998, announced a new “indefinite” boycott of the Parliament. Multiple statements from the OSCE, EU, and COE condemned the move immediately.⁷³ Despite continuous urgings, the Democratic Party maintained their boycott position throughout the remainder of the drafting process.

During August 1998, there appeared to be some possibility that the Democratic Party would participate in a roundtable with coalition politicians. However, the arrest of some former Democratic Party officials for alleged criminal activity in the 1997 civil unrest angered Democratic Party officials and disrupted the roundtable.⁷⁴ The Constitutional Commission and international community continued efforts to bring the Democratic Party into the process, but without success.

Attempted Coup D’Etat

On September 12, 1998, a high-level leader of the Democratic Party, Azem Hajdari, was assassinated directly after leaving Democratic Party Headquarters. Azem Hajdari was a leader of the original student movement and was widely regarded by Albanians as one of the

instrumental figures in the struggle for democracy in Albania. Within a couple of hours of his murder, the Democratic Party assigned responsibility for his death to the Socialist Prime Minister Fatos Nano.⁷⁵

The head of the Democratic Party, Sali Berisha, immediately seized upon this assassination as a justification for dissolution of the current government. The Democratic Party along with its satellite parties in the Union for Democracy issued public demands for a technical government in which they would share power. By noon the following day, their supporters had stormed several government buildings and destroyed substantial property.⁷⁶

On the afternoon of September 13th using highly inflammatory rhetoric, Sali Berisha gave Fatos Nano an ultimatum: relinquish power within twenty-four hours. This twenty-four hour period corresponds to the period provided in Albanian customary law in which a murderer is given a twenty-four hour period of truce before blood revenge is exacted.⁷⁷ This unstated threat was not lost on Democratic Party supporters, who began streaming into the capital city of Tirana, particularly from the mountainous north. Preparations were then made to conduct a public funeral-protest in the middle of the main square.⁷⁸

On September 14th, the twenty-four hour period elapsed as the funeral procession left the main square heading for government office buildings. A substantial number of the mourners were heavily armed with automatic weapons, and they broke into the Council of Ministers.⁷⁹ Union for Democracy supporters claimed government security forces fired upon them at that time. However, trained Western military observers who were present saw no evidence of this, and there were no confirmed injuries. Directly thereafter, Union for Democracy supporters commandeered tanks and took over the state television and several government buildings.

During the next hours and days, intense diplomatic pressure was brought to bear from both multilateral and bilateral actors. Through diplomatic channels, the armed insurgents were given a clear signal that a government installed by force would not be recognized. Moreover, the established position of the OSCE Presence allowed it to serve as a leader and coordinator of negotiations among various domestic factions. Because the OSCE enjoyed the respect and trust of all involved and could serve as an honest broker, it succeeded in creating a dialogue among the various parties, and thereby stabilized the situation at several key junctures.⁸⁰ Once the armed insurgents relinquished their hold on state institutions, Prime Minister Fatos Nano, who had been notably absent during the crisis, resigned, and a new leader was chosen by the ruling coalition. Taken collectively, these factors served to contain the situation and defuse the tensions, and within a couple of weeks, street life returned to normal.⁸¹

While mercifully brief and relatively limited in terms of casualties, the attempted coup was a defining moment in the final stage of the Constitution drafting process. From that point through the referendum, few people expected any significant progress in terms of political dialogue, and many anticipated that Democratic Party supporters would continue to agitate publicly, resulting in further violence. This factor was an overarching concern of all those involved in the preparations for the referendum itself, and without continued international support, many feared that the situation could decay once again, leading to further violence and disorder. However, the failure of the coup demonstrated vividly that the Democratic Party, and its supporters, did not enjoy widespread popular support for their aggressive tactics, and it may well have ironically served to cast support for the constitution drafting process in a more inherently favorable light.

ROLE OF INTERNATIONAL LAW

From the outset, the Constitutional Commission asserted a commitment to securing a full review of their final draft from a panel of international experts. The Constitutional Commission considered international approval important to ensure both technical quality and political support. As the debate during the referendum process demonstrated, both of these suppositions proved correct. When opposition critics attempted to mischaracterize the human rights provisions as restrictive and out of touch with international standards, the full record of international consultations proved otherwise.

Since Albania had joined the CoE, the Albanian drafters were cognizant of their accompanying legal responsibilities, and they were anxious to avoid any potential inconsistencies with the European Convention of Human Rights, which would prove embarrassing both internationally and domestically. Since 1991, Albanian constitutional experts had been engaged in dialogue with the experts of the Venice Commission, and as early as 1993, the Venice Commission had submitted formal, written comments on draft human rights provisions, analyzing their compatibility with the European Convention.⁸² Given that the 1994 draft that was put to a referendum had some infirmities in this regard, it is not surprising that the Venice Commission expressed a high degree of interest in the process. While other international experts also played significant roles, the Venice Commission had convened a special task force and taken the unusual step of posting a representative in Albania.⁸³ This investment of additional resources served to greatly enhance the role of the Venice Commission throughout the final stages of the process, providing the infrastructure to coordinate a rapid review of draft provisions.

This rapid review became particularly critical as large segments of the draft text were completed in the summer of 1998. The Constitutional Commission's June draft received extensive Venice Commission review at a series of meetings in Rome,⁸⁴ and the comments were incorporated into their revised final draft of August 5th. For the final stages of parliamentary review in the fall of 1998, a member of the Venice Commission Task Force Albania, Professor Matthew Russell, was sent to Albania to follow up on prior dialogue. Throughout, Professor Russell was permitted to participate freely in Parliamentary Committee Debates.⁸⁵ Following the Parliamentary debates, the Venice Commission stated unequivocally, "the draft [Constitution], in particular the human rights chapter, is in line conformity with European and international standards."⁸⁶

CONCLUSION

On November 28, 1998, the President of the Republic of Albania signed Decree No. 2260 formally promulgating Albania's first post-communist constitution.⁸⁷ The Constitution in 183 articles sets forth all the basic institutions and principles of a democratic state and establishes respect for human rights as a clear priority. The drafters ultimately settled on a unicameral parliamentary republic for the general framework. Over the course of the drafting process, discussions and debate did address dramatically different alternatives, such as a federal and/or presidential system. However, given the size and relative homogeneity of the population, the drafters concluded that the various alternatives would have introduced an additional degree of complexity without clear offsetting benefits.

The drafting of the 1998 Constitution was remarkable in a number of respects. Born out of a political turmoil that approached civil war, the process was intended to be one that

brought persons from across the political spectrum together. While it no doubt fell short of this laudable goal, it did, however, bring civil society and individual citizens into the drafting and approval process in a previously unheard of manner. A wide range of NGOs and individual citizens participated in the process and actually affected the final product. While the process failed to bring political unity, it nevertheless was instructive for the Albanian political class of how to run, and how not to run, a democratic political process.

The transparent and open nature of the drafting process made it very difficult for politicians to base their positions on distorted facts and false charges. Both Albanian and foreign participants were able to identify false charges and react accordingly. Possibly for the first time, the Albanian general public was given a detailed demonstration of the power of free speech and public debate. Though it would have been advantageous if the focus of the debate could have been more on substantive constitutional issues than on partisan political disputes, it nevertheless provided lessons in the power of transparency, openness, and citizen participation in the political process.

Furthermore, the 1998 Constitution drafting process demonstrated the efficacy of coordination of logistical support for the process at both local and international levels. Despite the politically-polarized domestic environment and the diverse agendas of foreign assistance providers, ACCAPP, in conjunction with the OSCE, was able to provide a framework for effective coordination throughout the constitution drafting process. Consequently, precious technical assistance and financial support was brought into an overall scheme that allowed for its efficient use and distribution. The result was that international assistance providers were more responsive to local needs, and aid recipients were better served. In short, the process lowered the

transaction costs of public participation; citizens participated in the process because access was made readily available to them.

While Western democracies share common concepts of democracy and the rule of law, institutional and national differences sometimes result in divergent priorities and create artificial rivalries among foreign assistance providers. The result is that efforts to promote democracy and the rule of law then become diluted. ACCAPP demonstrated that a coordinating structure that reflects local needs and international input can play an important role in organizing sustained, effective multilateral support for democracy and rule of law development programs. With such coordination, different organizations and bilateral donors were able to address issues from their own unique perspectives while at the same time exchanging lessons learned and endorsing shared principles of democracy and rule of law.

The constitution drafting process and ACCAPP can serve as an example of the fact that shared democratic values may be expressed across cultural and legal traditions. However, what is not so clear is how the diverse Western community can institutionalize the ACCAPP example. ACCAPP arose under relatively special circumstances. In Albania, the government gave OSCE an overall coordinating role for assistance to the constitution making process, and ACCAPP was therefore a logical initiative for the OSCE to support. Natural parochial interests typically compromise efforts to coordinate technical assistance, and the challenge facing the Western community is how to replicate the ACCAPP example without creating a new competing institution.

In the years since its adoption, the 1998 Albanian Constitution has proven to be a successful document that has shepherded the consolidation of this fledgling democracy. Even

those who originally vehemently opposed its adoption have now fully accepted it, and the entire political class of the country operates within the parameters it sets forth. Highlights of the intervening years include successful election of a new non-partisan President and the non-violent transition of power between opposing political groupings. Furthermore, external ratings of Albania's progress in the rule of law and democratic reform have also documented positive trends. Freedom House's *Nations in Transit* has shown consistent progress in Albania in the years since the constitution was ratified. While a participatory constitutional process may not be enough to guarantee this type of result, the absence of one certainly reduces the prospects for such growth. The Albanians have an expression, which paraphrased states, a good start makes for a good result. That certainly appears to have proven true in the case of the Albanian Constitution.

¹ *Portrait of Albania*, (Tirana: Government Printing House, 1981) pp. 99-101.

² *Id.* at p. 101

³ *Id.* at p. 102.

⁴ *Id.* at p. 102.

⁵ *Id.* at p. 108.

⁶ *Id.* at p. 115.

⁷ 1976 Constitution, at art. 10.

⁸ Law No. 7491, "On the Major Constitutional Provisions" (Approved on 29.04.1991), FLET. ZYRT. 1991, Vol. 4, P. 145, *as amended* [hereinafter ICP].

⁹ Venice Commission, Working Party on the Draft Albanian Constitution, 16 December 1991, CDL(91)37.

¹⁰ *Id.* at Chap. IV, art. 43.

¹¹ See ABA/CEELI Compilation of Albanian Draft Constitutions (July 1997). The work was fraught with stoppages in the politically charged atmosphere. The Prime Minister, who chaired the Commission, was called

upon to explain the delays. *Constitution Watch*, EAST EUROPEAN CONSTITUTIONAL REVIEW (Summer/Fall '94), pp. 2-3.

¹² Law No. 7866, "For Referenda," approved on 6.10.1994, FLET. ZYRT., Vol. 10 , p. 2.

¹³ *Constitution Watch*, EAST EUROPEAN CONSTITUTIONAL REVIEW (Winter 1995), pp. 2-3.

¹⁴ ICP, *supra* note 8, at Chapter IIIA, art. 25 ("The Constitutional Court starts action on a complaint or its own initiative").

¹⁵ *Constitution Watch*, *supra* note 13, at p. 3. A clear majority voted against adoption of the proposed constitution.

¹⁶ Venice Commission, Commentary on the Draft Albanian Constitution as Submitted for Popular Approval on 6 November 1994, Constitution, 16 January 1995, CDL(95)5.

¹⁷ 1996 ODIHR Final Report on Parliamentary Elections of 26 May and 2 June 1996. The conclusions cited numerous violations of local and international legal provisions.

¹⁸ The one exception was the Central Bank of Albania, which tried to introduce corrective measures in 1996, but was ignored by the central government. Remarks of the President of the Central Bank, Kris Luniku, at the Center for Strategic and International Studies Albanian Conference Series, March 25, 1997.

¹⁹ *Gazeta Shqiptare*, 31 January 1997.

²⁰ *Constitution Watch*, EAST EUROPEAN CONSTITUTIONAL REVIEW (Winter '97) pp. 2-5; *Albanian Daily News*, 5 March 1997 (President Berisha placed the Army under the head of the Secret Service with instructions to quell the unrest in the south; a state of emergency was declared; and President Berisha was re-elected by Parliament).

²¹ VEFA, the most "established" pyramid scheme, ran television shows on their pirate television station. Many shows featured propaganda seeking to legitimize VEFA's business image.

²² *Supra* note 20.

²³ Agreement for the Government of National Reconciliation, dated 9.3.1997.

²⁴ *Italy in the Balkans*, 48 NATO REV. 6-7 (No. 2 Sum.-Aut. 2000), available at <http://www.nato.int/docu/review/2000/0002-02.htm> (Operation Alba comprised 7,000 troops drawn from Denmark, France, Greece, Italy (3,000), Romania, Spain, and Turkey).

²⁵ OSCE, Annual Report 1997 on OSCE Activities 2.2.3 (18 December 1997), available at <http://www.osce.org/docs/english/misc/anrep97e.htm>.

²⁶ The Socialist Party led by Fatos Nano won 690,000 votes, or 52.5%, and its governing coalition won a total of 62%. The other coalition members were the Human Rights Party, led by Vasil Melo; Democratic Alliance Party, led by Neritan Ceka; Social Democratic Party, led by Skender Gjinushi; Agrarian Party, led by Lefter Xhuveli, and the National Unity Party, led by Idajet Beqiri.

The Democratic Party, led by former President Sali Berisha, won 336,000 votes or 25.7% of the total, and in conjunction with its affiliated parties in the Union for Democracy, represented approximately 32% of the total. The other members of the Union for Democracy were the Legality Party, led by Guri Durollari; Christian Democrats, led by Zef Bushati, the Democratic Union Party, led by Remzi Ndreu; and the Social Democratic Union Party, led by Teodor Laço.

A third, non-aligned center right parliamentary grouping, the United Right, won 76,000 votes, or 6%. The United Right consisted of the Republican Party, led by Fatmir Mediu; the National Front Party, led by Hysen Selfo; Right Democratic Party, led by Petrit Kalakula; and the Movement for Democracy Party, led by Dashimir Shehi.

²⁷ Decision 339, dated 3.9.1997.

²⁸ For example, the commission was instructed to “have a drafting process for the Constitution outside of the narrow political debate and to test it with public opinion” and “cooperate with foreign experts of international institutions.” *Id.*

²⁹ *Id.*

³⁰ OSCE Press Release of 15.10.97. The 29 May 1997 Memorandum of Understanding between the OSCE and the Government of Albania specifically provided that the OSCE would “provide the framework within which other international organizations can play their part in their respective areas of competence, in support of coherent international strategy, and in facilitating improvements in the protection of human rights and basic elements of civil society.”

³¹ The three lawyers were Ardita Abdiu (Albania), Erinda Ballanca (Albania), and Scott Carlson (U.S.).

³² These newsletters are currently available online at the ACCAPP website (in English and Albanian), *available at* <http://www.abanet.org/ceeli/countries/albania/constitution/home.html>.

³³ These recorded results are also accessible online at the ACCAPP website (in English and Albanian), *available at* <http://www.abanet.org/ceeli/countries/albania/constitution/home.html>.

³⁴ GTZ, USAID, and certain universities provided support for additional German and American constitutional scholars to assist in the process.

³⁵ The plan was truncated due to the attempted coup d’etat (discussed later in the text). Nevertheless, the major population centers were covered, including Tirana, Durres, Shkodra, Lezhe, Gjirokastra, Elbasan, Vlore, and Fier.

³⁶ Chairman, Kristaq Kume.

³⁷ The Society for Democratic Culture, or *Shoqata per Kulture Demokratike*, organized a series of public fora on constitutional issues at which experts discussed a variety of constitutional issues, including televised debates in Korça, Shkoder, Elbasan, Vlora, and Tirana. In addition, the Society conducted public opinion polls to measure citizen understanding and awareness and to test public opinion on particular constitutional issues, e.g., the death penalty.

³⁸ Sabri Godo of the Republican Party and Arben Imami of the Democratic Alliance Party.

³⁹ The Political Contract of 9 May 1997, signed by all the major political parties and referring to the prior Agreement of 9 March 1997 forming the technical government.

⁴⁰ Final Report on the Parliamentary Elections in Albania, 29 June - 6 July 1997, at p. 5. The Democratic Party ignored the language in the report which followed: “The results of these elections should be the foundation for a strong, democratic system, which Albanians want and deserve.” *Id.*

⁴¹ Constitutional Court Decision No. 53.

⁴² Law No. 8256, dated 19.11.1997, FLET. ZYRT., Vol. 18, p. 433, “‘For an addition to Law No. 8227, dated 30.7.1997 ‘For some additions and changes to Law No. 8215, dated 9.5.1997 ‘For financial audit of non-banking legal entities which have borrowed money from the public.’”

⁴³ Constitutional Court Decision No. 57.

⁴⁴ Venice Commission, Opinion on Recent Amendments to the Law on Main Constitutional Provisions of the Republic of Albania, adopted by the Sub-Commission on Constitutional Reform, 15 April 1998, CDL-INF(98)P, at p. 11.

⁴⁵ *Constitution Watch*, EAST EUROPEAN CONSTITUTIONAL REVIEW 5 (Fall '97), available at <http://www.nyu.edu/eecr/vol6num4/constitutionwatch/albania.html>.

⁴⁶ This date was selected in part because it would allow for promulgation on November 28th--the 86-year anniversary of independence from the Ottoman Empire. *Constitution Watch*, EAST EUROPEAN CONSTITUTIONAL REVIEW 1 (Spring '98), available at <http://www.nyu.edu/eecr/vol7num2/constitutionwatch/albania.html>.

⁴⁷ Statement on OSCE/ODIHR Activities, 12-25 March 1992; OSCE/ODIHR Report on the Referendum on the Draft Constitution, 6 November 1994.

⁴⁸ “The constitutional amendments or any other issue, which the referendum is held for, shall be considered as approved when the option received more than 50 percent of the valid “Yes” votes.” Law No. 7866, “For Referenda,” approved on 6.10.1994, FLET. ZYRT., Vol. 10 , p. 2. Article 36.

⁴⁹ Law No. 8416, “For some changes to Law 7866, dated 6.10.94,” approved 12.10.98, FLET. ZYRT. Vol. 9, p. 995.

⁵⁰ *See, e.g.*, Constitution of Ireland, at article 47; Constitution of Slovenia, at article 90; and the Constitution of Switzerland, at article 123.

⁵¹ For example voters’ lists had to be posted near each polling station by November 7, 1998.

⁵² This position was maintained despite strong international pressure. *See, e.g.* Declaration of the European Union, dated 9 November 1999 (“[T]he international community will isolate those groups and individuals who polarise the country and undermine democratic institutions. The EU therefore calls upon the Democratic Party, its leaders and followers to participate in the Referendum on the Constitution on 22 November 1998. Boycott is not a constructive instrument of democracy.”); Voice of America Interview with Deputy Assistant Secretary of State Eileen Malloy, dated 13 November 1998, at p. 2 (“The boycott, in reality, closes the doors of democracy. If a political party calls for the boycott of the vote, in fact it goes against the fundamental expression of freedom of speech, something which of critical importance for a democratic society.”).

⁵³ One Democratic Party TV spot showed old film footage of Albanians being executed by firing squads, religious buildings being destroyed, and property under collectivist, communist control. The Chairman of the European Parliament Delegation, Doris Pack, declared this spot “unacceptable.” European Parliament Press Release of 30 November 1998.

Another egregious example of Democratic Party disinformation was their attack on Article 18, which bans arbitrary discrimination. Democratic Party propaganda stated that this article demonstrated the Constitutional Commission’s malicious intent, and the article would be used to affirmatively restrict the individual liberties of people. According to the Democratic Party, it was “in complete violation” of the European Convention on Human Rights. The original text of this article was actually suggested by the President of the Venice Commission, Antonio La Pergola, in a letter of 13 June 1998 to the Constitutional Commission. When the DP accusations were disputed publicly by locals and internationals, the Democratic Party reiterated the false charges immediately and continued to do so thereafter. *See e.g.*, Democratic Party Press Release of 8.11.1999 (discussing Vice-President of the Democratic Party, Genc Pollo, meeting the electorate in Ballsh and Patos).

⁵⁴ Venice Commission-OSCE Press Release of 7.11.1998; Council of Europe Press Release of 20.10.1998.

⁵⁵ The OSCE conducted a detailed legal analysis of the underlying issues to ensure that proper process was respected. OSCE, Report No. 1 on the Constitutional Referendum Process: Voting and Appeal Mechanisms Under the Law for Referenda, 18 November 1998.

⁵⁶ As with the prior allegations, the OSCE conducted a detailed legal analysis of the underlying issues to ensure that proper process was respected. OSCE, Report No. 2 on the Constitutional Referendum Process: TV Broadcasts on the Constitution, 19 November 1998.

⁵⁷ The Deputy-Chairman threatened to set the Chairman on fire; he stated that if the OSCE Ambassador did not intervene to force television spots to be removed then he would not be able to leave Tirana “even with a helicopter”; and he staged a temporary walkout on November 6th and refused to join in various substantive meetings.

⁵⁸ Council of Ministers, Dec. No. 639, dated 19.10.1998.

⁵⁹ A demonstrable example of this fact can be found in how quickly the Ministry developed an operational outline of the issues involved. Within two days, the Minister of Local Government, Arben Demeti, had circulated his first pronouncement breaking the task down into component parts. See Ministry of Local Government Internal Memo 3525, dated 21.10.1998.

⁶⁰ OSCE, EU, and COE Joint Preliminary Statement Issued on 23 November 1998, at p. 2.

⁶¹ *Id.* at p.1.

⁶² *Id.* at p. 2.

⁶³ Leni Fischer (Germany), President of the Council of Europe Parliamentary Assembly; Frank Swaelen (Belgium), President Emeritus of the OSCE Parliamentary Assembly and President of the Belgian Senate; Renzo Imbeni (Italy), European Parliament Vice President; Tana De Zulueta (Italy), Rapporteur on Economic Affairs of the OSCE Parliamentary Assembly General Committee; Doris Pack (Germany), Chairman of the European Parliament Commission for Relations with the Southeast; Rene van der Linden, (Netherlands), Rapporteur of the Council of Europe Parliamentary Assembly on Albania; and Jordi Sole Tura (Spain), Rapporteur of the Council of Europe Parliamentary Assembly on Albania.

⁶⁴ Declaration by the Tri-Parliamentary Mission to Albania, 23 January 1998.

⁶⁵ The Declaration “[u]rged safeguarding of the independence of the judiciary...” *Id.*

⁶⁶ The Declaration “[c]alled on the Union for Democracy to promptly end their boycott of the Parliament and to participate in drafting the new Constitution...” *Id.*

⁶⁷ *Id.*

⁶⁸ Declaration by the Tri-Parliamentary Mission to Albania, 30 June 1998.

⁶⁹ Law No. 8001, “For Genocide and Crimes Against Humanity committed in Albania during the Communist Regime for political, ideological, and religious reasons,” FLET. ZYRT., 1995 Vol. 21, p. 923; Law No. 8043, “For checking the integrity of officials and other person who are completely within the protection of the democratic government,” FLET. ZYRT., Vol. 10 , p. 2.

⁷⁰ Notice of Release from Duty of the Member of the Constitutional Court Z. Gjata of 18.3.1998.

⁷¹ Declaration, *supra* note 68.

⁷² *Id.*

⁷³ Joint Statement of the OSCE Presence in Albania and the Office of the Council of Europe Special Representative, 8 July 1998; Joint Statement of the Parliamentary Assembly of the OSCE, Parliamentary Assembly of the Council of Europe, and the European Parliament, 10 July 1998.

⁷⁴ *Constitution Watch*, EAST EUROPEAN CONSTITUTIONAL REVIEW (Fall 1998), pp. 2-3.

⁷⁵ Democratic Party Press Release of 12.09.1998 (“The Democratic Party declares that the death is organized completely from the Chief Criminal of Albania, Fatos Nano”).

⁷⁶ *Constitution Watch*, EAST EUROPEAN CONSTITUTIONAL REVIEW (Fall 1998), pp. 3-5.

⁷⁷ *See* CODE OF LEKË DUKAGJINI, (bilingual edition) (ed. Shtjefen Gjeçov and translated by Leonard Fox) (1989), at arts. 854-863. Article 854 provides, “The truce is a period of freedom and security...suspending pursuit of vengeance in the blood-feud until the end of the specified term [initially, 24 hours].”

⁷⁸ *Constitution Watch*, EAST EUROPEAN CONSTITUTIONAL REVIEW (Fall 1998), pp. 3-4.

⁷⁹ Looting of government buildings in this section of town was substantial. Large quantities of computers and furniture were stolen.

⁸⁰ This diplomatic pressure helped avoid a number of potentially disastrous situations. For example, Ambassador Everts of the OSCE was instrumental in resolving the armed standoff with the Democratic Party supporters and government forces. On a 15.9.1998 radio broadcast, he pleaded with Berisha to intervene so that supporters would return commandeered tanks, which they did.

⁸¹ Political dealings remained tumultuous. Parliamentarians ascribed responsibility for the coup to President Berisha, and his parliamentary immunity was lifted. However, further prosecution was not forthcoming.

⁸² Venice Commission, Working Party on the Chapter of the revised Albanian Constitution relating to fundamental rights, 8 March 1993, CDL(93)13.

⁸³ *See* Giovanni Favilli, Report on the Mission to Tirana as a Liaison for the Venice Commission, 12 February 1998 CDL (98) 3.

⁸⁴ Venice Commission, Meeting of the Sub-Commission on Constitutional Reform together with Task Force Albania, 17 June 1998, CDL-CR(98)PV 3.

⁸⁵ COE-Tirana Press Release of 16.10.98 (“The draft Constitution is full conformity with European Democratic Standards”).

⁸⁶ Council of Europe Press Release of 20.10.1998 (Ref. 696 a 98).

⁸⁷ Decree No. 2260, dated 28.11.1999.