

## Main Electoral Systems, Electoral System in Albania and the Problems of Its Implementation



Law

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Ilirjana Nano

Faculty of Law, Luarasi University, Tirana, Albania.

### Abstract

Electoral systems are considered all over the world as legal mechanisms which are used to establish different representative organs. Elections and votes on various issues of the community are used since antiquity, but when we talk today about the electoral system, we refer to the modern period, a time when the political parties were created in the contemporary sense of the word. Electoral systems adopted by different states at different times, according to the researchers of electoral systems, are estimated to be in hundreds, but in this article deals with the main electoral systems, their advantages and disadvantages, what systems have been used and implemented in Albania after the restoration of political pluralism, which are the problems revealed in its various electoral processes. In addition, this article mentions several experiences of different countries, where their elections and results are less contested.

### Introduction

Democratic electoral system and democratic society, this would be the connection that would prove the degree of democratization of a country. The electoral system can be seen as a mechanism that realizes technically the formation of representative organs. Furthermore, it also expresses several constitutional principles that guarantee the participation of citizens in decision taking.

All these are related to the individual's right to participate in the conduct of public affairs, either directly or through the mediation of freely elected representatives; they also relate to the principle according to which the will of the people should be expressed through fair and periodic elections, whose outcome is mandatory. (Omari and Anastasi, 2010)

Thus, the electoral system constitutes a strong guarantee for the realization of the people's sovereignty and certain inalienable rights such as the right to vote.

### Understanding the system of elections

The two most well-known forms of democracy since ancient times until today are direct democracy and representative democracy or indirect democracy. The latter is accomplished through elections, which are the means to translate and transform the will of the people into mandates in representative bodies. The Constitution of the Republic of Albania in its Article 2 states: *The sovereignty in the RA belongs to the people and the People exercise sovereignty through their representatives or directly.* (Constitution of RA, 1998)

The people exercise its sovereignty directly in the case of referendums, which are numerically small in comparison with all the other important decision-takings. Most of the decision takings are implemented through the organs of state authorities. Among them, the main place is occupied by the Assembly which, in the range of representative bodies, is the highest and also the only legislative body. In this sense, in order that the people exercise sovereignty through their representatives, it should, first of all, elect these representatives. In order to enable the election of people's representatives in representative bodies, each state adopts and implements a certain system of elections.

*With the election system in the broadest sense of the word we consider the entirety of principles, norms, rights, warrants, activities and technical works sanctioned in the Constitution, laws and other legal acts, on the basis of*

*which it is determined and materialized the participation of citizens in the election of people's representatives in representative bodies.*(Saliu, 2004)

In a stricter sense, the election system is a procedure of mandates' allocation or the way the votes cast during elections are converted into seats won by participating political parties or their candidates or independent candidates.

One of the most important components of the election system is the right of elections (or the electoral law), which must be seen in both its meanings: objective and subjective aspects. *In the objective aspect the election law constitutes that part of the state's positive law, respectively that entirety of legal norms which regulate the election of representative bodies of the state. Through these norms, it is determined who is entitled to vote (to elect and to be elected) in representative bodies (in some countries in the post of Head of State as well), it is defined the grounds of the electorate, the norm of representation, the rights and duties of political parties, as well as the competences of state bodies in charge for the administration of elections.*(Saliu, 2004)

However, the electoral law, as any other right, is seen in its subjective meaning too. In this sense, the right of elections is a right which is enjoyed by the subject, the citizen, and it is one of the fundamental rights of citizens related to their political activity. The electoral law may be perceived and considered in two perspectives: the active right and the passive right. The active right is the right of the citizen to elect (others) and the passive right is the right to be elected (to be nominated in the current election and to be elected by others).

When we talk about the right of the subject to elect, we have into account the electoral subject (political party or coalition of parties), the representatives of the parties in single-member or multi-name lists, as well as the independent candidates by political parties.

Starting from the 19<sup>th</sup> century, where in most European countries, the representation in parliament was made through elections, despite the different restrictions such as: age, sex, education, wealth, etc., the main structures that enabled parliamentary recruiting became the political parties.

The elections for the highest representative body, the Parliament, take place at the end of its constitutional term or before, in case of early elections. Through them, the representative (legislative) body renews its composition.

*There are two kinds of elections to determine the representatives of the people in the legislative body: the first is the election to renew completely its composition and the second way is related to the partial renewal of this body. In most of the parliaments today, through elections, it is completely renewed the Parliament. While the most typical example of partial recovery today is the American Senate (the Upper House), which has a 6-year term and every 2 years is renewed through elections with 1/3 of the number of senators.* (Omari, 2005)

Election systems are governed by constitutional norms, but mostly and in more detail with other legal norms, such as laws on elections or Electoral Codes. On the other hand, there are constitutions which do not contain provisions and anticipations regarding the election system, but allow for all the regulations to the election law.

The Constitution of the Republic of Albania (after the amendments dated 21 April 2008) provides no details about the type of electoral system, which is currently proportional with multi-name electoral areas (Constitution of the RA, Article 64, point 1) and the electoral area complies with one of the administrative divisions of the administrative-territorial organization (Constitution of the RA, Article 64, point 2). In this manner, our Constitution reserves to the Electoral Code the stipulation of concrete rules for the manner of electoral system implementation, as well as for the stipulation of multi-name electoral areas.

## The main electoral systems

According to the researchers of the electoral systems, at the moment, their number is considerable; it reaches up to hundreds of them. However, all these systems might be categorized in three other groups or families:

1. The majoritarian system
2. The proportional system
3. The half proportional or the mixed system

### The majoritarian system

The majoritarian system or the system of the majority is that system where the country is divided in a certain number of electoral zones, more concretely it is the same number with the one of the representatives in the Parliament (or in other representative bodies which are created via the elections), competing with one-name lists of candidates. In this system, the political parties, the other electoral subjects or the independent candidates may compete. This system has several application variants. The ones that are used more commonly are the voting with one round or the voting with two rounds, or the runoff.

In the majoritarian system with one round, the winner among several independent candidates or representatives of different political subjects is that candidate who has won more votes than the others (the relative majority). This voting model with just one round is otherwise known as the model: “first past the post”, applied in more than 40 countries and the most classical representative of this model is Great Britain. In Great Britain, an effective two-party system has existed since 1868 even though some parties have achieved to have their representatives in the Parliament. The main parties in Great Britain are the Conservators and the Labour. There are even other parties, but these two are the ones that come to power and give life to politics in this country. However, the studies carried out about the application of the election system in Great Britain testify that the one-party majority has not always been the one that brings stability in the governance of this country.

*A study commissioned by the English Government, which focuses on the parliamentary history of England during the last 150 years, shows that only in 64 years out the 150 recent years, Great Britain has been governed by the one-party government. For the rest of the time the country has been governed by coalitions, even though it has not been always necessary. (Ibrahimi, 2005)*

*The majoritarian system with two (or more) rounds was the electoral system for the continental Europe, from the medieval times until 1914. (Cadart, 1990)*

This system is otherwise known as the system of the absolute majority. In this system, the winner is the candidate who gets the absolute majority of the votes or 50%+1. If a majority like this isn't achieved in the first round, then a second voting round (the runoff) is held. The two candidates, who have won more votes than the others, participate in this runoff and at the end of the second round; the winner is the one who has more votes than the other one. France is the most classical representing country of the system with two rounds.

### Proportional system

The proportional system is the one where the electoral subjects compete with multi-name lists and where the votes for a party or party coalition are interpreted into percentage equal to a number of votes in the representative body (for example if a party gets 25% of the general votes, then it should take 25% of the places

in the representative body). This system started to be applied as a reaction towards the disproportion which was created in the majoritarian system between the number of the votes that were received and the number of the mandates that were won.

The main difference in the application of the two types of the electoral systems, the majoritarian and the proportional system, is mostly related to the effect they have in the governing way and the level of democracy. The majoritarian systems, especially the ones with one tour, generally produce one-party governments; more than the other systems. The one-party governments produce a more consolidated way of governing, avoiding the chances for preliminary elections.

*In the parliamentary systems of the Western Europe, the lifespan of a government often depends on the number of the represented parties in it. So, the lifespan of a government goes approximately to 32,9 months, meanwhile the governments of the coalition have a life of about 21,2 months (starting from 25,8 months for the coalitions composed of 2 parties, up to 9 months for the coalitions composed of 6 parties and more) (Frognier and Berck, 2004)*

### **Half proportional (mixed) system**

The mixed systems also have a considerable number of variants. Among these variants, based on the report of the proportional and majoritarian aspect, the proportional corrected proportional system and the majoritarian corrected system with proportional elements are noticed. In the electoral practice of about 150 countries, the Inter-parliamentary Union has noticed that in the wide range of the electoral systems the majoritarian one prevails. However, the methods of proportional and mixed representation are being added more and more.

### **Which electoral system is “better”?**

We cannot talk about a good or a bad electoral system in itself. Every electoral system has its positive and negative aspects or its advantages and disadvantages. There is not an absolutely preferable system compared to the others. If we could stop longer at the advantages and the disadvantages of the two main systems, of course that even in relation to this aspect, the opinions of their researchers would separate. But at least we could render some of them. In the case of the majoritarian system, the electors vote the candidate who is introduced personally in front of them, in both cases when he is a candidate of a party or coalition or when he is independent. So, the voters find it easier to choose the best one between the two or more candidates. This system provides the opportunity for access in the representative body of really appreciated figures or personalities of different areas. In the proportional system, this opportunity does not exist as the voter faces a multi-name list and among the choices he does not know who is going to be his representative in the Parliament. Therefore the direct contact “elector-elected” is lost. On the other hand, the application of the majoritarian system causes a disproportion of the vote, so a part of the electors’ will does not have a presentation and the vote equality is violated.

However, in the proportional system, despite the applied models, the vote equality is safer. *But the proportional system guarantees the access to the parliament of many small parties which have a minimal number of deputies, fractioning the parliament in many small groups and complicating the formation of a stable governmental majority, as it commonly happens in Italy.* (Omari, 2006) This element is often regulated by the determination of a high electoral threshold (the minimal percentage of the votes that a party has to gain to be represented in the Parliament).

I would like to conclude the analysis related to the advantages and the disadvantages of the electoral systems with the opinions of the famous Italian political researcher Giovanni Sartori, who states the following about the electoral systems:

*“It is almost always said that the proportional system is fair while the one-name (majoritarian) one (my note, I.Nano) is unfair, so the problem remains at the “correct representation”, the right proportion between the votes and the seats in the parliament. Also, we almost exclude from our attention the case that the **elections have to be even selections**, and at the end the most persistent request of the citizen is a good governing. If the elections are carried out to define who will lead, the best way is the one that selects a good leadership” (Sartori, 2010)*

### **Electoral system in Albania**

Albania has organized 8 general elections for the Assembly since the pluralism was established (the elections of the year 1991, 1992, 1996, 1997, 2001, 2005, 2009, 2013) and during these elections six different systems were used, indicating an obvious lack of stability, which is conditioned even by the fact that in every electoral process the party that lost, always contested the elections, transferring a part of the responsibility to the system.

The first pluralist elections of the year 1991 were carried out based on the majoritarian system inherited from the past and the winner was the Labour Party, which had more favorable positions than the parties of the opposition which were just established and which were still in the process of being organized. In the year 1992, the parliament passed the new law “On the elections of the Popular Parliament”. According to this law the Popular Parliament would be composed of more than 140 deputies, from whom 100 would be chosen directly based on the one-name list for each political party. The elections included the voting with two rounds. Apart from the one-name list, the political parties had the right to present their candidates in a multi-name or general list. The electoral threshold for the political parties was defined up to 4%. This model was similar with the German election system. It intended to join the justice and the equality of voting provided by the majoritarian system. In this perspective, this system might be considered as a personalized proportional one with the majoritarian elements.

The elections of the year 1996 were developed with the same model, but they were accompanied with some changes which were related to the electoral threshold for the party coalitions. Based on the threshold of 4% for the political parties, the threshold for the coalitions depended on the number of the participating parties in it. For example: if a coalition is composed of two parties, the threshold would go up to 8%, with three parties 12% and so on. Even though this system was democratic, the elections of the year 1996 are considered as the most problematic elections of the transition. Flagrant and serious breaches were found. This situation caused doubt even for the progress of the fragile Albanian democracy.

The elections of the year 1997 were carried out under the conditions of the new changes in the electoral law. The general number of the deputies was 155, out of whom 115 would be elected directly according to the majoritarian system and 40 other ones would be elected from the multi-name lists of the parties and coalitions according to the proportional system. Also, the electoral threshold declined from 4% to 2%. This decrease would favour the small parties. Essentially, this system might be considered as a corrected majoritarian system with proportional elements.

With the approval of the Constitution in the year 1998 up to its changes in April 2008, two general elections were carried out for the Parliament, in the year 2001 and 2005. The general number of the deputies was 140, out

of whom 100 were chosen directly according to the majoritarian system and 40 deputies according to the percentage that the political parties or the coalitions would get in the first round of the elections. The electoral threshold for the political parties to benefit from the proportional part to divide 40 mandates was 2,5% and for the electoral coalitions 4%. This system was assessed based on the constitutional provisions: *The general number of the deputies of each party and/or the party coalition is defined in report with the valid votes they have taken in throughout the country in the first round of the elections* (The Constitution of the Republic of Albania, 1998, article 64, point 2). This system gets a proportional nature even though 100 places in the Parliament were provided via the majoritarian system.

The changes in the Electoral Code in 2003 covered even the voting with two rounds eliminating the runoff. The elimination of the second round was sanctioned even in a decision of the Constitutional Court, which pursuant to article 64 of the Constitution, assessed the second round as an opportunity if it was provisioned in the Electoral Code and not as an obligation. Therefore, the elections of the year 2005 were carried out in just one round.

During the general elections of the year 2005, some negative phenomena were noticed in the distribution of the 40 mandates gained by the proportional, which are known as “Dushku Phenomenon”, and applied by the parties of the left coalition in an electoral zone in the commune of Dushk, in Lushnja. The same phenomenon was noticed even in the general elections held on 3<sup>rd</sup> July 2005, but this time it was applied by the parties of the right coalition, this time known as “Big Dushku” or “Mega Dushku”.

According to OSCE/ODIHR, in the report on 7 November 2005, related to the general elections held on 3<sup>rd</sup> July 2005: *“the two main political camps based their campaign partly on the electoral strategies which challenged the thresholds of the law, diminished the distinctions among the political parties and had the opportunity to avoid the objective of proportionality “in the closest report”, as it was described in the previous documents of OSCE/ODIHR”*. (Report of the Election Observation Mission of OSCE/ODIHR, Warsaw, 7 November 2005)

The changes in the Constitution, in April 2008, touched even the electoral system. According to article 64 of the Constitution:

1. *The Parliament is composed of 140 deputies elected with the proportional system with multi-name electoral zones;*
2. *The multi-name electoral zone corresponds to the administrative division of one of the administrative-territorial organization level.*
3. *The criteria and the rules regarding the implementation of the proportional electoral system, about the determination of the electoral zones and the number of the mandates for each area are provided for in the law for the elections.*

This system which was applied for the first time in the general elections of the year 2009 and later on in the elections of the year 2013 is regional proportional. Pursuant to law no. 10019, on 29.12.2008, the Electoral Code of the Republic of Albania, more concretely article 74:

1. *The electoral area corresponds to the territory of the district and serves as an electoral unit for the election of a certain number of mandates, according to the rules defined in this Code.*
2. *The administrative boundaries of the districts are defined with the law for the administrative and territorial division of the Republic of Albania.*

Based on this definition and even on law no.8653, dated 31.07.2000 “On the administrative-territorial division of the local units in the Republic of Albania”, the country is divided in 12 electoral zones, in compliance with the administrative-territorial division in 12 districts and the parties or the other electoral subjects present multi-name lists, not at a national level but at a district level. The number of the mandates of the deputies which will be provided in each district is defined by the number of the electors in each electoral area according to the principle that a deputy shall be elected by an approximately equal number of electors with the other one.

The calculation of the mandates of the electoral subjects is defined in article 162 of the Electoral Code, as follows:

1. *Based on this Code, CEC calculates the share of the mandates for each electoral zone based on the number of the valid votes the subjects have taken at the electoral zone level, no later than three days from the completion of the complaint process against the decision for the approval of the results of the electoral area or the invalidity of the elections. Regarding the elections for the Parliament the political parties, which compete on their own, and have gained less than 3%, as well as the coalitions, which have gained less than 5% of the valid votes in the relevant electoral zone, are excluded from the mandate share.*

The change of the electoral system was accompanied even with the change of the threshold each party has to go through to ensure the access in the parliament. In this way, the electoral threshold for the political parties, which compete on their own in the elections is 3% and for the party coalitions 5%.

In continuation to the wide and all-inclusive consultation process, the Electoral Code of the year 2008 was changed widely in July 2012 with the support of the main political parties, through the law 74/2012.

According to the final report of the OSCE/ODIHR mission for the elections held on 23 June 2013 “*Some reviews which were made at the Electoral Code weakened the legal framework, including the mechanisms of the enforcement of the law, which are less strict with regard to not respecting the gender quota for the lists of the candidates, and a more tolerant provision for the use of the public officials for campaign effect.*” (Final report of OSCE/ODIHR on the observation of the parliamentary elections on 23 June, Warsaw, 10 October 2013)

If we refer to the reports of the international organizations after each electoral process, a phenomenon is noticed regarding the findings and the recommendations. In any case, the findings and the recommendations are related to the issues regarding the enforcement of the legal framework into power as well as with the recommendations for the continuous change of this framework.

In this viewpoint, it is difficult to understand if it is the “fault” of the system or of its enforcement that the elections in Albania are contested permanently.

## **Conclusions**

Is this system the best possible one or the best one applied in Albania during the years of transition? Of course, it is not very likely that this question might receive a positive answer. Immediately after the elections of the year 2009, and especially after the ones in 2013, in different analysis, it was noticed the necessity to change the electoral system from regional proportional, to national proportional, where the entire country would be considered as one single electoral area or at least with the national correction. Another discussed variant is the proportional system with open lists, which is applied in the Republic of Kosovo.

However, even though it was criticized over the years and the electoral system has been changed, I believe the issues presented in the case of all the general elections during the last 20 years, have stem from some negative phenomena such as the manipulation of the votes, the flaws in the lists of the electors, the different forms of the pressure against the electors, the pragmatist alliances among the political parties, etc. In this prospective, in order for an electoral system to produce what has been provisioned as a tool, and also to produce the correct interpretation of the people's will in mandates of representatives in the Parliament, it is not enough to approve this system with the consensus of the main political forces. In order for an election system to produce positive consequences and less contested results, it is important to have the political will of the electoral subjects during its application and a correct administration of the process from the state bodies which are in charge for this purpose.

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