Parliamentary Assembly
Assemblée parlementaire
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 11567
14 April 2008

Observation of the Presidential election in Montenegro (6 April 2008)

Report
Bureau of the Assembly
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1. Introduction

1. Following an invitation by the President of the Parliament of Montenegro, the Bureau of the Assembly decided, at its meeting on 25 January 2008, to set up an ad hoc committee to observe the presidential election in Montenegro, scheduled for 6 April 2008. At its meeting on 13 March 2008, the Bureau appointed me as chairman of the ad hoc committee.

2. On 4 October 2004, a co-operation agreement was signed between the Parliamentary Assembly and the European Commission for Democracy through Law (Venice Commission). In conformity with Article 15 of the agreement: "When the Bureau of the Assembly decides to observe an election in a country in which electoral legislation was previously examined by the Venice Commission, one of the rapporteurs of the Venice Commission on this issue may be invited to join the Assembly's election observation mission as legal adviser", the Bureau of the Assembly invited an expert from the Venice Commission to join the ad hoc committee as adviser.

3. Based on the proposals by the political groups in the Assembly, the ad hoc committee was composed as follows:

– Mr David Wilshire, head of delegation

– Group of the European People's Party (EPP/CD)

  - Mr Jean-Charles Gardetto, Monaco

– Alliance of Liberals and Democrats for Europe (ALDE)

  - Mr Serhiy Holovaty, Ukraine

– European Democrat Group (EDG)

  - Mr David Wilshire, United Kingdom

– Venice Commission

  - Mr Owen Masters, United Kingdom

– Secretariat

  - Mr Vladimir Dronov, head of secretariat

  - Ms Daniele Gastl, assistant

4. The ad hoc committee worked as part of an International Election Observation Mission (IEOM) alongside the Election Observation Mission of the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR). Working effectively together was challenging.

5. The ad hoc committee met in Podgorica from 4 to 7 April 2008 and held, *inter alia*, meetings with presidential candidates, the President of the Parliament of Montenegro, the Montenegrin delegation to the Parliamentary Assembly of the Council of Europe, the Head of the State Election Commission (SEC), the Head of the Election Observation Mission of the OSCE/ODIHR and his staff, the Head of the Election Commission (EC) office in Montenegro, as well as representatives of civil society and the mass media.

6. On election day, the ad hoc committee was split into three teams which observed the elections in and around Podgorica, in Tuzi, Golobovci, Virpazar, Kotor, Vranjina, Petrovac, Vlcinj, Bar, Cetinje, Bijeln, Prcanj.

7. The ad hoc committee concluded that the presidential election in Montenegro on 6 April 2008 was generally in line with the European standards for free elections. The citizens of Montenegro could freely and fairly make their choice on election day from a pluralist range of political platforms. The press release issued after these elections appears in the appendix).

8. The ad hoc committee wishes to thank the Special Representative of the Secretary General and staff of the Council of Europe Office in Podgorica for their co-operation and the support provided to the ad hoc committee.

2. Political and legal framework, candidate registration

9. The 6 April 2008 election was the first presidential election to take place since the Montenegrins voted for independence in a referendum, on 21 April 2006. The election was held under Montenegro's new constitution, adopted in 2007.

10. Montenegro is a multi-ethnic state, with a population of 670 000 (according to the 2003 census), of which about 40% are Montenegrins, 30% are Serbs, 14% are Bosniaks and Muslims, 7% are Albanians, 1% are Croats and 1% are Roma.

11. The political landscape is pluralistic. The governing coalition is made up of the Party of Democratic Socialists (DPS), led by Milo Djukanović and its main partner, the Social Democratic Party (SDP), led by the Speaker of the Parliament, Ranko Krivokapić. Two minority parties, the Croatian Civic Initiative (HGI) and the Democratic Union of Albanians (DUA) are also represented in the government.

12. The opposition is represented by the Socialist People's Party (SNP), People's Party (NS), the Movement for Change (PzP), the Serb People's Party (SNS), the People's Socialist Party (NSS), the Democratic Party of Unity (DSJ), the Serbian Radical Party (SSR), the Liberal Party of Montenegro (LPCG), the Bosniak Party (BS), the Democratic Alliance (DA) and the Albanian Alternative (AA).

13. The presidential election was governed by a new legal framework amended in the wake of the June 2006 declaration of independence. This framework includes the Law on the Election of the President (December 2007) and the Law on Registers of Elections (2000). The legislative framework provides for full access by local and international observers to the entirety of the electoral process. All our interlocutors stressed the importance of scrutiny by international observers.

14. The new Law on the Election of the President contains the provision from the old legislation whereby, in the event of none of the candidates obtaining 50% of the votes plus, at least, one vote, a second round has to be organised. In such a case, the two candidates who receive the highest number of votes will compete.

15. Presidential candidates are required to collect signatures of supporters (1.5% of the electorate). Voters can only sign for candidates at a municipal election commission (MEC) office in front of at least two members of the Commission. The PzP presidential candidate, Nebojša Medojević, appealed against this provision in the Constitutional Court on the grounds that the procedure compromises the concept of secrecy of the ballot. The Constitutional Court ruled, on 28 February 2008, that the procedure is not unconstitutional.

16. Under the existing law on political party funding, €2.7 million (0.4% of the national budget) has to be allocated for the activities of political parties represented in the parliament. In addition, on 6 February 2008, the parliament, in compliance with the above-mentioned law, allocated €400 000 for the election campaign. That amount is to be evenly distributed among those candidates who obtain at least 5% of the votes.

17. Four candidates, including the incumbent President, Filip Vujanović, were registered. Other candidates included the SNP leader, Srdjan Milić, the SNS leader, Andrija Mandić (running on behalf of the Serb list comprising, in addition to the SNS, the NSS, the DSJ and the SSR), the PzP leader, Nebojša Medojević and all four candidates and their nominating parties signed the Code of Conduct proposed by the Centre for Democratic Transition, on 19 March 2008, committing themselves to a tolerant and democratic election campaign. The campaign focused on the economy, European integration, and social welfare issues.

3. Election administration

18. Montenegro has a three-tiered election administration which comprises the State Election Commission (SEC), 21 municipal election commissions (MECs) and 1 141 polling boards (PBs). The SEC is appointed by the national assembly (parliament) for a period of four years and was last appointed after the new parliament took up office in late 2006. MECs are appointed by their municipalities for the same term. The PBs are appointed for each election (one for each polling station).

19. All election administration bodies consisted of members reflecting the political composition of the body that appointed it, and of one member for each candidate. This ensured political balance and enhanced confidence in, and transparency of, the electoral process.

20. All interlocutors met by the ad hoc committee expressed general support for, and confidence in, the work of the SEC.

21. Montenegro has a passive voter registration system. Names of eligible voters are added to the public voter register by municipal administrations on the basis of information from the Ministry of the Interior. Municipal administrations remove the names of the deceased from the register. The SEC has no responsibility for the accuracy of the voter register.

22. On 29 March 2008, the SEC published the final voter register according to which the total number of registered voters in Montenegro was 490 412.

23. Montenegro's independence from Serbia resulted in some 25 000 Serbs residing in Montenegro without being nationals of the country. While, under the constitution, only Montenegrin nationals are entitled to vote, the authorities decided, with the agreement of all political parties, not to disenfranchise any voters who had been already eligible to vote in elections and referenda prior to this election. The national assembly plans to address this issue before the next election.

4. The media environment

24. There are some 15 television channels, 42 radio stations and 45 print media outlets in Montenegro. Both public and four private television channels have nationwide coverage. The other privately-owned television channels have local coverage only.

25. There are several weekly and daily newspapers offering readers a variety of views. According to our interlocutors, the media environment in Montenegro is liberal, with little restriction on the distribution of broadcast media licences.

26. Coverage of the presidential election by the public service broadcaster, RTCG, is regulated by rules adopted by its council, whose members are appointed by the parliament. However, the parliament delayed ratification of new nominations to the Council, and the number of its members was, for a long time, below the requirements stipulated by law. In the absence of the quorum required, the RTCG editorial team prepared a set of regulations based on those in force for the last elections. On 21 March 2008, those regulations were adopted.

27. Private media are governed by their own internal regulations, whereas state-owned or state-controlled channels are regulated by legislation to make sure they provide equal access and coverage to all candidates, including free airtime for campaigning.

28. The regulations adopted on 21 March included the provision of thirty minutes of free airtime for each presidential candidate on 25 or 26 March. They also provided for two free five-minute reports from candidates' rallies. The regulations further provided for a live televised debate, however, participation in that event was not mandatory.

29. News programmes which were obliged to provide equal space slightly favoured Mr Vujanović with 33.8% coverage received. This coverage refers only to campaign events, not to coverage in his role as the incumbent president. The figure is in comparison to the 23.8% received by Mr Milić, 22.2% by Mr Medojević, and 20.1% to Mr Mandić.

30. All candidates bought airtime on at least some of the television stations, as well as purchased space in newspapers for political campaigning. Although not all candidates bought airtime on all television stations, no requests were refused.

31. Television is the most important broadcasting medium in Montenegro, while newspaper circulation is one of the lowest in Europe. The public broadcasters provided a balanced coverage of the electoral campaign and adhered to legal requirements regarding equal access and coverage. Most private media provided a relatively balanced coverage of the campaign, with a number of them showing a preference for one party or another.

5. Complaints and appeals

32. Within the legal deadline, 1 306 complaints were received by the Administrative Court, all referring to decisions made by municipal authorities with regard to the voter register. Some 81 out of 856 complaints regarding inclusion to the voter register were rejected; some 60 of these were rejected on the basis of their authors' Serbian citizenship.

33. One of the candidates, Mr Medojević, submitted an appeal to the Constitutional Court, challenging the process of signature collection on the grounds that the requirement that signatures be made before two MEC members violated the secrecy of the ballot. The Court upheld the constitutionality of the existing provisions, on 28 February 2008, on the grounds that the secrecy of the ballot was not compromised by the separate mechanism for signature collection regulations.

34. A complaint was also submitted to the Administrative Court, on 1 February 2008, by an unsuccessful nominee to the RTCG Council against the parliament for not confirming members of the council. The court ruled against the complaint and the formation of the council remained delayed.

6. The campaign

35. The OSCE/ODIHR advised us that during the campaign period the political environment was generally peaceful; that the tone of the campaigning was constructive with candidates focusing on the economy, investment, social welfare and European integration; that all candidates reached out to a wide audience (including voters from religious and ethnic minorities); and that inflammatory and nationalistic rhetoric was minimal.

36. All candidates campaigned throughout the country visiting all 21 municipalities. They were able to explain their policies freely without interference. Freedom of movement and assembly were respected. Numerous rallies were held. All candidates made widespread use of posters.

37. Our interlocutors confirmed this improvement in the style and quality of political discourse compared to previous elections. They consider it a further development of political maturity.

38. The main concern of the opposition parties was what they regarded as an unequal campaign environment arising from a blurred distinction between the state and the ruling parties. Other concerns included allegations of inadequacies in campaign funding legislation, unfair coverage in the state media.

39. There were persistent rumours of vote buying and police intimidation. The ad hoc committee could not find any evidence to support these rumours.

7. Election day

40. Our interlocutors told us that they were not expecting any election-day fraud and displayed great confidence in the integrity of the voting and the vote counting as ensured by political, legal and administrative safeguards and control.

41. Throughout election day, voting took place in an orderly and generally peaceful manner. IEOM observers were present at the opening of 59 polling stations and scored the process positively in 97% of cases. Some 12% of polling stations observed did not open on time and some procedural points were not always followed. This included not drawing lots for determining responsibilities of polling board members in 31% of cases. Unauthorised persons, generally party activists, were observed in 14% of opening procedures observed.

42. During the course of voting, IEOM observers visited 654 polling stations and scored the process as good or very good in 97% of cases. There were only two cases noted of voters being denied the right to vote for inappropriate reasons. No one was observed voting more than once, and no incidents were noted of anyone attempting to influence voters as to whom to vote for.

43. Procedural points were generally followed; voters were checked for ink in more than 99% of cases, identification documents were checked in nearly 100% of cases, and the secrecy of the vote was ensured in more than 99% of polling stations observed.

44. There were a few problems. Ballot boxes were noted as not being properly sealed in some 20% of polling stations visited and unauthorised persons were observed in nearly 9%. There seemed to be a lack of consistency in the role played by extended polling-board members.

45. The level of voting from home was somewhat high, at nearly 3%. It was understandably more prevalent in rural areas.

46. The IEOM observed the closing and counting in 64 polling stations. Observers reported the count as good or very good in some 87% of cases. There were, however, some problems. Control coupons were not counted by the polling board before the ballot box was open in nearly a quarter of cases and the number of unused ballots was not counted before the ballot box was opened in 19% of polling stations observed. Also, the number of voters who voted was not determined by the polling board before the ballot box was opened in 13% of cases. Approximately 10% of observers noted serious irregularities during the counting procedures. Again, unauthorised persons were observed in nearly 10% of polling stations visited.

47. The tabulation at MECs was observed by 13 IEOM observer teams across all 21 municipalities. Observers assessed the overall conduct of the tabulation as good or very good in all 21 cases. In two cases, tension in MECs was observed and, in one case observed, there were mathematical inconsistencies in polling boards' records of work.

8. Conclusions and recommendations

48. The ad hoc committee concluded that the 6 April 2008 presidential election in Montenegro was another step forward towards building a 21st century democracy and were largely conducted in line with European standards for free elections.

49. The ad hoc committee is sure that the Parliamentary Assembly is very willing to continue to assist democracy building in Montenegro and would welcome the involvement of the Venice Commission in the process.

50. To further improve Montenegro's processes, the ad hoc committee therefore makes the following recommendations:

a. The authority of the SEC should be expanded to enable it to have monitoring powers over all aspects of the campaign;

b. The separation between the state and political parties/candidates still needs substantial improvement before it complies with requirements of the Council of Europe's Code of Good Practice in Electoral Matters;

c. Additional legislation is needed to cover all aspects of campaign funding, including financial disclosure and limits on spending and the protection of "whistleblowers";

d. The candidate nomination process should be improved. The current requirement for signature collection should be brought in line with Venice Commission recommendations (maximum 1% of the number of voters). Steps should also be taken to minimise the risk of compromising the principle of secrecy in the process of signature collection;

e. The entitlement to vote in Montenegro must be settled and the voter register revised in time for the parliamentary elections in 2009;

f. Laws on electoral bribery should be strengthened to make attempted bribery and soliciting bribes criminal offences, as existing law only criminalises the actual giving and taking of bribes;

g. While the Montenegrin electorate has demonstrated that it is well educated in electoral matters, steps could usefully be taken to run voter awareness programmes in the future.

51. *a.* There is one further recommendation that the chairman of the ad hoc committee wishes to make:

b. The Bureau is urged to convene a meeting for all members of the Parliamentary Assembly who have led observer missions to discuss how we might improve the working relationships with the OSCE/ ODIHR.

Appendix – Press release[1]

According to observers, nearly all aspects of Montenegro's first post-independence presidential poll were in line with international standards for democratic elections (Podgorica, 7 April 2008)

1. This document is available on the Council of Europe's Internet site at the following address: www.coe.int/press.