

PART IV

EUROPE



© Copyright by the Endowment of
the United States Institute of Peace

11

The Drafting Process for the 1998 Albanian Constitution

Scott N. Carlson

When the Republic of Albania adopted a new constitution in 1998, it joined the ranks of other Central and Eastern European countries that have moved to democratic forms of government. For Albania, the new constitution provides a historic foundation upon which to forge an independent and democratic future. Throughout its recent history, Albania has endured domination and rigid control at the hands of regional powers. Even when independent, the country has suffered under autocracy, most egregiously so under Stalinist dictator Enver Hoxha, who led post-World War II Albania into forty-five years of exile from the international community. Albania's adoption of a democratic constitution was a significant step toward solidifying its democracy and joining the community of countries that rely on constitutions to structure and safeguard their democratic systems of government.

Albania's history of domination and isolation does not fully explain its delay in

adopting a new constitution, but it does shape the context in which constitutional reform developed. It helps to explain the lack of constitutional materials in the Albanian language, lack of familiarity and experience with modern democratic institutions and human rights, and both international and local agreement on the need for extensive foreign input.

Introducing a new constitutional system or structure is unavoidably challenging. Even a completely tried and tested system or structure may fail when applied to a new environment. The process of legal transplantation is delicate, as the host state can reject foreign legal concepts for a variety of reasons. Legal and political traditions can be both foundations upon which to graft new structures and obstacles to implementing them. Albania's efforts to develop a democratic constitution provide a classic illustration of the challenges that legal, political, and social traditions pose to persons advocating substantial systemic change. The tumultuous events before and

during the 1997–98 drafting process challenged local and international actors to devise new methods to engage politicians and the public, and the drafting and approval of the 1998 constitution represents a novel and sustained effort to incorporate public participation, both local and international, in all aspects of the process.

Albania was introduced to constitutionalism before World War II, but the period concluded with the self-proclaimed King Zog ceding power to occupying Italian fascist forces. During the war, the constitution was suspended and Albania administered by Italian appointees. Immediately after World War II, Enver Hoxha and his partisans secured control of Albania. On January 11, 1946, a constitutional assembly declared Albania to be a “people’s republic,” and two months later, on March 14, 1946, the assembly adopted a new constitution.¹ This constitution, as amended, provided the structure of the socialist state for the next thirty years.

In 1972, the Sixth Congress of the Albanian Party of Labor issued the directive that a new constitution should be formed, an effort that culminated on December 28, 1976, with the promulgation of a new constitution. In the words of Enver Hoxha, the new constitution was necessary to “complete the construction of socialism and the further development of our state of the dictatorship of the proletariat.”² According to official state pronouncements, the new constitution was drafted with the benefit of public consultations: Over the course of “several months,” the draft was “submitted for study to the working masses all over the country.”³ Suggestions emerging from these consultations with the public were “recorded and studied,” and “all suggestions improving on the document” were adopted.⁴ Despite this encouraging rhetoric, the 1976 constitution did not recognize the institutions of pluralist democracy nor permit the formation of a market

economy. Party dogma dictated that pluralism in the Western sense simply reflected “the multiplicity of groups with opposing interests in the ranks of the bourgeoisie.”⁵ The constitution provided for a highly centralized state that emphasized collectivism in all aspects. The constitution nominally permitted some personal property, but state involvement in all aspects of economic and political life was so extensive that taxes and levies were abolished.⁶ In general, modern concepts of individual civil and political rights and the separation of powers were considered irrelevant. The will of the masses—as expressed through the monolithic Party of Labor—was to direct all organs and functions of the state “for the purpose of defend ing the victories of the revolution and strengthening of the socialist order.”⁷

In 1990–91, the Party of Labor began to acknowledge that their vision of a monolithic socialist state was no longer viable, and gradually, party officials began work on drafting laws that would implement radical reforms in the system of government, introducing political pluralism and modern democratic institutions to protect basic human rights. The result of this process was a set of laws commonly referred to as the Major Constitutional Provisions.⁸ Collectively, these laws established the basic framework for a modern democratic state and protections of individual human rights.

The provisions were a dramatic change from the past, but there remained a need and political commitment to develop a permanent constitution. Acknowledging this fact, Albanian legal professionals opened a dialogue with the Venice Commission of the Council of Europe in November 1991, seeking to benefit from their diverse pool of constitutional-law experts.⁹ The Major Constitutional Provisions suffered from shortcomings and lacked clarity in certain areas, and Albanian legal professionals were

interested in addressing these issues in a manner consistent with international best practices. One area of political concern was the ease with which the provisions could be amended, as a simple two-thirds vote of parliament could amend any and all of them.¹⁰ Such a standard was not unacceptable per se, but a more deliberative process, perhaps including a referendum, would have been more open and less subject to manipulation by political supermajorities. In any case, the provisions were only intended to be temporary, as they called upon the parliament to establish a constitutional commission to control the drafting process. During 1993 and 1994, such a commission worked on a draft text and developed various versions of it. Generally speaking, the various texts all contained the basic provisions for establishing a fully functional parliamentary democracy.¹¹

In the summer of 1994, President Sali Berisha and his confidantes handpicked a select group of draftsmen and encouraged them to finalize a draft that would be put to a popular vote in a referendum. Those excluded from the drafting process, such as opposition parties, considered President Berisha's initiative to have placed political considerations above the established drafting process. Of particular concern was the proposed ratification process. Lacking the necessary two-thirds majority to approve a replacement text under the Major Constitutional Provisions, the governing coalition passed a referendum law with a simple majority on October 6, 1994, providing an alternate method of approving a permanent constitution.¹² The opposition Socialist Party protested publicly, challenging the constitutionality of the referendum law in the constitutional court.

As the November 6, 1994, referendum approached, there was concern that the constitutional court had not yet heard the case. When pressed for a response, the court an-

nounced that the Socialist Party complaint had been misplaced, causing a delay. Directly before the referendum, three of nine members of the court resigned in protest.¹³ Given the court's *sua sponte* review authority¹⁴ and the gravity of the complaint, failure to review the matter before the referendum created the distinct appearance of further political interference.

Nonetheless, the referendum proceeded without the benefit of a court review. Voting was relatively calm and uneventful, and the final tally resulted in an unequivocal defeat for the proposed draft,¹⁵ surprising many in the local and international communities. The Venice Commission had completed its review of the proposed draft the week before, finding it "unfortunate that the protection of human rights . . . [does] not form part of the fundamental principles of the Constitution."¹⁶ However, the commission's role was not widely understood and it is unlikely that its evaluation had any impact on the outcome of the referendum. The issue of a permanent constitution languished thereafter for several years.

The next national election was the parliamentary election of 1996. In contrast to the 1994 referendum, this election was fraught with manipulation and intimidation. International criticism followed, and the landslide reelection of the ruling majority was understood to be of questionable legitimacy at best.¹⁷ The government further jeopardized its dubious position when it refused to take legal action to halt Albania's rapidly expanding pyramid schemes later in 1996.¹⁸ Allegations were made that the governing majority was involved in the schemes, and tensions within the country increased as the year ended and the schemes began to fold. From November 1996 through March 1997, the majority of the pyramid schemes collapsed; in some cases, their leaders disappeared. Slowly, thousands of citizens began to realize they

had lost much if not all of their life savings. Government institutions reacted clumsily, sometimes curtailing rather than protecting citizens' rights. In a particularly outrageous example, the president of the Tirana District Court rejected all civil actions against the pyramid scheme operators.¹⁹ The government's impotence, combined with an ongoing refusal to fully address the crisis, enraged large segments of the population. Street protests against the government emerged. Most corrective actions were viewed as too little too late, and the governing coalition sought to reassert public confidence and order through coercive tactics.

In a style reminiscent of Albania's communist period, the government derided the protesters, imposed martial law, denied responsibility for the crisis, and reelected Berisha as president.²⁰ Meanwhile, the largest pyramid scheme remained untouched, reminding the general public of its powerful position on a daily basis through its private, extralegal television station,²¹ and the ruling coalition seemed to be emboldened. Public outrage mounted and widespread unrest emerged outside the capital of Tirana. The institutions of government buckled and civil order disappeared. As chaos descended over much of the country, faith in the constitutional order evaporated. People began to flee the country or lock themselves indoors, fearing loss of property and life. Looting occurred, particularly in establishments owned and operated by the pyramid schemes.²² After days of upheaval, the government finally conceded its inability to govern. On March 6, 1997, leaders of the majority party reached an agreement with opposition leaders and formed a technical government, anticipating new elections in summer 1997.²³ To support a stable transition and avert a humanitarian crisis, the Italian government volunteered to organize and lead Operation Alba, resulting in the rapid deployment of troops from North At-

lantic Treaty Organization (NATO) countries throughout Albania.²⁴

Structure of the Process

Complementing Operation Alba's security forces was the international political commitment of the Organization for Security and Cooperation in Europe (OSCE). On March 4, 1997, the OSCE chairman in office appointed Dr. Franz Vranitzky as a personal representative to Albania; on March 27, 1997, the OSCE's Permanent Council established the OSCE Presence in Albania. The OSCE mandate was broad, including "assistance in democratization" and serving as a "coordinating framework for the work of other international organizations."²⁵ With this commitment in mind, the OSCE Presence in Albania rapidly began to work with a variety of domestic, multilateral, and bilateral actors to prepare for new parliamentary elections.

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

A major concern of the 1997 elections was the need to reestablish civil order, and politicians focused on restoring public confidence in the institutions of government—in particular, adopting a new constitution as a symbolic step to instill faith in Albania's future as a modern Western democracy. Within two months of its formation, Albania's new parliament approved Decision 339, which provided a general framework for the process of drafting a new constitution.²⁷ This

decision established a twenty-one-member parliamentary commission and a set of guiding parameters, in which the decision defined public participation, both local and international, as a clear priority.²⁸ Decision 339 also set forth five substantive groupings around which the parliament expected the drafting process to be organized:

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

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

Public Participation in the Process

On October 15, 1997, the Administrative Center for the Coordination of Assistance and Public Participation (ACCAPP) opened in offices provided by the OSCE Presence in

Tirana.³⁰ The team of lawyers assembled by the Ministry of Institutional Reform designed ACCAPP³¹ as a “quasi non-governmental organization,” administered by its directors and financially supported by various other non-governmental organizations (NGOs) and foreign governments, though it enjoyed the cooperation and support of both the ministry and the OSCE as well. ACCAPP operated independently of both the OSCE and Albanian Ministry of Institutional Reform; it worked with Albanians and the international community to facilitate technical assistance, collect and distribute information, provide training, and organize polls and civic-education initiatives. Throughout its existence, ACCAPP remained independent and did not represent the interests of any particular party or government.

ACCAPP was primarily a liaison between and among Albanian and international participants in the constitution-drafting process. The goal of this process was to ensure that all interested parties could participate fully and avoid duplicative and conflicting initiatives. ACCAPP actively solicited assistance from Albanian NGOs and international donors to provide materials, training for constitutional commissioners and interested citizens, and other assistance. It also held working sessions with NGOs and international donors to develop strategies and action plans for organizing assistance and promoting public participation in the constitution-drafting process. To ensure increased coordination, an ACCAPP newsletter regularly reported on its activities, in English and Albanian.³²

Among Albanian participants in the constitution-making process, NGO and citizen involvement was considered essential to promote informed citizen participation in the drafting of a new constitution and citizen ownership in the final product. As described below, ACCAPP worked with the ministry to ensure that NGOs and citizens took part

in commenting on all of the basic categories described in Decision 339.

Development of a National Program of Public Participation

From December 1997 to September 1998, the constitutional commission of the Albanian parliament, the Ministry of Institutional Reform, and ACCAPP worked together to implement a national program of public participation. The program was designed to collect input into the drafting of the constitution (Phase I) and submit draft provisions to the public for review and comment (Phase II).

Phase I consisted of more than a dozen forums and symposia in which constitutional issues were discussed and public input gathered. The results of these forums provided commission members and their technical staff with a basic outline of the issues that the public considered important. International donors and local NGOs organized the Phase I meetings. The initial stage called for a series of meetings consisting of NGO forums, followed by focused discussion groups.

The three national NGO forums brought together various NGO representatives to discuss the five basic categories specified in Decision 339: legislative power, executive power, judicial power, human rights, and local government. At these forums, NGO representatives worked in small groups, brainstorming to produce recommendations and identify issues requiring further discussion. Albania has a relatively vibrant NGO community and invitations to the forums were essentially open, asking each interested organization to designate one or two representatives to participate. In the early phase of the process, NGO participation was used as a proxy for full public participation because of the desire to commence drafting quickly with some sense of the public's concerns; participation in the later public hearings was more broadly citizen based.

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

In May 1998, the results of the NGO input process were used as a basis for a broader discussion at the Three Powers Symposium, sponsored and organized by the American Bar Association Central East European Law Initiative (ABA/CEELI) and GTZ, in coordination with ACCAPP. As the name indicates, the symposium focused on the three classic constitutional themes of legislative, executive, and judicial powers.

The symposium provided an opportunity for Albanian leaders involved in the constitution-drafting process to hear the comments and suggestions of Albanian and foreign experts on the issues that Albanian NGOs identified. Symposium participation included members of the opposition Democratic Party as well as individual citizens. Following the symposium, ABA/CEELI, ACCAPP, and Albanian state television produced a three-part prime-time television series summarizing the discussions for Albanian viewers nationwide.

While Phase I was in progress, the commission began drafting a text; it finished a complete draft in June 1998 and approved a revised text in its entirety on August 5. Phase II was then initiated, consisting of a broad review of the August 5 text by individuals and organizations within and outside of Albania. This public review of the draft text was in addition to foreign experts' drafting consultations. Throughout all phases of the draft-

ing process, foreign constitutional experts were consulted for independent analysis of the technical substance of the various provisions. In this regard, the Venice Commission was the dominant foreign-expert influence. However, extensive consultations also took place with other U.S. and European constitutional experts, and the constitutional commission maintained an inclusive and open approach to foreign advice.³⁴ ACCAPP facilitated the process wherever possible, providing up-to-the-moment translations of new provisions and coordinating consultations. Consequently, the participation of international experts became an integral component of the drafting process, extending public participation and input beyond the national context.

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

Despite repeated attempts to bring Democratic Party members into the hearing process, participation remained low generally. On a number of occasions, Democratic Party leadership told interested members that they could not participate. However, there were notable exceptions, such as the contribution of the former head of the Central Election Commission.³⁶ When these persons intervened, they were treated with respect and their comments were incorporated fully into the process.

ACCAPP indexed and organized all the public comments according to subject matter to assist the commission and its technical staff in the review process. Hundreds of suggested changes to the draft were considered and more than 50 proposed changes, affecting more than 45 of 183 total articles, were accepted. Altogether, the commission amended approximately 25 percent of the draft articles based on specific public suggestions. The nature of these amendments varied widely and touched on some high-profile subjects, such as property restitution. Most important, each change was important to a broad range of individuals and interest groups and, once accepted, bolstered the legitimacy of the social contract. On September 30, 1998, the commission approved the constitution's final text.

From October 5 to October 20, the Albanian parliament reviewed the text proposed by the constitutional commission. This review consisted of an intense mixture of committee review and plenary session debates. Each of the following committees reviewed the draft: public order and national information service; industry, public affairs, and trade; agriculture and food; foreign affairs; health and environmental protection; economy, finance, and privatization; and human rights and minorities. These review sessions were open, with journalists, local experts, and a representative of the Venice Commission participating freely. The final draft, approved on October 21, 1998, included virtually all the public suggestions that the constitutional commission incorporated in their final September 30 draft.

Civic Education Initiatives

Given the public's anticipated involvement in the drafting process, Albanian leaders considered it important to provide civic education on constitutional issues before the public consultation phases. ACCAPP worked with

a host of local NGOs, the constitutional commission, and citizens to develop these types of activities. The list of contributors and participants is extensive, but certain Albanian NGOs, such as the Society for Democratic Culture,³⁷ took standout leadership roles: Not only did they educate the public on substantive constitutional issues, but they also demonstrated civil society's important role in the democratic process. As a result, the educational process itself became an example of the processes that must underlie the establishment of a successful constitutional democracy. Throughout the drafting process, ACCAPP, NGOs, and the constitutional commission developed and executed a variety of civic-education initiatives, including issue forums, such as television broadcasts and telephone call-ins; radio programs with telephone call-ins; pamphlets on particular constitutional issues, processes, and definitions; newspaper serials on constitutional issues; constitutional papers prepared by experts for study and review by citizens; and essay writing contests.

The international community recognized the need for education on constitutional issues before the referendum, and international representatives agreed that it should remain a priority for the foreseeable future to encourage understanding of the constitution and ownership in the social contract. After the conclusion of the constitution-making process, ACCAPP's local staff was absorbed by the OSCE Presence with the understanding that they would continue to devote time and resources to education on constitutional issues. In the years since, the OSCE Presence's legal unit has continued to do significant work in rule-of-law education and promotion, publishing a two-volume transcription of the constitutional commission debates.

Democratic Representation

With its adoption of Decision 339, the Albanian parliament decided to use the vehicle

originally envisaged in the Major Constitutional Provisions, a constitutional commission, as the official body to produce a draft constitution and receive public comment. The parliament concluded that the commission should be composed of parliamentary representatives from all parties and that the distribution of seats should reflect generally the proportionate voting blocks extant in the parliament. While this distribution gave somewhat disproportionate influence to smaller parties, it was nevertheless endorsed, ensuring that certain minorities, ethnic and otherwise, were officially represented.

Overall, Decision 339 provided a one-seat majority for the Socialist Party and its coalition partners. This slim majority provoked an aggressive and militant response from the Democratic Party and, for the most part, their allies. In autumn 1997, the Democratic Party and its Union for Democracy—the Democratic Party and a group of center-right satellite parties that owed their parliamentary seats in many cases to the Democratic Party's efforts—initiated a boycott campaign that lasted throughout the majority of the constitution-drafting process. The international community immediately tried to calm political tensions and reengage the Democratic Party in the political process. Common sense dictated that a new constitution should be forged with the consensus of all political parties. Initially, the Democratic Party mainly objected to the constitution-drafting process because the parliament had excluded them from the chairmanship of the constitutional commission, giving it to two minority parties instead, the Republican Party and the Democratic Alliance Party.³⁸ The governing coalition countered that excluding both major parties, the Socialist Party and the Democratic Party, fostered an open and inclusive approach toward minority parties. Furthermore, the coalition and the United Right invited the Democratic Party and its affiliated Union for Democracy to take their seats on the commission to discuss this and other is-

sues. The offer was refused, and the Union for Democracy called for a constitutional convention to handle all constitution-drafting issues. Under their proposal, new elections would be organized immediately to select delegates to the convention. The Democratic Party maintained that it enjoyed the support of the majority of the population, and the elections, if free and fair, would vindicate their position. They later relinquished their call for a convention but insisted on having a blocking minority, or veto power, within the constitutional commission. While the Democratic Party had pledged to accept the results of the 1997 election,³⁹ they focused on the language in the OSCE election monitoring report that referred to the election results as “acceptable, given the prevailing circumstances.”⁴⁰ They maintained that this marginal result, combined with new “attacks” on their membership and “democracy,”⁴¹ justified their boycott.

The political atmosphere was particularly supercharged after a couple of controversial constitutional court decisions. On November 13, 1997, the court struck down a legal provision that permitted government-appointed administrators to take charge of pyramid-scheme assets.⁴² The provision had been drafted with International Monetary Fund (IMF) consultation, and its invalidation raised concerns about the new government’s ability to finish the closing and liquidation of the pyramid schemes. The parliament reacted immediately, amending a constitutional provision and reenacting the contested provision.⁴³ In an openly confrontational manner, the constitutional court *sua sponte* issued a decision rejecting this parliamentary remedy.⁴⁴

Asserting supremacy in constitutional matters, the constitutional court in effect denied the parliament’s authority to amend constitutional provisions in response to court decisions. This contravened the Major Constitutional Provisions, which allowed for amendments with relative ease and a pau-

city of public dialogue; the parliament was clearly acting under their collective authority. Domestic and international criticism of the constitutional court followed. The Venice Commission unequivocally condemned the action, stating: “The Constitutional Court therefore overstepped the limit of its authority and entered into a political dispute with the People’s Assembly, which can only be to the detriment of the functioning of both organs.”⁴⁵ The parliament further politicized tense relations with the constitutional court by issuing a decision requiring the court to execute its constitutionally required rotation of membership. The Democratic Party decried the act, claiming that the constitutional court, consisting of members appointed by the prior Democratic-controlled parliament, was simply exercising its independent constitutional function.

In the midst of the turmoil, the constitutional commission commenced its work cautiously. At the end of 1997, several official meetings were convened, and in each instance, the seven members of the Union for Democracy boycotted. Though work proceeded on a draft of the commission’s internal operating rules, cochairmen Sabri Godo and Arben Imami prudently avoided moving substantive decisions to a final vote, noting that final decisions should be postponed until later meetings that might include all members.

The initial meetings were substantively limited, but they did provide both planned and unplanned benefits. Among the planned benefits, ACCAPP enjoyed an adequate opportunity to work with the commission on a realistic public participation program. The specter of a boycott actually increased the influence of public participation, as the commission would need to reach out to the public in a direct and demonstrable manner if it were to proceed with broad public legitimacy. Also, by demonstrating that genuine local efforts had been tried and exhausted, the repeated good-faith attempts by the commis-

sioners who had taken their seats to bring in the Union for Democracy substantially bolstered the case for international assistance to mediate the political dispute. This assistance, in turn, set the stage for the ongoing international involvement that characterized the bulk of the drafting process throughout 1998.

Timing and Sequencing of the Constitution-Making Process

With the chaos of early 1997 as the backdrop, a number of influential Albanian leaders considered a permanent constitution to be an urgent priority for restoring order. Initially, Decision 339 proposed an expedited timeline, with a completion date in late winter to early spring 1998. However, this date soon became unlikely at best and at worst, unwise.⁴⁶ The immediate and persistent objections of the Union for Democracy made it clear that more time was needed to explore their concerns fully, not to mention the concerns of the public at large. To maximize the participation of the Union for Democracy and the general public, both local politicians and international actors comprehended the need for a deliberate, inclusive process, characterized by public outreach.

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

The domestic political conflict and the international community's substantial role in assuaging it necessitated a substantial revision of the original target date. The president, Rexhep Meidani, eventually settled on November 22, 1998, for the popular referendum.⁴⁷ This date gave the constitutional commission, ACCAPP, and others in the drafting process enough time to develop viable schedules and allocate the necessary resources. Though the timing remained tight—particularly given the ongoing political disagreements—the drafting process could nevertheless proceed in a considered, professional manner.

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

Voter lists historically have been problematic in Albania. Consistently, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) has cited the Albanian government for inadequate voter lists,⁴⁸ and government officials were particularly concerned that the Democratic Party might capitalize on voter-list problems to defeat the approval of the constitution in the national referendum. The 1994 Referendum Law requires an absolute majority of registered voters to pass a measure.⁴⁹ However, if the voter lists are not accurate, it becomes difficult, if not impossible, to calculate accurately what constitutes such a majority. Given the large number of Albanians working outside Albania, the registration issue posed a logistical

problem and a potential source of continuing dispute. With these and other considerations in mind, the ruling coalition amended the law to allow a measure to pass if it received a majority of those voting.⁵⁰ The Democratic Party protested, decrying the amendment as politically motivated. The ruling coalition responded that either approach to tallying referendums is acceptable in a democratic system.⁵¹

With the constitution's final passage in the People's Assembly on October 30 and the referendum date of November 22, preparations were forced into a very tight timeline.⁵² The Ministry of Local Government and the Central Election Commission (CEC), with the assistance of the OSCE, ACCAPP, International Foundation for Election Systems (IFES), and European Union, engaged in a nationwide effort to distribute information to voters on registering to vote, voting, the provisions of the constitution, and the constitution-drafting process. Information was distributed through written materials, television, and radio. With this international support, thousands of pages of materials, posters, and copies of the draft constitution were distributed nationwide, and educational television spots, developed in conjunction with the CEC, were aired.

Typically, a referendum campaign focuses on the issues involved in the referendum, with different politicians taking different positions. Parties frequently do not take party positions, leaving members to vote their consciences. Certain issues draw broad coalitions from across political spectrums, and campaigning for or against an issue may unite traditional political opponents in common cause. However, the political polarization that characterized Albanian politics before the referendum campaign intensified during it, limiting the debate and further destabilizing the fragile democratic process. Both the majority and minority spent a relatively limited amount of time on substan-

tive issues. The minority Democratic Party sought to make the referendum a rerun of the elections, discussing personalities more than issues.

The Democratic Party's decision to boycott the referendum and the manner in which it conducted its campaign presented several substantive problems. First, the boycott itself raised the specter of intimidation. With the recent political violence fresh in mind, there was fear that Democratic Party personnel would note who had entered polling stations and target them for later reprisals, intimidating people from freely going to the polls. Second, the Democratic Party construed all voter education to be political campaigning. Because the Democratic Party favored boycott, they argued that encouraging voter participation amounted to a vote in favor of the constitution.⁵³ Democratic Party personnel attacked all efforts to encourage citizens to exercise their right to vote, and their representatives at the CEC even suggested that the CEC should educate citizens in their right not to vote. Finally, in November, when the Democratic Party engaged in a debate on the substance of the constitutional draft, its approach consisted of a distorted campaign of misinformation reminiscent of the communist period.⁵⁴ The distortions were so severe in some cases that international groups were compelled to issue corrective pronouncements.⁵⁵

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

Throughout the campaign period, CEC meetings were acrimonious and polarized along political lines. Democratic Party mem-

bers made numerous complaints concerning referendum administration. Many complaints were minor, but some involved major issues.⁵⁶ Consistent with its previous practice in Albania, the OSCE mediated CEC impasses. Particularly significant were Democratic Party challenges to television programming, as Democratic Party CEC members argued that Albanian law required that, first, only political parties could engage in constitutional programming, to the exclusion of NGOs and the state itself; second, CEC had the right to censor all programming; and third, any news segment involving a government official was by definition campaigning. The OSCE examined these legal issues in great detail and determined that such positions were not mandated under existing law and not required to keep with generally accepted democratic principles.⁵⁷ However, the OSCE did assist the disputing parties in arriving at a code of conduct for state television programming on the constitution. The principles agreed upon directed state television to develop balanced programming on the topic.

The OSCE was called upon to mediate in a variety of circumstances. In the final two weeks leading up to the referendum, attempts to mediate became progressively more difficult as the Democratic Party deputy chairman of the CEC took more extreme positions. During the final period, the deputy chairman issued physical threats to the chairman of the CEC and the OSCE ambassador, threatened walkouts, and was generally disruptive.⁵⁸

Responsibility for preparing to administer the referendum was assigned to the Ministry of Local Government.⁵⁹ The ministry was ideally suited for the task because it had a nationwide network of offices and an experienced professional staff.⁶⁰ Nevertheless, given the tight timeline for preparation and the scarcity of resources, the Ministry of Local Government turned to the OSCE and ACCAPP for assistance; these organi-

zations identified and secured funding for ballots, training, and other logistical needs, produced election-official training materials, and assisted in other aspects of preparation. Within two months, all basic preparations had been completed.

The day of the constitutional referendum, November 22, 1999, the weather was unusually poor. Ballots had to be helicoptered into remote snowbound areas. Despite the poor weather and the boycott, the actual administration of the referendum was relatively smooth. By the close of the polls, the vote was overwhelmingly in favor of the constitution, with approximately 90 percent in support of it. A broad team of international observers from the Council of Europe, European Union, and OSCE issued a joint statement on November 23, 1999, that concluded: "The observers found on 22 November the voting procedures of the referendum were carried out in a correct manner, for which the voters and election officials should be commended."⁶¹

The observation missions also commented on the drafting process and the Democratic Party's political campaign. Regarding the former, they noted, "The referendum followed an open and transparent process where advice on the constitution was taken from many sources, domestically as well as internationally."⁶² Regarding the latter, the observation team commented critically: "The disinformation on the contents of the constitution, the misrepresentation of international representatives and unfounded allegations against the constitutional process by the Democratic Party are to be regretted."⁶³

The Role of the International Community

Several organizations and bilateral actors took leadership roles in the constitution-drafting process. Overall, the OSCE was the most influential multilateral actor, position-

ing itself as an information clearinghouse and general facilitator, which the Albanian government accepted. The government's own lack of capacity to conduct the constitution-making process was one reason for this acceptance. The country was on the verge of all-out civil war at the time, and the high level of instability concerned a broad range of actors. In the circumstances, domestic political actors had proven unable to deal with the situation peacefully and efficiently. The OSCE role complemented that of the Council of Europe and European Union, which emphasized their respective capacities to marshal legal and political expertise. As for bilateral actors, the United States predominated with substantial assistance from EU counterparts, most notably Germany. While the sustained engagement of any one of these actors would have been remarkable, the constitution-drafting process benefited from the engagement of all of them, bearing witness to an extraordinary level of interest, cooperation, and support. Moreover, the involvement of the international community was unusually well coordinated at both a high diplomatic level and an on-the-ground project level throughout the entire eighteen months of activity. The multilateral engagement was most notable on several distinct occasions during the visits of parliamentary delegations and a coup attempt.

Parliamentary Delegations

The OSCE, in collaboration with ACCAPP, undertook an ambitious plan to bring political forces together at both the national and international levels to forge a sense of common purpose and commitment to work together for Albania's common good. The OSCE recognized that the Democratic Party's antagonistic posture bordered on a rejection of the 1997 election results, which would constitute a substantial impediment to consolidating democratic institutions. Further-

more, the domestic political scene was very sensitive to international opinion because the international community had brought them back from the brink of civil war, and the OSCE saw a need to ensure that all international actors viewed and analyzed the local situation objectively. Given the political nature of the issues involved, the OSCE chose to involve experienced politicians.

In mid-January 1998, the OSCE Presence, in cooperation with ACCAPP, organized an international parliamentary delegation to evaluate and counsel Albanian politicians on the political situation with a view to instilling a spirit of compromise and moderation. Local politicians had claimed international support for a variety of their positions, and the international community was interested in clarifying their positions on a number of these issues, in particular efforts to draft a new constitution. To ensure a broad, representative range of international views, the OSCE invited parliamentarians from the OSCE, Council of Europe, and European Union to participate. In the last week of January, a senior group of these parliamentarians, representing a range of political viewpoints, traveled to Albania.⁶⁴ This so-called Tri-Parliamentary Delegation met with the entire spectrum of local politicians and diplomats and openly discussed the situation. At the conclusion of their meetings, they adopted and issued a declaration, the first Tri-Parliamentary Declaration,⁶⁵ which urged the government to increase efforts to promote democratic institutions, procedures, and values,⁶⁶ and at the same time rejected the Democratic Party boycott tactics.⁶⁷ The declaration focused on the constitution-drafting process, endorsing the legality of the current parliament and constitutional commission and the need for a constitution and public referendum on that document.⁶⁸ Both the governing coalition and the Union for Democracy responded favorably to this counsel: The Union for Democracy returned

to parliament and the governing coalition adopted new rules of parliamentary procedure, improved actual parliamentary practice, enhanced the legal framework, and developed the new Magistrates School.⁶⁹

However, political turmoil affecting the constitution-making process subsequently re-surfaced. Most notably, the governing coalition summarily removed the president of the constitutional court, Rustem Gjata. After an investigation under the Union for Democracy–authored lustration laws,⁷⁰ it was determined that Gjata had committed objectionable acts under the Hoxha regime. Pursuant to the provisions of the lustration laws, the parliament removed the president, stating that the removal had “nothing to do” with the issue of judicial immunity.⁷¹ This action, along with other alleged provocations, led to the resumption of the Democratic Party boycott.

Political forces made some progress, with limited dialogue occurring behind the scenes in the wake of the first Tri-Parliamentary mission, but the international community remained concerned that progress was insufficient, particularly regarding the ongoing Democratic Party boycott of the constitution-drafting process. Though some Union for Democracy members appeared at select events, the Democratic Party had failed to officially engage.

In the last week of June 1998, a second senior group of parliamentarians, including some from the previous mission, traveled to Albania to reevaluate the situation and urge compromise. As before, the delegation met a full range of local politicians and diplomats and openly discussed the situation. At the conclusion of their meetings, they issued a second Tri-Parliamentary Declaration, which again attempted to provide a balanced set of recommendations addressed to all sides. However, regarding the constitution-drafting process, the declaration generally applauded the constitutional commission’s efforts, citing

its transparency and commitment to public participation; it also rejected Union for Democracy demands for veto powers on the commission.⁷² The Union for Democracy, which had refused to participate in a meaningful way, was called upon to do so.⁷³

Over the next week, a quiet dialogue with members of the Democratic Party leadership indicated their willingness to join the process. However, in a surprise move, on July 7, 1998, Democratic Party chairman Sali Berisha announced a new “indefinite” boycott of the parliament. Multiple statements from the OSCE, European Union, and Council of Europe condemned the move immediately.⁷⁴ Despite continuous urgings, the Democratic Party maintained its boycott position for the remainder of the drafting process.

In August 1998, there appeared to be some possibility that the Democratic Party would participate in a roundtable with coalition politicians. However, the arrest of some former Democratic Party officials for alleged criminal activity in the 1997 civil unrest angered Democratic Party officials and disrupted the roundtable.⁷⁵ The constitutional commission and international community continued their efforts to bring the Democratic Party into the process, but without success.

Attempted Coup d’Etat

On September 12, 1998, a high-level leader of the Democratic Party, Azem Hajdari, was assassinated directly after leaving Democratic Party headquarters. Hajdari was a leader of the original student movement and Albanians widely regarded him as one of the instrumental figures in the struggle for democracy in Albania. Within a couple of hours of his murder, the Democratic Party assigned responsibility for his death to the Socialist prime minister, Fatos Nano.⁷⁶

Berisha immediately seized upon the assassination to justify dissolving the current

government. The Democratic Party, along with its satellite parties in the Union for Democracy, issued public demands for a technical government in which they would share power. By noon the following day, their supporters had stormed several government buildings and destroyed substantial property.⁷⁷ On the afternoon of September 13, using highly inflammatory rhetoric, Berisha gave Nano an ultimatum to relinquish power within twenty-four hours—a period corresponding to the twenty-four hours of truce provided in Albanian customary law to a murderer before blood revenge is exacted.⁷⁸ This unstated threat was not lost on Democratic Party supporters, who began streaming into Tirana, particularly from the mountainous north. Preparations were then made to conduct a public funeral protest in the middle of the main square.⁷⁹

On September 14, the twenty-four-hour period elapsed as the funeral procession left the main square heading for government office buildings. A substantial number of the mourners were heavily armed with automatic weapons, and they broke into the Council of Ministers.⁸⁰ Union for Democracy supporters claimed government security forces fired upon them at that time. However, trained Western military observers who were present saw no evidence of this, and there were no confirmed injuries. Directly thereafter, Union for Democracy supporters commanded tanks and took over the state television and several government buildings.

In the following days, intense diplomatic pressure was brought to bear from both multilateral and bilateral actors. Through diplomatic channels, the international community gave the armed insurgents a clear signal that it would not recognize a government installed by force. Moreover, the established position of the OSCE Presence allowed it to lead and coordinate negotiations among various domestic factions. Because the OSCE enjoyed the respect and trust of all involved

and could serve as an honest broker, it successfully created a dialogue among the various parties, stabilizing the situation at several key junctures.⁸¹ Once the armed insurgents relinquished their hold on state institutions, Prime Minister Nano, who had been notably absent during the crisis, resigned, and the ruling coalition chose a new leader. Taken collectively, these factors contained the situation and defused tensions. Within a couple of weeks, street life returned to normal.⁸²

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

Role of International Law

From the outset, the constitutional commission asserted its commitment to securing a full review of the constitution's final draft from a panel of international experts. The commission considered international approval important to ensure both technical quality and political support. As the debate during the referendum process demonstrated, both of these suppositions proved wise. When opposition critics attempted to mischaracterize the human rights provisions as restrictive and out of touch with interna-

tional standards, the full record of international consultations proved otherwise.

As Albania had joined the Council of Europe, the Albanian drafters were cognizant of their accompanying legal responsibilities. They were anxious to avoid any potential inconsistencies with the European Convention of Human Rights, which would prove embarrassing both internationally and domestically. Since 1991, Albanian constitutional experts had been engaged with experts on the Venice Commission, and as early as 1993, the Venice Commission had submitted formal written comments on draft human rights provisions, analyzing their compatibility with the European convention.⁸³ Given that the 1994 draft that was put to a referendum had some infirmities in this regard, it is unsurprising that the Venice Commission was highly interested in the process. While other international experts also played significant roles, the Venice Commission convened a special task force and took the unusual step of posting a representative in Albania.⁸⁴ This investment of additional resources greatly enhanced the role of the Venice Commission throughout the final stages of the process, providing the infrastructure to coordinate a rapid review of draft provisions.

The rapid review became particularly critical as large segments of the draft text were completed in summer 1998. The constitutional commission's June draft received extensive Venice Commission review at a series of meetings in Rome,⁸⁵ and the comments were incorporated into the revised final draft of August 5. For the final stages of parliamentary review in autumn 1998, a member of the Venice Commission's Task Force Albania, Professor Matthew Russell, was sent to Albania to follow up on prior dialogue. Professor Russell was permitted to participate freely throughout the parliamentary committee debates.⁸⁶ Following these debates, the Venice Commission stated unequivocally that

“the draft [constitution], in particular the human rights chapter, is in line conformity with European and international standards.”⁸⁷

Conclusion

On November 28, 1998, the president of Albania signed Decree 2260, formally promulgating Albania's first postcommunist constitution.⁸⁸ In 183 articles, the constitution sets forth all the basic institutions and principles of a democratic state and establishes respect for human rights as a clear priority. The drafters ultimately settled on a unicameral parliamentary republic for the general framework. Over the course of the drafting process, discussions and debate addressed dramatically different alternatives, such as a federal or presidential system. However, given the size and relative homogeneity of the population, the drafters concluded that the various alternatives would have introduced an additional degree of complexity without clear offsetting benefits.

The drafting of the 1998 constitution was remarkable in a number of respects. Born out of political turmoil that approached civil war, the process was intended to bring together persons from across the political spectrum. It no doubt fell short of this laudable goal, but it did bring civil society and individual citizens into the drafting and approval process in a manner previously unheard of in Albania. A wide range of NGOs and individual citizens participated in the process and actually affected the final product. While the process failed to bring political unity, it nevertheless was instructive for the Albanian political class in how to run—and how not to run—a democratic political process.

The transparent and open nature of the drafting process made it very difficult for politicians to base their positions on distorted facts and false charges. Both Albanian and foreign participants could identify

false charges and react accordingly. Possibly for the first time, the Albanian general public was given a detailed demonstration of the power of free speech and public debate. Though it would have been advantageous if the debate had focused more on substantive constitutional issues than on partisan political disputes, it nevertheless provided lessons in the power of transparency, openness, and citizen participation in the political process.

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

While Western democracies share common concepts of democracy and the rule of law, institutional and national differences sometimes result in divergent priorities and create artificial rivalries among foreign assistance providers. The result is that efforts to promote democracy and the rule of law become diluted. ACCAPP demonstrated that a coordinating structure reflecting local needs and international input can be important in organizing sustained and effective multilateral support for democracy and rule-of-law development programs. With such coordination, organizations and bilateral donors in Albania could address issues from their own unique

perspectives while at the same time exchanging lessons learned and endorsing shared principles of democracy and rule of law.

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

In the years since its adoption, the 1998 Albanian constitution has successfully shepherded the consolidation of this fledgling democracy. Even those who originally vehemently opposed its adoption have now fully accepted it, and the entire political class of the country operates within the parameters it sets forth. Highlights of the intervening years include successfully electing a new non-partisan president and the nonviolent transition of power between opposing political groupings. Furthermore, external ratings of Albania's progress in rule-of-law and democratic reforms show positive trends. Freedom House's *Nations in Transit* has posted consistent progress in Albania since the constitution was ratified. While a participatory constitutional process may not be enough to guarantee this type of result, the absence of one certainly reduces the prospects for such growth. The Albanians have an expression that, paraphrased, states that a good start makes for a good result. That certainly appears to have proven true in the case of the Albanian constitution.

Notes

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

2. *Ibid.*, p. 101.

3. *Ibid.*, p. 102.

4. *Ibid.*, p. 102.

5. *Ibid.*, p. 108.

6. *Ibid.*, p. 115.

7. 1976 Constitution, art. 10.

8. Law no. 7491, *On the Major Constitutional Provisions*, approved on April 29, 1991, *Flet. Zyrt.*, 1991, vol. 4, p. 145, as amended (hereinafter ICP).

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

10. Venice Commission, *Working Party on the Draft Albanian Constitution*, chap. IV, art. 43.

11. See ABA/CEELI, *Compilation of Albanian Draft Constitutions*, July 1997. The work was fraught with stoppages in the politically charged atmosphere. The prime minister, who chaired the commission, was called upon to explain the delays. See “Constitution Watch,” *East European Constitutional Review*, vol. 3, no. 3 (Summer–Fall 1994), pp. 2–3.

12. Law no. 7866, “For Referenda,” approved on October 6, 1994, *Flet. Zyrt.*, vol. 10, p. 2.

13. “Constitution Watch,” *East European Constitutional Review*, vol. 4, no. 1 (Winter 1995), pp. 2–3.

14. ICP, chap. IIIA, art. 25 (“The Constitutional Court starts action on a complaint of its own initiative”).

15. “Constitution Watch,” Winter 1995, p. 3. A clear majority voted against adoption of the proposed constitution.

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

17. Office for Democratic Institutions and Human Rights, *1996 ODIHR Final Report on Parliamentary Elections of 26 May and 2 June 1996* (in author’s personal records). The conclusions cited numerous violations of local and international legal provisions.

18. The one exception was the Central Bank of Albania, which tried to introduce corrective measures in 1996 but was ignored by the central government. See remarks of the president of the Central Bank, Kris Luniku, at the Center for Strategic

and International Studies Albanian Conference Series, March 25, 1997.

19. *Gazeta Shqiptare*, January 31, 1997.

20. “Constitution Watch,” *East European Constitutional Review*, vol. 6, no. 1 (Winter 1997), pp. 2–5; *Albanian Daily News*, March 5, 1997. President Berisha placed the army under the head of the secret service with instructions to quell the unrest in the south, a state of emergency was declared, and President Berisha was reelected by the parliament.

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

22. “Constitution Watch,” Winter 1997; *Albanian Daily News*, March 5, 1997.

23. Agreement for the Government of National Reconciliation, March 9, 1997.

24. “Italy in the Balkans,” *NATO Review*, vol. 28, no. 2 (Summer/Autumn 2000), pp. 6–7, available at www.nato.int/docu/review/2000/0002-02.htm (accessed on April 10, 2009). Operation Alba comprised 7,000 troops drawn from Denmark, France, Greece, Italy (3,000), Romania, Spain, and Turkey.

25. OSCE, *Annual Report 1997 on OSCE Activities 2.2.3*, December 18, 1997, available at www.osce.org.

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

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

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

27. Decision 339, dated September 3, 1997.
28. For example, the commission was instructed to “have a drafting process for the Constitution outside of the narrow political debate and to test it with public opinion” and “cooperate with foreign experts of international institutions.” See Decision 339.
29. See Decision 339.
30. OSCE Press Release of October 15, 1997. The May 29, 1997, memorandum of understanding between the OSCE and the government of Albania specifically provided that the OSCE would “provide the framework within which other international organizations can play their part in their respective areas of competence, in support of coherent international strategy, and in facilitating improvements in the protection of human rights and basic elements of civil society.”
31. The three lawyers were Ardita Abdiu (Albania), Erinda Ballanca (Albania), and Scott Carlson (United States).
32. These newsletters were available online at the ACCAPP Web site in English and Albanian.
33. These recorded results were also accessible online at the ACCAPP Web site in English and Albanian.
34. GTZ, USAID, and certain universities provided support for additional German and American constitutional scholars to assist in the process.
35. The plan was truncated due to the attempted coup d’etat (discussed later in the text). Nevertheless, the major population centers were covered, including Tirana, Durres, Shkodra, Lezhe, Gjirokastra, Elbasan, Vlore, and Fier.
36. Chairman Kristaq Kume.
37. The Society for Democratic Culture (*Shoqata per Kulture Demokratike*) organized a series of public fora on constitutional issues, at which experts discussed a variety of constitutional issues, including televised debates in Korça, Shkoder, Elbasan, Vlora, and Tirana. In addition, the society conducted public opinion polls to measure citizen understanding and awareness and to test public opinion on particular constitutional issues, e.g., the death penalty.
38. Sabri Godo of the Republican Party and Arben Imami of the Democratic Alliance Party.
39. The Political Contract of May 9, 1997, signed by all the major political parties and referring to the prior agreement of March 9, 1997, forming the technical government.
40. *Final Report on the Parliamentary Elections in Albania, 29 June–6 July 1997*, p. 5. The Democratic Party ignored the language in the report, which stated, “The results of these elections should be the foundation for a strong, democratic system, which Albanians want and deserve.”
41. These claims were heard personally by the author.
42. Constitutional Court Decision no. 53.
43. Law no. 8256, November 19, 1997, *Flet. Zyrt.*, vol. 18, p. 433, “‘For an Addition to Law no. 8227, Dated 30.7.1997, ‘For Some Additions and Changes to Law no. 8215,’ Dated 9.5.1997, ‘For Financial Audit of Nonbanking Legal Entities which Have Borrowed Money from the Public.’”
44. Constitutional Court Decision no. 57.
45. Venice Commission, *Opinion on Recent Amendments to the Law on Main Constitutional Provisions of the Republic of Albania*, adopted by the Sub-Commission on Constitutional Reform, April 15, 1998, CDL-INF(98)P, p. 11.
46. “Constitution Watch,” *East European Constitutional Review*, vol. 6, no. 4 (Fall 1997), p. 5, available at www1.law.nyu.edu/eecr/vol6num4/constitutionwatch/albania.html (accessed April 10, 2009).
47. This date was selected in part because it would allow for promulgation on November 28, the eighty-six-year anniversary of independence from the Ottoman Empire. “Constitution Watch,” *East European Constitutional Review*, vol. 7, no. 2 (Spring 1998), p. 1, available at www1.law.nyu.edu/eecr/vol7num2/constitutionwatch/albania.html (accessed April 10, 2009).
48. Statement on OSCE/ODIHR Activities, 12–25 March 1992; OSCE/ODIHR Report on the Referendum on the Draft Constitution. OSCE issued both the statement and the report on November 6, 1994.
49. “The constitutional amendments or any other issue, which the referendum is held for, shall be considered as approved when the option received more than 50 percent of the valid ‘Yes’ votes.” Law no. 7866, “For Referenda,” approved on October 6, 1994, *Flet. Zyrt.*, vol. 10, p. 2, art. 36.
50. Law no. 8416, “For Some Changes to Law 7866, dated 6.10.94,” approved October 12, 1998, *Flet. Zyrt.*, vol. 9, p. 995.
51. See, e.g., Constitution of Ireland, at art. 47; Constitution of Slovenia, art. 90; and Constitution of Switzerland, art. 123.
52. Voters’ lists had to be posted near each polling station by November 7, 1998.

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

54. One Democratic Party television spot showed old film footage of Albanians being executed by firing squads, religious buildings being destroyed, and property under collectivist, communist control. The chairman of the European Parliament delegation, Doris Pack, declared this spot “unacceptable.” European Parliament press release, November 30, 1998.

Another egregious example of Democratic Party disinformation was their attack on Article 18, which bans arbitrary discrimination. Democratic Party propaganda stated that this article demonstrated the constitutional commission’s malicious intent, and the article would be used to affirmatively restrict the individual liberties of people. According to the Democratic Party, it was “in complete violation” of the European Convention on Human Rights. The original text of this article was actually suggested by the president of the Venice Commission, Antonio La Pergola, in a letter of June 13, 1998, to the constitutional commission. When locals and internationals publicly disputed the Democratic Party’s accusations, the party reiterated the false charges immediately and continued to do so thereafter. See, e.g., Democratic Party press release of November 8, 1999 (discussing vice-president of the Democratic Party, Genc Pollo, meeting the electorate in Ballsh and Patos).

55. Venice Commission–OSCE press release, November 7, 1998; Council of Europe press release, October 20, 1998.

56. The OSCE conducted a detailed legal analysis of the underlying issues to ensure that proper process was respected. OSCE, *Report no. 1 on the Constitutional Referendum Process: Voting and*

Appeal Mechanisms under the Law for Referenda, November 18, 1998.

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

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

59. Council of Ministers, Dec. no. 639, October 19, 1998.

60. A demonstrable example of this fact can be found in how quickly the ministry developed an operational outline of the issues involved. Within two days, the minister of local government, Arben Demeti, had circulated his first pronouncement, breaking the task down into component parts. See Ministry of Local Government Internal Memo 3525, October 21, 1998 (in author’s personal records).

61. OSCE, EU, and COE Joint Preliminary Statement, issued November 23, 1998, p. 2 (in author’s personal records).

62. OSCE, EU, and COE Joint Preliminary Statement, p. 1.

63. OSCE, EU, and COE Joint Preliminary Statement, p. 2.

64. Leni Fischer (Germany), president of the Council of Europe Parliamentary Assembly; Frank Swaelen (Belgium), president emeritus of the OSCE Parliamentary Assembly and president of the Belgian Senate; Renzo Imbeni (Italy), European Parliament vice president; Tana De Zulueta (Italy), rapporteur on economic affairs of the OSCE Parliamentary Assembly General Committee; Doris Pack (Germany), chairman of the European Parliament Commission for Relations with the Southeast; Rene van der Linden, (Netherlands), rapporteur of the Council of Europe Parliamentary Assembly on Albania; and Jordi Sole Tura (Spain), rapporteur of the Council of Europe Parliamentary Assembly on Albania.

65. Declaration by the Tri-Parliamentary Mission to Albania, January 23, 1998 (in author’s personal records).

66. The Declaration by the Tri-Parliamentary Mission to Albania “urged safeguarding of the independence of the judiciary.”

67. The Declaration by the Tri-Parliamentary Mission to Albania “called on the Union for Democracy to promptly end their boycott of the parliament and to participate in drafting the new Constitution.”

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

69. Declaration by the Tri-Parliamentary Mission to Albania, June 30, 1998 (in author’s personal records).

70. Law no. 8001, “For Genocide and Crimes Against Humanity Committed in Albania during the Communist Regime for Political, Ideological, and Religious Reasons,” *Flet. Zyrt.*, 1995, vol. 21, p. 923; Law no. 8043, “For Checking the Integrity of Officials and Other Persons Who Are Completely within the Protection of the Democratic Government,” *Flet. Zyrt.*, vol. 10, p. 2.

71. Notice of Release from Duty of the Member of the Constitutional Court Z. Gjata, March 18, 1998 (in author’s personal records).

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

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

74. Joint Statement of the OSCE Presence in Albania and the Office of the Council of Europe Special Representative, July 8, 1998; Joint Statement of the Parliamentary Assembly of the OSCE, Parliamentary Assembly of the Council of Europe, and the European Parliament, July 10, 1998 (in author’s personal records).

75. “Constitution Watch,” *East European Constitutional Review*, vol. 7, no. 4 (Fall 1998), pp. 2–3.

76. “The Democratic Party Declares that the Death Is Organized Completely from the Chief Criminal of Albania, Fatos Nano,” Democratic Party press release, September 12, 1998.

77. “Constitution Watch,” Fall 1998, pp. 3–5.

78. See *Code of Lekë Dukagjini*, ed. Shtjefen Gjeçov, trans. Leonard Fox (New York: Gjonlekaj Publishing Co., 1989), art. 854–63. Article 854 provides that “the truce is a period of freedom and security . . . suspending pursuit of vengeance in the blood-feud until the end of the specified term [initially, twenty-four hours].”

79. “Constitution Watch,” Fall 1998, pp. 3–4.

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

81. This diplomatic pressure helped avoid a number of potentially disastrous situations. Ambassador Everts of the OSCE was instrumental in resolving the armed standoff with the Democratic Party supporters and government forces. On a September 15, 1998, radio broadcast, he pleaded with Berisha to intervene so that supporters would return commandeered tanks, which they did.

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

83. Venice Commission, *Working Party on the Chapter of the Revised Albanian Constitution Relating to Fundamental Rights*, March 8, 1993, CDL(93)13.

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

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

86. “The Draft Constitution Is in Full Conformity with European Democratic Standards,” COE-Tirana press release, October 16, 1998.

87. Council of Europe press release, October 20, 1998 (Ref. 696–98).

88. Decree no. 2260, November 28, 1999 (author’s personal records).