



## **Observation Mission Republic of Albania Referendum on the Constitution 22 November 1998**

**Joint Preliminary Statement issued on 23 November 1998**

This is the joint preliminary statement of the Organisation for Security and Co-operation in Europe's (OSCE) Observation Mission for the 22 November Referendum on the Constitution in the Republic of Albania, including the OSCE Parliamentary Assembly and the OSCE Office for Democratic Institution and Human Rights, the Parliamentary Assembly of the Council of Europe and the European Parliament.

No final assessment can be drawn until the vote count and verification procedures have been completed, and the final results have been published. Final reports will be issued in the coming weeks which will contain more detailed analysis and recommendations.

### **Summary of Conclusions**

**The referendum on the Constitution was held under difficult circumstances and followed a campaign characterised by a political atmosphere of extreme polarization. The leading opposition party, the Democratic Party, in spite of international appeals to participate, decided not to take part in the process, and called for a boycott of the Referendum. This jeopardised the secrecy of the vote, since mere participation in the vote could be seen as a public political act. It shifted the emphasis from the content of the Constitution to the referendum as such.**

**The referendum followed an open and transparent drafting process where advice on the constitution was taken from many sources, domestically as well as internationally.**

**The security situation in Albania is still precarious and raises concerns. The Government does not have full control over the whole country. Serious incidents occurred in the weeks leading up to the referendum. Overall, in spite of these circumstances the referendum was carried out in a peaceful manner throughout the country. Only isolated incidents of violence were reported during the vote. It was encouraging to note that all the parties called upon fulfilled their role in most voting commissions at local level. Despite the security considerations, observers were deployed throughout the country.**

**As in earlier elections the lack of accuracy in the Voters Lists was, still a problem. The discrepancy between the legal provisions for the right to vote and the modality for updating**

the Voters Lists should be removed. The legal right of an individual to be registered as a voter, and the provisions to remove a person from the Voters Lists should be clearly defined, in particular for citizens living abroad, and all ambiguities in the process be removed. Accurate Voters Lists would be more easily extracted from a centralised civil register based upon actual residency of the citizens.

The very polarised political environment made fast and effective decision-making in the Central Voting Commission (CVC) difficult and hindered the organisation of this referendum. In particular protracted discussion on the educational TV slots brought the work of the CVC to a standstill for some time.

The disinformation on the contents of the constitution, the misrepresentation of international representatives and unfounded allegations against the constitutional process by the Democratic Party are to be regretted.

In the prevailing conditions and despite the above mentioned shortcomings this vote shows progress over last years' elections. The observers found that on 22 November the voting procedures for the referendum were carried out in a correct manner, for which voters and election officials should be commended. The political forces should now resume their dialogue and concentrate on Albania's vital problems. This could best be achieved through constructive co-operation between all parties, including the Democratic Party. The international community remains committed to assist Albania in this task.

### **The Constitutional Drafting Process**

The Referendum was called by Presidential decree on 21 October, following the third and last reading of the Constitution by the Parliament. The drafting of the Constitution was done by a Parliamentary Commission. The Democratic Party (DP) did not participate in the drafting process inside and outside of the Parliamentary Commission, and the party has not been filling its seats in the Parliament since last July, despite the recommendations by The Tri-Parliamentary Mission (from the OSCE Parliamentary Assembly, the Council of Europe Parliamentary Assembly and the European Parliament) which visited Albania twice in 1998. There was continuous input from the Council of Europe Venice Commission in the drafts, and from the Administrative Centre for the Co-ordination of Assistance and Public Participation (ACCAPP) of the OSCE Presence. The DP did not comment fully on the content of the constitution until 8 November 1998 and centred its campaign on formalities or events of a more narrow political nature.

### **The Legal Framework**

#### *The Late Changes in the Law on Referenda*

A number of amendments were made to the Law on Referenda on the 12 October 1998. One of these was to remove the requirement for 50 % turnout for a valid vote. There is no set international standard for whether or not a turnout requirement should be applied. The difficulties in establishing reliable voters lists would also make a turnout threshold difficult to implement.

However, the late date for making such a change was unfortunate and raised accusations that the rules of the game were changed to ensure that the constitution would pass.

### *The Voters Lists*

The turnout figure for the referendum became a contentious political issue in so much as the opposition wanted to show an effective boycott and the government a good support for the constitution. The accuracy of the Voters Lists thus became a political issue, when attention should have been devoted to ensuring that all eligible voters be able to exercise their right to vote.

The legal provisions governing voter registration are unclear. The Law on Referenda gives all citizens of Albania over the age of 18 the right to vote. However, the Law on Elections to Local Government foresees, that when compiling the voters' lists, the municipalities should cross out the enlisted voters staying abroad. It is unfortunate that clear criteria for the citizens living abroad to maintain their registration do not exist.

The accuracy of the voters lists has indeed been a matter of concern in all previous elections in Albania. The high degree of internal and external migration, and the lack of a reliable civil register has contributed to the low quality of the Voters Lists. To help improve the accuracy of the existing lists and to remove earlier mistakes such as double entries, registration of deceased people and to register the voters where they have their de facto residence, the Government introduced a procedure of house to house registration by groups of three persons representing both the Government and the opposition. However, the lack of clear criteria for the canvassing did not enable these groups to produce accurate lists of voters, particularly in the given time frame, and a consensus within the group does not to a sufficient degree protect the voters individual right to be registered.

The CVC issued a Decision on 19 November, allowing voters to register even on the day of the Referendum, to enfranchise voters that by mistake might have been left out of the lists..

The deadlines for establishing, posting and correcting Voters Lists were extremely constrained, and in many areas they were not met.

The only long lasting solution to the problems with the Voters Lists will be to establish a centralised civil register, for instance on the basis of a census. Until such civil registers have been established, clear criteria for citizens' registration - both in country as well as abroad - should be worked out.

### *The Legal Provisions for the Media*

The Article 43 of the Law on Elections to Local Government states that the CVC 'shall organise unbiased programmes on Albanian radio and television to educate the Albanian population about the elections'.

The Democratic Party has interpreted this as giving the CVC an exclusive right to produce all

voter education on Public TV, claiming that information on the content of the Constitution as well as on the referendum process has to be approved by the CVC. Furthermore, the DP refused to accept some voter education programmes because they considered them as support of the referendum vote.

Despite acceptance of a reasonable Code of Conduct, agreed to by the parties after consultation with the OSCE Presence, that seemed to have solved the dispute, the DP chose to leave the CVC for a few days.

Even though it is any person's or party's right not to participate in the referendum, there is no reason for accepting a boycott of the process as an alternative of the same prominence as a 'yes' or 'no' vote. The programmes actually transmitted on public TV were in content neutral information on how to exercise the democratic right to vote, and the parties were free to advocate for a boycott alternative in the time allocated for their campaign.

### *Voting Commissions*

By decision of the Parliament, the composition of the CVC was the same as the Central Election Commission formed during the local by-elections earlier this year. All election commissions included multi-party representation, in most instances with equal number of members from the Government coalition and from the opposition.

In the highly polarised context of Albania, this structure has led to a number of deadlocks, in particular when the DP representatives on the CVC have not signed the decisions and have therefore contested their legality. Much time was lost in debates in the CVC over how best to handle some of the contentious issues in the organisation of the Referendum, such as the media issues and the updating of the Voters Lists.

### **The Campaign**

When the Democratic Party decided not to take part in the voting, the emphasis shifted from the content of the Constitution to the referendum as such and to possible turnout figure, and the campaign was carried out in a polarized political climate.

The campaign environment allowed for all sides to publicly advocate their position if they so chose. However, the activities and positions of the two major political forces – the government coalition and the opposition Democratic Party dominated the campaign. The former chose to emphasize public education on the content of the draft over direct political party support for a “Yes” vote, and managed to adhere to this strategy in most cases.

Opponents to the referendum were able to hold public rallies and demonstration, and their position was widely disseminated through a variety of media. Their campaign was highly rhetorical against the government and against “foreign interests.” At times this rhetoric was both intimidating and misleading to the public. In particular, attacks against international organisations or misrepresenting the views of international representatives had to be regretted.

The general lassitude of the public due to the continued polarised and aggressive political environment is a new trend which should be seriously considered by all political forces.

### **Media**

Voters had access to a broad range of views on both the State TV and Radio and through a variety of private media outlets, including TV, radio and newspaper. Opponents to the referendum were entitled to both programming and spot time on the State television (although some of it was aired very late in the evening) and had access to private TV stations. While party publications strongly campaigned in favour of the respective party's position, the independent media were generally more balanced.

The State TV channel TVSH had a quite balanced attitude from the beginning of the campaign until a few days before the referendum day. During the last days it started to give more space to the governmental position, specifically in the news programs. The special campaign programmes followed the rules defined by the Central Voting Commission, whereas the news favoured the Government's point of view. Out of the total time of 1300 minutes devoted to the referendum, 25 % was given in favour of the constitution, 17 % against (including boycott) and the rest was neutral.

### **The Day of Referendum**

Overall, the voting on the day of referendum was carried out in a peaceful manner throughout the country. Incidents of violence have been very few. Due to the provisions for registering as a voter even on election day, the number of disenfranchised voters was reduced. However, the implementation was not fully consistent throughout the country. The process of voting on the referendum day was in most places technically correct, but still a number of shortcomings were reported.

The boycott by Democratic Party (DP) had as a consequence that the voters were deprived of the secrecy of their vote; turning up in a polling station already shows that the recommendations of the DP have not been followed. Since the ID is stamped after the voting, the participation can even be checked after the referendum day.

The campaign silence of 24 hours prior to the referendum was broken by both sides, by printing of campaigning articles in the newspapers of the Socialist Party and the Democratic Party.

Of other irregularities reported, the following were the most prominent:

- In many places the polling stations opened more than one hour after the prescribed opening hour
- Presence of unauthorised persons inside the polling stations where reported by many, but

- mainly without clear evidence of intimidation.
- Family voting is still wide spread
  - The reconciliation procedure for the count was not clear and was often not adhered to
  - The physical access to polling stations was difficult in many instances
  - The ID cards did not always get stamped to indicate that the voter had voted

A few instances of violence were reported.

It was encouraging to note that domestic non-partisan observers were present in a fairly large number of polling stations. In most polling stations, but not all, the co-operation between the polling station commission members was reported to be good.

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*Upon invitation from the Albanian Government of 5 October 1998, the Organisation for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) established an Election Observation Mission in Albania on 12 October 1998.*

*Senator Tana de Zulueta, Vice President of the OSCE Parliamentary Assembly, was designated by the OSCE Chairman-in-Office as Special Co-ordinator to lead the Short-term Observation Mission of the Constitutional Referendum in Albania on 22 November 1998.*

*Mr. Kåre Vollan was appointed by the OSCE/ODIHR as the Head of the ODIHR Observation Mission, and Ms Siri Skåre as the Deputy Head, both upon being seconded by the Government of Norway.*

*Mrs. Marcelle Lentz-Cornette was designated as Head of the Council of Europe Parliamentary Delegation for the Constitutional referendum in Albania.*

*Mrs. Doris Pack headed the delegation of the European Parliament.*

*This statement is based upon the collective findings of observers seconded by 27 countries, made by parliamentarians and public officials representing the OSCE Parliamentary Assembly, the Council of Europe Parliamentary Assembly, the European Parliament, the OSCE Presence to Albania, the European Community Monitoring Mission, the OSCE participating States, local Embassies, as well as a number of international NGOs. In total, 180 short-term observers and 23 long term observers and core staff members were deployed throughout the Republic of Albania.*

*The international observers would like to express its gratitude to the OSCE Presence in Albania, headed by Ambassador Daan Everts, for the substantial support provided to the Observation Mission. They also express their gratitude to the Albanian authorities, parties and people for their support and hospitality.*

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