

INTERIM REPORT 2
1–14 January 2007

I. EXECUTIVE SUMMARY

- On 12 January, political parties and coalitions reached an agreement at a roundtable initiated and presided over by President Alfred Moisiu. This permitted a resumption of the electoral process.
- Following the agreement, the Assembly on 13 January amended the Constitution, the Electoral Code and the Law on Public and Private Radio and Television. On 14 January, the President called local elections for 18 February.
- Under the amendments, the term of office of local governments has been extended from three to four years. Party representation on election commissions at all levels, including the Central Election Commission (CEC), has been increased. In addition, a number of previous OSCE/ODIHR recommendations have been addressed, especially on provisions pertaining to the vote count and the complaints and appeals process.
- Another amendment to the Electoral Code opens the possibility for changing the order of the candidates on the candidates' lists after the lists have been registered by the relevant election commissions, and after voting. Even though the rules for such re-ordering might be made public at the time of registration, this raises a concern with regard to the compatibility of such legal provisions with democratic principles as it lessens transparency for voters.
- Under transitory provisions for these elections, the deadline for the establishment of Local Government Election Commissions is 20 January. This date is also the deadline for parties and coalitions to register with the CEC. Candidate nominations must be submitted to LGECs by 23 January.
- Despite the compressed legal deadlines, there remains sufficient time for the adequate preparation of the elections if all stakeholders display the required political will, in particular the political parties whose role and responsibilities in the electoral process remain decisive.
- The transitory rules on the usage and administration of birth certificates provide for complex and cumbersome procedures which could constitute a challenge for civic status offices (CSOs), election commissions, and voters.
- Since the General Directorate of Civic Status (GDSCS) in the Ministry of Interior has received the large majority of preliminary voter lists, it is expected that the process of making corrections and producing the final voter lists can be accomplished within the compressed legal deadlines.
- The CEC, whose work had been seriously hampered by the past deadlock, resumed preparations for the elections the day after the agreement was reached.

- Preliminary media monitoring results indicate that both public and private media provide extensive election-related coverage, with public broadcaster TVSH showing some preferential treatment of the Democratic Party in its prime-time news.

II. POLITICAL ENVIRONMENT

Following weeks of continued inconclusive and at times confrontational dialogue, which included the submission of various proposals and counter-proposals and several rounds of negotiations, party leaders finally reached an agreement over the contentious issue of voter identification. The agreement came late on 12 January, within the framework of a roundtable initiated and presided over by the President of the Republic, Mr. Alfred Moisiu, in a most constructive manner.

This political agreement enabled the Assembly to adopt numerous amendments to the Constitution, the Electoral Code, and the Law on Public and Private Radio and Television in an extraordinary session on 13 January (see Section III, Amendments to the Legal Framework, for details). These amendments, which became effective on 13 January, made operational the 30 August and 30 December 2006 agreements between the ruling majority and the opposition, and also incorporated the terms of the roundtable agreement reached the previous day into the Electoral Code. The Electoral Code was voted unanimously; the other acts by an overwhelming majority. Following the adoption of the amendments by the Assembly, President Moisiu issued a new decree on 14 January, setting the date of the local elections for 18 February.

Prior to reaching this agreement, differences over the key issue of birth certificates as a form of voter identification continued to divide the ruling coalition and the opposition, and threatened to delay the holding of elections even beyond the 20 February constitutional deadline. On 6 January, the Central Election Commission (CEC) Chairperson had already declared that the CEC would not be technically able to hold the elections on 20 January, the date initially decreed by the President.

Political discussions to implement the 30 December agreement reconvened on 3–4 January within the Assembly's Legislative Committee. Although both sides were able to find solutions to many outstanding issues, they remained divided over the use of birth certificates as identification documents and, specifically, what additional identity documents would be required to support those certificates issued before a Ministry of Interior decision dated 1 November 2006 (which required the registration of certificates in special registers, hereafter, 'old certificates') was implemented.

While the majority parties favored a more extensive list of such supporting documents, the opposition wanted to limit them to only old passports and old state identity cards. The majority argued that this would unduly disenfranchise many voters, but the opposition maintained that it was necessary to control potential fraudulent use of certificates. The committee session broke up on 4 January without a compromise and without having set any date for future sessions.

Also on 4 January, a joint statement was issued from within the diplomatic community in Tirana, including the OSCE Presence in Albania, the Council of Europe (CoE), the EU Presidency, the European Commission Delegation, and the US Embassy. The joint statement expressed deep concern with the lack of progress being made in preparation for the local elections and urged

both sides to resolve all outstanding issues and to deliver, in good faith, on the 30 December agreement. This joint statement was accompanied by a statement by Mr. Javier Solana, EU High Representative for Common Foreign and Security Policy, who noted that failure to ensure democratic elections would put Albania's progress towards European integration at risk.

In context of this crisis, on 8 January, President Moisiu called on all parliamentary parties to come together under his auspices and to find a joint solution at a presidential roundtable, scheduled for 9 January. This move, although initially rejected by the Prime Minister and Democratic Party (DP) leader, Dr. Sali Berisha, was eventually welcomed by both sides. The international community, through a joint statement by the Secretary Generals of the OSCE and the CoE, also noted the importance of this presidential initiative as a potential instrument for consensus building. The OSCE Chairman-in-Office, Spanish Foreign Minister Miguel Angel Moratinos, sent a personal envoy, Ambassador Jose Pons, to Tirana to assist in the search for a compromise, following a request for assistance from political parties.

Leaders from both sides convened on 9 January and began negotiations focused on a draft agreement submitted by the President. After three rounds, the initial talks did not lead to concrete results as both sides proposed differing solutions to the birth certificate issue. The majority then held a press conference stating that they fully supported the draft agreement submitted by the President, signing a declaration to this effect and calling upon the opposition to do the same. The opposition instead issued a counter-proposal which moved away from their position of re-registering all 'old certificates', instead proposing that all copies of supporting ID documents be notarized in advance. This counter-proposal was rejected by the majority.

The next session of the roundtable continued in the evening of 10 January and ran until 8:30 the next morning without reaching a compromise. Also on 10 January, NATO issued a statement that called upon Albanian politicians to find a solution to the electoral crisis, noting that the conduct of democratic elections was essential to the country's aspirations of joining the alliance.

Following a noted lack of progress in negotiations, Prime Minister Berisha and his predecessor and former Socialist Party (SP) leader, Mr. Fatos Nano, made a joint public declaration on 11 January, calling on both sides to work together to find a solution to the current crisis on the basis of the 30 December 2006 agreement and CEC Decision 1076 of 1 July 2005. They also stressed that the goals of further Euro-Atlantic integration should not be subordinated to personal political interests. Later that evening, the SP and the Socialist Movement for Integration (SMI) leaders held separate press conferences in which they reiterated their support for the President's initiative to find a compromise and called upon the Prime Minister to participate in the proceedings. The SP leader and Tirana Mayor, Mr. Edi Rama, stressed that the registration of certificates was a recommendation from the international community and that their proposal was intended to implement this recommendation.

On 12 January, the President held separate meetings with both sides throughout the day before reconvening the roundtable in the evening for final talks. Following these talks, the leaders of all parliamentary parties (apart from the DP, which was represented by Deputy Chairperson Mr. Bamir Topi) signed the agreement in the presence of the President and the media. The OSCE Chairman-in-Office made a public statement on 13 January, welcoming the agreement and commending the efforts made by the President to mediate the process. He also encouraged both sides to maintain the spirit of consensus and respect for the rule of law and democratic institutions.

III. AMENDMENTS TO THE LEGAL FRAMEWORK

The specific circumstances of the forthcoming elections and their postponement at a very late stage have led to the necessity to compress all the legal deadlines for electoral preparations and procedures. Still, there remains sufficient time for the adequate preparation of the elections if there is the will on the part of the political parties, whose role and responsibilities in the electoral process remain decisive.

The Assembly amended Article 109 of the Constitution, extending the mandate of local councils and mayors from three to four years. The new rule is applicable starting with the forthcoming local elections. Noting that the three-year mandate was much shorter than in most European countries, the 2004 Joint Recommendations of the Council of Europe's Venice Commission and the OSCE/ODIHR had recommended the three-year term be reconsidered.

The provisions of the Constitution and the Electoral Code on the composition of the CEC have been amended to increase the number of the CEC members from seven to nine, with two additional members appointed by the Assembly.

The membership of Local Government Election Commissions (LGECs), Voting Center Commissions (VCCs) and Counting Teams has been increased from seven to thirteen, granting representation to the six largest parliamentary parties on each side of the spectrum.¹ This amendment reduces the control of the two main political parties over the middle- and lower-level commissions and thus partially addresses a previous OSCE/ODIHR recommendation. However, it could represent a challenge for some of the political parties to find a sufficient number of nominees to fill their positions on LGECs and VCCs. While the Electoral Code preserves the sole reliance on political parties to administer elections, this is only an effective model if political parties conduct themselves in a constructive manner. However, there is no mechanism that would allow filling vacancies in other ways if parties waive their nomination right or do not exercise it.

The newly adopted amendments have eliminated all references to the temporary register of citizens in the Electoral Code. This is a welcome change that reflects the fact that the temporary register has ceased to exist in practice. While the procedures for compilation and verification of voter lists generally remain unchanged, the respective deadlines have been adjusted to the new realities through a transitory provision pertaining only to the forthcoming elections.

In line with a recommendation of the 2005 OSCE/ODIHR Final Report, the deadline for appointment of counting teams has been changed from two hours before the closing of polls to two days prior to election day. In a positive development, the amendment provides for a flexible approach to determining the required number of counting teams, depending on the size of the local government unit (LGU), and allows counting teams to operate in shifts. Both changes had been recommended in the previous OSCE/ODIHR report as a possible means to ensure that the vote count is completed in a timely manner. In Tirana, ballots will be counted in each of the 11

¹ The same changes have been made concerning the composition of Zone Election Commissions (ZECs) for parliamentary elections. Since the left spectrum in the Assembly currently only comprises five parties, the SP will be entitled to nominate at least two commission members. Under this new rule, the eligible parties will be: the Democratic Party (DP), the Socialist Party (SP), the Republican Party (RP), the New Democrat Party (DCP), the Demo-Christian Party (DCP), the Human Rights Union Party (HRUP), the Environmentalist Agrarian Party (EAP), the Socialist Movement for Integration (SMI), the Democratic Alliance (DA), the Social Democratic Party (SDP) and the Social Democracy Party (SDY).

city boroughs. In an effort to enhance the transparency of the counting process, the amendments foresee the possibility for the CEC to decide on the usage of registering cameras and monitors (screens) to display the ballot papers before their evaluation.

A number of OSCE/ODIHR recommendations concerning the handling of electoral disputes have been addressed. In particular, the newly adopted amendments provide for the unification in one procedure of handling requests for invalidation of elections and related complaints, with shortened deadlines. Also, a less formalized approach for the assessment of evidence by the CEC has been adopted, in line with the recommendations of the 2005 OSCE/ODIHR Final Report. In connection with the examination of election materials during an administrative investigation, the CEC has explicitly been granted the right to open boxes of election materials and/or ballot boxes if this is required in the course of an investigation.

Yet, one particular aspect of the amendments raises several concerns. Amendments to art.87 of the Electoral Code allow an electoral subject that nominates candidates (i.e. a party or coalition) to deposit with the LGEC an agreement specifying the formula to be applied, after the vote, on the final ranking of candidates on its lists. This is problematic in several respects:

- As noted in the OSCE/ODIHR – Venice Commission joint recommendations of 2004, it would be contrary to OSCE commitments and international standards to permit a re-ranking or ‘final’ ranking of candidates after a voter casts his or her ballot.
- Such a possibility, which exists for parliamentary elections, was also criticized in the OSCE/ODIHR Final Report on the 2005 parliamentary elections stating that “mandates should be allocated in accordance with a candidate’s position on an electoral list as determined before the election day”.
- At a more practical level, this might not only present a challenge for LGECs to implement the formulas chosen by the parties, in particular if they are unclear, inconsistent, or conflicting with each other, but it also has the potential to increase considerably the volume of complaints to be adjudicated by the CEC and the Electoral College, as candidates could decide to challenge the allocation of seats by LGECs according to the ranking formula.

The possibilities opened by this amendment not only have the potential to challenge democratic principles, but might also raise considerable practical and legal issues.

IV. ELECTION ADMINISTRATION

Due to the political stalemate, the activities of the election administration came to a complete standstill before the 12 January agreement and the subsequent adoption of amendments.

During the reporting period, the CEC tried to continue to conduct its activities collegially and professionally. However, the sole decisions it had to take related to the appointment of supplementary LGEC members nominated by the DP, Republican Party and New Democrat Party and to the establishment of the salaries of LGEC members.

The CEC held an informative session where the Deputy Minister of Interior made a presentation of the software used by the GDCS and all CSOs to compile the voter lists. The CEC members nominated by the opposition considered that the session was not in compliance with the CEC objectives and stepped out of the meeting. For the remainder of the reporting period, the CEC met only once, to officially acknowledge a donation from the international community, while its

members were waiting for a political solution which would enable them to resume their activities.

Following the announcement of the new election date, the CEC is faced with compressed legal deadlines and the need to implement new legal provisions through CEC decisions and instructions. The CEC has seven days from the day the amendments enter into force to establish the 384 LGECs, i.e. until 20 January. It is now faced with the task of appointing the new LGEC members, seeking additional budgetary resources to remunerate them, and finding suitable space to accommodate the enhanced LGECs. A seven-day deadline also applies for the registration of electoral subjects (political parties and coalitions). Candidates for mayor and council members have ten days to submit their registration documentation to LGECs, i.e. until 23 January.

V. VOTER REGISTRATION

Before the 12 January agreement, 299 of the 384 LGUs had sent their preliminary voter lists to the GDCS. The mayor of Vlorë, one of the main cities, only submitted the list on 9 January. This considerable delay past the original deadline of 22 December prevented the GDCS from checking nationwide for possible duplicate entries.

The GDCS expected to receive the missing voter lists swiftly after the adoption of the amendments. Under the transitory provision relating to deadlines for the compilation of voter lists for the upcoming elections, the GDCS will be able to check for possible duplicates between 21 January and 6 February. Despite the compressed deadlines, the GDCS and CSOs should have sufficient time to correct, print and publish voter lists in accordance with the legal deadlines.

VI. BIRTH CERTIFICATES

Following the 12 January agreement, a transitory provision has been introduced to the Electoral Code, establishing special rules on the usage and administration of birth certificates in the forthcoming local elections. The new rules provide for complex and cumbersome procedures which can present an important challenge to the CSOs, LGECs and VCCs, and, most importantly, voters.

Under the transitory provision, different modalities are envisaged for the verification of birth certificates, depending on the time of their issuance:

- Certificates issued after their registration became mandatory and up to one day before election day will be verified by VCCs against a certified copy of the special register, received from the CSO through the LGEC.
- Certificates issued on the day before the elections and on election day are to be verified against a “*proces-verbal*” (protocol) from the CSO which records the serial numbers of all certificates which have been earmarked in advance for issuance during this period. Although reference is made to birth certificates to be issued for various purposes, it is clear from the wording of the amendment that the CSOs are supposed to allocate a certain number of certificates to be issued for election purposes for each voting center. For any voting center, the number of allocated blank certificates cannot be higher than the number of registered

voters. The ambiguous wording of this provision may cause confusion with CSOs and result in inconsistent implementation, unless a more detailed clarification is provided.

- In order to vote upon presentation of a birth certificate issued before the creation of the special register, a voter is required to provide originals and photocopies of two out of eight documents listed as supplementary proof of identity. The serial numbers of such certificates are to be verified against a “*proces-verbal*” of the Ministry of Interior with the serial numbers of all blank birth certificates distributed to each CSO. Certificates and photocopies will be retained by the VCCs.

The transitory provision entitles political parties to receive lists of registers of certifying institutions for the verification of the supplementary means of identification. However, the implementation of this provision appears challenging in practice, given the variety and status of institutions involved and the short timeframe.

A special requirement has been introduced for voters who have emigrated. These citizens may vote only upon presentation of a valid or expired passport and the ID of the country where they live. This requirement appears to discriminate against this group of voters and ignores the fact that many countries do not issue special IDs to foreign residents. Furthermore, it is unclear how the teams appointed by the CEC to identify this group of voters will operate in practice.

The newly introduced amendments enhance the criminal liability for falsification and the use of falsified birth certificates. The transitory provision provides for invalidation of the elections in an election unit should it be proven that the number of votes cast on presentation of false birth certificates might have influenced the allocation of mandates.

In an attempt to increase accountability and transparency, and trying to meet previous OSCE/ODIHR recommendations, the Ministry of Interior, through the GDCS, on 6 January issued a report “On the Procedures for Storage, Administration and Delivery of Birth Certificates and Holograms Used for their Production”. This report provides detailed information about the printing of new certificates. According to the report, a total of 7,588,999 certificates were produced. Mainly due to misprints, 350,707 certificates were rejected after quality controls undertaken by technicians of the Ministry of Interior and subsequently destroyed by the printing company. Holograms were produced in and imported from Switzerland. Between September and November, 8,300,000 holograms arrived in Albania. They were affixed to the certificates before the quality test and destroyed under the same procedures. 8,298,000 holograms have been used. The remaining 2,000 holograms remain under the custody of the printing firm. The EOM will continue following up on the administration of birth certificates both at central and local level.

At the request of the OSCE/ODIHR EOM, the GDCS also produced a detailed quantitative report on the certificates delivered to the LGUs. According to the report, officials from all LGUs except Tirana Municipality collected the new certificates. The Tirana CSO director said the CSO was too busy to collect them and still had a supply of old-style certificates, and that the Municipality of Tirana does not issue birth certificates for electoral purposes, which are only issued by CSOs in the 11 city boroughs.

VII. MEDIA

OSCE/ODIHR EOM preliminary findings for the period of 13 December 2006–14 January 2007 show that broadcast and print media are providing extensive election-related coverage. Although numerous political forces received media coverage, the two biggest parties were the main subjects of attention. In the absence of registered candidates, the political campaign in the media remained limited to news coverage and paid advertisements of a few designated candidates.

Article 41 of the Law on Public and Private Radio and Television obliges broadcast media “to present facts and events in a fair and impartial way”. However, preliminary findings indicate that public TVSH has failed to do so in its prime-time news. Public television allocated almost 32 per cent of its political coverage to the DP, overwhelmingly neutral or positive in tone, while the SP received 23 per cent, with roughly equal shares of positive and negative coverage. Smaller parties received less than 5 per cent. The Government received 22 per cent of mostly positive coverage.

Private Top Channel has so far provided quite balanced coverage, giving to the DP and SP 29 and 26 per cent, respectively, with an overall positive and neutral tone. Two local private channels, Vizion + and News24, have dedicated more time to the SP but have covered both main parties in a mainly neutral fashion. Criticism of the SP was focused on Mr. Rama personally, in particular on News24, where 37 per cent of his portrayal was negative.

Two private channels with nation-wide license, TV Klan and TV Arbëria, dedicated the highest amount of political information to the Government (28 and 27 per cent, respectively). However, they differed in their coverage of the main parties. While TV Klan had mostly neutral coverage of the DP, its portrayal of the SP was neutral or negative. TV Arbëria, by contrast, provided both main parties with mostly neutral and positive coverage. In addition, it dedicated 10 per cent of coverage to SMI, exclusively in a neutral or positive tone. This was the highest amount dedicated to a ‘smaller’ party on any of the monitored outlets.

Interlocutors from several media outlets have complained to the EOM about recent tenders for broadcast licenses, saying the procedures followed by the National Council for Radio and Television (NCRT) lacked transparency. After several media published critical information on this topic, the NCRT declared that it would sue them for defamation, but it did not undertake any legal steps during the reporting period. Some opposition parties have demanded the dismissal of the NCRT and the appointment of a new membership, which, under the 30 August agreement, would be augmented by two members proposed by civil society. On 13 January, Parliament decided to increase the NCRT’s composition without replacing its current members.

VIII. OSCE/ODIHR EOM ACTIVITIES

During the reporting period, the OSCE/ODIHR EOM continued its activities despite the fact that the election process had been stalled. The Head of Mission had repeated meetings with the President, the Prime Minister, the Deputy Prime Minister, the Speaker of Parliament, the Ministers of Foreign Affairs and Defense, the Chairperson of the CEC, party leaders and other officials. The EOM also continued meetings with political parties, civil society, the media, and other interlocutors. A second briefing with representatives of the international community and international organizations accredited in the Republic of Albania was held on 5 January. Long-term observers deployed in 11 two-person teams throughout the country continued to observe the pre-electoral situation in the regions.