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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS**  
**(ODIHR)**

**ALBANIA**

**JOINT OPINION**

**ON THE DRAFT LAW ON THE LEGISLATIVE INITIATIVE  
OF THE CITIZENS**

**Adopted by the Council for Democratic Elections  
at its 63<sup>rd</sup> meeting (Venice, 18 October 2018)**

**and by the Venice Commission  
at its 116<sup>th</sup> Plenary Session (Venice, 19-20 October 2018)**

**on the basis of comments by**

**Mr Oliver KASK (member, Estonia)**  
**Mr Cesare PINELLI (substitute member, Italy)**  
**Ms Tamara OTIASHVILI (ODIHR legal expert)**

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## I. Introduction

1. On 27 July 2018, Mr Gramoz Ruçi, Speaker of the Parliament of Albania, sent to the European Commission for Democracy through Law of the Council of Europe (hereinafter "Venice Commission") a request for an opinion on the draft law on the legislative initiative of the citizens of the Republic of Albania (hereinafter "the draft amendments").
2. Messrs Oliver Kask (member, Estonia) and Cesare Pinelli (substitute member, Italy) were appointed as rapporteurs for the Venice Commission. Ms Tamara Otiashvili was appointed as legal expert for the ODIHR.
3. A delegation of the Venice Commission and the OSCE/ODIHR composed of Mr Pinelli, Mr Garrone, Head of the division of elections and political parties at the Secretariat of the Venice Commission, as well as of Ms Tamara Otiashvili and Mr Konstantine Vardzelashvili from the ODIHR visited Tirana, Albania, on 19 September 2018 to meet with the parliament, the Minister of Justice, the Central Election Commission as well as with non-governmental organisations. This joint opinion takes into account the information obtained during the above-mentioned visit.
4. The present Joint Opinion was adopted by the Council for Democratic Elections at its 63<sup>rd</sup> meeting and by the Venice Commission at its 116<sup>th</sup> Plenary Session (Venice, 19-20 October 2018), following an exchange of views with Ms Vasilika Hysi, Vice President of the Albanian Parliament.

## II. Scope of the Joint Opinion

5. The scope of this Joint Opinion covers only the draft law, submitted for review.
6. The Joint Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses more on areas that require improvements than on the positive aspects of the draft amendments. The ensuing recommendations are based on relevant Council of Europe and other international human rights standards and obligations, OSCE commitments, and good national practices.
7. This Joint Opinion is based on an unofficial English translation of the draft amendments provided by the Albanian authorities. Errors from translation may result.
8. In view of the above, ODIHR and the Venice Commission would like to note that this Joint Opinion does not cover the entire legal and institutional framework, and that it does not **prevent them from formulating additional** written or oral recommendations or comments on the respective legal act or related legislation in Albania in the future.

## III. Executive Summary

9. At the outset, the Venice Commission and ODIHR welcome Albania's efforts to adopt legislation on the legislative initiative of citizens in order to implement the related provision of the Constitution in conformity with international obligations and standards.
10. Successful reform should be built on at least the following three elements: 1) clear and comprehensive legislation that meets international obligations and standards and addresses prior recommendations; 2) adoption of legislation by broad consensus after extensive public consultations with all relevant stakeholders; and 3) political commitment to fully implement the legislation in good faith. Relevant stakeholders are encouraged to ensure that the draft amendments undergo extensive consultation processes throughout the drafting and

adoption process, to ensure an open and transparent process, and thereby increase confidence and trust in the adopted legislation, and in the relevant state institutions in general.

11. In order to further improve the compliance of the draft amendments with international human rights standards and OSCE commitments, the Venice Commission and ODIHR make the following key recommendations:

**To simplify the whole procedure leading to the submission of a citizens' initiative**, in particular by:

- Not requiring the registration of all initiating organisations from the beginning of the process, but only the registration or the representation/representative committee after the collection of signatures;
- Ensuring that the signature collection outside of designated public space be included in the draft law. More generally, the signature collection process should be open, free from intimidation and devoid of formalism.
- Making clear that no discretion is given to the Central Election Commission (CEC) when registering the organising committee and involving it in the process only after the collection of signatures;
- Reconsidering the duration of the whole process by simplifying it and reducing the time-limits applying to the action of public bodies;
- Ensuring that the legislation provides the initiative groups with the right to organise the locations for signature collection in consultation with local authorities and imposes no limits for signature collection outside of designated public space.

12. Furthermore, the Venice Commission and ODIHR recommend in particular:

- Revising the eligibility of legal initiatives in line with international obligations;
- Clarifying that the draft does not apply to petitions, which should be possible without any formalism, but only to citizen's initiatives; in addition, for the sake of legal clarity, it is recommended that the wording of Article 5.1 be brought in conformity with Article 81.1 of the Constitution;
- Clarifying which are the exact requirements for digital signatures, with a view to ensuring equal treatment between the collection of classical and digital signatures, and easy access to the process in both cases;
- Leaving the motivation of the initiative's rejection, at least on material grounds, to the factions or members of the parliament rather than decided by a vote of the parliament;
- Introducing provisions implementing Article 82 of the Constitution (on financial expenses) into the draft;
- Envisaging that financial reporting be required to be submitted by those who succeed in collecting 20 000 signatures;
- Reviewing Article 8.1 so that it is expanded to cover income and other related expenses, not limiting itself to the collection of signatures;
- Foreseeing alternative ways of publication of financial reports in cases when an initiator does not have a website, such as a publication on the CEC website;
- Clarifying the competent appeal body against decisions taken on the basis of the draft. To increase transparency, the draft law should be amended to require timely and accessible publication of all decisions over an extended period of time.

#### IV. Analysis and Recommendations

##### A. International Standards Related to the citizen's Legal Initiatives

13. The right to citizen's legal initiative is one of the ways to ensure the effectiveness of the law-making process and enhancing democracy in general. One of the main international instruments recognising the value of public participation in general is the Universal Declaration of Human Rights (UNDHR), which states that "Everyone has the right to take part in the government of his country, directly or through freely chosen representatives" (article 21). The [International Covenant on Civil and Political Rights](#) (ICCPR) in its Article 25 also emphasises the right of every citizen to "take part in the conduct of public affairs, directly or through freely chosen representatives." In addition, as also set out in [General Comment 25 of the UN Human Rights Committee](#), the modalities of citizens' participation, which include public debate and dialogue, should be established by the constitution and other laws of the state concerned.

14. The right to citizen's legal initiative is also in conformity with the European standards and the Venice Commission's recommendations. In particular, in its "Report on legislative initiative" (CDL-AD(2008)035, par. 80-83), the Venice Commission has affirmed that, while presenting a legislative initiative citizens are "given an opportunity to initiate laws and consequently to bring directly to the attention and the agenda of the parliament their own input and ideas, and not only to consent to or disagree with a bill already elaborated and drafted", although "the final word and decision on the fate of this initiative will remain within the representative authority, that is the Parliament". At the same time, the Venice Commission has added that, given the current debates on the democratic deficit taking place in Europe, "the legislative initiative of citizens is increasingly regarded as a worthy corrector of the inevitable imperfections of indirect democracy", as demonstrated by Article 11.4 of the Lisbon Treaty with respect to the EU institutional system.

15. Numerous OSCE commitments stress the role of transparency in public affairs. In paragraph 10 of the [1990 OSCE Copenhagen Document](#) the participating States have reaffirmed "their commitment to ensure effectively the rights of the individual to know and act upon human rights and fundamental freedoms, and to contribute actively, individually or in association with others, to their promotion and protection, the participating States express their commitment to." Also in this context, the concept of "legislative transparency" is considered to be particularly important. OSCE participating States have specifically committed to ensure that "[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives" ([OSCE Moscow Document 1991](#)) and to "secure environments and institutions for peaceful debate and expression of interests by all individuals and groups of society" ([OSCE Maastricht Document 2003](#)). The OSCE has also recognised the vital role that civil society has to play in this regard. It also strives to promote equally effective participation of men and women in political, economic, social and cultural life.

##### B. General remarks: citizens' initiative and petition

16. Together with the referendum, the citizens' legislative initiative and the petition are the typical instruments provided by many Constitutions with the aim of directly involving the people in the country's decision-making process, and could therefore be called instruments of direct democracy.

17. After having stated that “[t]he people exercises sovereignty through their representatives or directly” (Article 2, para. 2), the 1998 Albanian Constitution (as of 2016) mentions such instruments as follows:

- Citizens’ legislative initiative: “The Council of Ministers, every deputy, and 20,000 electors each have the right to propose laws” (Article 81, para.1);
- Petition: “Everyone, by himself or together with others, may direct requests, complaints or comments to the public bodies, which are obliged to reply within the time limits and conditions set by the law” (Article 48);
- Referendum: “1. The people, through 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 about issues of special importance.
- 2. The parliament, 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 referendum.
- 3. Principles and procedures for holding a referendum, as well as its validity, are provided by the law” (Article 150).

18. Provisions on citizens’ initiative are rather common in Venice Commission and OSCE member States, although the practice is limited due to its high costs, other easily achievable means to propose draft laws and its non-inclusiveness as the peoples’ initiative is not intended to find a wide compromise in the society. It is common in European countries for the voters to have access to members of parliament to point out problems in legislation and propose draft legislation. As all the members of parliament have the right to present draft laws, providing a speedy means to have access to parliament’s attention and discuss all main issues of importance, even the small interest groups in the society are in principle in a position to find some support in the parliament. Thus, the citizens’ initiative – which exists in a number of European countries - could rather be aimed at putting the proposals by interest groups on the public place and providing a forum for free speech and inclusiveness. The principle of parliamentary democracy, which values communication between all interest groups, and the search for a consensus, may also lead to a low level of use of the citizens’ initiative.

19. The right to initiate a citizens’ initiative is vested on every eligible voter. According to Article 45 of the Constitution citizens who have been declared mentally incompetent by a final court decision do not have the right to vote. While it is a good practice to link the right to legal initiative to the right of vote, it disfranchises those who are mentally incapacitated.<sup>1</sup> Paragraph 7.3 of the 1990 OSCE Copenhagen Document commits the OSCE participating States to guarantee universal and equal suffrage to adult citizens. Article 12 of UN Convention on the Rights of Persons with Disabilities (UNCRPD) prescribes that “State Parties recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.” Whereas in accordance with Article 29 calls on State Parties to “guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others.” This also contradicts the revised interpretative declaration to the Code of Good Practice in Electoral Matters on the participation of people with disabilities in elections ([CDL-AD\(2011\)045](#)).<sup>2</sup> *Consideration should be given to revise the eligibility of legal initiatives in line with international obligations.*

20. The draft law provides for two distinct categories of public initiatives (Article 5.1): first, submitting a draft law to the parliament, second, asking the parliament to draft and adopt a law on a topic outlined by the initiators of the citizen’s initiative.

<sup>1</sup> See paragraphs 69 and 70 of the Venice Commission Report on Legislative Initiative.

<sup>2</sup> Deprivation of the right to vote on the basis of legal incapacity is also inconsistent with Articles 12 and 29 of the UNCRPD. In addition, paragraph 9.4 of the 2013 CRPD Committee’s Communication No. 4/2011 provides that “an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability”

21. Introducing the right to citizen's legal initiative through submitting legal drafts or submitting a detailed request to draft a legal act is welcomed. However, the wording of Article 5.1.b should not be understood as a right to petition as envisaged by Article 48 of the Constitution. As provided by the latter the right of petition is open to every individual, by himself or together with others, and should therefore not be the object of a detailed and cumbersome procedure.

22. Article 5.1.b should not be a way to circumvent Article 81.1 of the Constitution which provides for the exhaustive list of subjects who are entitled to legislative initiative (the Council of Ministers, every deputy and 20.000 voters). Notwithstanding the possibility for a limited group of citizens, or even an individual, to address a petition asking for amendments to the legislation, Article 5.1.b should be understood as a way to implement the citizens' initiative as meant by Article 81 of the Constitution. Article 5.1.a would then be the equivalent, *mutatis mutandis*, of the introduction of "a specifically-worded draft" in the field of referendums, while Article 5.1.b would correspond to "a generally-worded proposal".<sup>3</sup>

23. *The Venice Commission and the ODIHR therefore recommend making a clear distinction between citizens' initiatives and petitions, the latter being possible without any formalism, or stating in the law that it does not apply to petitions in the sense of Article 48 of the Constitution. In addition, for the sake of legal clarity, it is recommended that the wording of Article 5.1 be brought in conformity with Article 81.1 of the Constitution.*

24. The procedure appears rigid and time-consuming. The draft law requires collecting at last 20,000 signatures to register an initiative. While there is no international standard on the matter, it could lead quite often to a situation where the initiative group would fail to secure such support. In addition, further requirements, which are justified in case a draft has to be submitted to referendum, may be excessively burdensome when the initiative's only effect is to initiate a debate in the parliament. This risks making the use of the citizen's initiative very rare and ineffective, since simpler and easier ways to submit the same text to parliament (through individual MPs) may be considered.

### **C. Duties of Initiative Groups**

25. The draft law provides many duties for the initiative groups, such as the duty to sign a memorandum and the selection of a representation/representative committee (Article 3.6 and Article 6.1). Article 6.4 further provides that any civil society organisation initiating the draft law should be registered as provided by the Albanian legislation. This could in practice limit the right to draft such initiatives to registered NGOs only. Furthermore, although Article 5 allows for individual citizens to initiate the draft, paragraphs 1 and 8 of Article 6 require from the representation/representative committee to submit the memorandum of cooperation to the CEC, while Article 3.6 defines a memorandum of cooperation as an agreement among civil society organisations and between such organisations and citizens. This may be interpreted as a mandatory requirement for the citizens to sign a memorandum with a registered organisation or register themselves as NGOs. *The Venice Commission and the ODIHR recommend allowing citizens to carry out proceedings required by the law on civil initiative without being required to align with a registered organisation or register as organisations themselves.*

26. In addition, the draft law provides for an obligation for all representation/representative committees to be registered (Article 6.8). It is possible that very few people (e.g. only three) are the initiators of the draft, thus there is no legitimate aim for such requirement, combined with the obligation to provide the authorities with copies of their agreements or for the NGOs to be all

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<sup>3</sup> Code of good practice on referendums, [CDL-AD\(2007\)008rev](#), par. 28.



represented in the representation/representative committee. It should be up to the initiators to decide on whom to nominate as their representative(s), whether to be formally registered or not and for how long to be active in the collection of signatures during the procedure. A committee for organising the collection of signatures is undoubtedly necessary, but needs to be legally identified only when such number has been reached. The committee's registration, if required at all, could then be postponed to the moment in which the committee is in the condition of demonstrating that the number of 20.000 has been reached. *The Venice Commission and the ODIHR recommend not requiring committees on behalf of NGOs and citizens' initiatives to be registered with the CEC until the required number of signatures is collected.*

27. Article 6 defines the powers of the CEC regarding the registration of the committee. The draft law, however, is not clear on the criterion under which the CEC should evaluate the committee's request for registration. It provides that the decision is taken by the majority of members, that it must be explained, and that the committee may apply before the Administrative Court of Appeal in case of rejection of the request. These elements presuppose that the CEC is entrusted with a discretionary power of registering the committee. However, the sole reason for submitting the committee to registration consists in the need of identifying this subject in legal terms. Therefore, the registration should be automatic, not subject to a public authority's discretion. This is a further reason for postponing the registration of the committee to the moment in which the CEC verifies whether the civic legislative initiative has reached the prescribed number of 20.000 signatures. *The Venice Commission and ODIHR recommend making clear that no discretion is given to the CEC when registering the organising committee.*

28. The CEC's interventions in the procedure concerning the collection of signatures appear both burdensome and legally unnecessary. The CEC is a public body, whose functions are related to the elections, while the collection of signatures for the presentation of a civic legislative initiative reflects the free citizens' participation in the decision-making process of public authorities. Article 6.8 provides the data to be presented to the CEC in order to initiate the public initiative process. The number of required documents to be presented is very high and the request for clarifications on the object of the initiative is excessive too. The requirement for the original identity documents to be verified by a notary as well as by the CEC also appears as excessively burdensome. While the collection of signatures should indeed be regulated by this draft law, the intervention of the CEC should take place only after the collection of signatures. For example, the draft law correctly leaves the allocation of public places to the decision of the mayors, which should act at the request of the representation/representative committee, conceived as an informal subject until the time limit provided for the collection of signatures has expired. The CEC should only be in charge of the verification of signatures and the simultaneous legal recognition or the representation/representative committee. *The Venice Commission and ODIHR recommend involving the CEC in the process only after the collection of signatures.*

29. The duties of the initiative groups/NGOs, which initiate or carry out the procedure, are sanctioned by Article 19. Article 19.1 could be interpreted in a way that sanctions would be applied also in case memorandums of cooperation, as provided for by Article 6, are not in accordance with the requirements of the law, for example. It should be up to the NGOs to decide how active they are in collecting the signatures, based on their financial and human resources, as the minimum number of signatures might be collected only from one large city without the need to organise the collection of signatures in all municipalities. Articles 19.2 and 19.3 already sanction the fraudulent activities of NGOs. *The Venice Commission and ODIHR recommend explicitly providing in Article 19.1 that it applies only to the responsible civil servants.*

30. Article 7 provides that the initiators notify the parliament about the initiative after the CEC has decided to register it. This again appears unnecessary, since the draft law does not foresee any grounds for the parliament to deny the registration (e.g. on the ground that the draft law or

proposal is not in accordance with the Constitution or international obligations, such as the abolition of the death penalty). It seems that the parliament may later reject the draft law on such grounds. The initiative could be transmitted directly by the CEC to the parliament after it has registered it. *The Venice Commission and ODIHR recommend reconsidering this requirement.*

#### **D. Right to sign a citizens' initiative, collection and verification of the signatures, digital signatures**

31. The draft law provides for the right to sign the initiative for all Albanian citizens entitled to vote. The draft law may be interpreted as limiting the possibility to collect signatures in a private space or organise door-to-door collection of signatures, as well as e.g. in political party or NGO events where the interest groups might gather together. Such restriction would be unjustified. The public authorities (mayors) might have the task to provide for premises on an equal basis in case the initiators ask for it, but there should not be an obligation to collect the signatures in these premises. The draft law provides for the CEC to request the mayors to designate such premises, leaving the initiators no choice. *The Venice Commission and ODIHR recommend that locations for signatures collection in public space should be discussed and agreed between initiators and local authorities. The draft law should also provide for the possibility of collecting signatures outside of designated public space. More generally, the signature collection process should be open, free from intimidation and devoid of excessive formalism.*

32. The draft law foresees a 60-day time limit for the collection of signatures (Article 14.2). The collection "is done in public places, which are designated by decision of the mayor of the respective local government unit" on request of the CEC or of the representation/representative committee if the CEC omits to make the request within 30 days from the submission of the request by the committee. If the mayor does not decide the places where the signatures should be collected within 30 days from the submission of the request, the decision is taken by the committee (Article 9). Article 12 provides for special procedures for the collection of signatures in the location of citizens with health problems (in hospitals and other health care facilities, at home), detention facilities, embassies and consulates. The draft law could be interpreted in a way that the representation/representative committee has the duty to organise the collection of the signatures in all these facilities during the full period of 60 days. *This should be reconsidered. Moreover, in case 20,000 signatures are collected, the initiative group should be free to decide whether to continue the collection of signatures or present them for the verification and submission to the parliament or carry on the collection of signatures.*

33. Article 13 deals with the collection of electronic signatures. The draft law does not provide for specific forms for collecting digital signatures. The forms provided by the law (Article 11) have thus to be available also for digital signatures. The reference to legislation on the electronic signature, the electronic document, the electronic identification and the reliable services might not be enough. In case of digital signature, the person is identifiable without any need to provide additional information on his or her name, place and date of birth, number of ID card or passport etc. Thus, all the information required for ordinary signature collection and verification (Article 11.3) is not required in this case. *The Venice Commission and ODIHR recommend clarifying which are the exact requirements for digital signatures, with a view to ensuring equal treatment between the collection of classical and digital signatures, and easy access to the process in both cases.*

34. Article 15 entrusts the CEC with the verification of signatures that may amount either to register the initiative, or to set the time limits to complete or correct the inaccuracies, or finally to reject the initiative if it does not meet the legislative form (signatures not collected on the template approved by the CEC) or the required number of 20.000 voters. The verification



procedure is a compulsory element of the legislative initiative to guarantee that the requirements to propose a draft law are fulfilled. The CEC is competent to verify the signatures and has access to the civil register. The time-limits for this process are short (30 days from their submission, in case of inconsistencies, 2 days from their resubmission). It would be suitable to provide for a flexible presentation of collected signatures so that the initiative group would have the right to submit the signatures for verification before the collection of signatures is finished in order to speed up the process and provide the CEC more time for the verification. An alternative would be to start the verification process in case at least 15,000 signatures are collected to avoid a situation where the CEC would have to verify the signatures in case the initiative does not enjoy public support.

35. Article 15.5 provides the obligation of the CEC to reason all its decisions. For instance, the draft law is not clear whether explanations are only required for those decisions where corrections were requested or signatures were rejected. *Therefore it is recommended that this article be supplemented with such a clause.*

### **E. Financing and campaign**

36. Article 6.11 obliges the initiative group to carry out campaigning for the initiative (including on its official website). This provision should not be understood as compelling the initiative group to campaign. The same comment applies to Article 6.12.

37. The same Article provides for access to the public media free of charge. It has to be kept in mind that the right to initiate the collection of signatures is vested on everyone. There is no need for wider public support. Free access to public media in a manner and quantity provided for in the draft law would lead to a high level of initiatives without real chance to have 20,000 supporters only to get access to the media for free. As e.g. only two or three persons might present the initiative, the public media would be overburdened.

38. The same comment is applicable to Article 7.3, which provides for a wide publication of the written confirmation of the Parliament before the start of the collection of signatures. The media should be free to decide on the publication of the written confirmation based on the importance or the issue, without any obligation.

39. According to Article 8.1, the financing of the preparation of documents and collection of signatures is the task of the initiators. This is welcomed as it will ensure the independence of the initiators. However, the draft law does not mention the bearing of other related expenses and their financing. For example, the drafting of the law requires technical knowledge and expertise which in some cases would necessitate consulting a legal professional. *The Venice Commission and ODIHR recommend that Article 8.1 be expanded to cover other related expenses, not limiting itself to the collection of signatures.*

40. Article 8.2 provides for transparency measures by requiring the publication of sources of financing. While this enhances transparency, this leads to additional financial costs and burdensome procedures with respect to those who do not succeed with the initiative (signature collection). *The Venice Commission and ODIHR recommend that financial reporting is required to be submitted by those who succeed in collecting 20 000 signatures. In addition alternative ways of publication of financial reports could be foreseen in cases when an initiator does not have a website, such as a publication on the CEC website.*

41. As mentioned above, the requirement for publishing the campaign costs (Article 8.2) is welcome, even if it is not explicitly imposed by international standards. The Code of Good Practice on Referendums (II.3.4.a) is applicable only to referenda and the report on the role of

extra-institutional actors in the democratic system ([CDL-AD\(2013\)011](#)) does not require such reporting either. While the United Nations Convention against Corruption (UNCAC)<sup>4</sup> does not explicitly regulate citizens' initiatives, Articles 7 and 10 of the Convention may still be of relevance, taking into account the importance and potential to influence the legislative process, and to ensure integrity and transparency. In particular, the Convention requires "*to maintain and strengthen systems that promote transparency and prevent conflicts of interest*" (article 7) and "*to enhance transparency in its public administration, including with regard to its organization, functioning and decision making processes, where appropriate*" (article 10). It should also be noted that transparency requirements are equally applicable to incomes and expenditures. Furthermore, apart from reporting, the legislation may provide for independent mechanisms to audit the reports if necessary. *Therefore, the Venice Commission and ODIHR would recommend strengthening further transparency requirements, by extending the scope of reporting to cover costs as well as incomes of the campaign and empowering the CEC, if necessary, to audit financial reports.*

## **F. Discussion of the initiative in the parliament**

42. The legislative procedure in the parliament is not regulated in the draft law. It is common in European countries to provide in a specific piece of legislation for similar parliamentary procedures for all draft laws, with, if necessary, some specific rules for the draft laws initiated by the voters, e.g. the right to take part in the committee and plenary sessions and the right to be heard. As the parliament is not obliged to adopt the draft law and can provide for amendments according to the normal procedure without a possible referendum in case of rejection, Article 16 of the draft law is in accordance with European standards.

43. Article 5.3 provides that the parliament is entitled to reject the initiative if it does not comply with article 5.2, relating to its "compliance with the Constitution, the rules set forth in the parliament Rules of Procedure and the legal standards on drafting the legal acts". This could be interpreted as requiring the respect not only of the formal, but also of the material rules of the Constitution.

44. A check is needed regarding the initiative's compliance with the parliament Rules of Procedure and the legal standards on drafting the legal acts. However, the possibility of rejecting the initiative for these reasons could be strongly limited by previously informing the committee, possibly through the CEC, of these rules and legal standards and/or by giving to that committee a model form enabling *ex ante* the initiative to comply with these rules and legal standards.

45. Article 5.3 and 5.5 foresee that the rejection of the initiative by the parliament, be it on formal or material grounds, shall always be explained. Although this would lead to better understanding of the decisions by the parliament, democratic standards do not request the legislative body to formally explain its decisions (either adoption of a law or rejection of a draft law). These decisions are politically motivated and members of parliament usually have different reasons to vote for or against a law. There is thus hardly any consent on the reasons for the vote. The explanation of the decision needs to be voted, too, and would hardly contain all the reasons of the members of parliament. *The Venice Commission and ODIHR recommend leaving the motivation of the initiative's rejection, at least on material grounds, to the factions or members of parliament rather than decided by a vote of the parliament.*

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<sup>4</sup> See also Article 13 of the Council of Europe Criminal Law Convention on Corruption, ETS No.173 and Rec(2003)4, Recommendation of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns, in particular its Article 8.

46. Article 5.6 could be interpreted in a way that after the rejection the same initiative group may present the same draft law with the same support signatures to the parliament again. It is admissible to exclude an initiative on the same subject matter for some time after the rejection of the draft law in order to avoid burdening the parliament with draft laws without enough support.<sup>5</sup> Article 5.6 could be interpreted in the opposite sense. *Unless this is an issue of translation, the Venice Commission and ODIHR recommend clarifying this provision.*

## G. Other issues

47. According to Article 82 of the Albanian Constitution,  
“1. The proposal of laws, when this is the case, must always be accompanied by a **report that justifies the financial expenses** for its implementation.

2. No non-governmental draft law that brings about an increase in the expenses of the state budget or diminishes income can be approved without taking the opinion of the Council of Ministers, which must be given within 30 days from the date of receiving the draft law.

3. If the Council of Ministers does not give an answer within the above term, the draft law passes for review according to the normal procedure.”

48. The draft law does not take into account this constitutional provision, notwithstanding the requirement that any legislative proposal, should justify the financial expenses for its implementation, which is typical for Albania’s Constitution.<sup>6</sup> Moreover, the citizens’ legislative initiatives, being part of the “non-governmental drafts”, should comply with the requirement set forth in Article 82. Such requirement would not concern petitions in the sense of Article 48 of the Constitution, but only the “non-governmental drafts” that could be framed on their basis. *The Venice Commission and ODIHR recommend introducing provisions implementing Article 82 of the Constitution into the draft.*

49. The draft law provides for **appeals procedures** against all decisions of the CEC or other competent authorities. The reference to the Electoral Code concerning time limits and procedures is welcome (Article 17). However, there is a contradiction between Article 17.1 giving competence to the Electoral College (of the Court of Appeals of Tirana) (which only relates to the registration of the signatures) and another provision giving this competence to the Administrative Court of Appeal in the field like in the others (Article 15.6; cf. Articles 6.10, 19.4). It would be suitable that only one court be responsible for appeals against decisions of the CEC.<sup>7</sup> In addition, the CEC is required to support its decisions with an explanatory note, however there are no requirements for the publication of these decisions. *The Venice Commission and ODIHR recommend clarifying the competent appeal body against decisions taken on the basis of the draft. To increase transparency, the draft law should be amended to require timely and accessible publication of all decisions over an extended period of time.*

50. Article 18 provides for the **institutions responsible** for the implementation of the draft law. The Article does not explain the detailed responsibilities of the listed institutions. As the specific

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<sup>5</sup> Cf. Code of good practice on referendums, [CDL-AD\(2007\)008rev](#), III.5.b. In Estonia for example, it is possible to submit the same proposal only once in two years; only proposals to draft a law may be submitted, while public initiative to submit draft laws is not provided – Response to Memoranda and Requests for Explanations and Submission of Collective Addresses Act, available at <https://www.riigiteataja.ee/en/eli/501112016001/consolide>.

<sup>6</sup> Report on legislative initiative, CDL-AD(2008)035, par. 77.

<sup>7</sup> Paragraph 5.10 of the 1990 OSCE Copenhagen Document states, “Everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity”. Under Article 2.3(a) of the ICCPR States obligated themselves “To ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.” See also paragraph II.3.3.f of the Venice Commission’s Code of Good Practice on Referendums which says that “all voters must be entitled to appeal. A reasonable quorum may be imposed for appeals by voters on the results of a referendum.”

and concrete responsibilities stem from other Articles of the draft law, this Article seems to lack regulatory content. *It could be removed.*

51. Providing for precise **time-limits** for the collection of signatures,<sup>8</sup> as well as for the other stages of the process, is in line with international standards. However, it has to be kept in mind that the public initiative is intended to lead to a speedy adoption of new legislation, so the deadlines for deciding on the premises (as well as other different deadlines in the draft law) would prolong the process. Currently, from the formation of the representation/representative committee, the CEC has 30 days to decide on its registration. Then 20 days are left for the mayors to decide on the premises. After registration in the CEC, the initiators have to submit the notification to the parliament, which registers the notification within 48 hours. Then the CEC shall approve the model forms for signature collection sheets. After that, it is possible to start the collection of signatures only after 15 days, and it takes additional 60 days. When adding to that the time for verification, the total procedure might take more than four and a half months. *The Venice Commission and ODIHR recommend reconsidering the duration of the whole process by simplifying it and reducing the time-limits applying to the action of public bodies, especially the 30 day time-limit for the decision-making by the CEC on the registration of the initiative group (committee), and of course the 20 day time-limit for mayors' decision on the premises.*

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<sup>8</sup> Cf. Code of good practice on referendums, [CDL-AD\(2007\)008rev](#), III.4.b.