



Office for Democratic Institutions and Human Rights

REPUBLIC OF MONTENEGRO
EARLY PARLIAMENTARY ELECTIONS
29 March 2009

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

3 – 5 February 2009



Warsaw
12 February 2009

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I. INTRODUCTION

Following an invitation to observe the early parliamentary elections in the Republic of Montenegro, the OSCE's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed a Needs Assessment Mission from 3 to 5 February 2009 to analyze the pre-election environment and provide recommendations for a possible OSCE/ODIHR election observation activity.

The OSCE/ODIHR Needs Assessment Mission (NAM) was conducted by Mr. Konrad Olszewski, Deputy Head of the OSCE/ODIHR Election Department, Mr. Drew Hyslop, OSCE/ODIHR Election Advisor and Lusine Badalyan, OSCE/ODIHR Election Advisor.

The OSCE/ODIHR NAM held meetings in Podgorica with representatives of parliament, government authorities, political parties, civil society and the media as well as with the international community (see annex for list of meetings).

The OSCE/ODIHR is grateful to the authorities of Montenegro for their co-operation during the NAM. The OSCE/ODIHR would also like to thank the OSCE Mission to Montenegro for its support during the visit.

II. EXECUTIVE SUMMARY

On 27 January 2009, one day after parliament voted to shorten its mandate, the President of the Republic called early elections for 29 March, 2009. Following the independence of Montenegro in 2006, and the subsequent constitutional reforms, the next parliamentary elections were to be held before the end of 2009. However, calling of the elections already in January surprised most opposition parties, and many among the opposition oppose the move stating that the early elections are unconstitutional.

The opposition's main point of contention is that the elections will be held under legislation not harmonized with the 2007 Constitution, particularly in relation to the issue of "authentic representation" of national minorities. In addition, opposition parties raised concerns regarding campaign and political party finance legislation as well as independence of the public broadcaster.

Nonetheless, all parties have begun to prepare for the early elections. The ruling Party of Democratic Socialists has decided to run on a joint list with the Social Democratic Party and the Croatian Civic Initiative, but is in negotiations with other parties as well. The number of parties in opposition has increased due to internal competition

since the 2008 presidential election, although all parties are actively engaging in coalition negotiations.

The unicameral parliament of Montenegro will be elected for a four-year term through proportional representation on the basis of nation-wide lists of candidates. The election will be regulated by a comprehensive legal framework, comprising of, *inter alia*, the Constitution (October 2007), the law on the election of councillors and representatives (July 2006), the law on registers of electors (June 2008) and the law on political party financing (July 2008).

Despite progress on harmonization of some laws with the Constitution, the discussion on the amendments to the law on the election of councillors and representatives (the election law) has languished in parliamentary committee. While the election administration believes that elections are technically possible without amending the law, almost all interlocutors agreed that the new parliament will need to address this deficiency. In this context, there are outstanding OSCE/ODIHR recommendations that could be considered.

The early parliamentary elections will be conducted by a three-tiered election administration – the State Election Commission (SEC), 21 Municipal Election Commissions (MEC) and around 1,130 Polling Boards (PB). The SEC informed the OSCE/ODIHR NAM that the body is meeting its obligations in good time and that the 1.3 million Euros allocated by parliament is sufficient to conduct the election.

The voter register comprises of approximately 494,000 voters. The final register will be compiled by each MEC and sent to the SEC to announce the official number of voters for the upcoming election. While political parties did not raise the quality of the voter register as a concern, the status of approximately 25,000 non-citizen residents currently on the voter lists will have to be resolved after the elections, possibly after the negotiations on dual citizenship with Serbia are completed.

Two public and five private television channels broadcast across Montenegro with a larger number of local private stations and print media. While private media outlets are bound by internal rules and regulations, the public broadcaster Radio Television Crna Gora (RTCG) is bound by law to provide equal access and coverage to all candidates in the election, including unpaid air time for campaigning.

The legislative framework provides for full access of international and domestic observers to the preparation and the conduct of the election. Three domestic non-partisan observer organizations are preparing activities during the election period.

A broad interest was expressed by state authorities, political parties and civil society representatives for the deployment of an OSCE/ODIHR election observation mission. While previous OSCE/ODIHR election observation missions have seen repeated claims by the opposition of fraud and illegal government interference, the OSCE/ODIHR missions have been unable to find substantiating evidence, and such claims have neither been proven nor disproven. The claims, however, along with the

lack of any “clear action to allay suspicions”¹ by the authorities, were identified by interlocutors as a factor impacting upon public confidence.

Accusations of election-related violations continue, and interest was expressed for OSCE/ODIHR to place a special emphasis on the election campaign when such irregularities would allegedly occur. Concerns related to election-day procedures were not given as much emphasis, although many opposition parties expressed a general lack of trust in the electoral process. All OSCE/ODIHR NAM interlocutors saw the utility of having the entire election process observed by international observers.

The OSCE/ODIHR recommends the deployment of a standard election observation mission for the early parliamentary elections². The election observation mission should be deployed during the last week of February. In addition to a core team of experts, the mission should comprise of 16 long-term observers to be deployed throughout Montenegro in early March. Some 100 short-term observers will be requested for observation of election-day proceedings.

III. FINDINGS

A. POLITICAL CONTEXT

On 27 January 2009, one day after parliament voted to shorten its mandate, the President of the Republic called early elections for 29 March 2009.³ The election comes two and a half years into the Montenegrin parliament’s four-year term. Following the independence of Montenegro and the subsequent constitutional reforms, parliamentary elections were to be held before the end of 2009; however, the date is earlier than anticipated and the move to hold elections at this time has been criticized by parts of the opposition.

According to the governing coalition, an early election date will help speed reforms – stating that a full four-year mandate is required to address the challenges posed by the economic crisis and that a renewed mandate will be an important first step to prepare the country for entrance into Euro-Atlantic structures. Many among the opposition, however, state that the early elections are unconstitutional, and a case has been filed with the Constitutional Court.

The main point of contention by the opposition is that the elections will be held under legislation not harmonized with the new Constitution, particularly as relates to ensuring what the Constitution calls “authentic representation” of national minorities⁴.

¹ OSCE/ODIHR Election Observation Mission Final Report, 6 April 2008, available at: <http://www.osce.org/item/32780.html> .

² Although there are concurrent local elections in four municipalities, the OSCE/ODIHR will only observe these elections to the degree that they may impact upon the parliamentary elections.

³ Local elections will also be held on the same date in four municipalities – Herceg Novi, Tivat, Nikšić and Budva.

⁴ “Authentic Representation” is a term used in Article 79 of the Constitution which addresses minority rights and relates to affirmative action, but which has yet to be defined in the Montenegrin context. Some minority parties see the clause as ensuring reserved seats in

An initial deadline of January 2008 for harmonization of the election law with the Constitution was not met; parliament extended the period for implementation to six months, but this date was also missed. Parliament then voted to amend the law on the implementation of the Constitution yet again, delaying the requirement for harmonization for two years. A response by the Court on the constitutionality of this delay, as well as to discrepancies between the Constitution and election legislation, is expected before election day.

Meanwhile, all parties⁵ have begun to prepare for the early elections. The party that has controlled government since the break up of the former Yugoslavia, the Party of Democratic Socialists (DPS) led by Milo Djukanović, will likely run on a joint list with the Social Democratic Party (SDP), led by the Speaker of Parliament Ranko Krivokapić, and the Croatian Civic Initiative (HGI). Discussions with both the Bosniak Party (BS) and the People's Party (NS) to further expand the coalition are also taking place.

Many opposition parties have seen themselves divided by internal competition since the 2008 presidential election. Despite the divisions, all parties are actively engaging in coalition negotiations. The Socialist Peoples' Party (SNP), the only major opposition party not recently challenged by internal division, are in discussions on forming a joint list with Movement for Change (PzP) and New Serbian Democracy (NSD). NSD emerged from the electoral ticket that ran as the Serb List in 2006, dominated by the Serb People's Party (SNS). In protest against the transformation of the Serb List into a party, smaller parties of the Serb List formed into the Serb National List. The largest opposition party elected to parliament in 2006, the PzP, also suffered internal divisions, with defecting members forming the party Democratic Centre (DC).

Ethnic Albanian parties are expected to run independently, as their constituents vote under a special procedure where five mandates are allocated to 70 polling stations with predominantly ethnic Albanian populations⁶.

In addition to issues related to harmonization with the Constitution, opposition parties raised concerns regarding the campaign environment, media coverage or access to media and political party finance legislation. New legislation on political party financing passed parliament in July 2008 as part of a larger reform package legislated during an opposition boycott of the parliament. The provisions have reduced the percentage of the budget allocated to campaigns from 0.3 per cent of the annual government budget to 0.15 per cent, and reduced regular political party funding by approximately one-third. With the government continuing to pay rent to DPS for the use of buildings inherited by DPS after the dissolution of the Communist Party in the 1990s, the opposition claims to be at a drastically unfair financial disadvantage.

parliament for ethnic minorities. Other parties have different interpretations, ruling coalition see authentic representation as ensuring minority voters the right to choose their representation, a situation they view as already existing.

⁵ Parties represent the varied ethnic landscape of the country, which, according to the 2003 census, comprises of approximately 40 per cent Montenegrin, 30 per cent Serb, 14 per cent Bosniak and Muslim, 7 per cent Albanian, 1 per cent Croat and 1 per cent Roma citizens.

⁶ In 2006, the Democratic Union of Albanians (DUA), Democratic Alternative (DA), and Albanian Alternative (AA) each won one mandate – while the DPS won the remaining two.

During the OSCE/ODIHR NAM, no political parties expressed concerns regarding the election administration, and there were fewer complaints by the opposition about anticipated fraudulent activities on election day than in previous years. However, a number of opposition parties cited their continued lack of trust in the general election process – accusing the governing parties of such illegal activities as vote and ID buying as well as voter intimidation.

Such allegations, and the lack of an observable response by authorities, have an effect on voter confidence, a fact that was underscored by several interlocutors. Similar reports had been expressed to the OSCE/ODIHR during previous election observation missions in Montenegro, but most allegations were unsubstantiated, being neither proven nor disproven. Both the 2008 presidential election and the 2006 parliamentary elections were found to be conducted generally in line with OSCE commitments and international standards for democratic elections⁷; however, the OSCE/ODIHR did note that “the authorities took no clear action to allay suspicions”⁸ relating to allegations of fraud.

B. LEGAL FRAMEWORK

The early parliamentary election will be regulated by a comprehensive legal framework, comprising of, *inter alia*, the Constitution, the law on the election of councillors and representatives (July 2006), the law on registers of electors (June 2008) and the law on political party financing (July 2008).

Discussions to harmonize all relevant legislation with the Constitution have been ongoing since October 2007, when the new Constitution was passed along with a law on its implementation. Amendments require a two-thirds majority in parliament and discussion on the law on the election of councillors and representatives stalled in its parliamentary working group without an initial draft, and without a solution to the difficult decision relating to “authentic representation” of national minorities.

While the election administration believes that elections are technically possible without the required amendments, most OSCE/ODIHR NAM interlocutors agreed that the new parliament will need to address this deficiency. In this context, a number of OSCE/ODIHR recommendations made in previous years remain to be addressed. These relate to, *inter alia*, the voter list, candidate registration, voter education, voting, count and tabulation, complaints and appeals, campaign financing and the blurring of state and party structures.

The current law on the election of councillors and representatives calls for a unicameral parliament to be elected for a four-year term through proportional representation on the basis of nation-wide lists of candidates. The law also provides for the election of one member of parliament for every 6,000 voters. However the Constitution is more specific, stipulating an 81-mandate parliament; the president of

⁷ The OSCE/ODIHR has observed ten electoral events in the Republic of Montenegro since 1997. The Final Reports are available at <http://www.osce.org/odihr-elections/20443.html>.

⁸ OSCE/ODIHR Election Observation Mission Final Report, 6 April 2008, available at: <http://www.osce.org/item/32780.html>.

the State Electoral Commission informed the OSCE/ODIHR NAM that in this instance the Constitution takes precedence and that 81 MPs would be elected.

C. ELECTION ADMINISTRATION

The early parliamentary elections will be conducted by a three-tiered election administration – the State Election Commission, 21 Municipal Election Commissions and around 1,130 Polling Boards. The SEC is appointed by parliament for a period of four years, and was last appointed after the current Parliament took office in late 2006.

The SEC informed the OSCE/ODIHR NAM that the body is meeting its obligations in good time and that the 1.3 million Euros allocated by parliament is sufficient to conduct the election. This is achievable, in part, through the practice of not paying “extended” members of Polling Boards representing different candidate lists. It was decided that they should be paid by those who nominate them.

The voter register comprises of approximately 494,000 voters. By law, the final register must be concluded 25 days before election day. It is then compiled by each MEC, and by 21 March the SEC will announce the official number of voters. After the announcement, and up until 10 days before the election, changes are possible but only through a court decision.

While political parties did not raise the quality of the voter register as a concern, there remains an issue of non-citizen residents who were on the voter lists before Montenegro became independent in 2006. According to the Constitution and the election law, only Montenegrin citizens can vote in Montenegro; yet an estimated 5 per cent of the current voter register (approximately 25,000 voters) are Serbian citizens residing in Montenegro. In the autumn of 2008, efforts began to remove non-citizens from the voter list. However the administrative court took the pragmatic decision to stop removing these voters, stating that doing so was not explicitly called for in the law. No political parties met with during the OSCE/ODIHR NAM raised this as a point of contention. Discussions are ongoing between Montenegrin and Serbian authorities on the issue of dual citizenship, which could potentially solve this issue, but resolution is expected only after the elections.

D. MEDIA ENVIRONMENT

A variety of media outlets operate in Montenegro. Two public and five private television channels broadcast across Montenegro, with a larger number of locally broadcasting private TV stations as well as print media outlets. One Montenegrin news agency, *MINA*, competes for the market with several Serbian news agencies.

While private media outlets are bound by internal rules and regulations, Radio Television Crna Gora (RTCG) is bound by law to provide equal access and coverage to all candidates in the election, including unpaid air time for campaigning. Further regulations on campaigning are expected to be adopted by a decision of the RTCG council on 11 February.

A new law on public broadcasting services was passed in December 2008⁹ which altered the method by which the public broadcaster RTCG receives its funding. Rather than collecting a regular fee charged to all citizens, RTCG has been allocated a portion of the annual government budget (1.2 per cent). In addition, RTCG collects funds from the sale of commercial airtime.

While the funding change is beneficial for the stable functioning of the public broadcaster, it has led to opposition parties questioning the independence of RTCG from the government. This is despite the fact that the public broadcaster now automatically receives funds – as opposed to the previous system where the government would decide on an ad-hoc basis to support RTCG’s regular funding shortfalls.

The impact of the funding shift for RTCG is also having an impact on private media outlets. Previously 10 per cent of the funds allocated through a fee-based system were distributed between all private broadcast media. Some of the private broadcasters met with during the OSCE/ODIHR NAM expressed their fear that without this support, smaller broadcasters might be unable to survive on the market.

E. ELECTION OBSERVERS

The legislative framework provides for full access of international and domestic observers to observe the preparation and the conduct of the election. Three domestic non-partisan observer organizations – the Centre for Election Monitoring (CEMI), the Centre for Democratic Transition (CDT) and the Centre for Democracy and Human Rights (CEDEM) – are all preparing for activities during the election period. This includes observation of the pre-campaign period, the campaign and election day, specific observation of the use of state resources and inflammatory language during the campaign, as well as an opinion poll and partial parallel vote tabulation.

IV. CONCLUSIONS AND RECOMMENDATIONS

A broad interest was expressed by state authorities, political parties and civil society representatives for the deployment of an OSCE/ODIHR election observation mission. While previous OSCE/ODIHR election observation missions have seen repeated claims by the opposition of fraud and illegal government interference, the OSCE/ODIHR missions have been unable to find substantiating evidence, and such claims have neither been proven nor disproven. The claims, however, along with the lack of any “clear action to allay suspicions”¹⁰ by the authorities, were identified by interlocutors as a factor impacting upon public confidence. Accusations of election-related violations continue, and interest was expressed for OSCE/ODIHR to place a special emphasis on the election campaign when such irregularities would allegedly occur. Concerns related to election-day procedures were not given as much emphasis, although many opposition parties expressed a general lack of trust in the electoral

⁹ The law entered into force on 1 January 2009.

¹⁰ OSCE/ODIHR Election Observation Mission Final Report, 6 April 2008, available at: <http://www.osce.org/item/32780.html>.

process. All OSCE/ODIHR NAM interlocutors saw the utility of having the entire election process observed by international observers.

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ANNEX – LIST OF MEETINGS

Parliament

H.E. Mr. Ranko Krivokapić, Speaker of Parliament

Government

H.E. Mr. Milorad Šćepanović, Assistant Minister of Foreign Affairs

Election Commission/Administrative Court

Mr. Branislav Radulović, President of the Republic Election Commission and President of the Administrative Court

Political Parties

Mr. Miško Vuković, Member of Presidency and Chief of Caucus, DPS

Mr. Vasilije Lalošević, Vice-President SNP

Mr. Neven Gošović, Vice-President SNP

Ms. Radmila Đurišić, Chief of the Cabinet of the President and Adviser for International Relations, SNP

Mr. Koča Pavlović, Member of Presidency, Movement for Change

Mr. Srđa Brajović, Member of Presidency, Movement for Change

Mr. Emilo Labudović, Vice President, New Serb Democracy

Mr. Milutin Đukanović, President of the Executive Board, New Serb Democracy

Mr. Momčilo Vuksanović, President of the Serb National Council

Mr. Gojko Raičević, General Secretary of the Serb National Council

Mr. Dragan Ostojić, Democratic Serb Party

Ms. Marija Vučinović, Croatian Civic Initiative

Mr. Vaselj Siništaj, President Albanian Alternative

Mr. Mehmet Bardhi, Democratic Alliance

Mr. Zdravko Šoć, Liberal Party

Mr. Jovan Vlahović, Liberal Party

Mr. Slaviša Guberinić, People's Party

Civil Society

Mr. Zlatko Vujović, CEMI President

Mr. Nenad Koprivica, Executive Director CEDEM

Mr. Marko Čanović, Director CDT

Mr. Boris Raonić, NDC

Mr. Goran Đurović, Executive Director CRNVO

Media

Mr. Rajko Šebek, Editor of Informative Programmes, IN TV

Mr. Mirsad Rastoder, President of the Council of Self Regulatory Bodies

Mr. Branko Vojičić, RTCG Director

Ms. Vesna Banović, RTCG

International Community

Meeting Chaired by the OSCE Head of Mission, Ambassador Paraschiva Badescu with Ambassadors and representatives of the international community