



Office for Democratic Institutions and Human Rights

REPUBLIC OF ALBANIA

PARLIAMENTARY ELECTIONS 2005

**OSCE/ODIHR
NEEDS ASSESSMENT MISSION REPORT
12 - 16 April 2005**



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TABLE OF CONTENTS

I. INTRODUCTION	1
II. EXECUTIVE SUMMARY	1
III. FINDINGS.....	3
A. POLITICAL CONTEXT	3
B. ELECTORAL SYSTEM AND INDICATED IMPLEMENTATION.....	5
C. LEGAL FRAMEWORK AND ELECTORAL REFORM.....	6
D. ELECTION ADMINISTRATION	8
E. MEDIA	11
F. PARTICIPATION OF WOMEN.....	11
G. INTERNATIONAL AND DOMESTIC OBSERVERS	12
IV. CONCLUSIONS AND RECOMMENDATIONS	12
ANNEX 1. Programme of Meetings	
ANNEX 2. Electoral System and Party Strategies	

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OSCE/ODIHR Needs Assessment Mission Report
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I. INTRODUCTION

The Organisation for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) undertook a Needs Assessment Mission (NAM) to the Republic of Albania from 11 to 16 April 2005. The NAM was headed by Ambassador Christian Strohal, Director of the OSCE/ODIHR. He was accompanied by Nikolai Vulchanov, Deputy Head of the OSCE/ODIHR Election Section, Marcus Brand, Special Adviser to the Director of the ODIHR, and Gilles Saphy, OSCE/ODIHR Election Adviser.

The purpose of the NAM was to assess the conditions and level of preparation for the July 2005 parliamentary elections in line with OSCE commitments, and to advise on modalities for the establishment of an Election Observation Mission (EOM). The NAM held meetings with the President of the Republic, the Prime Minister, the Speaker of the Parliament, the Minister for Foreign Affairs, Minister for Local Government, the Central Election Commission (CEC), as well as other Government officials, representatives of the political parties and of the international community in Tirana (See Annex 1).

The OSCE/ODIHR is grateful to the OSCE Presence in Albania for the support provided during the NAM.

The OSCE/ODIHR highly appreciates the early invitation to observe the 2005 parliamentary elections extended to the Office by the Ministry of Foreign Affairs of the Republic of Albania.

II. EXECUTIVE SUMMARY

While in recent years Albania has demonstrated a consistent trend towards improvement of its elections and electoral framework, further efforts are needed for the conduct of elections in line with OSCE Commitments and other international standards for democratic elections.

The Assembly comprises 140 members. Of these, 100 will be elected in single-member constituencies (zones) in one round of voting, and the remaining 40 will be elected in one state-wide multi-mandate constituency based on party or coalition lists. While the system of translation of valid votes into parliamentary seats (the electoral system) has been simplified by removing the second round of voting in the zones, it remains complex.

According to Article 64.2 of the Constitution, "The total number of deputies of a party or party coalition shall be, to the closest possible extent, proportional to the valid votes won by them on the national scale in the first round of elections". Therefore, the 40 supplementary seats should be allocated with a view to compensate, as much as possible, the potential distortion of proportionality emerging from the outcome of the majority component of the election system. Procedural details are provided in Articles 65-68 of the Election Code and described in Annex 2.

The 2001 parliamentary elections saw attempts to deliberately circumvent the above-mentioned constitutional provision, without violating the letter of the election law. Interlocutors informed the NAM that similar trends were underway for the 2005 election. Such attempts test the law beyond acceptable limits. They must not be repeated in order to demonstrate clear political will to conduct a genuine democratic election and uphold achieved improvements. Furthermore, intentional circumvention of constitutional priorities is not consistent with the stated goal of Albania to conduct genuine democratic elections.

While the political landscape of Albania remains dominated by the Socialist Party (SP), the Democratic Party (DP) and their respective traditional allies, new actors such as the Socialist Movement for Integration (SMI) and the Movement for National Development (MND) have emerged. Lack of trust still prevails among political actors and hampers the overall pre-election environment.

The OSCE/ODIHR and the Council of Europe's Venice Commission issued Joint Recommendations on the electoral law and the electoral administration in Albania in 2004, with the aim to support the efforts of Albania to conduct elections in line with OSCE Commitments and other international standards for democratic elections.

A bi-partisan *ad hoc* parliamentary committee, with the strong support of the OSCE Presence in Albania, achieved a number of improvements in the electoral framework, through agreements between both major parties, including:

- a “balanced” composition of the CEC;
- an improved Electoral Code;
- a new framework for voter registration and compilation of voter lists.

An agreement on a new map of electoral constituencies, respecting to a large extent the legal requirements, was also worked out during the first months of 2005.

While these improvements were broadly recognised, they fell short of fully meeting the Joint Recommendations. Additionally, delays in the election reform reduced the time available for election preparations.

The upcoming parliamentary elections will be administered by a three-tiered election administration: Central Election Commission (CEC), 100 Zone Election Commissions (ZEC) and some 4,600 Voting Centre Commissions (VCC). As of the time of the OSCE/ODIHR Needs Assessment Visit, the appointment of ZEC was being delayed by political parties failing to propose nominees for appointment by the CEC.

In addition, for the first time in Albania, counting will be done in 100 Counting Centres (CC), one in each zone, rather than in the voting centres. While agreed and designed to address problems observed in past elections, this new system also raises questions related to respecting legal deadlines, logistical challenges, and appointment and training of counting personnel.

The overall pre-election environment impacts on the performance of the election administration, in particular the CEC. The NAM heard concerns about CEC members voting along party lines, possible political interference and members' comments in the media, affecting in part its collegial, professional and independent performance. This situation is also compounded by tendencies among political parties to misuse issues of a technical nature by

turning them into matters of political controversy. The EOM intends to pay particular attention to the performance of the Central Election Commission.

Despite the substantial positive changes made to the legal framework for voter registration, delayed implementation may impact negatively on the quality of the final voter lists. Preliminary voter lists are posted for public scrutiny. Voters should meet their civil responsibilities to inform the administration for necessary corrections in a timely manner, while administration should accurately reflect such eligible changes in the final voter lists. An intensive public awareness campaign needs to be conducted calling on citizens to go and check their registration in the preliminary voter lists.

As the electoral campaign will officially start on 3 June, election stakeholders met by the ODIHR team expressed concerns in regard to insufficient control of parties' and campaign funding.

A broad spectrum of generally free broadcast and print media provides voters with diverse information and facilitates informed choices. Broadcast media have seen a significant and rapid development over the past years. Positive trends in the media coverage of elections have been noted over the previous electoral processes. However, issues such as independent reporting and weakness of the media regulator, compel the EOM to focus on these specific aspects in addition to the coverage of the electoral process by the media.

All Albanian stakeholders welcomed a substantial election observation effort and insisted on the deployment of an important number of observers. Domestic observation is likely to be undertaken by a coalition of domestic NGOs with the support of the National Democratic Institute for International Affairs (NDI).

The NAM recommends that an EOM be deployed to the Republic of Albania in the first half of May to assess the conduct of the 2005 parliamentary elections in line with domestic legislation, OSCE commitments and other international standards for democratic elections.

The OSCE/ODIHR kindly requests the OSCE participating States to second 30 long-term observers from mid-May until two weeks after election day, and 400 short-term observers to be deployed across the Republic of Albania for the week around election day to monitor voting and counting procedures.

III. FINDINGS

A. POLITICAL CONTEXT

The 2005 Elections will be a crucial test for the sustainable development of the democratic process in Albania. While in recent years Albania has shown a consistent trend towards improvement of its elections, further efforts are needed for the conduct of elections in line with OSCE Commitments and other international standards for democratic elections.

As regards the 2001 parliamentary election, the OSCE/ODIHR concluded that despite improvements, more political will was required from the leadership of the SP in order for the

election to fully meet international standards. Notably, all Albanian election stakeholders recognised the 2001 OSCE/ODIHR Final Report and its findings in their entirety.

The Albanian political system, since 1991, has been highly polarised, with two dominant political parties, the SP and the DP, competing for power at both the state and local levels. The SP, led by Prime Minister Fatos Nano, has held power at the state level since 1997, when DP, led by Dr. Sali Berisha, lost majority after five years of dominance.

The SP majority was repeated in the 2001 parliamentary elections, while the DP considered these elections to be characterised by fraud and boycotted the main institutions, including the Parliament. In February 2002, a less confrontational phase commenced, which led to the opening of discussions on a reform of the electoral framework, the setting up an ad hoc bi-partisan parliamentary committee on electoral reform, and to the consensual election of the President of Albania by the Parliament in the summer of 2002. This was seen by many as a political remedy to the violations encountered during the 2001 parliamentary elections. A month after the election of President Alfred Moisiu, SP Chairman Fatos Nano became Prime Minister.

Typically, bi-partisan systems tend to define the overall political environment in which all parties operate. While the main political parties represent stable elements in Albania's political framework, alliances around them may be marked by instability and a propensity for fragmentation. Currently, around 90 political parties are officially registered with the Tirana District Court, out of which 15 are represented in Parliament. The Parliament currently comprises 8 parliamentary groups¹ and 3 independent MPs.

In the fall of 2004, former SP Prime Minister Ilir Meta broke away from the socialist parliamentary group and founded the Socialist Movement for Integration. A political grouping called MND brings together the Legality Movement Party (LMP affiliated with the former monarchy), the Renewed Democratic Party (RDP) and others.

The polarised atmosphere has resulted in an overall lack of trust between political opponents, with a particular impact on the elections process. So far, elections in Albania have failed to fully meet OSCE commitments and other international standards for democratic elections. In addition, electoral reforms have encountered difficulties, mostly due to an overall lack of trust and a general reluctance to make concessions. The international community, including in particular the OSCE Presence in Albania and ODIHR, has been substantially involved in supporting Albania's electoral reforms through the provision of specific expertise.

¹ Parliamentary groups should be composed of no less than seven members. The current majority is composed of the Socialist Party Group (61 members), the Social Democratic Party Group (composed of two SDP members and five SP members) and the Centre Group (7 members) which brings together MPs of the Environmentalist Agrarian Party (EAP), the Human Rights Union Party (HRUP), the Social Democracy Party (SDY) and the Democratic Alliance Party (DAP). Outside the ruling coalition, one can find the Socialist Movement for Integration (SMI) Group, composed by nine SP-elected MPs, the Democratic Party Group (30 MPs), the Reform and Demo-Christian Group (seven members) which includes five MPs from the New Democratic Party (NDP), one from the Demo-Christian Party (DCP) and one from the Movement for Human Rights and Freedoms party (MHRFP); the Republican Party (RP) Group (eight members including three DP MPs), and the Movement for National Development (MND) Group, bringing together MPs from the Legality Movement Party (LMP – affiliated with the former monarchy), two MPs from the Renewed Democratic Party (RDP), one MP from the RP and one independent.

The OSCE/ODIHR observed the 1996, 1997, 2001 parliamentary elections, the 1998 constitutional referendum, and the 2000 and 2003 municipal elections. A consistent tendency towards improvement has been noted, in particular after the 2000 municipal elections, with regards to the general campaign atmosphere, the media coverage, the performance of the police and the respect for institutions. Yet, it is still necessary to enhance the respect for the rule of law and political ethics, in order to prevent impediments that have the potential to hamper progress achieved to date.

B. ELECTORAL SYSTEM AND INDICATED IMPLEMENTATION

The electoral system is set up by Article 64 of the Constitution. Article 64.1 determines a fixed number, 140, of members of the Assembly, as well as the numbers of members to be elected by majority (100) and proportional (40) allocations. Thus 71 percent of the members are elected through a majority allocation and 29 per cent through a proportional one, however both allocations are interrelated in view of Article 64.2, please see below. The majority elections are conducted in one round of voting. There should be no other round of voting except for possible reruns, to be conducted in one single day, to remedy violations established by the relevant authorities. According to Article 64.3 of the Constitution, “parties that receive less than 2.5 percent, and party coalitions that receive less than 4 percent, of the valid votes on the national scale in the first round of elections do not benefit from the respective multi-name list.”

Article 64.2 of the Constitution sets an overall objective of proportionality, “to the closest possible extent”, between the party and coalition votes received by the electoral subjects on the first round of voting and the composition of the Parliament. The words “to the closest possible extent” indicate that there may be occasions where complete proportionality is not possible due to the fixed number of seats, as well as to the difference between numbers of seats obtained through majority and through proportional allocations. These are key differences between the Albanian electoral system and other systems, which may be incorrectly perceived as similar to it.

From the above it becomes clear that achieving proportionality, “to the closest possible extent”, is a priority within the framework provided by Article 64.1 and 64.3 of the Constitution. Relevant procedures are described by Articles 65-68 of the Electoral Code, see also Annex 2.

However, the above constitutional framework is open to abuse by party strategies aiming at maximising party interests to the detriment of proportionality “to the closest possible extent”. The 2001 parliamentary elections² saw two attempts to circumvent the objective of proportionality, by testing “the law beyond acceptable limits” without violating the letter of the Electoral Code, and in effect distorting the possible extent of proportionality in the translation of votes into seats.

Surprisingly, the NAM was informed, that a strategy, similar to the one applied in 2001 in Zone 60, and often referred to as “Mega Dushk”, is again being considered by the SP, with the intention to be applied throughout Albania. Such concerns were expressed by a number of interlocutors, including the DP, its traditional allies and the SMI. The SP, as well as traditional SP allies did not see a problem. Further to that, the DP stated that if SP goes ahead with this strategy, the DP would have no choice but to apply it as well.

² OSCE/ODIHR Final Report; <http://www.osce.org/odihr>.

If applied by both major parties, such a strategy might play to the disadvantage of parties, which are not members of *de facto* coalitions along with the SP or DP, and which mostly have a chance for parliamentary representation through the allocation of the 40 supplementary seats. Additionally, there is a concern that in view of the complexity of the election system, voters following possible party lines consistent with these strategies, might not be fully informed about how their choice will ultimately translate into seats.

While these strategic voting schemes might appear as remaining within the overall remit of the Law, it is very clear that they contradict the objective of proportionality established by the Constitution. The Constitution recognises that the electoral system by itself can generate some degree of variance between the ideal proportionality and the actual allocation of seats. Yet, “Mega-Dushk” schemes could generate variances between party votes and final numbers of seats that would go clearly beyond the variances inherent to the election system, and therefore contradict the constitutional objective of proportionality set out in art.64.2.

Typical for proportional allocation systems with thresholds, votes cast for parties and pre-electoral coalitions that fail to overcome legal thresholds are not accounted for in the allocation of parliamentary seats. Such concerns are usually addressed by including less influential parties in pre-electoral coalitions, rather than by tactical voting as the one seen in Zone 60 in the 2001 parliamentary elections. Further to that, in the context of Article 64 of the Constitution of the Republic of Albania, pre-electoral coalitions are likely to enhance the constitutional objective for proportionality, unlike party strategies based on *de facto* pre-electoral coalitions formalised only after the elections.

[Possible scenarios illustrating effects of party strategies attempting to circumvent Article 64.2 of the Constitution are considered in Annex 2.]

The electoral system was simplified to some degree by removing from the Electoral Code provisions for a second round of voting for the majoritarian elections. This amendment was aimed at addressing earlier concerns regarding the complexity of the election system and its protracted implementation. However, the system remains complex and possibilities for protracted implementation are not excluded, since some opportunities for repeated voting remain.

Implementation of party strategies prioritising party interest over the constitutional requirement of Article 64.2 of the Constitution may be interpreted as lack of sufficient political will for honest implementation of the law. Such attempts to deliberately circumvent the constitutional objectives test the law beyond acceptable limits. They must not be repeated in order to demonstrate clear political will to conduct genuine democratic elections and uphold achieved improvements. Furthermore, intentional circumvention of constitutional priorities is not consistent with the stated goal of Albania to conduct genuine democratic elections.

C. LEGAL FRAMEWORK AND ELECTORAL REFORM

The Electoral Code was first adopted by Parliament on 19 June 2003, primarily on the basis of amendments to the previous law agreed consensually in a bi-partisan parliamentary committee on electoral reform, co-chaired by the SP and DP with representation from all parliamentary parties. This new framework was first applied to the October 2003 local elections. While these

elections demonstrated improvements compared to the 2001 parliamentary elections, several provisions of the new code were still considered as problematic.

In 2004, the OSCE/ODIHR and the Council of Europe's Venice Commission issued Joint Recommendations on the Electoral Code and the electoral administration in Albania. The Joint Recommendations stated that the legislation could provide an adequate basis for a democratic election, but stressed several issues of concern and insisted that "the extent to which any amendments to the law can have a positive impact will ultimately be determined by the level of good faith and political will exhibited by political parties, state institutions and officials responsible for implementing and upholding the law."

The OSCE Presence in Albania and OSCE/ODIHR have engaged substantially in providing support to the implementation of the recommendations that were devised in OSCE/ODIHR's final reports and in the Joint Recommendations.

Following the signature of a protocol at the beginning of July 2004 between both major political parties, an *ad hoc* bi-partisan parliamentary committee was established, supported by a technical expert group (TEG), aimed at preparing draft pieces of legislation to be presented to the parliament for adoption. The TEG, chaired by the OSCE Presence in Albania, soon appeared to be the main forum of negotiation for all issues related to the election reform. These negotiations, as well as the work in the *ad hoc* committee, were hampered by a lack of trust between participants and at times a lack of political will to improve the process.

An improved Electoral Code was adopted on 10 January 2005. It brings about several positive developments, in particular concerning the election administration structure and functioning, the compilation of voter lists, counting proceedings, and deadlines for complaints and appeals. Most of these amendments endeavour to answer, to an extent, recommendations made by the OSCE/ODIHR and the Venice Commission.

Towards the end of 2004, the redrawing of electoral constituencies ("zones") became the most prominent issue. The zones boundaries inherited from the 2001 parliamentary elections had been drawn based on the figures of the 2000 Voter lists, which were considered as highly unreliable. In addition, these zones permitted an over-representation of southern Albania at the expense of northern and central Albania, and were seen as favourable to the Socialist Party whose base of support is mostly considered to be in the south.

After debates within an Electoral Zones Technical Expert Group and mediation from the OSCE Presence in Albania, both major political parties agreed on 30 December 2004 on a Protocol setting forth the basis and the criteria to redraw the electoral zones. On 1 February 2005 the Expert Group discussed a proposal considered to be the closest to the requirements of the Law: According to this solution, the region of Vlora would lose two seats, and Berat one; Tirana would gain two seats and Diber one seat. Yet, there was no consensus on such a solution, and this started a phase of long negotiations, at times acrimonious, on the actual changes to be made.

Eventually, both parties agreed to a solution whereby Vlora and Berat would lose one seat each, and Tirana and Shkodra would gain one each, and on 3 March, the agreement was spelled out in a new Law "on the establishment of electoral zones". While the solution reached is an

improvement over the past situation, it does not fully meet the requirements of the law in a number of zones³.

D. ELECTION ADMINISTRATION

The upcoming parliamentary elections will be administered by a three-tiered election administration: the Central Election Commission (CEC), 100 Zone Election Commissions (ZEC) and some 4,600 Voting Centre Commissions. For the first time in Albania, counting will be done in 100 counting centres, one in each zone.

The CEC is composed of seven members with a seven year mandate. Two are appointed by the Assembly, two by the President of the Republic, and three by the High Council of Justice. Under the current Electoral Code, political parties exercise substantial political influence on the nominating procedures. While this may be a useful tool to inject a degree of confidence in the process, if excessive, it may also have negative implications. The rationale of an election administration composed by party representatives is to build confidence. However election administrators are first and foremost administrators tasked to implement the law as it stands, and ultimately they are not and should not perceive themselves as politicians.

The main point of contention in the second half of 2004 has been the composition of the CEC, and whether or how the CEC should be “balanced”. “Balancing” the CEC was generally understood to mean that instead of having a CEC strongly dominated by the parliamentary majority (5 members out of 7), which had generated lack of confidence in the 2001 parliamentary elections and in the 2003 local elections, the SP should surrender at least one seat in favour of the opposition. The resolution of this issue has slowed the process of electoral reform.

An agreement was reached on 14 October 2004, whereby the SP would surrender one seat and DP gain one. While most decisions of the CEC are reached by an absolute majority of 4 votes out of 7, a qualified majority of 5 votes out of 7 is required for the certification of the election results.

This reform, while reaching a balance in the right of political parties to appoint CEC members, failed to address fully the OSCE/ODIHR and Venice Commission recommendations which recommended more professionalism and less politicisation within the CEC. Currently, the lack of trust among key political players is hampering the move towards an election administration free from undue political interference, and CEC members have often been divided along lines of alleged political preferences. The CEC and lower level election commissions need to develop a culture of collegiality and confidence.

According to the provisions of the new Electoral Code on ZEC composition, six members are appointed based on nominations from three parties on each side of the political spectrum. The seventh member of both ZECs and VCCs is assigned to the largest governing and opposition parliamentary parties on a parity basis, determined by “random selection”. Election contestants can request the replacement of the members they have proposed. Such a possibility might

³ In particular, while art.181.1.of the Electoral Code provides that “No electoral zone may be subject to a deviation of more than 10 percent from the average number of voters on a national scale”, the number of voters in several zones varies by more than 10 percent from the national average.

strengthen the effect of political affiliations with commissions and, if abused, destabilize the election administration.

Voting Centres Commissions (VCC) members are nominated by ZECs according to the same formula as ZECs no later than 10 days before election day.

Voter lists

New legislation to reform the voter registration process was adopted between October 2004 and January 2005. Importantly, it tasked the local government authorities with all responsibilities related to the compilation of the voter lists on the basis of information from the civil status books. This was a welcome development, since the local government maintains the books with the civil status data of the population. The central authority, the Ministry for Local Government and Decentralisation (MLGD), was tasked to check the amalgamated local government data for some specific types of possible multiple records. The Ministry also agreed to check the preliminary voter lists for any other types of possible omissions and inform the local government accordingly, with a view that the final decisions are taken by the local government, as provided by the Law.

To implement the new legislation, two exercises had to be conducted successively: First, an overhaul of the civil registries combined with the allocation to citizens of a numerical address⁴ had to be conducted, which would create a link between the person and the location of his registered permanent residence. Secondly, new computerised voter lists, based on civil registries, had to be compiled from scratch. Both tasks were performed by local government units, with the methodological support of the MLGD.

This process has been a major challenge for all local government units. The registration exercise might have been hampered by the fact that significant population movements and a high degree of “informality” made the location of some citizens difficult. In addition, local government units had only a few weeks to build computerised voter lists before they had to publicly display them on 1 April. Scarce resources and electricity cuts have been a major obstacle. Finally, field visits by the OSCE Presence and by the OSCE/ODIHR, showed that guidance from MLGD might have occasionally lacked clarity. In the end, lack of uniformity in the procedures applied, and a lack of time and resources, might affect the final quality of the lists.

Figures indicate that the most important potential problem lies with people not identified during the registration exercise and who have moved from the place where they are registered in civil status offices. These people might have voted in 2003 where they live because the rules for registration were different and not related to civil registries. Some of these people might have emigrated. Others might have refused to be identified by verification teams. Figures indicate that these phenomena might exist in rural areas more than in urban ones, and do not seem to affect local government units headed by a particular political party more than the others.

In this regard, a temporary re-establishment of the exemptions of a registration fee and other requirements as set forth in art 20 of the Law on Verification, Identification, and Registration of Citizens by the Local Government Units and in force until the end of February 2005, could

⁴ Albania is still in the process of developing a proper address system. Among other inconveniences, this has contributed to the poor quality of previous voter lists.

contribute to address this issue, and further increase the accuracy of the civil registers. Mayors could then add these new registrants in the final voter lists, which they should have until 8 June to draw up.

A central facility has been set up within the MLGD to perform the identification of potential multiple records in the preliminary voter lists and communicate them to the Mayors for analysis and resolution. This task will be crucial to the quality of the lists. On 24 March, a Memorandum of Understanding was signed between the OSCE Presence in Albania and the MLGD whereby the OSCE Presence would support the MLGD with equipment, while the MLGD would commit itself to grant full access and information to political parties.

As lists are now being displayed for public scrutiny, a number of them with delays, the CEC, the MLGD, and more generally all stakeholders, have to undertake strong public awareness campaigns. In particular in broadcast media, such campaigns should ask voters to come and check their names on lists. It is foreseen that the period for public scrutiny would end on 3 May. An extension of this deadline, compatible with the timeframe established for compiling final voter lists, is advisable, as it would increase the chances for voters to come and check their registration data.

The current system also envisages the possibilities for eligible voters not on the lists to register on a supplementary list on election day, if they can obtain a decision from a district Court.

Allegations have been made to the OSCE/ODIHR team that the lists were being tampered with. The OSCE/ODIHR stands ready to review and analyse any evidence indicating that such manipulation might be underway. It is worth mentioning that a multi party *ad hoc* parliamentary committee “on the implementation of the Electoral Code” has been established, in order to monitor, among other issues, the preparation of voter lists. This committee is due to nominate investigating teams to conduct random checks. Such a mechanism, if given a possibility to perform efficiently, should enhance transparency and confidence in the process.

Centralised count

This is one of the novelties of this election reform. Counting used to be done in polling stations. Frequent lack of professionalism or adequate training of commission members, combined with politicisation of commissions, and at times with bad faith, affected the accuracy and efficiency of the tabulation of results. Problems such as delays in tabulation, VCC members abandoning the process, refusal to tabulate results, conflicts among commission members representing rival parties, and in the worst case, tampering with protocols, have been observed in past elections.

Upon a proposal from the TEG in December 2004 to adopt a centralised counting mechanism, the Parliament passed the relevant amendments on 10 January 2005. Such procedures foresee that upon closure of polls, the election material from each of the approximately 4.600 polling stations should be transported to one of the 100 centralised Counting Centre (CC) to be created. All commission members should accompany the box, together with a policeman who should be in the same vehicle with the commissioners to protect the physical integrity of the box.

Yet, the procedures established for the centralised count raise questions related, *inter alia*, to the respect of legal deadlines, the transport of ballot boxes from polling stations and the rights of observers to follow the material from polling stations to counting centres and during the

count of the votes, the appointment and training of counting personnel. The EOM wishes to be able to deploy enough observer teams to cover all counting centres.

E. MEDIA

A number of TV stations and radios have started broadcasting in Albania over the past years and dominate the media landscape. Newspapers have generally limited circulation.

The public broadcaster Albanian Radio and Television (RTSh) controls one TV channel and two radios covering around 80 percent of the territory of Albania. Private national broadcaster Klan TV covers approximately 46 percent of the country and is part of Media 6, a media group also running other media, newspapers, and internet. The other private national broadcaster is TV Arberia, covers approximately 30 percent of Albania.

Many important broadcasters have licenses only for local broadcasting, often for four regions out of 12. This is the case of Top Channel, part of a media group which also controls Top Albania Radio. Other TV channels licensed as local broadcasters include Vision +, News 24, a round the clock news channel, and Shijak TV, which is often perceived as being close to DP, and was shut down for several days in December 2004 for broadcasting pirated programmes. The case is currently pending.

Broadcast media are regulated by the September 1998 “Law on public and private radio and television in the Republic of Albania”. A National Council for Radio and Television (NCRT) is responsible for overlooking media conduct. It started operating in 2000 and comprises seven members, three nominated by the parliamentary majority, three by the opposition and one by the President of the Republic. NCRT issues licenses and can suspend or revoke them. It monitors broadcast programmes and drafts regulation on licensing. Previous OSCE/ODIHR election observation missions have found it weak in using its power of sanction. During the electoral period, the media coverage of election-related issues is monitored by a Media Monitoring Board operating under the authority of the CEC and is regulated by specific provisions of the Electoral Code.

As regards the printed media, Shekulli, with about 20,000 printed copies, is the most read newspaper, followed by Panorama (about 15,000), Korrieri (about 8,000), Gazeta Shqiptare (about 5,000), Balkan (4,000 – 5,000), Tema (about 4,000).

Since the 2000 local government elections and through the 2001 parliamentary elections and the 2003 local elections, media have displayed positive trends, in particular in terms of compliance with legal provisions and balanced reporting. Yet, the ownership structure of most media outlets and its effect on their independence, the weaknesses of the regulatory body and the high stakes of the forthcoming elections make it necessary for the EOM to pay particular attention to this issue.

F. PARTICIPATION OF WOMEN

Previous OSCE/ODIHR reports have noted that although very active at the grassroots level in politics, women generally face difficulties in being selected as candidates and reaching leading positions in political parties. Women were also underrepresented in the election administration.

Most Albanian stakeholders met by the OSCE/ODIHR team have indicated they considered it as an area where significant improvement was needed and have shown willingness to tackle the issue. The OSCE/ODIHR EOM will pay particular attention to the participation of women in the electoral process, both as competitors and as election administration staff.

G. INTERNATIONAL AND DOMESTIC OBSERVERS

The Electoral Code (art.18) grants the right to send observers to “*Albanian and foreign non-governmental organisations, as well as international organisations specialised or engaged in the area of protection of human rights, representatives of foreign countries and of the media.*” In addition, political parties registered with the CEC and independent candidates in their respective zones can appoint an observer per ZEC, VCC and Counting Centre. The presence of observers in ZEC, VCC and CC is limited to two per organisation, NGO or election contestant. Requests for domestic observers have to be forwarded to the CEC up to 15 days before election day, and requests for international observers up to 72 hours before election day.

All local stakeholders met have asked for a significantly high number of observers to be deployed by the OSCE, on election day and throughout the process. In addition to the foreseen deployment of OSCE/ODIHR observers, there is a possibility that the international NGO coalition ENEMO could send a limited number of observers, and that the Francophonie might also send observers.

As regards domestic observation, seven domestic NGOs⁵ are expected to deploy about 2,500 domestic observers, with the support of the US National Democratic Institute for International Affairs (NDI). In addition, the Albanian Disability Rights Foundation intends to evaluate the access to voting for voters with disabilities, and MJAFT! (Enough!) might conduct exit polls.

Around Election Day, it is expected that the OSCE/ODIHR election observation mission will be joined by parliamentarians from the Parliamentary assembly of the Council of Europe and the European Parliament⁶.

The Director of the OSCE/ODIHR has nominated Mr Jørgen Grunnet (Denmark) to head the OSCE/ODIHR election observation mission.

IV. CONCLUSIONS AND RECOMMENDATIONS

The OSCE/ODIHR NAM recommends that an EOM be established in mid-May 2005, to observe the forthcoming parliamentary elections in the Republic of Albania. In addition to a core team of experts, the mission should include 30 long-term observers to be deployed throughout the Republic of Albania to follow the campaign and election preparations. In addition, the secondment by participating States of 400 short-term observers to follow election day procedures and counting is considered necessary.

⁵ Albanian Coalition Against Corruption, Society for Democratic Culture, Albanian Institute for Electoral Assistance and Democracy, the Kombinat Centre, Women’s Centre, Fan Noli Foundation and KRIIK-Albania.

⁶ The OSCE Parliamentary Assembly is due to hold its annual session in Washington from 1 till 5 July. As of writing this report, its participation in the International Election Observation Mission was not confirmed.

ANNEX 1.

OSCE/ ODIHR NAM, 11-16 April 2005 Programme of Meetings

Monday 11 April 2005

- | | |
|----------------|---|
| 10:00 hrs | Preliminary briefing by the OSCE Presence |
| 11.00 hrs | Meeting with USAID Democracy Officer Mr. Bruce Kay
(ODIHR Delegation + OSCE Presence in Albania) |
| 17:30-1845 hrs | Meeting with OSCE Presence in Albania staff |
| 1900 hrs | Dinner organized by the Ministry of Foreign Affairs for the OSCE
Chairman in Office (location: Government office Villa 31) |

Tuesday 12 April 2005

- | | |
|-------------|--|
| 10:00-11:00 | Meeting with the President Alfred Moisiu
(ODIHR Delegation + OSCE Presence in Albania)
(location: at the President's residence in Durres) |
| 12:00-12:45 | Meeting with the Prime Minister HE Fatos Nano
(ODIHR Delegation + OSCE Presence in Albania) |
| 13:00-13:30 | Meeting with the Speaker of the Parliament Mr. Servet Pellumbi
(ODIHR Delegation + OSCE Presence in Albania) |
| 13:30-14:30 | Lunch with Chairman of the CEC Mr. Ilirjan Celibashi
(ODIHR Delegation + OSCE Presence in Albania) |
| 15:15-15:50 | Meeting with the Minister of Foreign Affairs HE Kastriot Islami
(ODIHR Delegation + OSCE Presence in Albania) |
| 16:10-17:10 | Meeting with the Minister of Local Government and Decentralization
HE Ben Blushi (ODIHR Delegation + OSCE Presence in Albania) |
| 17:30-18:30 | Meeting with Central Election Commission
(ODIHR Delegation + OSCE Presence in Albania) |
| 18:45-19:45 | Meeting with the Russian Ambassador
(ODIHR Delegation + OSCE Presence in Albania) |
| 19:45 | Dinner with OSCE PiA staff |

Wednesday 13 April 2005

- | | |
|-----------|---|
| 8:30-9:30 | Breakfast with the American Ambassador |
|-----------|---|

- (ODIHR Delegation + OSCE Presence in Albania)
- 9:40-10:40 Meeting with **Head of DP Dr. Sali Berisha**
(ODIHR Delegation + OSCE Presence in Albania)
- 11:00-12:30 **EU Heads of Mission** Meeting at Dutch embassy
- 12:30-14:00 Lunch with **Minister of Justice HE Fatmir Xhafaj**
(ODIHR Delegation + OSCE Presence in Albania)
- 14:00-16:00 **Round table with small political parties**

Thursday, 14 April 2005

- 14.00 - 17.30 Working meeting with **OSCE PiA staff** on election activities, with an emphasis on the Voter Registration Project

Friday, 15 April 2005

- 09:15 – 09:45 Meeting with the **Embassy of Serbia and Montenegro** (ODIHR Delegation)
- 10:00-11:00 Meeting with, **the Deputy General Director of the Ministry of Public Order, Mr. Ahmet Haxhia** (ODIHR Delegation + OSCE Presence)
- 11:45-12:30 Meeting with **Secretary General of the Ministry of Local Government and Decentralisation, Mr. Bledi Cuci** (ODIHR Delegation + OSCE Presence)
- 14:00-15:30 Meeting with **Dr.Sali Berisha, Jemin Gjana, Ilir Rusmali, Çlirim Gjata** (ODIHR Delegation + OSCE Presence)
- 16:30-18:00 Meeting with **CEC** (ODIHR Delegation + OSCE Presence)

Saturday, 16 April 2005

- 09:00-09:50 Meeting with the **Diplomatic Adviser to the PM, Mr Virgjil Muçi**
(ODIHR Delegation)
- 10:00-10:55 Meeting with **Minister of Foreign Affairs, HE Mr. Kastriot Islami**
(ODIHR Delegation + OSCE Presence)
- 11:00-12:00 Meeting with **Cas van der Horst**, Deputy Head of Netherlands Embassy and **Todd Robinson**, Political Officer of the American Embassy (N. Vulchanov, G. Saphy, W. Sporrer)

ANNEX 2.

Electoral System and Party Strategies

The procedure to allocate the 40 supplemental seats, which are the main instrument to achieve proportionality to “the closest possible extent”, includes the following steps:

- (i) determine the valid votes cast for the multi-name lists of each registered party and pre-electoral coalition, as well as the total number of valid votes cast for all parties’ and coalitions’ lists together;
- (ii) determine which parties and coalitions are eligible for participation in the allocation of the 40 supplemental seats by overcoming the thresholds provided by Article 64.3 of the Constitution;
- (iii) determine the numbers of majority seats won by parties, coalitions and independent candidates (there may be parties or coalitions that won majority seats but failed to overcome the respective threshold of Article 64.3 of the Constitution);
- (iv) compare the proportions of parties’ and coalitions’ valid votes to the respective proportions of majority seats won by them in the zone contests;
- (v) for each party or coalition, if the number of majority seats won exceeds the total number of seats it would be entitled to according to proportional votes, such party or coalition does not qualify for participation in the allocation of supplementary seats regardless of the fact that it may have overcome the threshold of Article 64.3 of the Constitution, this is the distortion of proportionality compatible with Article 64.2;
- (vi) for each party or coalition, if the number of majority seats won is less than the number of seats it would be entitled to according to proportional votes, such party or coalition is eligible for participation in the allocation of supplemental seats, if it overcame the threshold of Article 64.3 of the Constitution;
- (vii) allocate the 40 supplementary seats to eligible parties and coalitions, according to the method of the largest remainder, so as to approximate the total number of seats each party or coalition would be entitled to according to the valid votes won by them on the national scale.

Based on these constitutional and legal provisions, voters are granted the right to cast two votes: (1) one vote for a candidate in the respective zone and (2) one vote for a party or a coalition multi-name list. There are no restrictions on either of the two voters’ choices. Each voter can vote for the candidate of a particular party (or an independent candidate), and for the same or another party (or coalition) list.

The 2001 parliamentary elections saw two attempts to circumvent the objective of proportionality, without violating the letter of the Electoral Code, and in effect distort the possible extent of proportionality in the translation of votes into seats.

In the first case⁷, the strategy was to decrease the number of majority seats won by the SP and thus increase its chances to qualify for participation in the allocation of the supplementary

⁷ The SP stated support for 20 majority candidates, all prominent SP figures, registered as independent candidates, without registering SP candidates in these zones. The DP responded by stating support for 93 “independent” candidates.

seats. Voters were to be asked to vote for the “independent” candidate supported by the SP in the respective zone, and for the party multi-name list. The OSCE/ODIHR assessed this strategy as testing “the law beyond acceptable limits”.

The second case occurred in a re-run ordered by the CEC to be conducted two weeks after election day in Zone 60. In that case, since the SP had already ensured a number of majority seats which would make the party ineligible to participate in the allocation of the 40 supplementary seats, its strategy was to ensure parliamentary seats for its *de facto* allies⁸. To achieve this, the SP asked its supporters to cast their majority votes for the SP candidate registered in Zone 60 and cast their proportional votes for three of its *de facto* allies. The SP achieved this through decreasing its own proportional vote, thus acting contrary to the constitutional priority, requiring proportionality “to the closest possible extent” as determined by Article 64.2⁹.

The extent, to which the distribution of seats in Parliament is close to the proportion of the votes cast for parties’ and coalitions’ lists can be assessed through the formula¹⁰

$$\Delta = \sqrt{\sum (v_i - s_i)^2}, i = 1, 2, \dots, N,$$

where N is the number of parties and coalitions eligible for participation in the allocation of the 40 supplementary seats, and v_i and s_i are the percentages of votes and seats of the respective eligible parties and coalitions. The quantity Δ is the size of the distortion of proportionality achieved, for ideal proportionality $\Delta=0$.

The above considerations, as well as those presented in Section III-B, can be illustrated by the following example, Table 1. Ten parties have contested the election. Three parties, A, B and C, won majority seats and passed over the 2.5 percent threshold amounting to 28875 votes. Two parties, I and J, won a majority seat but failed to pass the threshold, and one majority seat was won by an independent candidate. In addition to parties A and C, another three parties, D, E and F, qualified for participation in the allocation of the 40 supplementary seats. However, due to the high number of majority seats won, party B was not eligible to participate in the allocation of the 40 supplementary seats. Parties G and H had no seats at all. The average price of one seat was 8250 votes and 85,000 votes were not accounted in this allocation.

⁸ Following an interruption of the distribution of election materials for the first round of elections in the then Zone 60, the first round of voting in this zone was postponed with two weeks and took place on the day when second round contests were held. In Zone 60, in the course of these two weeks, the SP campaigned among voters to cast their majority vote for the SP candidate registered in this zone, and their proportional vote for one of three parties, the Democratic Alliance Party (DAP), the Human Rights Union Party (HRUP) and the Agrarian Party (AP), broadly perceived as SP allies. None of these three parties were overcoming the 2.5 percent threshold after the counting of the votes after the regular first round. As a result, in Zone 60, the SP candidate won 58.8 percent of the majority vote, the SP won 5.6 percent of the proportional vote and the three *de facto* SP allies won between 2,000 and 3,600 votes (between 16 and 28 percent of the proportional vote in the zone). This was enough for DAP, HRUP and AP to qualify for participation in the allocation of the 40 seats and each was allocated three seats.

⁹ However, the Election Observation Mission to the 2001 parliamentary elections noted (p.16) in its final report a complaint of the DP, that in a number of VCC in the then Zone 33 polling station results protocols, including the ZEC tabulation form, were tampered with by transferring votes to DAP. Similarly, in the then Zone 13, a representative of the SP formally complained that SP votes were allegedly re-allocated to the AP.

¹⁰ This formula defines the distance between two points in a n -dimensional Eukclidean space.

Table 1

Parties	Votes	v_i , %	Seats Maj.	Seats Total	s_i , %
A	400000	34.632	40	49	35.00
B	350000	30.303	56	56	40.00
C	150000	12.987	1	15	10.71
D	80000	6.926		8	5.71
E	60000	5.195		6	4.29
F	30000	2.597		3	2.14
G	25000	2.165		0	0.00
H	25000	2.165		0	0.00
I	20000	1.732	1	1	0.71
J	15000	1.299	1	1	0.71
Independents			1	1	0.71
Valid votes	1155000	100.00	100	140	100.00

In the absence of any strategy prioritising party interests over the constitutional requirement for proportionality to the closest possible extent, the average distortion of proportionality was $\Delta=10.1$ %. This is the distortion, intrinsic to the particular election system, which is due to the disproportionately high (relative to its percentage of proportional votes) number of majority seats won by party B.

However, if party B applied the strategy to support a number of “independent” candidates without fielding its own candidates in the respective zones, the outcome would change dramatically. If party B supported 19 “independent” candidates, without fielding its own candidates in the respective zones, and all 19 won seats, and all other data of Table 1 remained valid, party B would be eligible for participation in the allocation of the 40 supplementary seats and would win six of them. While the distortion of proportionality has decreased twice, $\Delta = 4.88$ %, it does not take into account the fact that the percentage of independents is now more than 14%. The *de facto* distortion, taking into account the party support for the “independent” candidates, will be $\Delta = 15.48$ %.

If party B applied a strategy similar to the SP one from Zone 60 of 2001, “donating” 10,000 votes to each of parties G and H, all other data of Table 1 remaining valid, both parties G and H would qualify for participation in the allocation of the 40 supplementary seats, and each would win 3 seats. However, this would decrease further the percentage of votes for party B, from 30.3% to 28.57%; and the intrinsic distortion of proportionality would slightly increase from $\Delta = 10.1$ % to $\Delta = 12.32$ %. More importantly, since these parties are affiliated to party B, they *de facto* “donate” to party B six seats in Parliament, to the disadvantage of party A (-2 seats), C (-2 seats), party D (-1 seat) and party E (-1 seat). The valid votes lost due to the 2.5% threshold decrease from 85,000 to 35,000. However, the same effect could be achieved through a pre-election coalition between parties B, G and H with distortion from proportionality $\Delta = 5.82$ %.

Consideration of the same strategy, with “donations” of 90,000 votes from party B to parties G and H, shows that both receive 7 seats each. This happens to the disadvantage of parties A and C (-4 seats each), party D (-3 seats), party E (-2 seats) and party F (-1 seat), with distortion from proportionality $\Delta = 26.26$ %. Notably, the efficiency of the “donation” decreases because with 20,000 “donated” votes the “gains” are six seats, while with 180,000 “donated” votes (9

times more) the “gains” are 14 seats (less than 3 times more). However, the “donor” party B loses nothing, because it remains ineligible for participation in the allocation of the 40 supplementary seats, even if it donates all of its proportional votes. In the extreme case, when party B “donates” all its proportional votes, the distortion from proportionality $\Delta = 41.11\%$, to the disadvantage of party A (-5 seats), party C (-7 seats), party D (-4 seats), party E (-3 seats) and party F (-1 seat).