

HEAD OF PRESENCE'S INTERVIEW ON ELECTORAL REFORM ISSUES

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Interviewed by Ergys Gjençaj

Vizion Plus: Mr. Ambassador, there are only five months until the upcoming parliamentary elections in Albania. There is an Electoral Reform Committee, whose mandate is extended to February 18th. How do you see the progress of the electoral reform, considering that the parties are far from one another, far from reaching consensus?

Ambassador Borchardt: This is the problem. There are only five months until the elections and there has been no substantive progress on the electoral reform. We regret to see that the process has been dragging for quite some time, without reaching any concrete results. Very little time, if at all, is left for meaningful and thorough electoral reform that is consistent with the OSCE/ODIHR recommendations, OSCE commitments and international standards. Last minute changes to the legislation also can undermine public trust in the process. This would mean that now there is an extremely short time left only for voters and the Central Election Commission to get, after change, familiar with the changed law. We believe however, that despite the very narrow time that is still available that, at least, in four areas, the ad hoc committee could still address successfully issues. The first is increased transparency and disclosure of campaign financing. That is a central issue. The second is strengthening the legal text for gender requirements for political party lists of candidates. The third is increased sanctions for breaking the law, for instance, for vote buying or for taking photographs in ballot cabins. The fourth is the need for a substantially improved text on media coverage of election campaigns. Those who see reports on TV about the elections have a right to know whether an independent journalist has prepared this report or whether they are seeing a party product, which is of course biased. I would like to urge therefore the parliamentary ad hoc committee to engage in full force in its activity and to move quickly forward to deliver rapidly results to the parliament for voting. The parties should leave aside their political interests and focus exclusively on what is really important for such an important reform to be successful. I believe that the parties should be interested in increasing the legitimacy of the electoral process. For that purpose, we suggest to agree on what is agreeable and to search for compromises on the before-mentioned issues. What parties have said in the past on that sound pretty similar. It is time now to deliver.

Vizion Plus: Mr. Ambassador, there are more than 50 OSCE/ODIHR recommendations on the electoral reform, but the biggest debate taking place between the majority and the opposition is about the application of technology in the elections, i.e. in the voting and counting process. The opposition considers that an essential prerequisite for free and fair elections in Albania. How do you see such request, and would it be possible to apply technology on the June 18th elections? Is there sufficient time for that?

Ambassador Borchardt: Any major changes in electoral procedures that have been developed over a long time in a given election setting require time to be introduced and implemented properly. As many other elements of an electoral system, the use of electronic voting and counting is known to be linked to several advantages and disadvantages.

According to OSCE/ODIHR research, electronic counting has the potential to increase voter turnout, lower the cost of the election administration in the long run, reduce human error (including invalid ballots), improve the accuracy of counting, and increase the speed of tabulation of the results. But on other hand, they also present certain potential challenges. Electronic voting is a very complex process that requires thorough and timely planning on how the equipment would be acquired (that needs to be a complicated procurement process); the evaluation; the certification; the security of the system. Intensive voter education campaigns are necessary. Training of election officials should also take place. Not to mention here the general concern, especially from a voter's point of view, about the transparency of the process: what is happening to my vote inside the machine? This was, by the way, the main concern of the German Constitutional Court when they forbade electronic voting in Germany. In other OSCE participating States electronic voting is allowed and taking place. What is crucial: the use of electronic voting does not necessarily build confidence, but rather it requires pre-existing trust in the administration of elections by all actors involved in order to have it successfully implemented. Unless all challenges are fully addressed, these challenges and the non-addressing of these challenges may even weaken public confidence in the results of elections from an electronic process. Before the elections in 2013, the then opposition, now government, had requested the introduction of electronic voting also at rather short notice before the elections. The OSCE then advised that the introduction needs more time to prepare. Now we are in the same situation and since October 2016 we advise – in consistence with earlier advice – that electronic voting needs more time to prepare than still available. Just to give you one example: the entrance door here of our OSCE offices in Tirana is protected with an electronic access control system. On a daily basis I observe how failure prone such a system can be. This makes me very sceptical concerning a system which has to rely also on the transmission of data from far away upcountry to central servers in Tirana if this is not done with very thorough preparation and testing.

Vizion Plus: So, Mr. Ambassador, in order to be more direct, there is no chance to apply technology in the June 18th elections then?

Ambassador Borchardt: As I just said: this takes a lot of time, and without this time we cannot advise to do that.

Vizion Plus: Mr. Ambassador, there has been a proposal made at the Ad Hoc Committee on Electoral Reform to avoid the Central Election Commission in the complaints process, so that the political parties may directly address their complaints related with the election results to the Electoral College. What is your stand on that?

Ambassador Borchardt: The institutions that handle complaints and appeals differ from country to country, also among our participating States, depending on their electoral and on their judicial system. Some systems use election administration bodies, others use directly the courts, and there are countries like Albania, where we have first the election administration body, and then its decision appealed in a special court, as it the case here. These are all possible solutions, and it depends on the Albanian authorities to decide which complaints and appeals system is best for the country. It is advisable, though, and this is recommended by the Venice Commission's Code on Good Practices on Electoral Matter that in any case there is some form of judicial supervision of a second-level of appeal.

Vizion Plus: Mr. Ambassador, you might actually see the issue I am going to ask you about as one that belongs to the Albanian local politics. I am referring to the option of open lists of

candidates by the political parties as an option being currently discussed in terms of amending the Electoral Code. What is your opinion on that?

Ambassador Borchardt: There is a large variety of different electoral systems in the world and among the OSCE participating States. So, the choice of a country for its system should be respected. As long as fundamental democracy principles are respected there is no bad or good electoral system per se. That has to be decided locally, in the country. The OSCE and ODIHR therefore do not recommend any specific lists of systems where the countries could choose from and certainly not a specific system for a specific country. It is the sole prerogative of Albanian authorities to decide on which model to apply here in this country what is the best for your country. But, as it has been underlined by the Council of Europe, and also by us, fundamental elements of electoral law – in particular the electoral system, membership of electoral commissions and the drawing of constituency boundaries – should not be open to amendments less than one year before the election. This is an international recommendation. Any changes in the elements of an electoral system should happen well in advance and as part of an all-inclusive and transparent system of discussion.

Vizion Plus: Mr. Ambassador, thank you very much!

Ambasadori Borchardt: It's my pleasure!