

INTERIM REPORT 3

4–14 July 2005

I. EXECUTIVE SUMMARY

- Following the issuance of a preliminary statement of findings and conclusions on 4th July, the OSCE/ODIHR EOM has continued its observation of the next steps of the electoral process, with a particular focus on the counting process, as well as on the handling of complaints and appeals.
- While in many zones the vote counting process proceeded relatively smoothly, in others it was protracted, disorganised and in some cases contentious. In three election zones, ballots from one or more voting centres were not counted.
- Significant delays also occurred during the tabulation of results. On occasions this was attributable to the near exhaustion of election officials. However, in other zones delays resulted from political disputes. Observers reported instances where election officials obstructed the process and placed party interests before their duties to serve as impartial election administrators and to count and report votes in an honest manner.
- Some 280 appeals against Zone Election Commission (ZEC) decisions concerning election results have been filed with the Central Election Commission (CEC). In addition, the CEC will consider around 100 requests to invalidate part, or all, of the elections.
- Preliminary results issued by the CEC show that electoral strategies described in previous EOM reports have been implemented and smaller parties involved with the main two parties prior to the election have received significantly more votes at national level than their weight in the outgoing parliament would suggest. It is however not possible to quantify the effect of these strategies.
- Some parties have alleged that votes were not counted accurately. Specifically, the Socialist Movement for Integration (SMI) and some small parliamentary and non-parliamentary parties have claimed that either their own votes were attributed to other parties or that votes cast for the Democratic Party (DP) or the Socialist Party (SP) were counted in favour of allied parties or coalitions.
- The OSCE/ODIHR EOM will retain a small team of experts to follow the election process until its completion. They will pay particular attention to the adjudication of complaints and appeals.

II. MISSION INFORMATION

On 4 July, the OSCE/ODIHR Election Observation Mission (EOM), together with the OSCE Parliamentary Assembly (OSCE PA), the Parliamentary Assembly of the Council of Europe (PACE) and the European Parliament issued a joint Statement, reflecting its conclusions and findings up to and including election day.

The OSCE/ODIHR EOM has continued its observation activities, focussing on the counting of votes, their tabulation and the announcement of results. In addition, the EOM has been following the process of the CEC's adjudication of a large number of appeals against ZEC decisions. The OSCE/ODIHR EOM will continue its observation of the handling of complaints and appeals until the process is completed, and offer a comprehensive assessment of the process, including recommendations for future improvements, in its Final Report.

III. ELECTION ADMINISTRATION

The Counting of Votes and Vote Tabulation at ZECs

After the close of voting, ballot boxes were transferred to 100 Counting Centres, where the votes were counted. OSCE/ODIHR observers submitted reports from 97 Counting Centres, although they were not present continuously in all of those observed.

Observers' overall assessment of the counting phase, up to the end of 4 July, indicates that the process was considered reasonably well organised in 86% of observers' reports. However, many counting teams were appointed late and were insufficiently trained. Although many counting teams performed their tasks efficiently, the counting process in 14% of zones was poorly organised. In addition, observers reported that in a significant minority of zones (15%), counting teams, which were nominated by political parties, did not undertake their tasks impartially. Almost none of the ZECs were able to complete the vote count and official tabulation of the results within the legal deadline of 17:00 hrs. on 4 July.

Many observers reported that the distance they, and other observers, were required to remain from the counting tables lessened their ability to observe the process effectively. In some 20 zones, observers reported that the process lacked transparency.

As the vote count proceeded, disputes over the validity of ballots arose frequently and discrepancies were noted between the number of voters having been recorded as casting ballots and the number of ballot papers counted. Disputes between ZEC and counting team members frequently led to disruptions and interruptions in the counting process. It is of particular concern that during the counting of votes, observers noticed serious irregularities in eight zones, while others received allegations that votes for particular parties were not being counted according to the choices made by voters.

The Announcement of Results

From election night, the CEC released preliminary election results based on information received from ZECs. However, a relatively large number of ZECs did not provide the CEC with preliminary results as frequently as requested. Initially, the CEC relied on individual tabulation sheets received by fax; later, the CEC based the preliminary results on aggregate tables of results sent by ZECs.

In the first days following the elections, the CEC released results for many single mandate elections (hereafter ‘candidate results’). However, ZECs experienced a noticeable delay in announcing the results for the party-list election (hereafter ‘party results’). By the end of 6 July, the CEC had declared approximately half of the candidate results. In approximately 20 zones, observers reported that either the count was not yet complete or that ZECs had not completed the tabulation of results for either the candidate or party results, or both. In some cases, delays were attributable to fatigue, as ZEC and counting group members worked for days with insufficient rest. In other cases, delays were the result of the counting teams’ or ZECs’ refusal to count the ballots or walkouts by election officials.

The ZEC in election zone 2 ignored a CEC decision ordering them to complete the vote count.¹ The CEC fined each ZEC member ALL 90,000 (approximately €730) and on 7 July decided to dismiss all seven ZEC members and to initiate criminal proceedings against them. Other ZECs which refused to count ballot boxes from individual VCs included ZECs 64 and 73, who sent these ballot boxes to the CEC without opening them and counting the ballots. The members of ZEC 64 were fined 80,000 ALL each (approximately €650) for not counting all ballot boxes.

Several ZECs, for example in zones 36 and 43, requested new aggregate tables from the CEC, claiming that the originals had been used by counting teams by mistake or were illegible due to corrections of clerical mistakes. The CEC decided to provide ZECs with new tables upon request, but only after the ZECs had returned the original tables to the CEC. Significant problems during the tabulation were also reported by EOM observers in a number of other election zones. In some zones, the CEC had to send inspectors or regional coordinators to resolve problems with the count of the tabulation.

By the afternoon of 8 July, aggregate results for candidates were still missing for eight zones, and party-list results, from nine zones. By 11 July, three ZECs had not sent the aggregate tables of results for the single mandate contest and two had not reported aggregate results for the party-list election.

The Socialist Movement for Integration (SMI), the Movement for National Development (MND), the Democratic Alliance Party (DAP) and the Social Democracy Party (SDY), among others, have alleged that votes for their parties were intentionally attributed to other political parties. They also alleged that some votes cast for the Democratic Party (DP) were attributed to parties of the right-wing Alliance for Freedom, Justice and Welfare (AFJW) and that some votes cast for the Socialist Party (SP) were recorded for some of the parties in the outgoing governing coalition, in particular for the Social Democratic Party (SDP).

Preliminary results issued by the CEC show that electoral strategies have been implemented and smaller parties involved with the main two parties prior to the election have received significantly more votes at national level than their weight in the outgoing parliament would suggest. It is however not possible to quantify the effect of these strategies.

IV. POST-ELECTION APPEALS

The Legal Framework

¹ Two ballot boxes remain uncounted. On election day, a relatively large number of voting centres in this zone did not open.

The Electoral Code permits electoral subjects (candidates, political parties and coalitions) registered with the CEC to appeal against a ZEC decision on the tabulation of the election results. These appeals must be filed with the CEC no later than two days after the day the ZEC took a decision on the results. Providing that the appeal is submitted on time and meets other legal requirements, the CEC must adjudicate the appeal within ten days. Any delay by a ZEC to take a decision on the election results could protract this stage of the appeals process.

In addition to hearing appeals on ZEC decisions regarding election results, the CEC can also consider requests to invalidate an election at an individual voting centre, an election zone or zones, or the entire election. Elections can be invalidated by the CEC if: (1) there were violations of the law; (2) a natural disaster happens; or (3) the voting did not begin or was suspended for more than six hours *and* if the electoral process has been affected to such a degree that it may have impacted the allocation of mandates in the election units or on a national level.² A request for invalidation must be filed within ten days of the date of the elections.³ Where the elections are invalidated, the CEC should order the holding of a re-run election.⁴ All re-run elections in all electoral zones should take place on the same day, which must be no later than four weeks from the day of the CEC decision to re-run the election. The Electoral Code only permits the re-run of the election zone contests. While the CEC is able to invalidate part of the party-list election, those parts of the party-list election which have been invalidated are not repeated.

The CEC takes decisions on appeals against ZEC decisions on election results or requests to invalidate elections by qualified majority of five of its seven members. If the appeal or request does not receive this majority, it is considered ‘rejected’. Electoral subjects can appeal the CEC’s decision to the Electoral College, provided that it is submitted no later than five days after the CEC’s decision. The Electoral College, which consists of eight judges chosen by lottery from a pool of all appellate judges, decides cases in panels composed of five members also chosen by lottery. The Electoral College has ten days to adjudicate an appeal.

Observers will closely follow the appeals process, devoting particular attention to how the Electoral College fulfils its obligation to provide written decisions describing the evidence and reasons supporting the decision. The EOM will also devote particular attention to whether political parties interfere with, or fail to respect, the principles of judicial independence.

Adjudication of Appeals

By 13 July, some 281 appeals against ZEC decisions on election results had been filed with the CEC⁵. Of these, 96 were not considered because they were not submitted in the correct legal format or past the deadline. The remaining 185 appeals have been adjudicated, apart from four which have been suspended pending a ruling on a request to invalidate zone election results. The CEC accepted two appeals, against the decisions of ZECs 35 and 37, where the majority of ZEC members voted against the aggregate table of results. As of 13 July, seven appeals have been filed with the Electoral College. Two were rejected for procedural reasons. The Electoral College has

² Source: Article 117 of the Code (see Albanian version) permits the CEC to invalidate elections even if there is no potential impact on the allocation of mandates. However, in such a case, the election is not repeated.

³ If the CEC receives a request to invalidate the results in an election zone and also an appeal against a ZEC decision on the election result, then the CEC firstly adjudicates the request to invalidate the result. The CEC must consult with the respective ZEC before taking a decision to invalidate the results in an election zone.

⁴ The Election code requires the CEC to repeat the election in the entire electoral zone (see Albanian version).

⁵ Of these, 54 were filed by the DP or parties in the AFJW coalition; 92 appeals were filed by the SP or parties in the outgoing governing coalition; 21 appeals were filed by the SMI; and 114 appeals were filed by all other parties.

suspended hearing one appeal while it awaits for evidence it has requested from the CEC. The other appeals are scheduled to be heard on 16 July.

The CEC has received a total of 107 requests to invalidate election results. Seven of these were not in the correct legal format and were not considered. Most of the remaining 100 requests to invalidate elections concern specific zones⁶. However, two request the invalidation of the party-list election in all 100 zones. The CEC started hearing requests to invalidate an election on 14 July.

Many of the appeals filed with the CEC lack merit. However, the CEC appeared to be deciding many appeals hurriedly, without taking the time necessary to consider all the evidence requested by parties. The CEC has yet to review the contents of a ballot box, which some parties believe will substantiate their claims that votes for the party-list election were not counted honestly in some zones. Although the ballot recount provisions were removed from the law in January 2005, the Code still permits the CEC discretion to recount or re-evaluate ballots if it feels this is necessary in order to make a decision on an appeal.

V. TIMEFRAME TO CONVENE THE NEWLY ELECTED PARLIAMENT

The Electoral Code provides that the CEC takes a decision on the final election results only after the adjudication of all outstanding appeals, including those heard by the Electoral College. The decision must be taken no later than three days from the day the CEC receives all official data from election commissions and the courts. The final election results, as announced by the CEC, include the results for each of the single-mandate election zones as well as the number of supplementary mandates allocated to party lists.

The Constitution provides that the President of Albania calls the first session of the newly elected Parliament “no later than 20 days from the conclusion of the elections”. If the President fails to call this meeting, then the Parliament ‘convenes itself’ no later than ten days after the expiry of the 20-day deadline. The mandate of the Parliament elected in 2001 continues until the first meeting of the incoming Parliament.

Pursuant to Article 106 of the Constitution, the current Prime Minister and ministers retain their offices until the appointment of the new Council of Ministers. Article 96 of the Constitution requires that “at the beginning of a legislature (sic)”, the President appoints the Prime Minister on the proposal of the party or coalition of parties that has the majority of seats in the Parliament. The President’s appointment of Prime Minister is subject to approval of the Parliament. Under Article 98, a minister is appointed by the President on the proposal of the Prime Minister. The President’s decree on appointment is reviewed by the Parliament within ten days.

⁶ Of the 100 pending requests to invalidate, 43 were filed by the Coalition Albanian Social Parties and Party of National Unity, 36 by the SP, 10 by the DP, 3 by the SMI, 2 by the HRUP, and one each by the New Democratic Party, Democratic Alliance, Demo-Christian Party, Labour Party, Communist Party, and an independent candidate (EZ 100).