

DEMOCRATIC LEGITIMACY AND THE CLOSED-LIST SYSTEM IN ALBANIA'S 11 MAY 2025 ELECTIONS

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ABSTRACT

This paper analyzes the limited democratic legitimacy of candidates elected through the closed-list system used in Albania's parliamentary elections of 11 May 2025. Although the system operates within the electoral legal framework, it creates a structural gap between formal legitimacy and genuine popular representation. The closed-list restricts voters' ability to select individual candidates, transferring decision-making power almost entirely to party leadership structures. As a result, candidates derive their political status primarily from internal party hierarchies rather than from the direct will of the electorate.

The study argues that this mechanism weakens the substantive meaning of representative democracy by reducing voter influence over electoral outcomes. When the ranking and selection of candidates are predetermined, electoral choice becomes largely symbolic, while real power shifts upward to party elites. This dynamic results in a form of party-centered governance that diminishes the sovereignty of citizens and limits political accountability.

By comparing Albania's model with several European systems – including mixed-member proportional systems, open-list proportional models, and proportional systems with corrective mechanisms – the paper demonstrates that alternative frameworks provide voters greater control and ensure more balanced representation. These comparisons highlight how the Albanian closed-list produces disproportional outcomes, often transforming votes cast for political ideas into automatic support for predetermined party nominees.

The central conclusion is that candidates elected through the closed-list system possess only formal legitimacy. Their lack of direct voter endorsement creates a democratic deficit that distances the electoral process from the principles of liberal representative democracy and reduces the authenticity of political representation in Albania.

KEYWORDS: Popular sovereignty, Party dominance, Voter autonomy, Representative deficit, Electoral accountability

1. INTRODUCTION

Modern democracy, as conceived in the Western tradition, is not merely an electoral mechanism but a system grounded in the principle of legitimate representation of popular sovereignty. This principle is embodied in the political doctrine of the Enlightenment and foundational documents such as the Universal Declaration of Human Rights (1948), which states that *“the will of the people shall be the basis of the authority of government”*.¹ In this sense, a political representative is not merely the product of a legal procedure but the bearer of a moral and democratic mandate obtained through a free, equal, and unconstrained electoral process.

In political literature, democracy is classified into two fundamental dimensions: procedural (formal) democracy and substantive (real) democracy. Formal democracy exists when electoral processes are conducted according to the law; substantive democracy exists only when the citizen exercises real control over the outcome of their vote and when elected representatives enjoy direct legitimacy from the electorate.² In the absence of such control, the system shifts from representative democracy to partyocracy,

in which political parties and their leaders monopolize the selection of legislative elites.³

1.1. Context of the 11 May 2025 elections

The parliamentary elections of 11 May 2025 in Albania were presented as a step toward modernizing the proportional system. However, the introduction of the two-part voting structure created a democratic paradox:

- **The first part** consists of a closed party list, where candidates are ranked and fixed in advance, and voters cannot change the order.
- **The second part** allows for individual preferential voting, but this vote is taken into account only *after* the mandates from the closed-list have been allocated.

In practice, the closed-list secures most of the mandates won by a party, even though it does not reflect the direct will of the voters. This mechanism transfers sovereign power from the voter to the party leader because a candidate earns a mandate not on the basis of direct individual votes⁴ but on the basis of the ranking imposed by party structures.⁵

1 United Nations, 1948. Universal Declaration of Human Rights. Article 21, p. 5.

2 Compare. Merkel, W., 2014. Is There a Crisis of Democracy? *Democratic Theory*, 1(2), p. 12.

3 Compare. Katz, R. S. and Mair, P., 1995. Changing Models of Party Organization and Party Democracy: The Emergence of the Cartel Party. *Party Politics*, 1(1), p. 6.

4 Compare. OSCE/ODIHR, 2024. *Election Assessment Report for Albania*. Warsaw: ODIHR, pp. 19-20.

5 In a proportional system with closed-lists, the ranking of candidates is determined entirely by the political party before the election, and voters have no possibility to change this order. Citizens vote only for the party and not for individual candidates. The seats won by a party are allocated according to the order of its list, starting from the first candidate and continuing downward. For this reason, in a closed-list system it is incorrect to claim that the ranking of candidates can be changed by voters' choices. A change in the ranking of candidates is possible only in systems with open lists, where voters have the right to vote for specific candidates, usually within a party list, and candidates who receive more personal votes can move up in the ranking regardless of their initial position set by the party. In this case, voters directly influence the composition of parliamentary representation. Unlike proportional systems with lists, the majoritarian system does not use party lists. In this system, the country is divided into single-member electoral districts, and citizens vote directly for individual candidates. The candidate who receives a majority or the highest number of votes wins the seat. The role of political parties is limited to supporting or nominating candidates, but their position on any list has no legal significance, since the choice is made directly by voters. In conclusion, in closed-lists voters choose only the party and the ranking of candidates remains fixed; in open or semi-open lists voters can influence the ranking of candidates; whereas in the majoritarian system voting is conducted only for candidates and party lists do not exist.

1.2. Logical and democratic problem

In this context, a fundamental scientific and normative question arises: *Can a political representative be considered legitimate when the voter has not directly chosen them but is compelled to accept them as the product of a predetermined party ranking?* According to the Venice Commission (2018), democratic legitimacy derives not only from the formal observance of the law but from the “*active approval of the popular sovereign.*”⁶ In the absence of such approval, a candidate may be legally elected but does not represent the true will of the sovereign.

1.3. The principle of free voting and control over sovereignty

The Constitution of Albania (Article 45) provides that the vote must be individual, equal, free and secret.⁷ The closed-list system, as applied in Albania, undermines two of these elements:

- The vote is **not individual** because the voter cannot choose a concrete candidate but must accept the party’s ranking.
- The vote is **not under the voter’s control** because the individual vote for a candidate is automatically transferred into a party vote, regardless of the voter’s intention.

This mechanism is considered in the literature a form of “*forced vote transfer,*” which contradicts international standards for free and fair elections.⁸

1.4. Purpose and significance of this study

The main purpose of this paper is to demonstrate, through constitutional-legal and democratic-theoretical analysis, that candidates elected through the first part of the closed-list possess formal legitimacy (from positive law) but lack substantive legitimacy (from popular sovereignty).

This analysis aims to show that the current system:

- distorts democratic will;
- reduces the sovereign role of the citizen;
- creates a political elite independent of accountability to the electorate.

2. CONSTITUTIONAL FRAMEWORK AND THE PRINCIPLES OF POPULAR SOVEREIGNTY

The constitutional framework of the Republic of Albania is the foundation on which the democratic system and the legitimacy of public institutions are built. The Constitution is not merely a formal legal act but a document with normative and philosophical character, embodying the fundamental principles of representative democracy and ensuring that power originates from the people and is exercised solely through their free will. In this context, every electoral system must align not only with the text of the Constitution but also with its spirit, which seeks to guarantee the real and effective participation of citizens in governance. The current closed-list system, which favors political parties over the indi-

6 Venice Commission, 2018. *Report on the Role of Political Parties in a Democracy*. CDL-AD(2018)004, Strasbourg, p. 14.

7 Compare. Constitution of the Republic of Albania, 1998. Article 45, p. 12.

8 Council of Europe, 2020. *Standards of Democratic Elections*. Strasbourg: Council of Europe Publishing, p. 18.

vidual, stands in visible tension with these constitutional principles and raises essential questions about the substantive legitimacy of political representation.

2.1 Article 45 of the Constitution of the Republic of Albania: Fundamental and contextual analysis

Article 45 of the Constitution of the Republic of Albania states: “Voting is free, equal, secret, and direct.”⁹

This article constitutes one of the main guarantees of representative democracy, establishing four fundamental pillars of the electoral act:

- **Freedom of the vote** ensures that the voter must not be influenced, coerced, or manipulated.
- **Equality** means that every citizen’s vote carries the same political weight.
- **Secrecy** protects the personal integrity of the choice.
- **Directness** implies an unconditioned link between the voter and the candidate/party they choose.

Forced Vote Transfer as a Violation of the Principle of Free Voting

In the current electoral system, when a voter marks only the name of the candidate without marking the party, their vote is automatically attributed to the political subject that nominated the candidate. This is considered an automatic and involuntary transfer of the vote, undermining the principles of freedom and directness. The voter loses the ability to differentiate their political will between the individual and the party, effectively being

forced to “support” a party without expressing clear consent.

According to OSCE/ODIHR (2019), “the freedom of the vote presupposes not only the ability to vote without pressure but also control over the political outcome of one’s vote.”

¹⁰ A vote that is automatically interpreted as support for a political subject other than the one chosen by the voter constitutes a distortion of electoral will.¹¹

Legal-Political Consequences of This Mechanism

This transfer:

1. Converts voting into an act that is not entirely sovereign, stripping the citizen of the right to determine the final destination of their vote.
2. Violates the equality of the vote, since voters who wish to vote only for a candidate are treated differently from those who vote only for a party.
3. Violates the principle of directness by interposing party decision-making between the voter and their representative.

The Venice Commission emphasizes: “A vote must be interpreted only in accordance with the expressed will of the voter, not according to the interests of a political subject.”¹²

Thus, the current electoral system creates an unlawful asymmetry between the party and the citizen, restricting the vote to serve party structures rather than popular sovereignty.

9 Constitution of the Republic of Albania, 1998. Article 45, p. 12.

10 OSCE/ODIHR, 2019. *Guidelines for Democratic Elections*. Warsaw: ODIHR, p. 7.

11 Ibid.

12 Venice Commission, 2018. *Code of Good Practice in Electoral Matters*. CDL-AD (2002)023rev, Strasbourg, pp. 6-7.

2.2 The principle of popular sovereignty (Article 2 of the Constitution): The essence of democratic legitimacy

Article 2 of the Constitution declares: “Sovereignty in the Republic of Albania belongs to the people. The people exercise sovereignty through their representatives or directly.”¹³

This principle contains two essential dimensions:

- **Formal sovereignty**, exercised through institutions emerging from elections.
- **Substantive sovereignty**, meaning that representatives must reflect the real will of voters, not the internal structures of political parties.

The Crisis of Substantive Sovereignty in the Closed-List System

In the 11 May 2025 elections, candidates on the closed-list were not chosen by the people but appointed by party leadership. In this context, the people did not exercise sovereignty through the free selection of representatives but merely confirmed a ranking predetermined by party structures.

This contradicts the principle that: “Democratic representation is not a passive act of accepting a ranking, but an active act of delegating power.”¹⁴

Normative Analysis

- Popular sovereignty requires that a deputy hold a free and representative mandate – not a mandatory party mandate.

- The closed-list transforms the representative into a delegate of the party leader, not of the people.

The Venice Commission notes: “Electoral systems that restrict the voter’s ability to influence the selection of individual candidates undermine popular sovereignty, as representatives are accountable not to the voters but to the political subject that appointed them.”¹⁵

3. PARTYOCRATIC DOMINANCE AND THE CRISIS OF SUBSTANTIVE DEMOCRACY

The dominance of political parties in the Albanian electoral system has produced a deep crisis of substantive democracy, transforming democracy from a process of free and pluralistic representation into a partyocratic mechanism where the will of the electorate is reduced to a formality rather than an effective instrument of popular sovereignty. This phenomenon is widely documented in contemporary political science literature, which distinguishes between two levels of democracy: procedural democracy (which formally respects elections and vote counting) and substantive democracy (which ensures that representatives are genuinely chosen by – and accountable to – the people).¹⁶ In this regard, the Albanian closed-list system undermines substantive democracy and consolidates a regime of “controlled electoral democracy.”

13 Constitution of the Republic of Albania, 1998. Article 2, p. 3.

14 Habermas, J., 1996. *Between Facts and Norms*. Cambridge: Polity Press, p. 288.

15 Venice Commission, 2004. *Report on Electoral Systems – Overview of available solutions and selection criteria* (document CDL-AD(2004)003), p. 51.

16 Compare. Dahl, R., 1989. *Democracy and Its Critics*. New Haven: Yale University Press, pp. 108–109; Merkel, W., 2004. Embedded and Defective Democracies. *Democratization*, 11(5), p. 35.

3.1. The hypertrophy of party power

One of the main characteristics of deformed democracies is the hypertrophy of political party power, where parties shift from being mediating mechanisms between citizens and government to controlling structures that absorb and replace the will of the sovereign. In the closed-list system, candidates do not emerge from the will of the citizens but from a hierarchical nomination process occurring within narrow party circles.

According to Wolfgang Merkel, this situation constitutes *partyocracy*, where: “Party leaders replace the role of the voter in determining political representatives, reducing popular sovereignty to a formal and not substantive act.”¹⁷

The essence of liberal democracy is that a representative should hold a public mandate, not a party mandate. Yet in Albania, the opposite occurs: the MP is accountable to the party leader who ranked them on the list, not to the voters who “voted” for them.

The Venice Commission (2018) notes: “Electoral systems that do not allow voters to influence candidate selection risk creating a democracy controlled by parties, not represented by the people.”¹⁸

3.2. Delegitimization of preferential voting and the fossilization of political elites

Although the electoral system theoretically provides for preferential voting, in practice this vote is symbolic and overridden by the dominance of the closed-list. In the

2025 elections, up to 90% of a party’s mandates were assigned to candidates from the closed-list, even though some candidates on the second part of the ballot obtained thousands of personal votes.

This configuration produces a “fossilization of the political elite,” where party structures reproduce the same individuals in power regardless of citizens’ preferences. As Gallagher and Mitchell (2008) argue, “closed-list systems tend to create self-reproducing political elites that are accountable to parties, not the electorate.”¹⁹

The consequences of delegitimizing personal votes include:

- The voter loses real decision-making power, as their vote has no direct impact on the selection of the representative.
- Democratic competition diminishes because candidates compete not for public support but for the favor of the party leader.
- The principle of political meritocracy is undermined, replaced by clientelism and party loyalty.

OSCE/ODIHR (2021) notes that “systems where the closed-list dominates the preferential vote tend to limit voter sovereignty and reduce MP accountability to the electorate.”²⁰

3.3. The crisis of substantive democracy: From form to control

In liberal democracies, political legitimacy derives not only from the procedural act of elections but from the moral and substantive mandate of the voters.²¹ When the election of MPs is not the result of free public choice,

17 Merkel, W., 2004. Embedded and Defective Democracies. *Democratization*, 11(5), p. 37.

18 Venice Commission, 2018. *Report on the Role of Political Parties in a Democracy*. CDL-AD(2018)004, Strasbourg, p. 16.

19 Gallagher, M. and Mitchell, P., 2008. *The Politics of Electoral Systems*. Oxford: Oxford University Press, p. 51.

20 OSCE/ODIHR, 2021. *Election Assessment Report: Albania*. Warsaw: ODIHR, p. 24.

21 Compare. Dahl, R., 1971. *Polyarchy: Participation and Opposition*. New Haven: Yale University Press, p. 4.

democracy loses its essential character and transforms into a façade democracy.

- **Procedural democracy:** voting, counting, and allocation of mandates according to law.
- **Substantive democracy:** requires voters to have real control over their representatives.

The closed-list system fails to meet the second criterion, generating a crisis of political legitimacy and democratic representation.

As Merkel (2004) concludes: “A democracy that does not ensure direct representation of citizens’ will and delegates this will to party structures is no longer a functional democracy but a hybrid partyocratic regime.”²²

Interim Conclusion

The partyocratic dominance and the devaluation of preferential voting in the 11 May 2025 elections show that the Albanian electoral system produces representatives who are legally legitimate in form but not substantively legitimate in democratic terms. This creates a widening gap between the people and power, transforming democracy into a mechanism controlled by a permanent political elite.

4. THE ABSENCE OF REAL PROPORTIONALITY IN THE ALBANIAN ELECTORAL SYSTEM

The Albanian electoral system is presented normatively as a proportional system, with the aim of guaranteeing fair representation of all political forces according to their weight in the electorate. However, a substantial analysis reveals a clear discrepancy between arithmetic

proportionality and political proportionality. This discrepancy produces a profound distortion of the democratic will, strengthening political parties as bureaucratic institutions and minimizing the influence of the individual voter.

4.1. Arithmetic proportionality versus political proportionality

Arithmetic proportionality is a technical mechanism that allocates seats on the basis of the national percentage of votes received by parties. In this respect, the Albanian system presents the appearance of balanced representation. However, political proportionality requires not only that parties be fairly represented, but also that specific candidates who receive direct support from citizens have the possibility of entering Parliament as a result of preferential votes.²³

In the current system, votes for parties have absolute priority over votes for individual candidates: a party that receives 40% of the party vote can secure up to 90% of its mandates through the closed-list (in which candidates are predetermined by the party leadership), while citizens’ personal votes for candidates in the open list (the second section) are systematically devalued.²⁴

4.2. Asymmetry between the sovereign’s vote and party control

The concept of true political proportionality is grounded in the democratic principle that representatives must be elected, not appointed. When a party can determine who enters Parliament through a closed-list – before the voter has expressed their will – representation is not the result of a democratic

22 Merkel, W., 2004. Embedded and Defective Democracies. *Democratization*, 11(5), p. 35.

23 Compare. Gallagher, M. and Mitchell, P., 2005. *The Politics of Electoral Systems*. Oxford: Oxford University Press, p. 26.

24 Compare. OSCE/ODIHR, 2023. *Election Assessment Report on Albania*. Warsaw: ODIHR, p. 33.

process, but a partyocratic one.²⁵ This creates a distortion of electoral freedom, because representatives do not reflect the aspirations of electoral districts, but the agreements and interests of party structures.

4.3. The purpose of proportionality and its distortion in practice

The Venice Commission (2018) emphasizes that proportionality must not be limited to the allocation of seats among parties, but must ensure “*the equality of the value of each vote*” and “*the real possibility for the citizen to influence the composition of the legislative body.*”²⁶ In Albania, citizens cannot modify the ranking of candidates in the closed-list; that ranking is determined exclusively by the party forum, not by the electorate.

As a result, the proportional system degenerates into an arithmetic mechanism of confirming party power, without respecting the political proportionality of citizens’ votes.

4.4. Consequences for representative democracy

This model creates a concentration of power in the hands of party elites and devalues the preferential vote of citizens. As David Farrell (2011) highlights, “*an electoral system that does not allow competition among candidates of the same party and does not enable real voter control over the individual outcome cannot be considered a proportional system in the democratic sense.*”²⁷

Illustrative example: A political party that receives 40% of the vote at the national level may secure up to 90% of its parliamentary representatives from the closed-list, regard-

less of whether individual candidates are disapproved, contested by the local electorate, or have received very few personal votes. This transforms elections into a formal process in which citizens do not choose the individual who will represent them, but only confirm the power of the party.

4.5. Subsection conclusion

The absence of real proportionality in Albania is not merely a technical electoral issue, but a fundamental problem affecting the functioning of representative democracy. The current system appears proportional on paper, but is entirely non-proportional in terms of the impact of the individual vote and the political equality of citizens. It produces an artificial majoritarianism within parties, transforming the parliamentary mandate into an act of appointment rather than representation. This is the essence of the legitimacy crisis affecting the closed-list.

5. INTERNATIONAL STANDARDS AND PRACTICES

The study of international electoral models is essential to understand whether the Albanian closed-list system of 2025 aligns with the established democratic norms and practices of Europe and Western democracies. Three main sources of international standards are relevant: (1) functional models of developed democracies such as Germany, (2) documents and recommendations of the OSCE/ODIHR, and (3) the normative principles of the Venice

25 Compare. Katz, R.S., 1986. Party Government and Its Alternatives. *Parliamentary Affairs*, 39(3), pp. 31–32.

26 Venice Commission, 2018. *Report on the Role of Political Parties in a Democracy*. CDL-AD(2018)004, Strasbourg, p. 16.

27 Farrell, D., 2011. *Electoral Systems: A Comparative Introduction*. London: Palgrave Macmillan, p. 67.

Commission. All three converge on a clear conclusion: the voter must have effective control over the political mandate, while the political party should serve only as an organizational instrument, not as the supreme authority over electoral sovereignty.

5.1. The German model: Balancing party representation and individual representation

The German electoral system (Mixed-Member Proportional Representation – MMP) is considered by scholars and international institutions as one of the most democratically balanced formats, as it combines national party representation with the individual legitimacy of candidates (Bawn, 1993; Farrell, 2011).²⁸

Structure of the German system

- **The first vote (Erststimme)** allows citizens to directly elect a candidate in their electoral district. This mandate is personal and reflects the individual trust of the voters.
- **The second vote (Zweitstimme)** determines the final composition of Parliament proportionally, based on the national results of the parties.

This model:

- Does **not** permit forced transfer of votes from the candidate to the party; a voter may support a candidate from one party without supporting the party itself.
- Respects the principle of voter sovereignty, giving citizens dual control over the effect of their vote.²⁹

- Ensures substantive legitimacy, since every candidate who enters the Bundestag is either directly elected by citizens or comes from the proportional list explicitly supported by voters.

Relevance for Albania

The Albanian closed-list system with mandatory vote transfer functions in the opposite way:

- The Albanian voter has no mechanism to reject a party without simultaneously rejecting a candidate.
- Electoral sovereignty is controlled by the party, whereas in Germany it is controlled by the voter.

As Farrell (2011) notes: *“Electoral systems that give voters two separate votes create a balance between the political authority of parties and the sovereign freedom of citizens to choose the individual who represents them.”*³⁰

5.2. OSCE/ODIHR

Recommendations: The vote must be free, individual, and free from imposed effects

OSCE/ODIHR, as the international monitoring institution for elections, has repeatedly emphasized the need for voters to have full control over the final effect of their vote.

Key principles according to OSCE (2021; 2023):

- *“The will of voters must not be manipulated – either actively or passively – by legal mechanisms that automatically direct votes to undesired destinations.”*
- *“Electoral systems that grant parties control over the ranking and selection*

28 Compare. Bawn, K., 1993. The Logic of Institutional Preferences: German Electoral Law as a Social Choice Outcome. *American Journal of Political Science*, 37(4), p. 968; Farrell, D., 2011. *Electoral Systems: A Comparative Introduction*. London: Palgrave Macmillan, p. 67.

29 Venice Commission, 2002. *Code of Good Practice in Electoral Matters* (CDLAD(2002)023rev2cor), pp. 3-4.

30 Farrell, D., 2011. *Electoral Systems: A Comparative Introduction*. London: Palgrave Macmillan, p. 66.

of candidates undermine the principle of fair and equitable representation.”³¹

The OSCE report on Albania (2021) states: *“The closed-list system reduces electoral freedom because the voter does not have the real possibility to choose the representative, but only the political subject.”³²*

In recent reports, OSCE adds: *“When a voter selects a candidate, but their vote is automatically converted into a vote for a party without explicit consent, there is a violation of international standards for freedom of choice.”³³*

This finding is crucial for the Albanian context, where electoral will is diverted from the personal act toward party structures. The voter lacks both a “negative vote” and “split-ticket voting,” which are widely available in Western democracies.

5.3. Venice Commission Standards: Democracy as substance, not merely procedure

The Venice Commission, the constitutional advisory body of the Council of Europe, emphasizes that electoral legitimacy arises not only from formal compliance with the law but from the real democratic substance of the process.

Fundamental principles according to the Venice Commission (2018; 2020):

- *“Elections must be a true act of popular sovereignty, where citizens have a real possibility to choose and reject individuals and political options.”*
- *“Political parties must not replace the*

role of the sovereign, but must mediate it in a neutral manner.”³⁴

The Commission distinguishes between:

- **Formal legitimacy (procedural legitimacy)** – compliance with existing law.
- **Substantive legitimacy (democratic legitimacy)** – compliance with the real will of citizens.

In its 2018 report, the Commission notes: *“A system in which candidates are selected without the individual consent of voters, but solely through party control, creates a deviation from substantive democracy and poses a risk of oligarchization of institutions.”³⁵*

Application to the Albanian context

- The closed-list does not give voters any mechanism to reject undesirable candidates, thus undermining pluralism.
- The electoral process loses its “competitive” nature and becomes a “ratifying” procedure for party decisions.

Section Conclusion

The analysis of international standards clearly demonstrates that the Albanian closed-list system does not conform to consolidated democratic models and violates the fundamental principles of OSCE/ODIHR and the Venice Commission. In every functional democracy, the voter is the “author of the political mandate,” whereas in the current Albanian system, this mandate is the product of the will of party leaders.

31 OSCE/ODIHR, 2021. *Election Assessment Report: Albania*. Warsaw: ODIHR, pp. 23–26; OSCE/ODIHR, 2023. *Election Assessment Report on Albania*. Warsaw: ODIHR, p. 31.

32 OSCE/ODIHR, 2021. *Election Assessment Report: Albania*. Warsaw: ODIHR, p. 23.

33 OSCE, 1990. Copenhagen Document, p. 2.

34 Venice Commission, 2018. *Report on the Role of Political Parties in a Democracy*. CDL-AD(2018)004, Strasbourg, p. 14; Council of Europe, 2020. *Standards of Democratic Elections*. Strasbourg: Council of Europe Publishing, p. 18.

35 Venice Commission, 2018. *Code of Good Practice in Electoral Matters*. CDL-AD(2002)023rev, Strasbourg, p. 6.

Consequently, closed-list candidates possess **formal legitimacy**, but not **substantive legitimacy**, because they are not directly and freely chosen by the popular sovereign. Instead, they are appointed through a partyocratic mechanism that contradicts the European democratic ethos and represents a deviation from the constitutional model of representation.

6. FORMAL LEGITIMACY AND SUBSTANTIVE LEGITIMACY: A FUNDAMENTAL ANALYSIS OF SOVEREIGNTY AND POLITICAL REPRESENTATION

The question of the legitimacy of candidates emerging from the closed-list in parliamentary elections is not merely a technical legal debate, but a major democratic problem that affects the very foundations of the constitutional state and popular sovereignty. In the political and legal literature, the legitimacy of a political institution is not measured solely by procedural legality, but above all by the substantive approval of those who are governed. This distinction is essential to understanding why closed-list candidates, although “lawful” in the formal sense, are not necessarily “legitimate” in the democratic sense.

6.1. Formal legitimacy: Legality as a limited procedure

Positive law, as defined by the legal system in force, provides the procedural framework for the election of representatives. Candidates on a closed-list are considered duly selected, as they comply with the existing electoral law. This type of legitimacy is formal

– bureaucratic and legalistic – a product of a legal mechanism rather than of the direct will of the citizens.

According to Max Weber’s theory, “legal-rational legitimacy” is based on adherence to institutionally adopted norms, regardless of the origin of political will.³⁶ In this sense, the Albanian system certifies candidates through law, but without guaranteeing that they originate from popular sovereignty.

Thus, formal legitimacy implies:

- Compliance with procedure, not with democratic substance.
- Elections that lack active citizen participation in the individual selection of candidates.
- A form of “*imposed legality*,” not “*authorized legality*” deriving from the people.

6.2. Substantive Legitimacy: Democracy as the Real Sovereignty of the People

Substantive legitimacy, according to the theory of substantive democracy³⁷, concerns whether an election reflects the authentic will of the sovereign. It is not satisfied by legal procedure alone; it requires direct representation, free competition, real choice, and explicit authorization from the citizen.

Under closed-list conditions:

- The candidate is not chosen by the citizen, but by the party leader.
- Electoral will does not go toward the individual, but is transformed into a “collective party vote.”
- Representation does not flow from the people, but from centralized party structures.

36 Compare. Weber, M., 1978. *Economy and Society: An Outline of Interpretive Sociology*. Berkeley & Los Angeles: University of California Press, p. 213.

37 Compare. Merkel, W., 2004. Embedded and Defective Democracies. *Democratization*, 11(5), p. 35.

The OSCE/ODIHR emphasizes that: “Democratic legitimacy is not merely the result of counting votes, but of the freedom and conscience with which they are cast.”³⁸

6.3. The crisis between legality and legitimacy

The conflict between formal legality and substantive legitimacy creates a crisis of representation. In this crisis, Parliament is not necessarily “the voice of the people,” but “the voice of party authority.”

According to Article 2 of the Constitution of Albania: “Sovereignty in the Republic of Albania belongs to the people, who exercise it directly and through their representatives.”³⁹

If representatives are not directly authorized but appointed through predetermined lists, then sovereignty is not exercised by the people but is lawfully appropriated by political parties.

6.4. European tradition and democratic standards

In European democracies, closed-list mechanisms are used only when:

- There are guarantees of internal democratic competition within parties.
- Voters have the ability to reject individual candidates (the Scandinavian model).
- Popular will is measurable and individually verifiable (the German model).

The Venice Commission (2018) states: “Democracy requires not only the possibility of choice, but also direct accountability to the

sovereign. Appointed candidates cannot possess full substantive legitimacy.”⁴⁰

6.5. Key argument of the paper

Closed-list candidates in the elections of 11 May 2025 do not represent the will of the people, but the will of political leadership. They are not the product of free individual choice but of a vertically controlled mechanism.

This situation contradicts:

- The constitutional principle of popular sovereignty.⁴¹
- The principle of free and equal voting.⁴²
- OSCE/ODIHR international standards.
- The democratic theory of representation of John Locke and Rousseau, according to whom *no authority can be legitimate without the direct consent of those who are governed*.⁴³

7. EXPANDED CONCLUSIONS AND RECOMMENDATIONS FOR REFORM

7.1. Restoring the principle of free and sovereign voting

Restoring the voter’s right to fully control the effect of their vote constitutes the foundation of a functional democracy. The principle of “free voting” enshrined in Article 45 of the Constitution of Albania requires that every vote be the result of an informed and unconstrained act of the citizen. In the current model, when the voter chooses only the candidate, the vote is automatically attributed to

38 OSCE/ODIHR, 2019. *Guidelines for Democratic Elections*. Warsaw: ODIHR, p. 7.

39 Constitution of the Republic of Albania, 1998. Article 2, p. 3.

40 Venice Commission, 2018. *Code of Good Practice in Electoral Matters*. CDL-AD (2002)023rev, Strasbourg, pp. 6–7.

41 Constitution of the Republic of Albania, 1998. Article 2, p. 3.

42 Ibid. Article 45, p. 12.

43 Locke, J., 1689. *Two Treatises of Government*. Cambridge: Cambridge University Press, pp. 287; Rousseau, J.-J., 1762. *The Social Contract*. Trans. M. Cranston. London: Penguin Books, p. 61.

their political subject without explicit approval⁴⁴. This mechanism violates the principle of voter autonomy recognized by the Venice Commission, which emphasizes that *“a free vote implies not only the right to choose, but also the right not to support someone.”*⁴⁵

Restoring free voting means:

- A clear separation between the vote for the party and the vote for the candidate (German and Danish models).
- Allowing voters to support a candidate without being forced to endorse the party.
- Eliminating any formula that gives parties the right to “rewrite” the electoral will.

According to Merkel (2004), a democracy is functional only when the voter has direct control over their representatives and when electoral mechanisms do not filter or transform the vote through party structures.⁴⁶

7.2. Eliminating forced vote transfer and correcting mandate distortion

Forced vote transfer is unacceptable in democratic states and has been described as *“a passive form of manipulation of the electoral system.”*⁴⁷ This transfer violates the principle of the “consent of the governed”⁴⁸, which requires that every political mandate originate exclusively from the expressed approval of the citizen.

Consequences of forced vote transfer:

- The candidate gains a mandate without being directly voted for.

- The citizen’s vote becomes an instrument of the party rather than individual will.
- Popular sovereignty is transformed into sovereignty of the party structure.

For these reasons, it is recommended that the electoral law be amended so that:

- A personal vote for a candidate is not automatically converted into a party vote.
- Mandates are allocated first on the basis of individual votes, and only then on party votes.

7.3. Harmonization with OSCE/ODIHR and Venice Commission standards

OSCE/ODIHR reports on Albania have consistently emphasized that the current system *“does not offer the voter a genuine choice among individual candidates and political parties.”*⁴⁹ According to ODIHR, the voter must have full control over how their vote is used, choosing:

- A political party (if they wish to support a political platform).
- An individual candidate (if they wish to support personal representation).

In countries like Sweden, the Netherlands, and Austria, voters have multiple levels of choice, combining list voting with preferential voting. The Venice Commission has stated: *“The system must avoid any mechanism that eliminates the voter’s ability to determine their representatives through an individual democratic act.”*⁵⁰

44 Compare. Constitution of the Republic of Albania, 1998. Article 45, p. 12.

45 Venice Commission, 2018. *Report on the Role of Political Parties in a Democracy*. CDL-AD(2018)004, Strasbourg, p. 14.

46 Compare. Merkel, W., 2004. Embedded and Defective Democracies. *Democratization*, 11(5), p. 33.

47 Compare. OSCE/ODIHR, 2020. *Special Election Assessment Mission Final Report*, p. 30.

48 Locke, J., 1689. *Two Treatises of Government*. Cambridge: Cambridge University Press, p. 288.

49 OSCE/ODIHR, 2021. *Election Assessment Report: Albania*. Warsaw: ODIHR, p. 25.

50 Venice Commission, 2019. *Electoral Law and National Democracy*. Strasbourg, p. 22.

Implementing these standards would bring:

- Democratization of electoral lists.
- Reduction of oligarchic party control.
- Increased electoral transparency and public trust.

7.4. Increasing the substantive legitimacy of the Parliament of Albania

Parliament, as an institution of popular sovereignty, cannot consist of individuals who are not directly elected by citizens. Max Weber (1919) distinguishes between formal legitimacy (based on law) and substantive legitimacy (based on popular acceptance).⁵¹ Formal legitimacy is minimal and insufficient to guarantee institutional stability.

To increase the substantive legitimacy of Parliament:

- Candidates must be chosen through direct and personal voting.
- List ranking must be flexible and influenced by preferential votes.
- Mandates must not be allocated automatically according to hierarchies set by party leaders but according to popular trust.

This would reduce the distance between representative and voter and restore Parliament as an institution grounded in sovereignty rather than controlled by party power.

CONCLUSION

The parliamentary elections of 11 May 2025 clearly demonstrated that Albanian democracy faces a substantive legitimacy crisis. Although the electoral process was conducted in accordance with positive law, it did not

meet the criteria of real democracy as defined by international organizations and constitutional standards.

The closed-list model produced three major distortions:

- **Distortion of popular sovereignty** – the citizen’s vote was used to endorse political subjects without direct authorization.
- **Oligarchic domination of political parties** – candidates were determined by party structures rather than by citizen will.
- **Consolidation of formal democracy** – the system functioned within legal boundaries but outside the democratic spirit of the Constitution.

According to Dahl (1989), democracy requires “*effective participation, equal voting, and citizen control of the political agenda.*”

⁵² None of these was fully guaranteed in the elections of 11 May 2025. Therefore, the legitimacy of closed-list candidates is limited because it does not originate from the individual will of the sovereign, but from a formal mechanism that primarily serves party interests.

Fundamental conclusion: Democracy cannot be measured solely by the existence of elections, but by the quality of representation they produce. Until the Albanian voter regains substantive control over the effect of their vote, democracy in Albania will remain procedural but not representative; formal but not sovereign.

Electoral reform is not merely a political necessity – **it is a constitutional, democratic, and moral obligation to the fundamental principle: power belongs to the people, not to the parties.**

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51 Compare. Weber, M., 1919. Politics as a Vocation. In *Max Weber: Essays in Sociology*, edited by H. H. Gerth and C. Wright Mills. Oxford: Oxford University Press, 1946, p. 77.

52 Dahl, R., 1989. *Democracy and Its Critics*. New Haven: Yale University Press, p. 108.

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