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ANALYSIS OF THE LEGAL FRAMEWORK ON MEANS OF CITIZENS' PARTICIPATION IN DECISION-MAKING PROCESSES IN ALBANIA

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For the publisher:

Goran Miletić
Director for Europe

Authors:

Armela Maxhelaku
Xhon Skënderi

Editor:

Megi Reçi

Translator:

Viola Jonuzi

Design:

Ambra Tagani

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Analysis of the legal framework on means of citizens' participation in decision-making processes in Albania

Armela Maxhelaku
Xhon Skënderi

i. LIST OF ACRONYMS

ASCS	Agency for the Support of Civil Society
GPD	General Policy Directorate
MoLSAEO	Ministry of Labor, Social Affairs and Equal Opportunities
LGU	Local Government Units
OECD	Organization for Economic Cooperation and Development
NGO	Non-governmental Organization
LG	Local Government
UNDP	United Nations Development Program
EU	European Union
CC	Constitutional Court
HC	High Court
CEC	Central Election Committee
No.	Number
Para.	Paragraph
RoA	Republic of Albania
Ed.	Editor
Eds.	Editors
Et seq.	Et sequentia
Pg.	Page
Ibid.	Ibidem
Id.	Ibidem
Vol.	Volume

ii. Methodology

Scrupulous research demands first and foremost a well-defined methodology be employed for its development and conclusions. The study method is closely related to the field of study because the method should most importantly match the field of study and the results that are to be reached. This *policy paper* aims at analyzing the Albanian legislation on citizens' participation in decision-making, therefore it could be easily inferred that the study will comprise the legal analysis of the regulatory framework in force, according to the hierarchy defined under the Constitution of Republic of Albania (RoA), with the ultimate goal of identifying the tools made available to the RoA citizens for participation in decision-making processes at the central and local level. In line with the above, the methodology employed in order to drive this paper forward consists of the following:

Doctrinal research, involving literature review on the object of research, thus focusing on the identification and collection of books, scientific articles, reports, and monographs in the field of legislation. Doctrinal research is a widely applied method aiming at reflecting all theoretical stances about the mechanisms and tools made available to the RoA citizens to participate in decision-making processes. Such reflection of doctrinal stances enables us to provide an overview on approaches legal researchers uphold, and analyze those approaches in conjunction with the legislation in force, to deduce the problematic issues and legal omissions in this regard.

Legislation analysis. The method will be used to analyze and interpret the legal norms provided in the Constitution, laws, and other acts issued under the laws. Legislation analysis is the gist of this *policy paper*, therefore this method will serve us to define and interpret the current RoA legal situation to clearly outline the existing mechanisms and instruments explicitly provided for by the national legislation in force.

Comparative method. The present research will center on juxtaposing our current national legislation in force with the EU legislation on citizens' participation in decision-making processes. This highly efficient method will serve us to diversify the applied methodology and to highlight through a comparative study all the issues in our national legislation when juxtaposed with the legislations of several EU-member countries.

iii. Policy Paper Outline

The policy paper is outlined into four main sections, each further organized into subsections.

Section One - “*Legal framework historical evolution, focusing on citizen participation in decision-making in Albania*” This first section of the *policy paper* lays down a brief historical evolutionary expose of the RoA legal framework on citizens’ participation in decision-making, focusing predominantly on electoral processes. In our judgment, this first part of the *policy paper* is paramount for it mirrors the historical evolution of the legal mechanisms citizens have been provided with to involve themselves in decision-making processes. It aims at shedding light on the progress and/or regress that has taken place from the historical legal development perspective.

Section Two - “*An analysis of the legislation in force in the Republic of Albania*” This second section of the *policy paper* reviews and deals with RoA sub-legal acts in force which provide for (or not) the mechanisms for citizen participation in decision-making processes at the central and local level. The analysis builds on two axes: the doctrinal axis and the practical and current axis.

Section Three - “*EU regulatory framework*”. This third section showcases the most successful models, which in our judgment, should also feed onto our legislation to enhance citizen participation in decision-making processes. The comparative method mentioned *ut supra* has been employed with the sole goal of identifying the best models implemented in several EU countries, which will eventually lead to deductions on omissions and gaps in our national legislation.

Section Four - “*Conclusions and recommendations*”. This last section shows a synthetic and concise chronological ranking of conclusions under this *policy paper* on a case-by-case basis. Moreover, it forwards recommendations based on our findings and conclusions, to provide the legislator, stakeholders, civil society, etc. with concrete recommendations on how to improve the current situation.

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1.1 The historical evolution of the legal framework in RoA, focusing on citizen participation in decision-making.

The concept of citizen participation originates from antiquity. The first written testimonies on citizen participation date back to the 8th and 7th century B.C in Greek city-states. All free males at the age of 18 were welcomed to take part in the assemblies of the governance units. Civic assemblies were convened to discuss, find a consensus, and make democratic decisions. Simple representation models seem to have been applied here and there during the medieval period and after the dissolution and division of the Roman Empire, where urban artisans used to organize themselves into unions to have control over public affairs affecting their work. Direct citizen participation re-emerged later in the Italian city-states during Renaissance, in the people's assemblies in English cities of the 9th century, and Swiss cantons and communes in the 13th century. When democracy re-established as a political system more than 2000 years later, the decision-making power rested no longer with the people, but with their electives, thus shaping the representative democracy system. Participatory democracy is a process demanding a wide citizen and stakeholder involvement in guiding and leading political systems. It aims at enabling citizens - as much as possible - to involve themselves and make their contribution in decision-making, as well as provide multiple opportunities to expand the circle of people that access such a process.¹

In countries with a representative democracy system, where people's sovereignty is manifested through parliament election by the people, the electoral system² is of utmost importance. The most important aspect of the electoral system is the individual's right to participate in running public affairs, either directly (through a referendum) or through freely elected representatives, which is closely connected to the principle that people should express themselves through fair and periodic elections, the outcome of which is binding.³

During the transition, a series of general elections took place in the Republic of Albania, all relying on different electoral systems thus indicating a lack of stability in the country.⁴ On 31 March 1991, parliamentary elections took place in post-communist Albania for the first time. These elections were held under the majority electoral system, inherited from the past. 11 entities participated in the first elections following the establishment of pluralism. They were monitored like never before by international bodies and 250 foreign journalists⁵, and featured a voter turnout as high as 98,92%⁶. The Law on *People's Assembly Elections* was the last to be approved by the Pluralist Parliament on 4 February 1992⁷. The law explicitly provided that the People's Assembly would comprise not less than 140 MAs (Members of Assembly), out of whom 100 were directly elected according to a mono-nominal list for each political party. The law aimed at combining vote equity and equality underpinning the proportional system, with the need to establish a sustainable majority, as guaranteed by the majority system⁸. Therefore, the system was proportional at its core but had some majority elements.⁹ On 26 May 1996, the next elections were held on the 14th Parliament

¹ Advocacy Training and Resources Center (ATRC): 'Citizen Participation in the Local Decision-making', November 2012, Pg.1 (paragraph I and II).

² Luan Omari, Aurela Anastasi: 'Constitutional Law', Tirana 2010, pg. 267.

³ Idem.

⁴ Luan Omari, Aurela Anastasi: 'Constitutional Law', Tirana 2010, pg. 277.

⁵ Doriana Pano: Dissertation on defending the "Ph.D." scientific title with the topic: 'Political Transition in Central Europe, Eastern Europe and Albania', University of Tirana, 2016, pg. 125

⁶ Idem.

⁷ Law No.7556, dated 04.02.1992 'On People's Assembly Elections in the Republic of Albania'.

⁸ Luan Omari, Aurela Anastasi: 'Constitutional Law', Tirana 2010, pg. 278.

⁹ Idem.

Legislature¹⁰ upon parliamentary approval of several changes to the electoral code¹¹. The main change - in our opinion - were the provisions under Article 6 amending Article 11, which preserved the minimum threshold of 4% that each party needed to have elected MAs in the plurinominal list.

On 29 June 1997, snap elections took place. During this period, the Assembly adopted other amendments to the Electoral Law¹², *inter alia*, explicitly providing in its Article 3 the amendment made to Article 6 therein that the new Assembly would comprise of 140 MAs, out of whom 115 would be directly elected in every area, while the remaining 25 seats would be handed to the candidates included in the plurinominal lists of different parties, proportionately to the votes they had earned in the first round at the national level. These changes lowered the minimum threshold from 4% to 2%¹³. These changes made to the Electoral Code have been also subject to juridical doctrine review¹⁴, which lays down the following main features: (i) setting of a specific number of MAs and electives among the candidates involved in the plurinominal lists, shifted the electoral system from proportional with majority features to majority with proportional features (or corrected majority system) and, (ii) lowering of the threshold from 4% to 2%, which eventually favored small parties, compensated their potential damage from the strengthening of the majority system.

In 1998 the Constitution of the Republic of Albania¹⁵ was approved, which regulated the electoral system in Article 64, maintaining a corrected majority electoral system. The number of deputies determined was 140, 100 be elected directly in the zone, and 40 based on multi-name lists. The required threshold to benefit from the proportional share was 2.5% for a political party and 4% for party coalitions. In 2000, upon the approval of the Electoral Code¹⁶, the precise formula for the calculation of mandates was defined and implemented in the 2001 general elections. However, the formula was unclear, so it was amended with the Amendments to the Electoral Code in 2003¹⁷. This formula was also considered unclear by the Venice Commission and the ODIHR, which suggested, among other things, the drafting of a new formula, to implement with great accuracy and clarity the relevant provision of the Constitution¹⁸. Even in 2005, the so-called bipartisan commission¹⁹, made further amendments to the Electoral Code, which were approved by the Assembly²⁰. Referring to Article 67 of the Electoral Code of 2005, if the number of single-member seats won by each party or coalition was greater than the total number of seats, then that party or coalition would not get any of the 40 additional seats²¹. Following many recommendations, reports, and directives from the OSCE-ODHIR, on 18 November 2008, the new Electoral Code was adopted. The new amendments, in our opinion, were constitutive and were preceded by the constitutional amendments of 21 April 2008. From these constitutional amendments, it is worth noting Article 64, point 1, which implemented the proportional representation electoral system, because the deputies were already elected based on the multi-name lists of different electoral zones. The Constitutional and the Electoral Code amendments had a positive

¹⁰ Idem.

¹¹ Law No.8055, dated 01.02.1996, on amendments made to Law No.7556, dated 04.02.1992, 'On People's Assembly Elections in the Republic of Albania'.

¹² Law No. 8218, dated 16.05.1997, "On several amendments to Law No. 7556, dated 04.02.1992 'On People's Assembly Elections in the Republic of Albania', as amended with Law No. 8143, dated 11.09.1996.

¹³ Article 4 amending Article 11.

¹⁴ Luan Omari, Aurela Anastasi: 'Constitutional Law', Tirana 2010, pg. 279.

¹⁵ Approved by Law no. 8417, dated 21.10.1998

¹⁶ Law No. 8609, dated 08.05.2000 "Electoral Code of the Republic of Albania".

¹⁷ Luan Omari, Aurela Anastasi: 'Constitutional Law', Tirana 2010, pg. 280.

¹⁸ Idem.

¹⁹ A commission composed of deputies of two main political parties, socialist and democratic

²⁰ Luan Omari, Aurela Anastasi: 'Constitutional Law', Tirana 2010, pg. 281.

²¹ Idem.

impact on the framework of citizens' participation and implementation of constitutional principles in the framework of protection of the fundamental rights and freedoms of the citizens of the RoA. *Inter alia*, we can note the wider representation of women as candidates for MPs, etc.

II

2.1 Analysis of the legislation in force in the Republic of Albania

The existing legal framework that regulates citizens' involvement in decision-making processes in the Republic of Albania, consists of a series of laws and normative acts, some of which have been subject to legislative amendments, while some of them require legislative initiatives to make the appropriate amendments or the adoption of new laws.

According to the hierarchy of legal norms, the basic act that regulates the citizens' participation in decision-making processes is the Constitution of the Republic of Albania. The Constitution guarantees the right of citizens to express their will through various mechanisms such as referendums or assemblies. The right to hold referendums, as a constitutional right, is one of the direct forms of exercising democracy and people's sovereignty. Specifically, the Constitution states that 50 thousand citizens, who enjoy the right to vote, have the right to a referendum for the abrogation of a law, as well as to request the President of the Republic to hold a referendum on issues of special importance. The Assembly, upon the proposal of not less than one-fifth of the deputies or the Council of Ministers, can decide that an issue or a draft law of special importance be presented for referendum²².

Despite representing a direct form of exercising democracy at the central and local level, our country does not have a law on referendums, but aspects related to this constitutional right are analyzed in the provisions of the Electoral Code and that on the Local Self-Governance. It is worth noting that, despite being identified as rights, these laws do not specify the procedure and rules that shall be followed to activate the referendum instrument.

The Electoral Code of 2003, in part nine, in Articles 118 et seq., provided the rules on the conduct and administration of constitutional, general, and local referendums. The new Electoral Code approved on 29 December 2018, repealed the Electoral Code of 2003, except for the provisions set out in part nine, as well as any part of its provisions relating thereto, which would remain in force until the approval of the new law on general and local referendums. In July of this year, the Assembly approved the amendments to the Electoral Code of 2008, with Law No. 101/2020 "*On some additions and amendments to Law No. 10 019, dated 29.12.2008 "Electoral Code of the Republic of Albania"*", as amended. As regards referendum initiatives, these amendments relate to the competencies of the bodies defined by law for the administration or supervision of referendums.

Specifically, the new amendments, in addition to the redefinition of the Central Election Commission²³ as the responsible institution for the organization and administration of elections and referendums, established the State Election Commissioner (Commissioner) as a monocratic body that exercises executive competencies, directs the CEC administration, and represents the CEC in relations with third parties²⁴. According to Article 19, point 1, letter "b" of Law No. 101/2020, the Commissioner directs and supervises, directly or through the CEC administration, the activity of the electoral administration during elections and

²² Article 150 of the Constitution of the Republic of Albania.

²³ Article 12, point 1 of Law no. 101/2020 "*On some additions and amendments to Law no. 10 019, dated 29.12.2008 "Electoral Code of the Republic of Albania"*", as amended.

²⁴ Article 12, point 3 of Law no. 101/2020 "*On some additions and amendments to Law no. 10 019, dated 29.12.2008 "Electoral Code of the Republic of Albania"*", as amended.

referendums. The new legal amendments established the structure of the Regulatory Commission (Regulator), as the competent body for the approval of normative acts and establishment of rules on elections²⁵. According to Article 20, point 1, letter “a” of Law No. 101/2020, the Regulator reviews and approves draft normative acts, prepared by the CEC administration or its members on the detailed rules for the organization and administration of elections and referendums, duties of the electoral administration and the applicable procedures of elections.

The electoral reform brought several fundamental changes to the country’s Constitution, as well as to the Electoral Code. The constitutional amendments are related to the criteria and rules for the implementation of the new electoral system. Specifically, with Law No.115/2020 “*On some amendments to Law No. 8417, dated 21.10.1998, “Constitution of the Republic of Albania”, as amended*”, Article 64²⁶ and the first point of Article 68²⁷ of the Constitution were amended. Based on these constitutional amendments, our country will no longer apply the proportional electoral system with multi-name lists for electoral zones, but a system with regional competition and national threshold and, only electoral subjects which reach this threshold can participate in the dissemination of mandates. Also, the constitutional amendments guarantee voters the right to preferential voting of the candidates on multi-name lists. We are not dealing with a new electoral system, because the electoral system remains to be the proportional electoral system, but the constitutional amendments have changed the competition system of candidates and the novelty lies in the impact it brings to voters in the selecting and voting for MP candidates.

The constitutional amendments stipulate that, without changing the current electoral system, the proportional system by regional competition with closed lists, to change to open lists, while the criteria and rules on the implementation of which are defined and detailed in the amendments made to the Electoral Code. Moreover, these constitutional amendments guarantee voters the right to preferential voting, the right to choose their most preferred candidates from the electoral subjects’ candidates’ lists. Besides, the constitutional amendments define the political parties and voters as electoral subjects proposing candidates for MPs, banning the possibility of creating “*pre-election coalitions*”, and setting a national threshold, as a quota to be reached by political parties to participate in the dissemination of mandates.

Regarding the Electoral Code amendments in the framework of the electoral reform, as mentioned above, the amendments were finalized with the approval of Law No. 101/2020 “*On some additions and amendments to Law No.10 019, dated 29.12.2008 “Electoral Code of the Republic of Albania”, as amended*”. Substantial changes, in addition to those that reflect a broader political agreement, related to the restructuring of the Central Election Commission, its governing bodies, the voters’ electronic identification at the polling stations, and the opportunity of Albanian citizens living abroad to vote. The novelties of these

²⁵ Article 12, point 4 of Law no. 101/2020 “*On some additions and amendments to Law no. 10 019, dated 29.12.2008 “Electoral Code of the Republic of Albania”, as amended*”.

²⁶ Article 64 of the Constitution states that: “1. *The Assembly consists of 140 deputies, elected according to a proportional election system with regional competition and national threshold. 2. The electoral subjects which reach the national threshold participate in the dissemination of mandates. 3. The voters enjoy the right to preferential voting of the candidates on multi-name lists. The criteria and rules for the implementation of the electoral system, for the designation of electoral zones, the national threshold, the number of mandates for each zone, and the extent of the preferential vote are defined in the law on elections. The law on elections guarantees that no less than two-thirds of the multi-name list will be subject to preferential voting and shall provide gender representation*”.

²⁷ Article 68, point 1 of the Constitution states that: “*Candidates for MP shall be presented at the electoral zone by the political parties or voters. A candidate may be presented by only one of the proposing subjects, according to this point. The rules for the registration of candidates for MP are determined by the law on elections*”.

amendments are reflected in the determination of the gender quota in the Assembly, as well as the reorganization of the Electoral College, which shall consist of eight judges selected by lot from the High Judicial Council, from the ranks of judges who have successfully passed, with a final decision, the transitional re-evaluation for judges, according to Law No. 84/2016 *“On the transitional re-evaluation of judges and prosecutors in the Republic of Albania”*. Moreover, the amendments to the electoral law changed the electoral period, whereas the general or local elections shall take place within a period that extends from 15 April to 15 May or from 15 October to 15 November²⁸.

Furthermore, on the 5th of October 2020, the Assembly approved Law No. 118/2020 *“On some additions and amendments to Law No. 10019, dated 29.12.2008, “The Electoral Code of the Republic of Albania”, as amended”*. The approved Electoral Code amendments concern electoral subjects, distribution of mandates, gender quotas, etc. Specifically, these changes enable political parties to propose MP candidates in a joint list, but the proposing subject shall be the political party, while the group of parties that choose to run together with a list of MP candidates, is considered as one electoral subject competing under the leadership of the leading party of the coalition. According to these amendments, regarding the distribution of seats for the winning candidates of the list, all listed candidates are subject to preferential voting of voters. Every voter has the right, in addition to the party or electoral coalition, to place the mark on the name of a preferred candidate. Voters are given the right to change the ranking of candidates and respectively the distribution of seats, by evaluating those candidates who demonstrate that they enjoy great support, even on the ranking of the political party that proposes them.

The amendments approved in October 2020 refer also to the re-ordering rules of the first part of the list corresponding to the mandates won, as well as the ranking of candidates of the second part of the list, based on the number of preferential votes of each candidate, and the fulfillment of legal condition for the less represented gender to be not less than 30% of the composition of the Assembly, even in the conditions of implementation of fully open lists. According to these amendments, one in three consecutive names belongs to the less represented gender, both in the preliminary list submitted by the electoral subject and in the final list of mandates won by the electoral subject. Also, some other changes are related to the reduction of the threshold for the allocation of mandates from 3% to 1%, competencies of the Appeal and Sanctions Commission as recognized by the Electoral Code, as well as the repeal of the provisions on the Electronic Verification System²⁹.

Regarding the right to referendum at the local level, Article 108, point 4 of the Constitution provides that self-governance in the local units is exercised through their representative bodies and local referendums. While, Article 18, point 2 of the Law No. 139/2015 *“On local self-governance”*, as amended states that: *“2. Public consultation, in any case, is done in the manner provided in the regulation of the council, using one of the necessary forms, such as open meetings with residents and interested parties, meetings with specialists, interested institutions and non-profit organizations or through taking the initiative to organize local referendums”*. As stated in this provision, even though the law guarantees this constitutional right, it does not detail the procedure on the initiative for the organization of local referendums.

The draft law *“On Referendums”* is currently being reviewed by the Assembly. This draft law contains material and procedural provisions, but also the relevant references of the Electoral

²⁸ Article 4 of Law no. 101/2020 *“On some additions and amendments to Law no. 10 019, dated 29.12.2008 “Electoral Code of the Republic of Albania”, as amended.*

²⁹ Committee on Legal Affairs, Public Administration and Human Rights, *“Report on two draft laws “On some additions and amendments to Law no. 10 019, dated 29.12.2008 “Electoral Code of the Republic of Albania”*

Code. It also contains provisions on holding general referendums, as well as those at the local level in the election process administration plan, differentiating two basic categories for the direct exercise of people's sovereignty: the general and local referendum³⁰.

Freedom of assembly, as a means of exercising direct democracy, is stated in Article 47 of the Constitutions, which provides that: "1. *The freedom of peaceful and unarmed assembly is guaranteed.* 2. *The peaceful gathering in public squares and places is done in compliance with the procedures provided by the law*". Freedom of assembly and organisation is regulated by Law No. 8773, dated 23.4.2001 "*On Assemblies*". This law defines the procedures and conditions in which it is allowed to hold gatherings and manifestations of different forms. The law states the obligations of the State Police structures, rights and duties of the leader and its assistants, provisions regarding the venue of the gatherings, prohibition, closure, and dissolution, as well as the relevant sanctions in case of a criminal offense.

This law recognizes the right of each individual to organize and participate in peaceful and unarmed assemblies, including gatherings, demonstrations, meetings and parades, in which a group of individuals expresses their demands and views on problems on which they are interested and includes urgent gatherings³¹. Exceptional cases where the law prohibits the organization of a gathering include the existence of a real threat to national security, public safety, crime prevention, protection of public health or moral or the protection of the freedoms and rights of others and such threat may not be prevented by other less restrictive means.³² These rights belong to the category of rights that may be limited, as is the current situation of the global pandemic that our country is facing. DCM no. 243, dated 24.03.2020 "*On the declaration of the state of natural disaster*", among other things decided to prohibit gatherings, rallies, and strikes.

To guarantee freedom of assembly and organization, the People's Advocate has recommended taking the necessary measures related to:

- Taking measures to stop the practice of prohibiting non-massive gatherings in closed or open spaces, during the pandemic or the state of the natural disaster. It is necessary to improve the applicable normative acts, to guarantee the exercise of the right of assembly even during a natural disaster or pandemic, following health measures and protocols.
- Taking measures to guarantee the right of journalists to exercise their profession while reporting gatherings.
- Preparation and approval of instructions or circular by the General Prosecutor's Office, for the unification of the prosecution and judicial bodies' practices for the criminal prosecution and adjudication of cases for the criminal offense "*Organizing and participating in illegal manifestations*", provided by Article 262 of the Criminal Code.
- Moreover, the People's Advocate has recommended to the General Prosecutor's Office to take immediate measures for the preparation of concrete proposals to amend Article 262 of the Criminal Code in accordance with the Constitution of the Republic of Albania, the European Convention on Human Rights as well as the current practice of the European Court of Human Rights.³³

In July 2019, the Assembly of the Republic of Albania approved Law no. 54, dated 18.7.2019 "*On the legislative initiative of voters in the Republic of Albania*", which is

³⁰ Report on the draft law "*On referendums*".

³¹ Article 5, point 5 of Law no.8773, dated 23.4.2001 "*On Gatherings*".

³² Article 8 of Law no.8773, dated 23.4.2001 "*On Gatherings*".

³³ Recommendation of the People's Advocate on taking the necessary measures to respect the constitutional freedom of assembly during extraordinary situations

considered a legal guarantee to facilitate and promote the citizens' representation and participation in decision-making processes of the country. This law was approved according to the implementation of Article 81, point 1 of the Constitution which states that: "*The Council of Ministers, every deputy, and 20,000 voters, each have the right to propose laws*", thus voters have the opportunity to be directly involved in public decision-making and issues having a huge public impact, being themselves subjects of the initiative.

The law "*On the legislative initiative of voters in the Republic of Albania*", was drafted with the assistance of ODHIR experts and the Venice Commission, in accordance with the Regulation No.211/2011 of the European Parliament and of the Council dated 16.02.2011 "*On the European Citizens' Initiative*". Materials prepared by the Venice Commission, in particular "*The Code of Good Practice on Referendums (2007) – Chapter IV*", which regulates the process of collecting and verifying signatures, have been extensively consulted for the draft law. The latter remains one of the most important procedures which was not properly sanctioned in the existing legislation, and for this reason, the law creates a model procedure that gives Albanian citizens the proper dignity and legitimizes them as subjects of the initiative, without requiring their signatures to be verified by the forensic expertise in any case³⁴.

The law on the legislative initiative of voters in the Republic of Albania will have a great impact in terms of citizens' involvement in decision-making processes, raising their awareness of involvement in issues of concern to the community or public work, better qualitative citizens' engagement in the legislative process and increase of the cases of citizens' civil engagement. The law aims to involve citizens who have the right to vote, as well as civil society organizations in decision-making processes and it is realized through the proposal of draft laws. The law contains 18 provisions and defines the procedures for exercising the voters' legislative initiative in the Republic of Albania, as stipulated by the Constitution of the Republic of Albania³⁵, procedures which are concluded with the submission of the initiative to the Assembly and after this moment, the provisions of the Rules of Procedure of the Assembly and parliamentary practices apply. As it results from the content of the law, citizens can rely on this law to exercise only legislative initiatives to propose draft laws, and not to undertake other initiatives, such as petitions or referendums.

The process of legislative initiatives is based on two important constitutional principles, firstly on the principle of non-discrimination and secondly on the principle of human rights. Law no. 54/2019 prohibits any kind of restriction to participate in the process of proposing draft laws, as well as imposes the obligation that this process is conducted in respect of human rights, in particular, the right to freely organize, freedom of expression and freedom of the press, freedom of movement within the territory of the Republic of Albania, as well as the right to be informed³⁶.

The law has guaranteed the necessary means to take the initiative to propose draft laws to the Assembly by not less than 20.000 voters after the list of signatories has been previously verified by the Central Election Commission. Voters who initiate a legislative initiative are represented by representatives when the legislative initiative is initiated by individuals; by the Initiative Representative Committee, in the case when the legislative initiative is initiated by one or several civil society organizations, where each of the organizations has the right to appoint a representative as well as in the case when the legislative initiative is initiated by individuals in cooperation with civil society organizations. In the latter case, the Initiative

³⁴ Explanatory report of the draft law "*On the legislative initiative of voters in the Republic of Albania*".

³⁵ Article 1 of Law no. 54/2019 "*On the legislative initiative of voters in the Republic of Albania*".

³⁶ Article 2 of Law no. 54/2019 "*On the legislative initiative of voters in the Republic of Albania*".

Representative Committee consists of one to three members elected by the group of individuals, as well as one representative for each civil society organization.³⁷

Regarding the persons who may be subjects of the initiative, it is concluded that, indirectly, the law accepts some restrictions that de facto stem from the Constitution. In the analysis of the constitutional provisions and those of Law no. 54/2019, it results that the persons who have the right to undertake or sign a legislative initiative are the persons who have the right to vote, i.e. who freely exercise the right to vote in the Republic of Albania. Article 45 point 2 of the Constitution excludes from the right of election citizens who have been declared mentally disabled by a final court decision. Moreover, the 2015 amendments³⁸, Article 45, point 3 provides that in exceptional and justified cases, the law may provide for restrictions of the election right citizens serving an imprisonment sentence or the right to be elected before a final decision being rendered, or the citizens that have been deported in connection with a crime or very serious and grave breach of public security.

Civil society will play an important role not only in undertaking initiatives and submitting them to the Assembly but also during the process of collecting signatures and coordinating work between them and institutions involved such as the Assembly, the Commissioner for Personal Data Protection, and Freedom of Information, etc. According to Article 5, point 2 of Law no. 54/2019, the drafting and proposing of the legislative initiative in the Assembly shall be conducted in compliance with the Constitution, the Rules of Procedure of the Albanian Assembly, as well as the legal standards on drafting of normative acts. In case of rejection by the Assembly, the legislative initiative may be submitted again for consideration, but not earlier than six months after the rejection date. In addition to guaranteeing the right to propose legislative initiatives, the law brings a novelty related to the collection of electronic signatures. According to Article 12, point 1 of this law, the collection of electronic signatures is carried out in accordance with the applicable legislation on electronic signature, electronic document and electronic identification, and trusted services. Moreover, Law no. 54/2019 brings novelty in terms of guaranteeing the right to be involved in legislative initiatives for Albanian citizens living abroad, through signatures at embassies or consular posts of the Republic of Albania. This procedure is provided as a special procedure, in addition to two other special procedures for signatures, in cases where the voter, for health reasons, is unable to go to the signature collection or in cases the voter is isolated for security reasons, after being considered suspect, is charged or is being tried for a criminal offense or is serving a sentence.

The Law provides also the right of appeal to the Delegation/Representative Committee near the administrative court, against the decision of the Central Election Commission, in case of refusal to register the signature forms or the initiative, as well as the applicable penalties in case of violation of procedures and deadlines related to the collection of signatures and registration of the initiative by responsible persons, as well as the inclusion of false data by persons charged by this law with the collection of signatures³⁹.

Law no. 146/2014 “*On Public Notification and Consultation*” regulates the public notification and consultation of draft laws, drafting of national and local strategic documents, as well as policies of high public interest and provides the applicable procedural rules to ensure transparency and public participation in policy-making and decision-making processes of the public authorities⁴⁰. This law provides the obligation of public bodies to take all necessary

³⁷ Article 6 of Law no. 54/2019 “*On the legislative initiative of voters in the Republic of Albania*”.

³⁸ Law no. 137/2015 “*On some additions and amendments to Law no. 8417, dated 21.10.1998, “Constitution of the Republic of Albania”, as amended*”.

³⁹ Articles 16 and 17 of Law no. 54/2019 “*On the legislative initiative of voters in the Republic of Albania*”.

⁴⁰ Article 1, points 1 and 2 of Law no. 146/2014 “*On Public Notification and Consultation*”.

measures, to create opportunities for the participation of the public and all interested parties, citizens of the Republic of Albania and stakeholders, in the process of public notification and consultation.

It is important to ensure the implementation of a transparent consultation process by public institutions, which have the obligation to provide stakeholders with the justification and necessity of taking the initiative and starting the decision-making process for the issuance of draft acts, where the latter may include draft laws, draft national and local strategic documents and policies of high public interest, drafted by public bodies. The law has set a deadline of 20 days, as a necessary and sufficient deadline within which recommendations and comments should be sent to the public decision-making body.

According to Article 4 of the law on public notification and consultation, the provisions of this law do not apply to the decision-making process related to national security issues, to the extent that they constitute a state secret, international relations and bilateral and multilateral agreements, individual administrative acts and administrative acts of a normative character, except when otherwise provided by a special law, normative acts, with the force of law, approved in the Council of Ministers, civil emergency and other exceptional cases provided by law.

The Constitution of the Republic of Albania defines the right to information as a fundamental human right and freedom. However, it extends the protection of this right to other parts that concern the legal regulation of the state institutions' functioning, as well as in some other provisions in which the right to information is presented as an important element to exercise other fundamental human rights. Article 23, point 1, having a declarative character, guarantees the general right of everyone to information, which implies a negative right that should be exercised without the intervention of public authorities. While the constitutional guarantee of the right to information is set, point 2 determines a legal reservation, to further regulate with a special law, the right to get information about the activity of state bodies or persons who exercise state functions. This provision has not only provided general protection of the right to information on matters of general public interest but has also been defined as a separate right - the right to seek and receive official information from state bodies or their public officials. In furthering the protection of the right to information, the Constitution has treated it as an important element to achieve more open and transparent governance. This aim is intended to be guaranteed by Article 23, point 3 of the Constitution, which provides the right to everyone to follow the meetings of elected collective bodies. It should be noted that this point can be analyzed in conjunction with other provisions of the Constitution, which although do not directly regulate freedom of information, treat it as an important element, and transparency as a special principle in the work of institutions, the activity of which these constitutional provisions regulate⁴¹.

Law Nr. 119/2014 'On the right to information' regulates the right of access to information being produced or held by public authorities. The rules contained in this law are designed to ensure public access to information, in the framework of exercising the rights and freedoms of the individual in practice, as well as establishing views on the state and society situation. The law aims at encouraging integrity, transparency, and accountability of the public authorities. The law explicitly states that any person enjoys the right to access public information, not being subject to explain motives, as well as, any person shall be entitled to access the public information, either through the original document or receiving copies in the form or format enabling full access to the document content. The public authority shall be obliged to inform the applicant whether it holds the requested information or not. Article 6 of this Law charges the Commissioner for Personal Data Protection and Freedom of

⁴¹ Further, a reference to Baraku, Irma: 'The right to information and the means of its realization in the Republic of Albania'. Dissertation for the Ph.D. scientific title, Tirana 2012, pg.23 and et seq.

Information to approve and disseminate transparency program models for various public authority categories, in compliance with the current legislation on the protection of personal data. In compliance with the transparency programs approved for each public authority, the latter shall prepare in advance and easily comprehensible and accessible formats, as well as making available to the public the following information categories in Article 7, *inter alia*: e) *data on the budget and plan of expenditure for the ongoing financial year and the previous years, as well as any annual report on the implementation of the budget*; ë) *information on the procurement procedures or competition procedures of the concession/public-private partnership*; gj) *any mechanism or procedure, by which the interested persons may submit their opinions or have an impact in any other way on the drafting of laws, public policies, or exercise of the public authority*; i) *record of applications and responses, etc.* The right to information may be restricted as long as it is indispensable, proportional, and if making the information available would harm the following interests: a) right to privacy; b) commercial secret; c) copyrights; ç) patents.

To guarantee institutional cooperation with civil society organizations in the Republic of Albania, in favor of expanding democracy, consolidation of good governance, and increasing transparency, the legislator adopted Law no. 119/2015 “*On the establishment and functioning of the National Council for Civil Society*”⁴². This Council functions near the Council of Ministers, advising the latter on the establishment of state policies to promote the sustainable development of civil society. Also, through special laws, several special structures have been established which are an expression of the citizens’ involvement in decision-making processes, such as the National Council for European Integration, the National Council for Gender Equality, the National Council for Disability, etc.

The National Council for European Integration is established by Law no. 15/2015 “*On the Role of Parliament in the Integration of the Republic of Albania in the European Union*” and is the highest national advisory structure on European integration.⁴³ This Council, in addition to representatives of other institutions, is composed of three representatives from civil society organizations, involved in European integration issues. Moreover, in the meetings of the National Council of European Integration participate with the status of permanent guests: representatives from the public university, media, representatives from business organizations, as well as trade unions. Referring to the data recorded in the Annual Report of the National Council of European Integration for 2019, it results that to expand the involvement and contribution of civil society, the number of representatives of civil society organisation in the NCEI, increased significantly in relation to the previous representation, where from 8 representatives that were before, currently the number is 18⁴⁴.

The National Council on Gender Equality is established by Law no 9970, dated 24.07.2008 “*On gender equality in society*”, as an advisory body on gender equality issues. This Council, based on the principle of equal representation, according to gender, is chaired by the minister who covers issues of gender equality and is composed of ten representatives appointed by government and three by the civil society⁴⁵. While the National Council on Disability, as an advisory body, is established by Law no. 93/2014 “*On inclusion and accessibility for persons with disabilities*” and has the authority to advise the government, make assessments, and provide recommendations for the implementation of public policies

⁴² Article 6 of Law no. 119/2015 “*On the establishment and functioning of the National Council for Civil Society*”.

⁴³ Article 6 point 1 of Law no. 15/2015 “*On the Role of Parliament in the Integration of the Republic of Albania in the European Union*”.

⁴⁴ Annual Report of the National Council for European Integration, <https://www.parlament.al/Files/Integrimi/Raporti%20vjetor%20i%20KKIE%202019.pdf>, Accessed on 8 September 2020.

⁴⁵ Article 11, points 1 and 2 of Law no. 9970, dated 24.07.2008 “*On gender equality in Albania*”.

and legislation in force, in order to guarantee the accessibility and inclusion of persons with disabilities in all areas.

The institutional cooperation in the framework of citizens' involvement in decision-making processes was re-dimensioned with the involvement of civil society and stakeholders in the implementation of the Justice Reform, one of the most important reforms undertaken to consolidate the justice system and equality of citizens before the law. In addition to the commitment of the Special Parliamentary Committee on Justice System Reform, this Reform, included several other actors such as the High-Level Experts Group, a considerable number of ten non-profit organizations, lawyers, professors of public and private universities, as well as experts/ lawyers funded by foreign projects⁴⁶. In addition, another important aspect is related to the fact that well-known lawyers engaged in academia or practicing law have become part of new justice institutions such as the High Judicial Council or the High Prosecution Council.

Among practical cases of citizens' involvement in decision-making processes, in the form of participation in gathering, referendums, public consultations, etc., we can mention:

Regarding assemblies:

- Gathering dated 31.03.2018 for the opposition of the tariff set for passing "*Rruga e Kombit*";
- Gathering organized in January 2019 from students for the fulfillment of the conditions required by them in Higher Education Public Institutions.
- Gatherings organized by opposition parties and residents against the demolition of their buildings in "*Unaza e Re*", "*Astiri*" areas, and extension of the Boulevard "*Zogu i Parë*".

Regarding referendums:

- A group of 16 initiators who on 30 November 2011 addressed the CEC with a request to initiate procedures for holding a general referendum on abrogation of a part of Law no. 10463, dated 22.09.2011 "*On integrated waste management*". After verifying the signatures of over 50,000 voters, the CEC addressed the Constitutional Court to verify the constitutionality of this request, which declared the request for a general referendum on abrogation of the provisions of the law on waste as incompatible with the Constitution.⁴⁷
- The request submitted to CEC by a group of 24 voters for initiating procedures for holding a general referendum on abrogation of Articles 5, 7 and 8 of Law no.9904, dated 21.04.2008 "*On some amendments to Law no. 8417, dated 21.10.1998 "Constitution of the RoA", as amended*". After the CEC decided not to consider the referendum request, the initiating group addressed the Constitutional Court. After reviewing the case, the Constitutional Court declared the request on abrogation as incompatible with the Constitution.⁴⁸
- 53 thousand voters who addressed the Constitutional Court with the request to hold a referendum on abrogation of Articles 4 and 6 of Law no. 8889, dated 25.04.2002 "*On some additions and amendments to Law no. 7703, dated 11.05.1993 "On Social Security in the Republic of Albania"*". The CEC forwarded the request for a general referendum to the Constitutional Court to review its constitutionality in advance. The Court decided to

⁴⁶ Data from the official webpage of the Justice Reform: <http://www.reformanedrejttesi.al/>, Accessed on 4 September 2020.

⁴⁷ Decision no. 8, dated 08.03.2013 of the Constitutional Court.

⁴⁸ Decision no. 25, dated 24.07.2009 of the Constitutional Court.

declare the request for holding the referendum on abrogation of respective legal provisions as incompatible with the Constitution⁴⁹.

Regardless of the above-mentioned cases, there are **no cases of successful referendums in our country**. The citizens' organization and participation in decision-making results to have been performed for the last time in 1994 and 1997, when respectively general referendums were held on the draft constitution and form of government, choosing the "Republic" as the form of government.

Regarding public consultations:

According to the Parliament, during 2018, several consultation processes were conducted with stakeholders and civil society representatives, of which: 100 hearings (39 for the legislative process, 33 for parliamentary control, and 8 for election process); 8 consultation tables; - 11 meetings; 6 conferences; 12 activities, the committees have passed for approval to the plenary sessions 421 amendments submitted by civil society organizations and stakeholders. 395 civil society organizations and stakeholders, represented by 354 participants participated in the activity of committees, subcommittees, and other parliamentary activities⁵⁰.

2.2 Citizens' Participation in Local Governance.

Citizens' participation in decision-making processes is a key element of the local democracy. It increases transparency and makes local government officials more accountable for their decisions.⁵¹ The main prerequisite for pursuing a sustainable democratic reform process is the ability to make the citizens trust the elected local officials⁵². The stronger the connection between the two parties (citizens and elected officials), the more successful and more democratic the society will be developed⁵³. Undoubtedly, this relation strengthens proportionally with the readiness of the elected officials to respond to the real needs of citizens; represent their best interest, and improve their quality of life⁵⁴. This is increasingly important at a local level of governance, where the relationship between the two is more evident, tangible, and sensitive⁵⁵.

In the Republic of Albania, the citizens' participation is regulated and guaranteed, *inter alia*, by the Constitution of the Republic of Albania⁵⁶, as well as by the Law "On Local Self-Governance"⁵⁷. The Law "On Local Self-Governance" explicitly states⁵⁸ that the mission of local government is, among others: "... *dh) promotion of effective participation of residents in local governance*". Also, Article 16 of the Law provides that local self-governance bodies are obliged to guarantee public participation in the decision-making process. In this context, each local government unit is obliged to appoint a coordinator for public notification and

⁴⁹ Decision no. 31, dated 19.11.2003 of the Constitutional Court.

⁵⁰ Report on public participation in decision-making for 2018: <https://www.parlament.al/Files/Informacione/Raportishoqerisecivile2018.pdf>, Accessed on 7 September 2020.

⁵¹ 'Implementing Citizens Participation in Decision-Making at Local Level', OSCE, Date. 5.4.2016, pg. 50. Accessed through OSCE web page: <https://www.osce.org/files/f/documents/5/3/231366.pdf>, Date. 5.9.2020, time 19:51.

⁵² Idem.

⁵³ Idem.

⁵⁴ Idem.

⁵⁵ Idem.

⁵⁶ Constitution of the Republic of Albania, Approved by Law no. 8417, dated 21.10.1998 of the People's Assembly.

⁵⁷ Law No. 139/2015, 'On Local Self-Government'.

⁵⁸ Article 3 of Law no. 139/2015, 'On Local Self-Government'.

consultation, in accordance with the provisions of applicable law on public notification and consultation. Also, the Law has provided⁵⁹ legal guarantees to ensure citizens' participation, even providing in a permissible manner, that the meetings of the Municipal Council are open to the public and every citizen is allowed to attend the meetings of the Council, according to the procedure defined in the regulation of the Council. Following the material provision, the Law regulates the procedural aspect⁶⁰ of the citizens' participation in the Municipal Council meetings, and succinctly stipulates that public consultation, in any case, is conducted in the manner defined in the regulation of the Council, carried out in one of the necessary forms, such as open meetings with residents and stakeholders, meetings with specialists, interested institutions and non-profit organizations or through taking the initiative to organize local referendums.

Every citizen or group representing communities has the right to address requests, complaints, or remarks to the local government bodies for issues related to functions and competencies in the jurisdiction of the local government unit⁶¹. Every community, through its authorized representatives, or not less than one percent of the residents of the municipality, has the right to submit civic initiatives on issues that are within the jurisdiction of the local government unit for decision-making to the municipal council. The manner and form of submission of these initiatives, the procedure of their review and approval are defined in the regulation of the organization and functioning of the municipal council ⁶².

Citizens' participation at the local level has been regulated by Law "On Local Self-Governance", which provides the material and procedural point of view for citizens' participation in local government, their representation, etc., another very important aspect is the legal framework which regulates the citizens' participation in the local election process, namely the Electoral Code of the Republic of Albania⁶³.

The mandates of the Local Councils in the Republic of Albania are allocated to political parties and coalitions according to the d'Hondt system, while the allocation of seats for parties within a coalition is realized according to the Sainte Lague method. The legal framework on local elections is regulated by the Constitution of the Republic of Albania and the Electoral Code, which was last amended in 2020, as well as other supporting legislation, where inter alia, we can mention: Law on Political Parties⁶⁴, Law on Assemblies⁶⁵, Law on Gender Equality in Society⁶⁶, Law on Audio-Visual Media⁶⁷, etc.

The Electoral Code has explicitly provided that Albanian and foreign non-governmental organizations, as well as international organizations specialized or engaged in good governance and democratization, representatives of foreign countries, and the media have the right to send observers to elections. During the local elections of June 30, 2019, also referring to the ODIHR Evaluation Report⁶⁸, we conclude that the participation of citizens in local elections is a very important aspect that must be taken into account, in order to develop a transparent and legal elections process.

⁵⁹ Article 17, point 1. Law no. 139/2015, 'On Local Self-Government'.

⁶⁰ Article 18, point 2. Law no. 139/2015, 'On Local Self-Government'.

⁶¹ Article 19, point 1. Law no. 139/2015, 'On Local Self-Government'.

⁶² Article 20, point 1. Law no. 139/2015, 'On Local Self-Government'.

⁶³ Law 10019, dated 28.12.2008, Amended by Law no. 74/2012, Law no. 31/2015, and Law no. 101/2020

⁶⁴ Law no.8580, dated 17.2.2000.

⁶⁵ Law no.8773, dated 23.4.2001

⁶⁶ Law no.9970, dated 24.7.2008

⁶⁷ Law no. 97/2013

⁶⁸ Evaluation Report of ODIHR, Warsaw, 17 April 2019, pg. 15.

Practical cases of citizens' participation in decision-making processes in local government.

From a practical point of view, the citizens' participation in decision-making processes within local government is not at a satisfactory level, compared to citizen participation at the central level. Specifically, we have referred only to the Municipality of Tirana, where we have identified several cases of citizens' participation in its decision-making processes.

The first case is in the framework of drafting the budget for 2018 with participation, for which the Municipality of Tirana organized meetings and kept minutes⁶⁹ in its 16 local units. During these public hearings, citizens gave their budget proposals.

The second case in the Municipality of Tirana was the holding of open and comprehensive consultations for its projects, which have a great and direct impact on citizens. Specifically, the citizens' participation for the approval of the General Local Plan, where it is noted that many of the ideas presented by citizens regarding the Orbital Forest in order to increase the greenery, became part of the plan.

The third case deals with the already completed project of 'Sheshi Skënderbej', a project which underwent many modifications thanks to the consultations with the citizens' participation in 24 units, wherein conclusion many of the recommendations were taken into consideration and was decided on the construction of an underground parking lot.

III

3.1 European Union regulatory framework.

At a moment of low citizens' trust and confidence in European Institutions, improving citizens' participation and transparency at the EU level is necessary to close the perceived gap between the European Union on the one hand, and citizens and representative organizations, on the other hand.⁷⁰ Several ongoing developments offer the opportunity to address this gap and improve citizens' participation and transparency.⁷¹ However, the participation of citizens in the political life of the European Union depends to a large extent not only on the policies but also on the 'politics', namely on progress in the integration process towards real multilevel democracy.⁷²

The European Commission developed *White Paper on European Governance*⁷³, which *inter alia*, aimed to reinforce the culture of consultation and dialogue at the EU level and improve the legitimacy of decision-making. *The White Paper* sets five principles of "good governance": (i) openness, (ii) participation, (iii) accountability, (iv) effectiveness, and (v) coherence, which not only underpin the democracy and rule of law in the Member States, but they apply to all levels of government – global, European, national, regional and local. This document recommended changes in a number of directions and obliged the European Commission to take action in their implementation. One of the results was the approval from the European Commission of the General principles and minimum standards for consultation

⁶⁹ <https://www.tirana.al/faqe/buxheti>

⁷⁰ European Movement International: 'Citizens' Participation and Transparency: Closing the Gap', 2020, pg. 2.

⁷¹ Idem.

⁷² Idem.

⁷³ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52001DC0428&from=EN>

of interested parties in 2002.⁷⁴ This document emphasized the importance of providing clear consultation documents, ensuring the consultation of all relevant target groups, providing sufficient time for citizens' participation, published results, and obtaining respective opinions.

The approach of participation in policymaking at the EU level and its Member States was also evident in the Treaty of Lisbon⁷⁵. The Treaty provides explicitly in Article 10, that: *"every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and closely as possible to the citizen"*. Following the Treaty of Lisbon, the European Parliament implemented the Resolution on the Perspectives for Developing Civil Dialogue under the Treaty of Lisbon⁷⁶. The Resolution highlights the importance of consultation and calls on the EU institutions to implement the binding guidelines concerning the appointment of civil society representatives, methods for organizing consultations and their funding, and calls to maintain up-to-date registers of activities of civil society organizations. The Resolution also stresses the importance of dialogue with citizens at all participation levels.

On the other hand, the Council of Europe has been very active in addressing the issue of citizens' participation and has issued a number of recommendations in this regard. Among others, we can cite: (i) Recommendation CM/Rec (2007) 14⁷⁷; (ii) Recommendation CM/Rec (2010) 5⁷⁸ and, (iii) Recommendation CM/Rec (2001) 19⁷⁹.

In the context of local participation, a very important document is the European Charter of Local Self-Government⁸⁰, which is the first binding international treaty that guarantees the right of communities to elect authorities and, the implementation of the subsidiarity principle. Upon signature of this treaty, states mobilized to respect basic principles, such as the right of citizens to participate in the conduct of public affairs.

If we were to analyze and deduce the best practices implemented by some non-EU and EU Member states, we would first analyze the regulatory framework of England, which although no longer part of the European Union, was one of the oldest EU member states. England, as one of the countries with the longest and most stable democracy, is considered one of the most successful countries in implementing the best practices for citizens' participation in decision-making processes. The regulatory framework in England recognizes a number of binding and non-binding acts. As an example of binding acts having legal force, we cite the Freedom of Information Act⁸¹. This act emphasizes the general right to access information, according to which, any person who addresses a request for information to one of the public institutions has the right to be informed in writing by the public authority in case the latter has or does not have the requested information, and the information shall be communicated to the citizen within 12 days from the day of receipt. Beyond legally binding acts, England has a number of other acts with non-binding force and many good practices, aimed at addressing and involving citizens in decision-making processes, at the central and local level.

⁷⁴ [https://www.eumonitor.eu/9353000/1/j4nvke1fm2yd1u0_j9vvik7m1c3gyxp/vkcweed5bwsz/v=s7z/f=/com\(2002\)704_en.pdf](https://www.eumonitor.eu/9353000/1/j4nvke1fm2yd1u0_j9vvik7m1c3gyxp/vkcweed5bwsz/v=s7z/f=/com(2002)704_en.pdf)

⁷⁵ http://publications.europa.eu/resource/cellar/688a7a98-3110-4ffe-a6b3-8972d8445325.0007.01/DOC_19

⁷⁶ <https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0007+0+DOC+XML+V0//EN>

⁷⁷ <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1194609>

⁷⁸ <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1606669>

⁷⁹ <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1606669>

⁸⁰ <https://rm.coe.int/168007a088>

⁸¹ <https://www.legislation.gov.uk/ukpga/2000/36/contents>

In this context, we can cite the Accord on Relations between the Government and Volunteers and Community Sector⁸². Following this document, the government launched the Code of Good Practice Agreement on Policy Consulting and Evaluation, which established the mechanisms on how consultation between citizens and the Government should be implemented. In general, from a *prima facie* point of view of the English regulatory framework, a very good realization of the establishment of the relationship between government structures and NGOs can be noticed, because the mechanisms analyzed *ut supra* have proved that citizens' participation has influenced a multilayer and comprehensive democracy and the citizens' voice has been heard and continues to be heard.

Another European country, an EU Member State, has implemented very good practices that reflect the citizens' involvement in decision-making. Austria, similarly to England, has implemented in a non-binding document all standards for citizens' participation. The so-called "Standards of Public Participation – Recommendations for Good Practices"⁸³, was prepared by an inter-ministerial working group with the participation of 20 Austrian authorities and entered into force in 2008. This act aims to help the administrative staff of the federal government to increase citizens' participation.

⁸²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/61169/The_20Compact.pdf

⁸³http://www.partizipation.at/fileadmin/media_data/Downloads/Standards_OeB/oebs_standards_engl_finale_web.pdf

IV

4.1 Conclusions and Recommendations

Firstly, pursuant to Article 45 of the Constitution, citizens who have been declared mentally disabled by a final court decision are excluded from the right of election, meaning they cannot exercise their right to vote. Consequently, these citizens cannot take an initiative or sign it, within the meaning of Law no. 54/2019 “*On the legislative initiative of voters in the Republic of Albania*”. In accordance with the Opinion of the Venice Commission, Article 45, point 2 of the Constitution should be reviewed, not depriving mentally disabled persons of the right to vote. This constitutional provision is contrary to international standards, namely Articles 12 and 29 of the United Nations Convention on the Rights of Persons with Disabilities, which recognize the right of persons with disabilities to enjoy legal capacity as the rest of the population in all aspects of life.

Second, it is concluded that, despite the guarantee of several rights related to involvement in decision-making processes, Law no. 146/2014 “*On public notification and consultation*” is not being implemented with due efficiency in practice. Even though the Commissioner for Personal Data Protection and Freedom of Information is the body charged by law to review the complaints of interested parties for the violation of their rights to public notification and consultation, regulations and other sub-legal acts are necessary to be adopted to strengthen monitoring capacities and enable the effective implementation of the law.

Third, according to Law no. 8773, dated 23.4.2001 “*On Gatherings*”, following international recommendations, acts, and practices, it is necessary to include the right to organize spontaneous gatherings, as well as counter-protests. Regarding spontaneous gatherings, it is required an intervention of an administrative nature, where it is necessary to prepare and publish on the official website of the General Directorate of State Police, models/standard letters for gatherings’ notifications, addressed to the Police Station, to standardize and facilitate the procedure. Also, with the development of online communication, the law should provide for the possibility of online notification of gatherings.

Considering the pandemic and on the other hand, to respect this constitutional right is required the review of applicable normative acts, to provide and guarantee the right to organize gatherings even during the pandemic, following approved health protocols.

Fourth, the reform of electoral legislation shall proceed further, through the drafting of a new electoral law, new law on political parties, the law on financing and control of political parties, according to the OSCE/ODIHR recommendations.

Fifth, the Electoral Code of 2008, amended by Law no. 101/2020 “*On some additions and amendments to Law no. 10 019, dated 29.12.2008 “The Electoral Code of the Republic of Albania”*”, as amended, as well as Law no. 139/2015 “*On local self-government*” guarantee the right to referendum, but do not specify the procedures to be followed for the referendum. Thus, it is necessary to adopt a special law on referendums, which shall define in detail the procedures, development, and administration of constitutional, general, and local referendums.

Sixth, concerning local government, there is a need to increase transparency and strengthen cooperation between Local Government Units and stakeholders or civil society organizations. The Local Government Units, according to the provisions of the applicable law, must make transparent not only their activity and decision-making but through various communication channels, to notify stakeholders and interested persons to involve them in decision-making processes. This is a greater problem in the Local Government Units that cover Municipalities or Regions with a smaller number of residents. The latter, in addition to

the digitalization of their information systems, need to use visual, print, and social media to make transparent and publicly known, notifications for the inclusion and submission of their opinions or evaluations for various decision-making initiatives. Furthermore, within the local government, the relevant authorities should show a higher degree of care in the implementation of the legal provisions of the law on the right to information. Thus, we suggest that the relevant authorities should handle all citizens' requests with due diligence, treat them nominally, more professionally, and respond to each citizen completely and accurately, informing them of their requests exhaustively within the applicable legal framework.

Seventh, there is a need to strengthen the role of civil society organizations in decision-making processes, through their involvement in issues of public importance and not only in a part of them, as well as a periodic engagement and not only in special or specific cases. In this context, it is important to increase the internal transparency of these organizations, as well as the coordination of their work with each other.

v. Bibliography

A. Literature

1. Doriana Pano: Dissertation for the defense of the scientific degree 'Doctor', on the topic: 'Political transition in Central, Eastern Europe and Albania', University of Tirana, 2016.
2. European Movement International: 'Citizens' Participation and Transparency: Closing the Gap', 2020.
3. Luan Omari, Aurela Anastasi: 'Constitutional Law', Tirana 2010.
4. Advocacy Training and Recourses Center (ATRC): 'Citizens participation in decision-making at local level', November 2012.
5. Explanatory report of the draft law "On the legislative initiative of voters in the Republic of Albania".
6. Report of the draft law "*On referendums*".
7. Report of two draft laws "*On some addenda and amendments to Law No. 10019, dated 29.12.2008 "The Electoral Code of the Republic of Albania"*".
8. Beijing25+ Platform for Action Report, April 30, 2019.
9. ODIHR Assessment Report, Warsaw, 17 April 2019.
10. "Implementing citizens participation in decision-making at the local level", OSCE, dated 05.04.2016.

B. Legislation

1. Constitution of the Republic of Albania, adopted by Law No. 8417, dated 21.10.1998 of the People's Assembly.
2. Law No. 115/2015 "*On some addenda and amendments to Law No. 8417, dated 21.10.1998, "Constitution of the Republic of Albania", as amended*".
3. Law No. 7556, dated 04.02.1992 'On Elections of the People's Assembly of the Republic of Albania'.
4. Law No. 8055, dated 01.02.1996, on some amendments to Law No. 7556, dated 04.02.1992, 'On Elections to Popular Assembly of the Republic of Albania'.
5. Law No. 8218, dated 16.05.1997, on some amendments to the Law no. 7556, dated 04.02.1992 'On Elections of the People's Assembly of the Republic of Albania', amended by Law No. 8143, dated 11.09.1996.
6. Law No. 8609, dated 08.05.2000 "The Electoral Code of the Republic of Albania".
7. Law No. 101/2020 "*On some addenda and amendments to Law No. 10 019, dated 29.12.2008 "The Elections Code of the Republic of Albania", as amended*".
8. Law No. 8773, dated 23.4.2001 "*On rallies*".
9. Law No. 54/2019 "*On the legislative initiative of voters in the Republic of Albania*".
10. Law No. 146/2014 "*On notification and public consultation*".
11. Law No. 119/2015 "*On the establishment and functioning of the National Council of the Civil Society*".
12. Law No. 15/2015 "*On the role of the Albanian Assembly in the process of Albania's integration into the European Union*".
13. Law No. 9970, dated 24.07.2008 "*Gender Equality in Society*".
14. Law No. 139/2015, 'On local self-government.
15. Law 10019, dated 28.12.2008, amended by Law No. 74/2012, Law No. 31/2015, and Law No. 101/2020
16. Law No. 8580, dated 17.2.2000.
17. Law No. 9970, dated 24.7.2008
18. Law No. 97/2013

C. Websites

1. Annual Report of the National Council for European Integration,
<https://www.parlament.al/Files/Integrimi/Raporti%20vjetor%20i%20KKIE%202019.pdf>
2. Public participation in Decision-Making Report for 2018:
<https://www.parlament.al/Files/Informacione/Raportishoqerisecivile2018.pdf>
3. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52001DC0428&from=EN>
4. [https://www.eumonitor.eu/9353000/1/j4nvke1fm2yd1u0_j9vvik7m1c3gyxp/vkcweed5bwsz/v=s7z/f=/com\(2002\)704_en.pdf](https://www.eumonitor.eu/9353000/1/j4nvke1fm2yd1u0_j9vvik7m1c3gyxp/vkcweed5bwsz/v=s7z/f=/com(2002)704_en.pdf)
5. http://publications.europa.eu/resource/cellar/688a7a98-3110-4ffe-a6b3-8972d8445325.0007.01/DOC_19
6. <https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0007+0+DOC+XML+V0//EN>
7. <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1194609>
8. <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1606669>
9. <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1606669>
10. <https://rm.coe.int/168007a088>
11. <https://www.legislation.gov.uk/ukpga/2000/36/contents>
12. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/61169/The_20Compact.pdf
13. http://www.partizipation.at/fileadmin/media_data/Downloads/Standards_OeB/oebs_standards_engl_finale_web.pdf



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