

MAKING DEMOCRACY WORK

2002 NATIONWIDE SURVEY OF THE JUDICIARY

Findings from the IFES Survey

**Prepared For
The Central Election Commission, Albania**

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INTRODUCTION

This report presents results from the first nationwide survey of the Albanian judiciary, undertaken by the International Foundation for Election Systems during the month of February 2002. The findings presented in this report are based on data collated from 301 members of the Albanian judiciary at district court, appeals court and constitutional court level.

This report is composed of three parts. Part one provides an overview of the survey project and the methodology followed to achieve the project objectives. Part two presents some of the key results from the survey by topic area covered by the interviewer and questionnaire. In part three IFES offers comments and observations about the findings and the role of the judiciary in the election disputes resolution process.

This survey has proved to be a useful tool for measuring the level of experience and opinions of the judiciary thereby providing a clear understanding of the challenges faced and the priorities for judicial training prior to the local government elections in 2003.

PART ONE: THE JUDGES SURVEY PROJECT

The new electoral code established new rules and involvement of all levels of the Albanian judiciary in the adjudication of election disputes. During the past two elections the judiciary has had to deal with a number of election issues and in doing so enter into an area where the courts had very limited experience. Following the local elections in the year 2000 and again following the national elections in 2001, ODIHR observation reports identified the adjudication of election complaints as a problem.

In recognition of the problems faced by the courts and the comments made by ODIHR it is understood that additional efforts have to be made to improve the professional integrity of the courts. In addition, it was felt necessary to measure the impact of past training events provided for the judiciary including the impact of training organized by the Magistrates School, to identify potential areas of training and finally, to seek the opinions of judges regarding any changes or additional procedures needed by the judiciary in order to complete their responsibilities. With these considerations in mind, IFES in co-operation with the Central Election Commission (CEC) undertook a survey of members of the Albanian judiciary. The objectives of the survey were:

- Obtain feedback from judges on the parliamentary election process
- Identify the weakness and strengths of the electoral code and court procedures
- Measure the impact of the training of judges, organized by the Magistrate School
- Identify future training requirements for the judiciary
- Identify procedures that need to be established for the future

The Survey of Judges was planned and implemented over the period December 2001 – March 2002. The first attempt to undertake the survey was through the presentation of a questionnaire at the annual judicial conference in December 2001. Conference participants were asked to fill out the questionnaire and to leave the completed questionnaire with the conference secretariat. However, due to the poor response it was decided to proceed with direct interviews in 2002.

A second questionnaire was prepared by IFES and the CEC with the aim of carrying out direct interviews in the courts around Albania.

The questionnaire was composed of seven parts:

- Background Information
- Training organized by the Magistrate School
- Electoral Code and Potential Areas of Improvements
- Recount Process
- Election Issues adjudicated by the Courts
- Court Jurisdictions as provided in the Electoral Code
- Independence of the Courts

The interviews were organized at prefecture level, with a group of interviewers hired by the IFES. The interviewers were largely drawn from those involved in the first nationwide survey of local election officials in the fall of 2001. The selection of interviewers was based on previous job performance as well as their judicial knowledge. Some students from the Faculty of Law were also employed. In total there were 15

interviewers, one for each prefecture and four for the Prefecture of Tirana. Interviewers were required to attend a two-day training program in February, which included a session on familiarizing the interviewers on the judicial structure and the involvement of the judiciary in the electoral process. Topics included:

- Albanian Court System
- Role of the Courts, based on the Electoral Code
- Role of the Courts during the Parliamentary Elections 2001 and problems that occurred

The training program also covered:

- Objectives of the project
- Understanding the questionnaire
- Completing the questionnaire
- Interviewing techniques

Each of the interviewers was provided with a list of judges (with contact numbers) to interview. The CEC informed the Chair of the High Court and the chair of each of the 36 district courts about the project and asked them to help in its' realization.

The project was carried out in three weeks in February 2002 followed by a de-briefing session with the interviewers. At that time, the interviewers reported that in most cases they were strongly supported by the chairs of the courts as well as individual judges, with the exception of Tirana. Of a potential number of 351 interviews it was possible to complete 301 interviews (85%). While attempts were made to arrange appointments to interview high court judges, no interviews were possible.

The questionnaire had a number of open-ended questions. It was found that there was a great reluctance by the judges to respond to these types of questions. This is partly explained by the fact that in all only 49 judges interviewed reported that they were involved in an election related case in 2001. In addition, time had elapsed since the elections. Finally, there may have been a reluctance to comment on matters if a judge had limited knowledge or experience.

PART TWO: RESULTS OF THE JUDGES SURVEY

A. BACKGROUND INFORMATION

- There were a total of 301 questionnaires completed during the survey. This represents approximately 85% (351) of all judges in Albania. The same questionnaire was used for all judges, however, some sections were specifically targeted at different court levels.
- Of those surveyed, 65% (197) were male and 35% (104) were female. There is a higher than average percentage of female judges in Durres (51% / 18), Fier (42% / 10), Korce (38% / 13) and Kukes (46% / 5) prefectures. Lezhe (11% / 1) and Diber (14% / 2) prefectures have a very low percentage of female judges.

Figure 1: Number of Judges at Prefecture Level

Prefecture	Number of Judges Interviewed	Constitutional Court Judges	Appeal Court Judges	District Court Judges
BERAT	11			11
DIBER	14			14
DURRES	35		7	28
ELBASAN	26			26
FIER	24			24
GJIROKASTER	21		4	17
KORCE	34		6	28
KUKES	11			11
LEZHE	9			9
SHKODER	27		5	22
TIRANE	63	8	10	45
VLORE	26		5	21
TOTAL	301	8	37	256

Actual Number of Judges in Albania

	Actual Number	Constitutional Court Judges	High Court Judges	Appeal Court Judges	District Court Judges
TOTAL	351	9	15	39	288

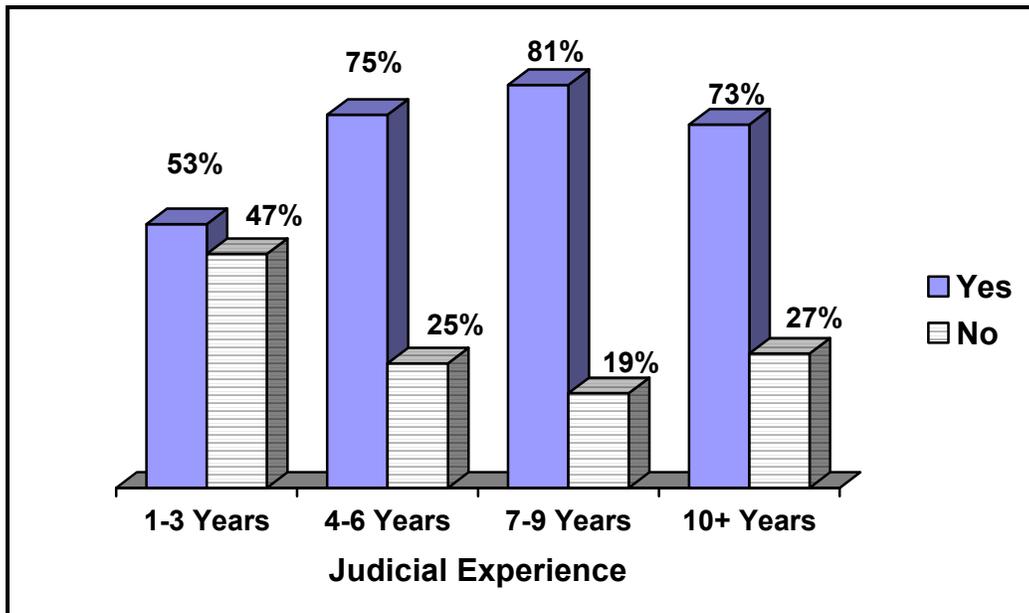
- Many judges were between the ages of 26 to 35 (45% / 134). Thirty one percent (93) were between the age of 36 and 45; 21% (62) were 46 and over; and 4% (12) between the ages of 23 to 25.

B. TRAINING OF THE JUDICIARY

Questions were directed to the judges about training organized by the Magistrate School. In response to the question: “Did you participate in the training program?”

- Seventy two percent (217) of the respondents (62% of all judges in Albania) declared that they participated while 28% (84) did not participate in the training program. There is a sizable difference in participation between less experienced and more experienced judges. The survey found that 53% (33) of those who have been judges for 1 to 3 years attended the seminar, compared to 75% (42) of those who have been judges for 4 to 6 years, 81% (92) of those who have been judges for 7 to 9 years, and 73% (50) of those who have been judges for 10 or more years. Another indication that more experienced judges were likely to attend the seminar is that 30 out of the 34 chairs interviewed attended the seminar, while 180 of the 259 members (70%) interviewed attended the seminar. Among those who did not attend the seminars, the two primary reasons listed for non-participation in the seminar were lack of notification (42% / 35) and workload (24% / 20). If serious attention is going to be paid to training judges for election dispute adjudication, it is imperative notice and time is given so that they can attend these training events.

Figure 2: Attendance at Seminar, by Judicial Experience



- Ninety-eight percent (212) of those who participated in the training, thought the training was necessary. Eighty percent (174) felt that training was well organized while 18% (38) thought it was not well organized. A majority of the judges who participated in the training were satisfied with the quality of the training. Seventy-four percent (160) of the participating judges felt that the trainers could answer their questions while 68% (148) felt that the training was comprehensive. Less-experienced judges (1-3 years) were more likely to disagree with the statement that the training was comprehensive (36% / 12) than more experienced judges. This is probably indicative of the lesser exposure to different types of cases among the less-experienced judges and could point to a need to hold separate trainings for judges with different levels of experience.

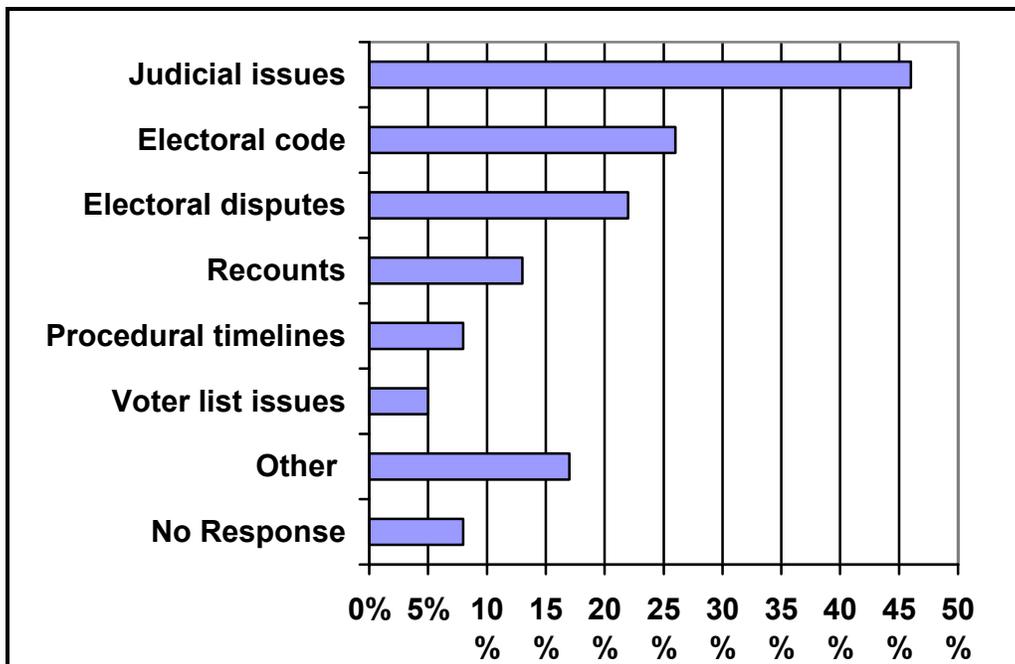
Figure 3: Evaluation of Aspects of Training (Respondents=217)

	Agree	Disagree	Don't Know
The training program was necessary	98%	1%	1%
The training program was very well organized	80%	18%	2%
The experts could answer our questions	74%	23%	3%
The training program was comprehensive	68%	27%	5%
All judges should have participated in the training program	94%	5%	1%
Judges should be trained before every election	86%	11%	3%

- When asked if all judges should have participated in the training event, 94% (203) of those who received the training thought all judges should have participated and 86% (186) of the judges responded by stating judges should be trained before every election.
- Judges were asked if their court had organized training regarding the electoral process. Only 32% (96) of them responded that there had been briefings before the elections. None of the respondents interviewed in Berat, Diber, Gjirokaster, and Kukes reported judicial training was organized in their districts, and only one out of 9 judges in Lezhe reported that additional training was held. Judges in Shkoder (63% / 17) were the most likely to report additional training being held. Between 32% and 46% of judges in other prefectures reported additional training being held.

- Respondents were asked if they thought all judges should be trained on matters regarding election disputes. Eighty nine percent (267) of the respondents agreed. An equal percentage of respondents felt that the training should take place in the district where the judges served (37% / 112) as those who said that the training should take place in Tirana (37% / 110). Surprisingly, judges from Tirana were the least likely to say that training should be held in Tirana (14% / 9) and among the most likely to say that it should be held in the districts (51% / 32).
- A plurality of respondents (29% / 88) felt that the primary responsibility for organizing a training program should be borne by international experts. A significant percentage also mentioned the High Court (28% / 83) and the CEC (22% / 65). Regarding the time when training should take place, the vast majority of judges felt that training should be organized after the Presidential decree on the date of the elections. (84% / 253).
- Judges were also asked about topics for this training, The topic most frequently mentioned is judicial issues (46% / 140). Other frequently mentioned topics included discussion of items in the electoral code (26% / 79), discussion of complaints and electoral disputes (22% / 65), recounts (13% / 38), procedural timelines (8% / 25), and voter lists issues (5% / 15).

Figure 4: Possible Topics for Training (Respondents=301)

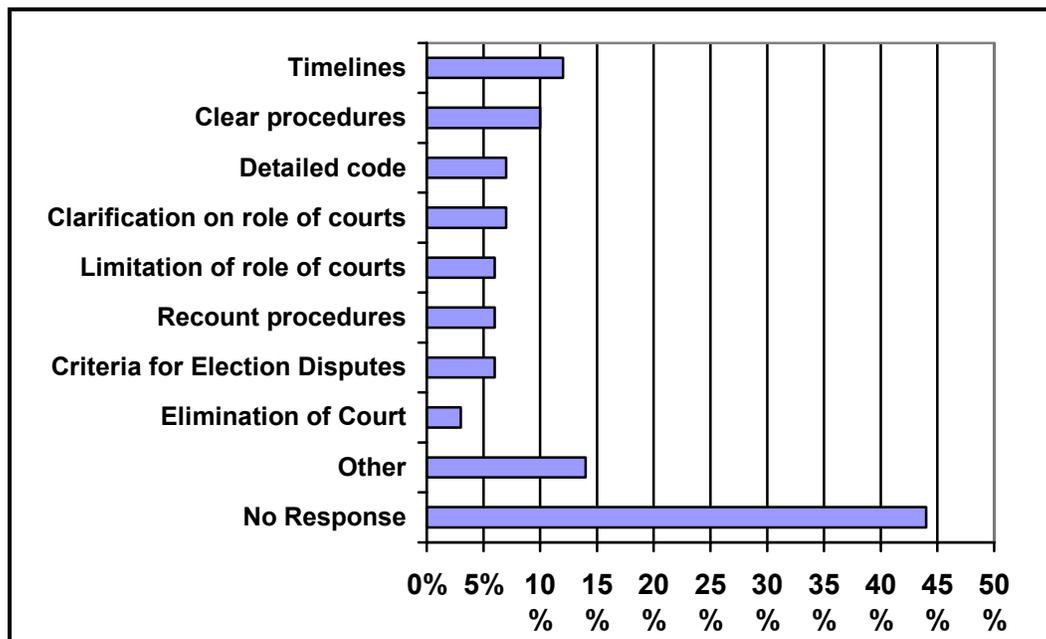


C. ELECTORAL CODE

- Respondents were asked about the clarity of the electoral code regarding the types of decisions to be addressed to the different courts. Regarding this question, 51% (153) of the respondents believed that the code is clear and 41% (122) thought it was not. Interestingly, not one of the eight constitutional court judges interviewed felt that the electoral code was clear about the types of decisions to be addressed to the different courts.
- When the respondents who said that there was a lack of clarity were asked where this lack of clarity exists, the most frequent responses among this group were that the lack of clarity exists in the competencies (42% / 51) and in the dispositions (21% / 25).
- Respondents were next asked if the electoral code should or should not include detailed procedures to be followed by the courts while adjudicating election disputes. Ninety-two percent (276) of the respondents mentioned that the electoral code should include these procedures, while those who thought these procedures should be excluded from the electoral code think the code of the civil procedure can be followed or a separate document can be established.
- When asked if there should be defined criteria established for the court to follow when adjudicating election disputes, 89% (267) stated that there should be some criteria established and 75% (201) felt that criteria could be inserted in the electoral code and 17% (46) felt there should be a separate law.
- Judges were then asked about their knowledge about the procedural timelines for resolving electoral disputes. Seventy-four percent of respondents (222) are fully familiar with these procedural timelines, while 19% (56) are partially familiar. As would be expected, more experienced judges have a greater level of familiarity with these timelines than less experienced judges. While 81% (56) of those with more than 10 years of experience are completely familiar with these timelines, this figure drops to 52% (32) for those with 1 to 3 years of experience. There is no clear consensus on the utility of these timelines among those who are familiar with them. Forty-eight percent (134) of those who know about the procedural timelines think that the cases can be solved objectively respecting these timelines while 46% (129) thought it was not possible to solve cases objectively while respecting these timelines.

- When asked what specific changes should be made to the electoral code, 44% (132) of the judges interviewed did not list any changes. Generally, the more experienced a judge, the more likely they are to provide a list of changes that need to be made to the electoral code. The most frequently mentioned changes felt to be necessary were to timelines for electoral cases (12% / 35), for clear procedures in these cases (10% / 30), for a detailed code (7% / 22), for clarification of the role of the courts in electoral cases (7% / 22), for defining criteria for electoral disputes (6% / 19), for limitation of the role of the courts (6% / 17), and recount procedures (6% / 17).

Figure 5: Recommended Changes to Electoral Code (Respondents=301)

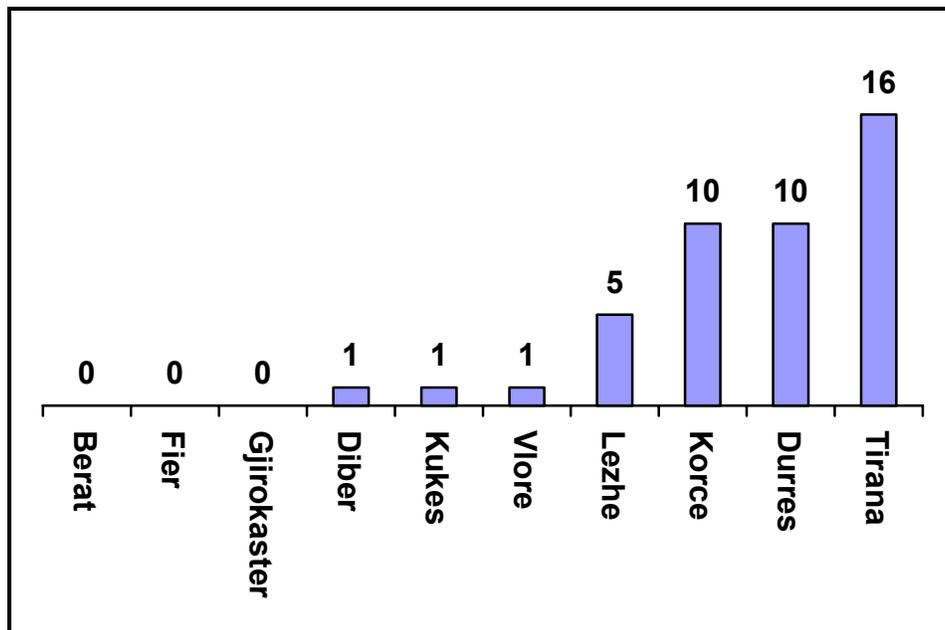


- A further question sought the opinion of the judges on the possible establishment of an investigatory body on election disputes. Forty-eight percent (145) of respondents felt that it was very important that this type of body be established, 20% (61) thought it was somewhat important, and 27% (80) said it was not important at all. In total, 69% of judges felt that this type of body is at least somewhat important, perhaps reflecting a strong desire to avoid the controversies that tinged the 2001 parliamentary election. Those serving on appeal courts are more likely to say these bodies are very important (62% / 23) than those serving on district courts (47% / 121). Of those who thought that an investigatory body is very or somewhat important, 59% (121) felt that this body should report to the CEC, 15% (31) felt it should report to the Court, and 5% (10) felt that it should report to the public prosecutor. Only 8% (16) said that it should be an independent body. The fact that a majority feels that the CEC should administer this body reflects confidence in the CEC as a neutral body.

D. RECOUNT

- Respondents to the survey were asked a series of questions on the procedures for recounting ballots, as well as the courts' role in recounting ballots. Details of responses to these questions are provided below.
- When asked who should be responsible for the recounting of ballots, 47% (142) of the respondent thought that this should be the responsibility of district courts, 23% (69) thought it should be the responsibility of the CEC, and 23% (69) thought that a special body should be responsible for recounting. Interestingly, judges on constitutional (63% / 5) and appeal courts (51% / 19) are more likely to say that district courts should have responsibility for recounting (53% / 24) than district court judges (46% / 118).
- When it comes to having actual experience with recounts, only 16% (49) of respondents reported that their court was involved with the recounting of ballots. No judges in Berat, Fier, and Gjirokaster reported that their court was involved in a recount. Only 1 judge in Diber, Kukës, and Vlorë reported their court being part of a recount. Five out of nine judges in Lezhë report taking part in a recount. More than 20% of judges in Korçë (29% / 10), Durrës (29% / 10), and Tirana (25% / 16) reported their courts being part of a recount.

Figure 6: Number of Judges Involved in Recounts, by Prefecture



- Of the judges who reported that their court was involved in a recount, 29% (14) felt that the procedures for recounts in Chapter 8 of the electoral code are mostly clear. A further 53% (26) stated that these procedures are only partially clear and 10% (5) felt that they were not clear at all. This points to a need for changes in this section of the electoral code and is further elaborated in the next question.
- Judges were asked how the provisions for recounting could be improved in the electoral code. Forty-eight percent (144) of respondents did not respond to the question. The most frequent mention was that detailed and clear procedures are needed (15% / 45). Many judges responded that the courts should be excluded altogether from the recount process (14% / 42), a possible lingering affect of the 2001 election controversies. Other suggested improvements included a change in the legislation governing recounts (8% / 25) and a definition of the criteria for recounts (5% / 15). Longer timelines for recounts were mentioned by a few respondents (2% / 6).

E. ELECTION ISSUES

- Respondents were provided with a list of elections issues that were adjudicated by the courts during and after the 2001 parliamentary election, and asked to state if their court had dealt with each of the issues and to state the approximate number of cases for each issue. The issues were:

People left off the voters list
 Substitution of Election Commission Members
 Voting Center Protocols
 Electoral Zone Declaration of Results
 Registration of Candidates (including independent candidates)
 Decisions of the CEC
 Other cases

The percentage of judges who reported that they dealt with cases addressing these issues were as follows:

People left off voters lists	48% / 144
Electoral Zone Declaration of Results	15% / 45
Substitution of Election Commission Members	11% / 34
Decisions of the CEC	10% / 30
Voting Center Protocols	8% / 25
Registration of Candidates	6% / 19
Recounts	6% / 19

- Disputes dealing with voters lists were by far the most frequent election-related cases brought to the attention of the court. When asked whether a party or a candidate had brought these cases to the court, most judges did not give an answer. Those who did answer most frequently mentioned both a party and a candidate (16% / 27), followed by a party alone (15% / 25), and then a candidate (18% / 3). For other types of cases, a similar pattern holds as most of the respondents who answered were more likely to say that both a party and a candidate brought forth a case, rather than one or the other.
- The judges who were party to these cases were asked what procedures they followed when adjudicating these election disputes. The judges most frequently responded that they followed the procedures outlined in the electoral code (43% / 85). Others stated that they used procedures from the civil code (13% / 25) and some responded that they combined the electoral code procedures and those found in the civil code (4% / 8). Many responded that they followed the law without specifying whether it was the electoral or civil code (25% / 49), and a few said that they did not follow formalized procedures (10% / 20). The range of answers to this question indicates that the electoral code is not felt to be exhaustive by judges in addressing electoral disputes. Improvements to the electoral code and mandatory, intensive training of judges on the electoral code could go a long way toward remedying this situation.
- Regarding the use of CEC instructions in adjudicating the listed electoral disputes, the majority of judges involved with these cases (64% / 125) responded that they used the instructions. However, 32% (63) responded that they did not use the CEC instructions. Closer inspection of this question reveals that the use of the CEC instructions is related to experience. A majority of those with 1-3 years of experience stated that they did not use the CEC instructions (53% / 18). This compares with 28% (45) of those with more than three years experience who did not use the instructions. This finding could highlight a need for the CEC to make a greater effort to inform less experienced judges about its role in resolving electoral disputes.
- As already indicated in an earlier question, judges who have worked on electoral dispute cases felt that CEC instructions could be improved by being more complete (23% / 43). Timely distribution of the instructions was also frequently mentioned (11% / 21).
- When asked to describe the relationship of their court with the CEC, almost all judges who had contact with the CEC responded that the relationship was either very good or good (93% / 173). One hundred and fifteen judges (38%) reported not having any contact with the CEC.

- Respondents were asked if they thought that complaints brought by the political parties to the courts, were based on concrete violations of the law. Regarding this question 40% (121) of the judges said yes, 16% (47) said no, and 43% (130) responded with don't know. The most critical judges were from Elbasan, 39% (10) of whom said the complaints were not based on violations of the law.

F. INDEPENDENCE OF THE COURT

- The two last questions of the survey related to the independence of the court in the adjudication of election disputes. Regarding the question if they believe judges were independent and impartial in their decision-making in disputes related to the Parliamentary Elections 2001, 82% (247) think judges have been independent, while 11% (34) think otherwise.
- As a follow-up to this question, judges who did not feel that judges were independent were asked how the independence of the courts could be increased. The most frequently cited response was a more defined role of the court in electoral disputes (24% / 9) followed by legal space and guaranties (16% / 6), and respect for the independence of the court (13% / 5).

PART THREE: IFES COMMENTS AND OBSERVATIONS

One of the changes in the Albanian election system contained in the Electoral Code passed by the National Assembly in May, 2000 was to involve, for the first time, the Albanian courts in the recounting of ballots and adjudication of election disputes. The decision to involve the courts in this process was a deliberate attempt to de-politicize the electoral process at the level of election commissions. The involvement of the courts proved to be a challenge for both the political parties as well as the courts. During the local government elections the procedures enabling candidates and the political parties to take issues to the court was not well used. Instead, candidates and parties took issues directly to the CEC who was ill-equipped to deal with them. When issues did go to the courts, there was some confusion within the judiciary on how to deal with the matters brought before them. During the elections for the National Assembly in 2001 candidates and parties made extensive use of the court procedures. Approximately 1,000 cases were dealt with during and after the election.

Prior to the local elections in 2000 it was not possible to undertake a formal judicial training program. There was, however, a one day seminar sponsored by the High Court to provide judges with an overview of the provisions of the code. In April 2001 the Constitutional Court initiated a seminar for the judiciary to discuss issues related to the adjudication of election disputes. The High Court joined in sponsoring this initiative along with IFES and the Council of Europe. The seminar was followed by a series of weekend programs at the Magistrates School for all judges around the country during the months of April and May 2001. The Magistrates School program was sponsored financially by IFES. The Council of Europe provided a number of experts to assist in the development of the program.

The Survey of Judges undertaken by IFES in February 2002 clearly shows that while a large number of judges participated in the Magistrates School program this training was not followed up by seminars within each judicial district or within the various levels of Albanian courts. In addition, the survey points out a number of areas where changes to the Electoral Code should be considered along with the need to develop clear procedures by the various levels of Albanian courts.

TRAINING

Adjudication of election issues is a new area of legal expertise in Albania. Consequently, there is a need for the judiciary to receive on-going, formal training in this field. This need is recognized by the judiciary as expressed in the survey. On-going programming at the Magistrates School is necessary. In addition, it may be advisable for a formal course on election law to be included in the curriculum of the Faculty of Law at the University of Tirana.

PROCEDURES AND COMPETENCIES

When the electoral code was drafted it was assumed that the procedures in the code would be those to be applied by the courts, not the civil code. This was a major source of confusion during the local elections in 2000 but significantly reduced in 2001. However, as the survey points out the procedures of the code are not universally applied, with many judges adopting the civil code procedures instead. Clarification on this matter in any future revision to the electoral code is advisable.

The survey also points out differences of opinion within the judiciary regarding the appropriate levels of the courts to deal with election issues. It should be noted that these differences of views are held outside the judiciary as well. The survey also indicates that members of the judiciary believe that the Central Election Commission should have clearer powers of investigation to deal with a complaint prior to a judicial review and decision. Third, the survey indicates that there is support within the judiciary for the concept of a special (temporary) court to deal with all election disputes. These three issues (in addition to further clarification in the law regarding recounting of ballots) are the most important matters to be considered by Albanian law makers.

During the balance of this year consideration will be given to changes to the electoral code by the National Assembly of Albania as well as the Central Election Commission. During this process it would be advisable for both these bodies to consult with the judiciary and to propose appropriate changes to the electoral code. In the coming weeks and months IFES will be making some suggestions on these matters with the view of clarifying issues and strengthening the legal process to ensure transparency and fairness in the Albanian electoral system.

Finally, in preparation for upcoming elections IFES will continue to sponsor specific training programs for the Albanian judiciary regarding the electoral code and the electoral system in order assist the judiciary in the fulfillment of their responsibilities.

APPENDIX A: JUDGES SURVEY QUESTIONNAIRE



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