

Red Lines for Albania

The EU and the June Parliamentary Elections

7 May 2013

Introduction

There has always been a risk that Albanian parliamentary elections on 23 June 2013 will fall short of international standards. This would likely precipitate a major political crisis in Albania. Another result would be the loss of any credible prospect of progress towards European integration in the foreseeable future and a spiral of political, social and economic decline in Albania.

To counter this risk, ESI argues that the international community must take a strong and uncompromising stand on the democratic principles that must be observed. It must take a non-partisan approach of strong support to the rule of law.

As Albania prepares for parliamentary elections on 23 June 2013, this paper draws attention to recent violations of democratic principles in Albania. These provide the international community, and in particular the European Union, with an opportunity to make a point of principle at a crucial moment in what is set to be a very tight and heated electoral contest.

Albania and European integration

Albania applied for EU membership exactly four years ago. The criteria for starting negotiations on EU membership were set down by the European Council in Copenhagen in 1993. They include the requirements that a country must have achieved “stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.”

There are sound, practical reasons why “stability of institutions” is a precondition for negotiations. To qualify for EU membership, a huge number of legislative and institutional changes are required. Without strong parliamentary and executive institutions and a broad-ranging political consensus, candidate countries are unlikely to implement such far-reaching reforms.

In Croatia, which joins the EU in a few weeks, political consensus was forged through a National Committee for Monitoring the Accession Negotiations in the Croatian parliament. Headed by a prominent member of the opposition, the Committee reviewed every negotiating

position that the Croatian Government presented to the EU in Brussels, requiring unanimous, cross-party support among its 15 members. This mechanism ensured the successful and implementation of a far-reaching reform agenda, despite changes of government during the accession process.

So far, Albania has not been able to generate this kind of political consensus. Past elections have produced deep polarization and recurrent political instability. The 2009 parliamentary election results were heavily contested, leading to a two-year opposition boycott of parliament. Many important reforms requiring more than a simple majority could not be adopted by a parliament. In place of the “stable institutions” required for EU accession, Albania faced political stasis, popular demonstrations and violent clashes.

Not surprisingly, Albania has not received a positive reply to its application for EU membership. In 2010, the EU Commission wrote that it “considers that negotiations for accession to the European Union should be opened with Albania once the country has achieved the necessary degree of compliance with the membership criteria and in particular the Copenhagen political criteria requiring the stability of institutions guaranteeing notably democracy and rule of law” (European Commission, Albania Opinion, 2010).

Albania desperately needs a better outcome from its 2013 elections. The geo-political context in the Western Balkans is changing. The countries of the region are increasingly divided into two groups: the frontrunners making progress on EU accession, including Croatia, Montenegro and, in all likelihood, Serbia; and the laggards, including Albania, Kosovo, Bosnia and Herzegovina and (so long as the name issue remains unresolved) Macedonia. For the latter group, even the starting line of opening negotiations on accession looks increasingly distant.

This regional division risks becoming self-reinforcing: against the backdrop of a deepening social and economic crisis, the poorer parts of the Balkans are losing faith in the EU integration process just as the EU risks giving up on them. Without the incentive of a clear membership prospect to help forge political consensus, they are unable to undertake the necessary reforms, slipping ever further into social and economic dislocation. The result is likely to be a new Balkan ghetto, encompassing most of the region’s Albanian population.

Electoral crisis in Albania

In its 2010 Opinion on Albania’s EU application, the European Commission listed twelve reforms that must be undertaken as a priority. Two of these pertain to elections. Albania must modify its electoral legislation in accordance with OSCE recommendations (the OSCE’s Office for Democratic Institutions and Human Rights (ODIHR) undertakes election observation across the region), and it must ensure that its elections are conducted “in line with European and international standards”.

The first condition has been largely met. After a political agreement in November 2011, the opposition returned to the parliament to start working on electoral reform and other EU priorities. A revised Electoral Code passed the parliament in July 2012, with broad support, addressing most of the OSCE-ODIHR recommendations (OSCE/ODIHR, Needs Assessment Mission, 2013).

We have growing concerns, however, as to whether the second criteria will be met. Preparations for the forthcoming elections are not going well. On 15 April 2013, the Albanian parliament voted to replace one of the members of the Central Election Commission (CEC), the body that manages elections. The decision was taken in violation of the new electoral law. It threw into question the independence and legitimacy of this key institution, before a single vote had been cast. The political message was clear: Albania's politicians are willing to ride roughshod over the rules in their own political interest.

The CEC is a permanent, 7-member body. Its members are voted on by parliament, and are appointed for 6 years, with the possibility of re-election. The current membership was chosen after the electoral reforms of 2012. It consists of three candidates nominated from the governing coalition and three nominated by the opposition, with an independent Chair.

While the nominations are by the political parties, each member is supposed to act a-politically – as, for example, in appointments to the US Supreme Court. Once in place, the members are guardians of the electoral process and cannot be removed for political reasons. They can be impeached by parliament only if they are found guilty of a crime, refuse to exercise their mandates or engage in inappropriate political activity (Albania Election Code, 2012, Article 18).

A strong and independent CEC is central to any prospect for a fair election. As its Chair, Ms. Lefterie Lleshi, pointed out during an event organized by the US Embassy in Tirana on 28 March 2013 announcing US financial support for the elections, there is already political pressure from all sides:

“[politicians] recognize the CEC as accurate, professional, transparent and independent only on those occasions when it makes decisions in their interests. In these few months of work with the CEC, I am yet to see politicians with the courage to refrain from putting political pressure on the CEC's decisions, and even less to appreciate the individual and collegial vote in the CEC” (ESI Translation from original).

Early in April 2013, there was a shift in political alliances. The Socialist Movement for Integration (SMI) of Ilir Meta – formerly part of the governing coalition with Prime Minister Sali Berisha's Democratic Party (DP) – announced that it was forming a pre-election coalition with the Socialist Party (SP) of Edi Rama. Following this announcement, the DP parliamentary group presented a motion to parliament to remove one of the CEC members, Ilirjan Muho. Mr Muho had been an SMI nominee in 2012. The DP parliamentary group first argued in its deposition in parliament that this step was necessary to bring back “political balance”:

“the [Electoral] Code is built upon a basic principle: that of the political balancing of the parliamentary majority and opposition. Political balance is the core principle of CEC composition... This principle is the backbone which holds up the entire election administration.”

There is, however, no basis in the Electoral Code to remove a CEC member against his will for any reason other than those given above. Prior to the parliament's decision, US Ambassador in Tirana, Mr. Alexander Arvizu, noted that:

“The CEC was properly and legally constituted and mandated. It is the institution responsible for the conduct of the elections, and as such, it is important for the

independence of this institution to be respected. The CEC should be free from interference by any individual, by any institution, and that includes the Parliament of Albania.”

The parliamentary debate on the legality of removing the CEC member lasted over 12 hours. Over the course of the debate, the DP changed its legal argument. It asserted that, in a previous job as public prosecutor in 2003, Mr. Muho had been suspended from his post. It pointed out that the Electoral Code stipulates that, in order to be appointed to the CEC, individuals must not have been dismissed from any public office due to a violation of the law (Albania Election Code, 2012, Article 12).

The DP insisted that Mr. Muho had broken Article 12 of the Electoral Code by failing to disclose his suspension before being voted into the CEC. The DP majority in the parliament then proceeded to annul the original decision to approve his nomination. The vote went along party/coalition lines. A new CEC member from the Republican Party – a coalition member with the Democratic Party – was appointed in his place.

The SMI protested against this action in the strongest terms. In a letter addressed to foreign diplomatic missions in Tirana, it pointed out that Mr. Muho had been relieved of his post as public prosecutor improperly. Far from committing any crime, he had arranged for the transfer of a convicted prisoner to a mental institution, pursuant to an order of the responsible court. This order had subsequently been affirmed by the High Court of Albania. Mr. Muho was rehabilitated. He was under no obligation to disclose the information.

The removal of Mr. Muho led three other CEC members to resign in protest. As a result, the CEC currently has only four of its seven members. This is not a dispute over a legal technicality. The parliamentary majority had openly stated its political motivation to remove the CEC member. If this decision is allowed to stand, it will set a precedent for the removal of CEC members in the future by simple parliamentary majority, based on one pretext or another.

Counting votes and appealing decisions

With only four members, the CEC cannot fulfill one key aspect of its mandate in the coming elections: it cannot act as an electoral appeals body. Under the Electoral Code, five votes are required to decide on appeals against the results in particular electorates or to declare the election invalid, in whole or in part (Albania Election Code, 2012, Article 25).

Recent elections in Albania have produced extremely tight results. In 2009, the Democratic Party and its allies defeated the Socialist Party by just 24,000 votes. In the mayoral elections in Tirana in 2011, Social Party candidate Edi Rama first appeared to win the election by a margin of 10 votes over Lulzim Basha, the Democratic Party nominee, out of a total of over 250,000 votes. The CEC then adjusted to include miscast ballots, putting Mr. Basha ahead of Mr. Rama by 81 votes. Though a controversial decision, it was taken by the body with the mandate to resolve such disputes.

Various political commentators are suggesting that, based on the current coalitions, there are at least four districts where the winning margin could be as close as 500 to 1,000 votes. This

means that the election could once again be decided by decision on disputed votes or counts. It is therefore crucial that the bodies administering these elections act according to the rules.

Predicting election results is a tricky business, in Albania as in most democracies. But we are confident of one prediction regarding the forthcoming Albanian election. In the absence of a credible, impartial and legitimate CEC, this election is going to end up in a bitter dispute. Whoever will be the eventual victor, the loser is going to be Albanian democracy and its prospects for European integration.

The role of the international community

Outsiders cannot substitute for the good will of national leaders. They can however help mitigate conflicts, both before and after election-day, by standing up for clear principles and communicating clearly the expectations of the international community.

The key message from all international observers, and in particular from the European Union, must be that all Albanian institutions must rigorously respect the laws they themselves have adapted. There are certain red lines that must not be crossed. Albanian leaders must know that the world is watching.

Spelling out these red lines in advance makes it less likely that they will be transgressed. These should definitely include the following:

- a) Members of the election administration cannot be removed for reasons unspecified in the Election Code.
- b) Counting and adjudication of complaints and appeals must be done through strict observation of Election Code procedures.

By taking a clear position now, and insisting on a reversal of the decision to dismiss a member of the CEC who had been appointed for six years, the US and the European Union increase the likelihood that such red lines will not be crossed in the coming weeks and months. This raises the likelihood of these elections meeting “international and European standards.”

Conclusion

These elections will not only test Albania’s democracy but also its rule of law. They will show whether Albanian institutions can respect the rule of law enough to ensure the prevalence of democratic principles in the country.

ESI believes that the position of the EU should be made very clear now to avoid much worse confrontations later. The EU should state without ambiguity that unless the CEC is reconstituted before the official election campaign starts on 23 May 2013 in line with the Election Code, and unless it is then able to conduct its functions professionally and impartially until the end of the election process, the EU will not consider these election “conducted in line with European and international standards”. This will then also block Albania to make any further progress towards EU accession.

Even one month ago ESI had hoped that timely messages from the international community would help make these 2013 elections different from those in 2009. Today we note that there is less reason for such optimism.

Despite this it remains a matter of vital international interest that these elections meet international standards and that a credible and legitimate post-election government emerges in Albania. It is a matter of vital interest to Albanians, but also to the rest of Europe.