

# REPUBLIC OF SERBIA FEDERAL REPUBLIC OF YUGOSLAVIA

# PRESIDENTIAL ELECTIONS 29 September and 13 October 2002

and

# REPEAT PRESIDENTIAL ELECTION 8 December 2002

# FINAL REPORT



Warsaw 18 February 2003

## TABLE OF CONTENTS

I.	EXECUTIVE SUMMARY	1
II.	INTRODUCTION AND ACKNOWLEDGEMENTS	2
III.	POLITICAL CONTEXT OF THE ELECTIONS	3
A	A. GENERAL BACKGROUND	3
В	THE CANDIDATES	4
IV.	LEGAL FRAMEWORK	4
A	GENERAL OUTLINE	Δ
В		
	1) The September/October Elections	
	2) The December Election	
C		
	1) The 50% turnout requirement	
	2) Inconsistencies between the presidential and parliamentary election laws	
V.	ELECTION ADMINISTRATION	
A		
	1) The Republican Election Commission	
	2) Intermediate levels of administration	
В	3) Polling Boards	
C		
D		
	1) The Voter Registration Process	
	2) Central Voters Register	
E.	. Kosovo	11
VI.	PARTICIPATION OF WOMEN AND NATIONAL MINORITIES	12
VII.	THE ELECTION CAMPAIGN	12
A	THE SEPTEMBER/OCTOBER CAMPAIGN	13
В		
	I. THE MEDIA AND ELECTIONS	
VIII		
A		
В		
C		
	1) The September/October Elections	
	<i>'</i>	
IX.	RESOLUTION OF ELECTION DISPUTES	17
X.	DOMESTIC OBSERVERS	17
XI.	OBSERVATION OF VOTING, COUNTING AND VOTE TABULATION	18
A	VOTING	18
В		
C		
XII.	POST-ELECTION DAY DISPUTES, COMPLAINTS AND APPEALS	19
A	A. Post-29 September	19
В		
C	C. Post-8 December	20

Table of Contents Page: ii

XIII.	RECOMMENDATIONS	21
A.		
В.	ELECTION COMMISSIONS	
C.	CANDIDATE NOMINATION AND REGISTRATION	22
D.	CAMPAIGN AND THE MEDIA	
E.	VOTER REGISTRATION	22
F.	ELECTION DISPUTES	
G.	ELECTION DAY	23
APPE	ENDIX: SUMMARY OF OFFICIAL RESULTS	24
AROI	UT THE OSCE/ODIHR	25

## REPUBLIC OF SERBIA FEDERAL REPUBLIC OF YUGOSLAVIA

# PRESIDENTIAL ELECTIONS 29 September and 13 October 2002 and REPEAT PRESIDENTIAL ELECTIONS 8 December 2002

# **OSCE/ODIHR Election Observation Mission Final Report**<sup>1</sup>

#### I. EXECUTIVE SUMMARY

Elections for the President of the Republic of Serbia (Federal Republic of Yugoslavia) took place on 29 September and 13 October 2002 and were repeated on 8 December. All three attempts failed to meet criteria that were required by domestic law for a president to be elected. While the conduct of the elections was largely in line with international commitments and standards for democratic elections, the combination of a political impasse and defective legislation enabling an endless cycle of repeat elections caused these attempts to fail.

The initial two rounds of the presidential elections were held under legislation inherited from the previous regime. In order for the election of a president to be valid, the law imposed two criteria: (1) a successful candidate must gain 50% plus 1 of all votes cast, and (2) 50% of all registered voters must participate in the voting. The two conditions were mandatory for the first and any second round "run-off".

Prior to scheduling a repeat election, the legislation was amended *inter alia* to remove the voter turnout requirement in the second round of a presidential election. Mostly, these amendments followed OSCE/ODIHR recommendations.

The repeat presidential election on 8 December also failed to attract the required turnout and was void. As a result, following the expiry of the President's term of office on 29 December 2002, the mandate of the President was assumed by the Speaker of the Serbian Parliament.

The three election campaigns were conducted in a calm atmosphere. However, the tone of Vojslav Sesejl's campaign in the December election went far beyond acceptable limits in a democratic society.

Overall, the administration of the process by the Republic Election Commission (REC) was efficient. However, at times the REC struggled to implement legislation that included ambiguous and conflicting provisions. This was apparent in its handling of the candidate registration process in the September/October elections and in its response to complaints concerning voter registration. Questions also remain over the early termination of the previous REC mandate and its current composition.

During both stages of the election, the State-owned Radio Television Serbia (RTS) provided free airtime to all candidates and its campaign coverage was unbiased, enabling voters to make an

This report is also available in Serbian. However, the English version remains the only official document.

informed choice. While the private press and electronic media offered a variety of political opinions on the election, their coverage tended to focus only on the leading candidates. In the September/October elections, some TV stations appeared to favour a particular candidate.

International observers gave an overwhelmingly positive evaluation of the polling process on the three election days. Multi-party polling board members performed their duties co-operatively and largely in accordance with correct procedures. The vote count and the tabulation of results were evaluated in equally positive terms.

Polling was also conducted in Kosovo among the Serb population, but the local authorities did not permit campaigning in the territory.

The presence of almost 10,000 non-partisan domestic observers on each of the three election days contributed to the improved transparency of the election process. However, the rights of domestic and international observers are not sufficiently guaranteed by law and three civil society organisations were denied accreditation.

The three failed elections came at considerable cost to the public's confidence in the democratic reforms in Serbia since 2000. In order to strengthen democratic institutions in Serbia and the confidence of the public in them, a constructive dialogue between political parties is imperative. Comprehensive and urgent review of all election legislation and co-ordinated efforts to improve further the accuracy of voter registers are both required. Given the repeated failure of these elections, the OSCE/ODIHR is concerned that the turnout requirement is impractical as it may lead to an endless cycle of elections and must be repealed.

The OSCE/ODIHR reiterates its willingness to assist the authorities and civil society of Serbia to overcome these challenges.

#### II. INTRODUCTION AND ACKNOWLEDGEMENTS

The presidential elections were monitored by two International Election Observation Missions formed by OSCE/ODIHR and Parliamentary Assembly of the Council of Europe (PACE). The OSCE/ODIHR long-term Election Observation Mission (EOM) for the September/October election was established for the period from 2 September to 18 October and consisted of 28 experts based in Belgrade and nine regional centres. The EOM for the December election, ran from 11 November to 13 December, consisted of 21 experts based in Belgrade and five regional centres. Mr Nikolai Vulchanov (Bulgaria) headed both OSCE/ODIHR Missions. The delegations from the PACE for the 29 September and 8 December election days were led by Mr Thomas Cox MP (UK).

On election days, the EOMs was augmented by international short-term observers from OSCE participating States. The 29 September election day was monitored by 230 observers from 37 OSCE participating States. On 13 October, 114 international observers took part. The 8 December repeated election involved 121 short-term observers from 31 OSCE participating States.

The OSCE/ODIHR is grateful to the Ministry of Foreign Affairs of the Federal Republic of Yugoslavia and the authorities of Serbia, in particular the Republican Election Commission, the Ministry of Interior and the Ministry of State Administration and Local Self Government, for their assistance and co-operation during the course of the election observation. The OSCE/ODIHR is

also grateful for the support and cooperation of international organisations and embassies accredited in Belgrade.

#### III. POLITICAL CONTEXT OF THE ELECTIONS

#### A. GENERAL BACKGROUND

The presidential elections in Serbia created an opportunity to remove from power the last vestige of the previous regime. The declared winner of the 1997 elections - Milan Milutinovic of the Socialist Party of Serbia (SPS) - was indicted by the United Nations International Criminal Tribunal for the former Yugoslavia (ICTY) in 1999.

The elections also provided the first real test of support for the main political forces in Serbia since the parliamentary elections of December 2000. Following the success of the coalition "Democratic Opposition of Serbia" (DOS) in 2000 elections, the Government of Serbia embarked on a process of reform aimed at undoing the legacy left by the Milosevic regime. After winning a large parliamentary majority in 2000, tensions among the 18 parties of the DOS coalition soon became apparent. These stemmed from differing standpoints on the nature and pace of reform, divergent ideological orientations as well as personal and political rivalries. The most significant line of cleavage existed between the two largest DOS parties, the Democratic Party of Serbia (DSS) led by the President of the Federal Republic of Yugoslavia, Vojislav Kostunica, and the Democratic Party (DS) led by Prime Minister of Serbia, Zoran Djindjic. Each party had 45 deputies elected to the Serbian Parliament as part of the DOS coalition.

In the summer of 2001, the DSS formed its own parliamentary group and withdrew from the Government of Serbia. Between June and July 2002, the tension between the two parties culminated in the expulsion of DSS deputies from the Serbian Parliament. This led to a parliamentary stalemate, delaying the adoption of key legislation, and caused a rancorous atmosphere between the DSS and the DS to emerge during the September/October presidential election campaign. On 7 November, the DSS parliamentary mandates were temporarily returned, enabling amendments to election legislation to be made, but with no lessening of the arguments between DSS and DS.

The future of the Federal Republic continued to be a key political issue. The negotiations to establish a Constitutional Charter to follow the March 2002 agreement on future relations between Serbia and Montenegro (known as the "Belgrade Agreement") ran throughout the election period and were widely covered in the media.

The population of Serbia still struggles to cope with the economical, political and social upheavals. Despite several significant reforms, the economic situation has yet to improve. Refugees from the conflicts in the region still have temporary residence status in Serbia, while some 200,000 internally displaced persons (IDPs) from Kosovo live elsewhere in Serbia and Montenegro.

The elections took place in an environment still dealing with consequences of armed conflict, remaining legacies from the previous regime, nationalistic rhetoric by some political actors, uncertainties concerning the future of a union State, economic insecurity, and political discord. While public confidence in the integrity of elections was significantly strengthened by the good conduct of the December 2000 parliamentary elections, citizens' faith in the State's democratic

institutions has yet to be fully established. In addition, presidential candidates faced a significant challenge to overcome public political fatigue.

#### **B.** THE CANDIDATES

Eleven candidates contested the first round of the presidential election on 29 September. President Milutinovic did not stand. The DS together with some other DOS parties endorsed and supported the candidacy of Federal Deputy Prime Minister, Miroljub Labus. Although a member of DS, Dr Labus stood as an independent candidate formally nominated by a group of citizens centred around the influential "G17 Plus" organisation.<sup>2</sup>

The DSS nominated Dr Kostunica as its candidate. Other DOS parties, including Democratic Centre (DC), New Democracy (ND), the Reformists of Vojvodina (RV) and New Serbia (NS) chose to support his candidature.

In reflection of its continued fragmentation, two separate factions from the SPS proposed two different candidates. Velimir Bata Zivojinovic, a well-known actor, was the party's official candidate, while Dr Branislav Ivkovic was nominated by a group of citizens "Socialists for the return to the base". In the run up to the election the media reported that Slobodan Milosevic had declined to support the SPS candidates and endorsed the candidate of the Serbian Radical Party (SRS), Dr Vojislav Seselj, a hard-line nationalist. A third SPS wing followed Milosevic's call.

Three other political parties nominated their presidents as candidates: Vuk Draskovic of the Serbian Renewal Movement (SPO), Vuk Obradovic of Social Democracy (SD), a former Deputy Prime Minister in the DOS Government, and Borislav Pelevic of the Party of Serbian Unity (SSJ). There were also three independent candidates: Tomislav Lalosevic, Dragan Radenovic and Nebojsa Pavkovic, the former Chief of Staff of the Yugoslav Army.

As no candidate won a majority of 50% plus 1 of the votes in the first round, the two leading candidates – Dr Kostunica and Dr Labus – were required to contest a second round run-off. Two candidates from the first round – Dr Seselj and Mr Pelevic – urged their supporters to boycott the second round which failed as well.

Only three candidates stood for repeated failed elections on 8 December: Dr Kostunica (DSS), Dr Seselj (SRS) and Mr Pelevic (SSJ). No candidate was proposed by DOS coalition and divisions emerged within it as to whether support should be given to Dr Kostunica.

#### IV. LEGAL FRAMEWORK

#### A. GENERAL OUTLINE

The Constitution of Serbia provides for the President to be elected for a five-year term through general and direct elections conducted no later than 30 days before the expiry of the term of office of the acting office-holder. In the event of the early cessation of the term of office, or if the incumbent is "temporarily prevented" from functioning, the presidential duties shall be performed

Mr Labus was nominated by a group of citizens called "Best for Serbia – Miroljub Labus". G17 Plus was initially formed as a group of experts, a number of whom are independent members of the Republican and Federal Governments. In November 2002, Mr Labus publicly announced his resignation from DS and, in December 2002, G17 Plus established itself as a political party, with Mr Labus as President.

by the Speaker of the Parliament, whereupon elections are required within 60 days. However, the Constitution gives no explicit guidance in the event when President's mandate has expired but a successor has not yet been elected, e.g. following repeated failed elections.<sup>3</sup>

Two key laws provided the legal framework for these elections: the 1990 Law on the Election of President of the Republic ("the presidential election law") and the 2000 Law on the Election of Representatives ("the parliamentary Election Law"). Other laws and Administrative Decisions issued by the Republic Election Commission (REC) are also applicable.

Suffrage is granted to every person aged over 18 who is registered as permanent resident in Serbia and is a citizen of Serbia and Yugoslavia. Candidates for president must meet these same criteria and also be resident in Serbia for at least one year. Candidates can be nominated by political parties, coalitions, or groups of citizens with the support of at least 10,000 voters' signatures.

#### B. ASSESSMENT OF THE LEGAL FRAMEWORK

#### 1) The September/October Elections

The legal framework for the first stage of the election was largely a legacy from the previous regime. The presidential election law, adopted in 1990, was unchanged since 1992. The parliamentary election law was adopted in the immediate aftermath of the 2000 DOS victory in the federal elections. The law enjoyed the support of a broad political consensus despite the fact that it was sponsored by the SRS. The presidential election legislation had been subject to repeated critical analysis by the OSCE/ODIHR since 1997. See OSCE/ODIHR Final Report on 1997 presidential elections, and also Assessment of Election Legislation in Serbia and FRY (April 2001).

The most serious concern relating to the presidential election law related to the 50% voter turnout requirement in the second round of an election. This applies also to the Republic of Montenegro. No OSCE participating State with a directly elected Head of State has a 50% voter turnout requirement in the second round. The law also required a winning candidate to receive a majority of all votes cast, including invalid. This provision may lead to a situation where a candidate gaining a majority of valid votes is still below the legal requirement to be elected. Importantly, the law was silent on deadline by which a repeat presidential election was to be held.

The election administration structure, voter registration processes and election day procedures for the presidential election were addressed in the parliamentary election law. While providing certain safeguards to guarantee transparency and multi-party representation within the electoral process, the following provisions created problems during the first stage of the elections:

• The prescribed two-tiered structure for election administration consisted of the REC and around 8,600 polling boards (PBs). The absence of a formal intermediate level of election administration over-burdened the REC and caused a delay in announcing election results;

On 30 December 2002, the Parliamentary Committee on Constitutional Issues, confirming an earlier decision of the Republican Election Commission on 27 December, interpreted the Constitution so as to provide for the Speaker of Parliament to assume the duties of the President after the expiry of the incumbent's term of office. DSS members of the Committee voted against the decision.

The comments in this section only relate to the parliamentary election law in so far as it is applied to a presidential election. The OSCE/ODIHR has raised a number of other issues of concern in relation to its application to parliamentary and municipal elections, in particular, the provisions relating to party control of the mandates of elected representatives, which is contrary to paragraph 7.9 of the Copenhagen Document.

- The unconditional prohibition of out-of-polling station voting effectively disenfranchised voters unable to attend a polling station in their place of permanent residence. This included persons with disabilities restricting their access to polling stations, hospitalized or housebound, voters travelling or temporarily resident abroad, imprisoned, and any IDPs temporarily resident in Montenegro.<sup>5</sup> By preventing such registered voters from voting the provision also facilitated a reduced level of turnout on election day;
- The restriction on updating the voter register between rounds to include any changes including the removal of deceased persons and inclusion of persons reaching the age of 18.

Following the failure of the 13 October second round, the OSCE/ODIHR, in its Statement of Preliminary Findings and Conclusions, specifically recommended to amend the relevant legislation ahead of a repeat election, in particular that the 50% turnout requirement should be removed in the second round, the number of voters who voted should be calculated from ballots in the ballot box, that winning candidate should require a majority of the valid votes cast (disregarding invalid votes), and that an intermediate election administration body at a municipal level should be established.

#### 2) The December Election

On 5 November, the Serbian Parliament adopted a series of amendments to the presidential election law.<sup>6</sup> The amendments addressed the following aspects of the applicable law:

- The voter turnout requirement in the second round was removed;
- The establishment of the existing Municipal Election Commissions (MECs) as intermediate level bodies within the election administration structure;
- A clarification on the method by which voter turnout was to be determined, which was to be through the counting of ballots found in the ballot box;
- A provision for the successful candidate in a second round to be the one with "the largest number of votes" regardless of the number of invalid votes;
- A requirement for the Speaker of Parliament "to decide on calling [repeat] elections...within 60 days" of unsuccessful elections;<sup>7</sup>
- Obligations upon the REC and the Republican Bureau of Statistics to provide election day information and results within specified deadlines;
- A provision to enable additions to be made to the voter register between a first and second round upon a decision of a municipal court;
- A reduction to 30 days of the minimum notice period between calling and holding a presidential election. The maximum period remained at 90 days.

These amendments substantially improved the legal framework for presidential elections in Serbia and enabled progress to be achieved ahead of the December election. In particular, the changes incorporated three of the four key recommendations made by the OSCE/ODIHR.

The minimum notice period was reduced to enable the repeat election to be held within the constitutional requirement of 30 days before the expiry of the incumbent's term of office. No steps

A significant number of OSCE participating States allow its citizens resident abroad to vote in elections.

The amendments were drafted by the Serbian Government and supported by all parliamentary parties except the SRS. Alternative proposals, submitted by the DSS, were not debated.

Article 5.10 of the Law on the Election of the President of the Republic, as amended November 2002. In the light of Constitutional and legislative obligations to hold elections within precise timeframes (in particular Article 87 of the Constitution which requires elections to be held within 60 days of the Speaker of Parliament assuming the office of the Acting President), the repeat election cannot be postponed beyond these deadlines.

were taken to amend the provisions restricting out-of-polling station voting. Therefore, a sizeable number of voters remained effectively disenfranchised.

#### C. REMAINING CHALLENGES

#### 1) The 50% turnout requirement

The amendments to the presidential election law retained the requirement for half of all voters to participate in a first round presidential ballot in order for it to be valid. Otherwise, the first round is repeated.

The OSCE/ODIHR considers that there is no international standard on the level of voter participation in a presidential election. However, given the repeated failure of these elections and those of 1997 on the basis of turnout, the OSCE/ODIHR is concerned that the requirement is impractical, counter-productive to the concept of participatory democracy and leads to the possibility of an endless and expensive cycle of repeat elections. In addition, if such a requirement is to be met, a voter register of high accuracy and legislative provisions that enable all registered voters to vote are necessary. Neither is currently present in Serbia.

The turnout requirement has tended to encourage electoral boycotts, such as from political forces that may seek, for their own narrow party interests, to prevent a popular opponent from winning. Where elections have failed because of boycotts, the confidence of voters in the worth of voting has the potential to be undermined, further weakening public confidence in a democratic process.

Furthermore, the voter turnout requirement in Serbia is established not by the Constitution but by the presidential election law. The Constitution envisions a presidential office that executes laws promulgated by the Parliament, unhampered by vacancy. Constitutional provisions that promote the continuity and stability of the presidential office underscore this principle and are at odds with legislative provisions that can lead to a perpetually vacant office. Thus, the OSCE/ODIHR considers that the requirement may run counter to the Constitutional obligation to have an elected president.

#### 2) Inconsistencies between the presidential and parliamentary election laws

The 5 November amendments to the presidential election law have now created two different administrative structures for Republic-wide elections in Serbia. The parliamentary law retains a two-tiered election administration that, by excluding an intermediate municipal level, was seen during these elections to be inefficient. The inclusion of the MECs into the structure was made by the presidential election law.

The presidential election law imposed obligations on the REC and the Republican Bureau of Statistics for the processing of results that are not contained in the parliamentary election law.

#### V. ELECTION ADMINISTRATION

#### A. THE STRUCTURE AND COMPOSITION OF THE ELECTION ADMINISTRATION

#### 1) The Republican Election Commission

In accordance with the parliamentary election law, the REC has a chairperson and 16 "permanent" members (all with deputies) appointed by Parliament in June 2002. These members replaced the REC established in October 2000 with a four-year term of office. The legal basis for the termination of the previous REC mandate has not been made clear by the Parliament or the new REC.

For a presidential election, each candidate has the right to appoint a representative as an "extended" member of the REC. The law requires that the REC works in its extended composition "until the conclusion of the elections". However, on 30 September, the REC voted to dismiss from the REC and the PBs the extended members appointed by the nine unsuccessful first round candidates. The REC claimed that their representatives no longer fulfilled the legal requirements of membership. This decision was upheld on appeal to the Supreme Court.

There is no differentiation between the rights of the permanent and extended REC members, and each has a right to vote. Decisions must be approved by a majority of all members whether present or not. There were occasions when a significant number of abstention votes caused a proposal or appeal to result in no decision being taken and thus were rejected.

#### 2) Intermediate levels of administration

The practical difficulties of the two-tiered election administration structure envisaged by the parliamentary election law were remedied for the September/October elections by establishing an *ad hoc* system of District Co-ordinators (who were also REC members) and Municipal Working Groups (MWGs) in each of the 161 municipalities in Serbia. However, there was no legal basis to the decision and no clear definition of the composition of MWGs or their competencies.

The 5 November amendments to the presidential election law addressed this lacuna by incorporating the Municipal Election Commissions (MECs) into the election administration structure. However, the REC decided to retain the MWGs in Kosovo where MECs operating under Serbian legislation are not present.

MECs generally had multi-party representations and, in addition, all candidates were entitled to nominate extended members to the MECs, even if they were not represented in the municipal assembly.

#### 3) Polling Boards

For the September/October elections, the REC appointed polling boards in each of the 8,615 polling stations. Each PB consisted of a president plus three permanent members, each required to

The October 2000 Parliament was dominated by the SPS, SRS and SPO each of whom nominated 4 members on the REC. The DOS Coalition was also represented with 4 representatives.

The REC in the run-up to the 29 September election was composed of 28 members, plus deputies. For the December election, it was composed of 20 members, plus deputies.

<sup>10</sup> Article 29 of the parliamentary election law.

have a deputy. The PB membership was made upon the recommendation of the MWG and there was no guarantee of multi-party representation; a process which generated a number of complaints. However, each candidate was also entitled to nominate a representative as an extended member. There are no figures available to indicate the level to which candidates exercised this right.

In the 8 December repeat elections, the number of polling stations was increased to 8,630. The number of permanent PB members was reduced to the chairperson and two members. A small number of complaints were made in relation to the appointment of PB presidents and permanent members in certain municipalities.

Certain violations or procedural irregularities can lead the PB to dissolve itself, causing the annulment of the election in the polling station and the need to hold repeat elections with a new PB. These allow potentially minor infractions to lead to self-dissolution.

#### **B.** ORGANISATION OF THE ELECTIONS

Although the majority of members of the REC appointed in June 2002 were new to their post, their overall approach to the management of the election administration during both stages of the election was efficient and transparent. All REC meetings were open to the media and domestic observers, and the REC produced a website that promptly published most of its decisions.

However, there were a number of occasions when the REC struggled to implement legislation that included ambiguous and conflicting provisions. This was most clearly apparent in the candidate registration process, responses to complaints concerning voter registration and decisions taken on the right of extended REC and PB members to continue their appointment after the first round contest. Moreover, at times, the members of the REC permitted political rather than legal considerations to prevail, especially where disputes arose on the differing interpretations of the law or administrative provisions.

#### C. CANDIDATE REGISTRATION

After the submission of a candidate nomination supported by 10,000 signatures, the REC must confirm a candidate registration within 24 hours, including verification of signatures. This short timeframe is applied regardless how many nominations are received, even if they are all submitted at the same time.

For the 29 September election, candidates had a period of almost six weeks to collect signatures. The candidate registration process was contentious with appeals lodged at the REC and the Supreme Court.

The arguments surrounding the candidate registration created a perception that some candidates were registered on tenuous grounds. Initially, the nomination of Dr Radenovic was rejected as a number of submitted signatures were deemed invalid, bringing him below the required number. However, the nomination of Mr Pavkovic, who initially submitted only 7,000 signatures, was approved.<sup>11</sup> On appeal, the REC reversed its decision on Dr Radenovic and, on 13 September, produced a final list of candidates that omitted Mr Pavkovic. On his appeal with the Supreme Court, the decision of the REC was overturned and an amended 11-person candidate list was published on 16 September.

Mr Pavkovic submitted a sufficient number of additional signatures after the legal deadline.

Other appeals were lodged at the REC against decisions to approve nominations of two candidates that allegedly included invalid signatures. The SRS further appealed this to the Supreme Court together with other complaints alleging shortcomings in the nominations of four other candidates. The REC and the Supreme Court rejected the SRS challenges on the grounds that they were submitted too late and without addressing the substance.

For the 8 December elections, the timeframe for submitting support signatures was shortened to eleven days. Despite the tight deadline, the three candidates were able to submit a sufficient number of signatures.

#### D. VOTER REGISTRATION

The accuracy of voter register was more important for these elections because of the voter turnout requirement. During all stages of these elections, the voter registers were subject to numerous complaints by political parties.<sup>12</sup>

#### 1) The Voter Registration Process

Citizens aged 18 and over are included in the voter register on the basis of their declared municipality of permanent residence or, in the case of IDPs, their temporary residence. The parliamentary election law requires the voter registers to be created by each municipality "as a part of a uniform, connected system". However, the law provides no specification on how the central register is to be made uniform across the Republic nor which body has the responsibility to supervise the process.

In practice, there are two main sources for maintaining the voter register: (1) the registrars of each municipal administration who are responsible for recording births, deaths, marriages and citizenship of persons residing within that municipality, and (2) the local branch of the Ministry of Interior, with which all citizens are obliged to record their permanent or temporary residence. The success of the system depends on the ability of municipalities to maintain their civil records accurately, the co-ordinating role of Republican Government, the relationship between a municipality with the local branch of the police and other municipalities, as well as the timely reporting of civil events by citizens.

During these elections, the absence of a uniform and maintained computerized database of eligible voters prevented any effective inspection in order to ensure against duplicate entries and other possible flaws.<sup>14</sup> The Ministry for State Administration and Local Self-Government undertook publicised attempts to "clean" the voter registers by using cross-referencing techniques, removing some 50,000 apparent duplications prior to the 29 September election and a further 28,000 before 8 December.

The OSCE/ODIHR has criticised the voter registration process in Serbia on a number of occasions since 1997. However, little progress has been made since.

<sup>13</sup> Article 12.

According to the Ministry of State Administration and Local Self-Government, this problem was compounded by technical shortcomings: for these elections, six municipalities in Serbia did not have a computerized system of registration, while those with computers used around 90 different software programs for their registers.

The voter registers were made available for public inspection and voters were able to check the information contained in the municipal registers and request changes.<sup>15</sup> With the exception of Kosovo, generally amendments were incorporated.

Each municipality submitted their municipal voter registers to the REC. The total number of registered voters eligible to vote in the 29 September and 13 October elections was 6,553,042. The relevant law then prevented any changes being made to this figure for the second round regardless of deaths or persons reaching the age of 18. For the December 8 election, the total number of voters was 6,525,760.

#### 2) Central Voters Register

The consolidated versions of the voter register were contained on CD-ROM disks. The data was stored as individual files from each municipality rather than merged databases of all registers. For the repeated election, the REC voted on 2 December, after lengthy and controversial discussions, to grant access to the CD-ROM disk to REC members and other authorized representatives of candidates. Access was restricted to the REC premises due to concerns about the protection of private data and computer queries had to be carried out by an authorized civil servant from the Ministry of Interior.

Between 3 and 11 December, the DSS scrutinized the CD-ROM with the voter registers, claiming repeated technical problems and alleged obstruction from officials. The REC decision of 2 December to provide access to the CD-ROM did not grant access to observers, including the OSCE/ODIHR EOM. However, on 7 December, after a written request, the EOM was shown a number of municipal voter registers in which some voters' unique personal identification numbers ("JMBG") had not been entered correctly. Such errors indicated a failing by certain municipalities to maintain records properly, but in no way could be construed that the voters in question did not exist or that they should have been deprived of their right to vote.

#### E. Kosovo

Polling for the presidential election took place in Kosovo on all three election days in the 19 municipalities where Serb population resides. After the calling of elections, the authorities of Serbia requested that the United Nations Interim Administration in Kosovo (UNMIK), the representative authority in the region, supply the voter registers of all voters resident in Kosovo for their inclusion in the total number of registered voters in Serbia. This request was declined. Consequently, the municipal voter registers for the presidential election were compiled by the Serb institutions that continue to cover municipal level activities outside of UNMIK's formal municipal structures. The voter registers contained predominantly, but not exclusively, ethnic Serbs recorded as residing in Kosovo. For the September/October elections, around 108,000 voters were registered, and this figure was reduced to some 98,000 for the December election. There was a limited opportunity for voters to scrutinize voter registers during the review period.

\_

The draft registers were generally, but not always, displayed in municipal offices or in the *mijesna zajednica* (local community centers).

The register of voters in Kosovo is produced and maintained for UNMIK by the OSCE Mission in Kosovo (OMIK). At the time, an updated voter register was being prepared for the holding of municipal elections in Kosovo on 27 October 2002. In Serbian and Federal elections prior to December 2000, the official data on Kosovo voters was highly unreliable and was used as the basis of significant levels of electoral fraud.

The administration of the elections in Kosovo was determined by REC decisions which established MWGs in the 19 municipalities and two district co-ordinators. The MWGs established around 260 polling stations.

An estimated 200,000 eligible voters have been displaced from Kosovo since 1999. Their right to vote in Republic-wide elections has been guaranteed by the parliamentary election law, which allows them to be placed on the voter register of the municipality where they are registered as temporary residents.<sup>17</sup> This right, however, did not extend to some 20,000 IDPs with temporary residence in Montenegro, who remained registered in their Kosovo municipalities. Because of the prohibition on out-of-polling station voting, these voters were effectively disenfranchised.

#### VI. PARTICIPATION OF WOMEN AND NATIONAL MINORITIES

No women candidates submitted nomination papers and the candidates were thus exclusively male. Women tended to be represented fairly well on election administration bodies, especially the REC, but less so on polling boards. There was no significant attempt by any candidate to address issues of gender equality.

Similarly, no candidate came from a national minority. During the latter stages of the September/October campaign, some candidates began addressing minority issues and campaigned in minority communities, although this was significantly absent from the 8 December election campaign. At times, the campaign language of some candidates went far beyond acceptable limits of democratic rhetoric and ventured into anti-minority discourse.

During both rounds of the September/October elections, voters from national minority populations generally participated in voting. For example, the Sandžak and Northern Vojvodina regions recorded some of the highest turnouts on 13 October. In contrast, the December elections attracted little interest from national minorities, whose leaders generally perceived the three candidates to be unresponsive to minority interests.

In South Serbia, following calls for an election boycott by the Party of Democratic Union of Albanians and the Movement for Democratic Progress, voter turnout was very low, especially in Presevo.<sup>18</sup> The ethnic-Albanian population of Kosovo showed little interest in the elections, although a number of its newspapers vehemently opposed the holding of the elections in the region.

On the three election days, observers reported that voters from the Roma minority participated in the elections, including at polling stations in Kosovo.

#### VII. THE ELECTION CAMPAIGN

Overall, the two election campaigns took place in a calm environment, although isolated cases of intimidation, mostly concerning "poster wars", were reported. As in December 2000, the fundamental freedoms of association, assembly and expression were respected, reflecting the

It is not clear whether there was a uniform system of ensuring that the names of any IDP registered as a voter elsewhere in Serbia was removed from the voter register of the original municipality in Kosovo.

The Party of Democratic Action led by Razim Halimi, the Mayor of Presevo, called on its supporters to participate.

Page: 13

significantly improved atmosphere for elections since the end of the Milosevic regime. The decision by UNMIK not to allow campaign visits by candidates to Kosovo led to complaints.

For both stages of the election, the Serbian Government provided a campaign fund to be divided equally among the contestants. Controls on the use of this fund as well as the use of additional funding from private sources were not sufficient.

During the campaigns, all sides, candidates or political forces, failed to motivate public interest in the elections.

#### A. THE SEPTEMBER/OCTOBER CAMPAIGN

The campaigns by the eleven candidates in the run-up to the 29 September election were relatively low-key. Most candidates toured the country to hold meetings with voters and all used media advertisements. The campaigns of Dr Kostunica, Dr Labus, Dr Seselj and Vuk Draskovic were the most intense, but no campaign appeared to gather significant momentum. At an early stage, there was a general perception that the level of public interest and enthusiasm in the election was limited. Moreover, other political issues, such as the removal of DSS parliamentary mandates, the emergence of new parliamentary factions and the continuing debate on the future of the union State, overshadowed the campaigns.

While the general focus of the campaign was upon the leading candidates, Dr Kostunica and Dr Labus, the more visible political debate was taking place during the election period between Dr Kostunica and Prime Minister Zoran Djindjic, who was not a candidate. Much of Dr Kostunica's campaign was strongly critical of DS and the Serbian Government. Midway during the election, the Government of Serbia launched a public relations campaign called "Proud of Serbia" which sought to promote successes since 2000.

For the second round run-off, the campaign was even quieter, with the main focus being a two-hour televised debate on 9 October.

The decision by two defeated first round candidates Vojislav Seselj and Borislav Pelevic to advocate a boycott of the second round seemed motivated by a wish to see the run-off fail to meet turnout requirement. Although encouragements to vote came from a range of political parties, civil society organisations, the Orthodox Church, international organisations and labour unions, an insufficient number of voters turned out on election day.

#### B. THE DECEMBER CAMPAIGN

Despite indications of increasing public apathy towards the repeat election, each of the three candidates chose to pursue a low profile campaign, with few public meetings and media appearances. Attempts to generate some public attention, including a "get out the vote" campaign conducted jointly by the OSCE Mission to FRY and Council of Europe, failed to change the general perception that the election would fail because of the lack of voter interest.

The primary political focus of the campaign period was on whether the member parties of the DOS coalition would formally support the candidacy of Dr Kostunica in view of the continuing public disagreements between the DSS and the DS. Once again, other political issues, especially developments related to the Constitutional Charter between Serbia and Montenegro and FRY's accession to the Council of Europe, dominated the media during the election period.

The campaign by Vojislav Selselj for the December election was bellicose in its use of a 45-minute paid television advertisement that displayed combative scenes of the candidate with his paramilitary forces during the wars of the previous decade, including a speech from Radovan Karadjic, wartime leader of Republika Srbska indicted by ICTY, images of a human skull in a peacekeeper's helmet placed as a trophy on the hood of his car, and all accompanied by songs advocating a greater Serbia.

#### VIII. THE MEDIA AND ELECTIONS

#### A. MEDIA ENVIRONMENT

Following the events of October 2000, democratic changes in the sphere of the media took root quickly and the recent adoption of reforming legislation should consolidate this important development. In July 2002, Parliament adopted a new Law on Broadcasting that provides for transforming RTS, the State owned radio and TV station, into a public service broadcaster. It also establishes the independent Republic Broadcasting Council with responsibility for supervising and licensing broadcasters, the 9 members of which had yet to be appointed.

Overall, the Serbian electronic and print media devote much space to political issues and citizens are offered a broad range of political information.<sup>19</sup>

#### B. THE LEGAL FRAMEWORK

The Constitution guarantees freedom of press and prohibits censorship. The parliamentary election law guarantees citizens the right to be informed about the election programs of presidential candidates. However, insufficient provisions failed to ensure candidates equal access to, and coverage in, the media. While the law was explicit in addressing the State-owned media, it provided no guidance on the role and obligations of the private media in the election campaign.

Candidates have the right to place paid advertisement on both the private and public media but the parliamentary election law does not provide that broadcasters and publishers should offer equal payment rates to all contestants.

The election legislation establishes a Supervisory Board, appointed by Parliament to oversee aspects of the campaign and the media coverage. However, unlike 2000, the Board was not constituted for this election. The justification given by Parliament was that the Board had a temporary mandate relating only to the previous parliamentary election. The decision was appealed by the SRS with a request to invalidate the 29 September election, but the REC and the Supreme Court of Serbia rejected the complaint as groundless.

The RTS, the Serbian Government and the political parties represented in Parliament reached an agreement on presenting candidates, providing to all candidates 45 minutes of free airtime on State-

According to the Agency for Media Research and Public Relations, there are approximately 1,500 media outlets in the Republic of Serbia. A large number of electronic media operate without being properly registered or without having adequate license.

OSCE/ODIHR Final Report on December 2000 Elections highlighted important shortcomings in the functioning of the Supervisory Board as well as insufficient definition of its mandate.

Page: 15

owned national TV and 30 minutes on State-owned national radio.<sup>21</sup> All candidates were able to address the public through the RTS program *Izborna hronika* (Election Chronicle) and one free advertisement spot daily.

#### C. MEDIA MONITORING

#### 1) The September/October Elections

Between 31 August and 13 October, the EOM monitored four TV stations, most broadcasting nationally, and four newspapers.<sup>22</sup> It applied qualitative and quantitative methods to analyse the media coverage of candidates, parties and other relevant political subjects, the tone in which the subjects were portrayed (positive, neutral or negative) and the proportion of direct speech.

Prior to 27 September, Dr Kostunica and to some extent Dr Labus received more coverage in all electronic media than the other candidates, with much time devoted to their official activities as office holders. Before the second round, the electronic and print media provided the two remaining candidates with a broadly equal amount of campaign coverage. The overwhelming majority of this airtime covered Dr Kostunica and Dr Labus as presidential candidates rather than federal officials.

The other nine candidates received varying amounts of broadcast time. Dr Seselj and Mr Pavkovic coverage was mainly politically neutral while the other seven candidates received less space, particularly Dr Lalosevic and Dr Radenovic.

Prior to the first round, Dr Labus placed most paid advertisements in the broadcast media. This decreased in the run-up to the 13 October poll, whereas Dr Kostunica increased the quantity of advertisements, resulting in a largely equal presentation of both before the second round.

The "Proud of Serbia" campaign launched by the Serbian Government in mid-September was given extensive coverage in the electronic media in the period before the first round and to a much lesser extent, between the election rounds. The campaign, which could be considered as indirect campaigning, and its coverage continued even during the first 48-hour campaign silence period.

RTS offered voters balanced and largely unbiased coverage of candidates, enabling voters to make informed choices on election day. Before the first round, Dr Kostunica received more extensive coverage than other candidates, receiving 36% of the total time devoted to candidates. In contrast, Mr Pavkovic received 14% with Dr Labus and Dr Seselj 12% and 9% respectively. Other candidates received approximately 3% - 5%. Prior to the second round, RTS did not broadcast many election-related programs and candidates received coverage mostly through news. Dr Kostunica and Dr Labus received approximately double the amount of airtime compared to the first round.

YU INFO provided mostly neutral information about all candidates. Prior to the first round Dr Kostunica received the most coverage (38%), followed by Dr Labus (13%) and Dr Seselj (12%). To 27 September, private TV BK gave Dr Labus less airtime (23%) than Dr Kostunica (38%), but the tone of the latter was less positive. More than other stations, it devoted greater airtime to the

Separate agreements were signed for the two stages of the election. The first agreement was signed on 10 August, the second on 25 November (2 weeks after the legal deadline).

The following media were monitored: State-owned TV station, RTS 1; privately owned TV stations - TV PINK, TV BK and Federal TV - YU INFO; newspapers: *Blic, Nacional, Politika* and *Vecernje Novosti*. The EOM's Media Unit monitored eight hours of prime-time TV broadcasts, daily.

other nine candidates with Dr Seselj and Mr Pavkovic accounting for (14%) and (6%) respectively. Prior to the second round, Dr Kostunica and Dr Labus received a similar amount of airtime on TV BK and YU INFO, the tone of which was generally neutral. On TV BK the ratio was 58/42 in favour of Kostunica. On YU INFO the ratio was 53/47 also in Kostunica's favour.

Prior to the first round, Dr Kostunica and Dr Labus received widespread coverage (39% each) on privately owned TV Pink. While Dr Kostunica was presented in a mostly negative tone, Dr Labus was presented extremely positively. In addition, TV Pink solely broadcast live Dr Labus' final campaign rally on 26 September. After the first round, the two candidates received generally similar amounts of total time, but the tone of the information was not changed.

On 9 October, a two-hour debate between the two candidates was broadcast on State-owned TV and radio, as well as a wide range of local media outlets. The calm and polite debate represented the most significant campaign event between the election rounds. However, on the day of the debate, TV Pink and TV BK dedicated a significant part of their main news to politicians who urged an election boycott.

In general, the print media offered readers a more diverse range of views than the electronic media. *Vecernije Novosti*, *Politika* and *Blic* granted most space to Dr Kostunica and Dr Labus but provided mostly neutral information about all candidates during the entire campaign period, with *Blic* adopting a critical approach.

One significant complaint alleging breach of the 48 hours campaign silence period by *Nacional* was rejected by REC on the grounds that it lacked competence to rule on the matter, which raises the question as to which body has the jurisdiction to rule on media related complaints in the absence of Supervisory Board.

#### 2) The December Election

From 11 November to 6 December, the media was characterized by a limited presentation of the contestants and less media attention of the campaign than in September/October. Only in the last few days of campaign, the media allocated larger portion of airtime, both free of charge (*YU Info*) and paid (*BK Telecom*). The electronic media dedicated a much greater share of its coverage to the activities of the Government of Serbia and to Republican and Federal parliamentary sessions.

Dr. Kostunica dominated coverage in all the media but mainly in his role as Federal President. The tone of the coverage remained predominantly neutral or slightly positive. The activities of the other two candidates were covered at a lower level but in a balanced manner and mainly neutral tone. While receiving greater coverage than Mr Pelevic, there were more critical portraits of Dr. Seselj in the print media, especially following his decision to use imagery of his paramilitary history.

RTS continued to fulfil its obligations to provide all candidates with free airtime and advertisements and balanced inclusion in election programs. The dominant coverage was of the activities of the Government of Serbia (29%) but this was overwhelmingly neutral in its content. Candidates received 14% of political news, with neutral and slightly positive treatment.

YU INFO broadcast balanced informative programs, while the most popular TV Pink offered very limited coverage of the campaign, in particular in comparison with the autumn pre-election period and its tone of the contestants' coverage was slightly negative. The bulk of the TV Pink coverage (52%) was dedicated to Government and was overwhelmingly positive. In comparison with all

**Page: 17** 

other outlets, BK Telecom covered Dr. Seselj in the most positive way and broadcast his paid advertisement.

Again, the print media offered a wider range of political views and served as a more comprehensive source of information.

The campaign silence was breached by RTS, BK Telecom, B 92 (television channels), Vecernje Novosti, Politika, Blic, Glas Javnosti (papers) by two types of ads urging citizens to vote. One of these ads, sponsored jointly by the OSCE and the Council of Europe missions, was published in violation of the contracts requiring an end of the campaign by 6 December.

#### IX. RESOLUTION OF ELECTION DISPUTES

Electoral complaints may be lodged by any voter or candidate who claims a violation of electoral rights or irregularity regarding the electoral process. As all decisions related to the administration of the election and interpretation of election legislation were made by the REC, an appeal or complaint against one of its decisions can only be made to the Supreme Court of Serbia. In practice, however, a complaint against a decision of the REC is heard by the REC itself and that decision is appealed to the Supreme Court. On election day, the decisions of polling boards can only be appealed to the REC, making it realistically impossible for there to be an opportunity for rapid redress. Potentially, a large number of election day complaints could render the REC, as the first instance adjudication body, to be inundated with appeals, although this did not occur following any of the three election days. Where complaints were received on election day, the REC had adopted a pragmatic approach in asking the relevant District Co-ordinator, who was familiar with the issue, to make a recommendation on its settlement.

In contrast to the REC meetings, which are public, appeals to the Supreme Court are considered as administrative disputes and, under legislation dating back to the previous regime, must be held *in camera*. Neither the parties to the dispute nor their lawyers are allowed to attend these hearings. The Supreme Court has the discretion to allow legal representation and an appellant to attend its proceedings.

During these elections, with the exception of challenges on candidate registration and the voter registers, relatively few substantive complaints or appeals were filed with the REC. Most complaints concerned the composition of polling boards. All were rejected by the REC as unfounded or as filed out-of-time.

#### X. DOMESTIC OBSERVERS

The rights of non-partisan observers to the election process, whether domestic or international, are not provided for in the legislative framework for elections in Serbia. However, in practice for both election stages, the REC issued an instruction allowing observers to be accredited and to be given full access to the election process. The instruction does not set out criteria for the accreditation process. Applications for accreditation from three organizations were refused on the basis that they were not primarily involved in election observation. <sup>23</sup>

The organizations were the political movement "OTPOR!", the Center for Democratic Transition from Montenegro and the Center for Research and Protection of the Natural, Cultural and Ethnological Heritage of Kosovo.

The entire election process was monitored closely by the Belgrade based Center for Democracy and Free Elections (CeSID) that deployed over 10,000 observers in polling stations to monitor polling and counting. From these sources, CeSID was able to provide voter turnout figures and parallel vote tabulations on the count that were accurate and timely. The work of CeSID contributed significantly to the transparency of the election day processes and the public confidence in the accuracy of the results.

# XI. OBSERVATION OF VOTING, COUNTING AND VOTE TABULATION<sup>24</sup>

#### A. VOTING

On all three election days, polling was conducted in a relaxed atmosphere and generally in accordance with the law and regulations. Turnout was 55.5% in the first round, and low in the second round (45.5%) and repeat election (45.2%), causing the elections to fail.

The overwhelming majority of international observers reported positively from the polling stations they visited. Only in 1% of visits observers assessed the manner of the procedures followed as "poor". Observers reported that access was difficult for disabled or elderly voters in 10% of polling stations visited.

Polling boards worked efficiently, impartially and tried to ensure correct voting procedures. The methods of maintaining privacy for voters lacked uniformity and occasionally effectiveness, especially in a number of polling stations that were simply too small or where the voting equipment used was substandard. In some areas, PBs failed to prevent "group voting" (more than one voter marking ballots at voting booths simultaneously). This was recorded in 19% of polling stations in September, 15% in October and 12% in December. Another problem noted was the failure of PBs to systematically check voters' identities before handing out ballots.

The majority of PB presidents who were met stated that they did not represent any political party and were appointed on the basis of their experience. However, a significant proportion of PB presidents were reportedly DS members. Representatives of most candidates generally were represented as extended members on PBs. On the 13 October, 23% of the stations visited had extended PB members from unsuccessful first round candidates, despite a REC decision that only the two remaining candidates were entitled to do so.

International observers were also able to peruse the extracts of the voter registers to identify problems on the data, for example, whether a JMBG was included. On 13 October, approximately 34% of PB presidents indicated that they were aware of deceased persons still being registered as voters, although the numbers were small.

In around 20% of polling stations visited, at least one person had been turned away because of name not included on the voter list. In the vast majority of cases, persons not on the voter list were not allowed to vote. The voter register entries with the highest rate of inaccuracy and omissions concerned voters in Kosovo, IDPs, those serving in the military or turning 18.

Observers received a number of complaints from voters on the issue of the prohibition of out-of-polling station voting, including from disabled voters unable to enter inaccessible polling stations.

On 29 September and 13 October respectively, international observers visited 1,296 and 618 of the 8,615 polling stations. On 8 December, observers visited 637 of the 8,630 polling stations.

#### B. VOTE COUNT

Observers also evaluated the vote count in positive terms with only 2% characterising the three counts as "poor". In the vast majority of cases, procedures to safeguard the integrity of the count were implemented properly. The count was quick and efficient. However, due to a small number of inconsistencies such as the failure of each voter to sign the register, a few observers reported that there were occasionally a few ballots in the box over the number of voters recorded as having participated. Some PBs had difficulty in completing the protocol of results due such discrepancies. In the large majority of cases extended PB members received copies of the protocols, a copy of which was nearly always posted publicly.

Observers visited also the MWG or MEC premises to observe the handover of election material. The processing of results at this stage was generally transparent although somewhat slow, with many premises overcrowded. While there were a number of reports that extended PB members were being refused to accompany polling material to the municipality, most candidates had representatives present during this process. Observers reported a high degree of confidence in the process and the accuracy of results reporting.

#### C. TABULATION OF ELECTION RESULTS

The REC processed election results efficiently and transparently enabling the announcement of election results within the legal deadlines. For 13 October, the REC adopted new instructions to ensure the speedier announcement of preliminary results and these were formalised by the amendments to the presidential election law.<sup>25</sup> All REC members were able to receive electronic copies of the final results. There was no challenge to the accuracy of the results. The amended presidential law also required the REC on 8 December to announce turnout figures during the course of the day.<sup>26</sup>

#### XII. POST-ELECTION DAY DISPUTES, COMPLAINTS AND APPEALS

#### A. POST-29 SEPTEMBER

Following the first round, over 40 complaints were lodged at the REC, alleging polling irregularities and/or errors in the voter list. All were rejected. Most were concerned with relatively minor issues, and were not appealed. However, one complaint by the SRS, which called for the annulment of the election results, was appealed to the Supreme Court. It alleged a wide number of violations, including irregularities in the candidate registration process, the improper termination of extended members of election administration bodies, the failure to compile a centralised voter register and violations on election day. The appeal was upheld in part by the Supreme Court but the request to annul the results was rejected. The REC was required to re-consider the SRS complaint and give its reasons for its decisions. The REC again rejected the complaint, a decision which was upheld on a further appeal.

25

On 29 September, CeSID and a number of political parties announced unofficial PVT results many hours ahead of the REC.

A similar initiative by CeSID was severely criticised by the DSS, accusing CeSID of adversely affecting the final turnout.

#### Page: 20

#### B. POST-13 OCTOBER

Only five complaints alleging minor polling irregularities, errors in the voter list, and local campaign silence breaches were immediately submitted to the REC after the second round. The REC chose not to require any repeat elections in specific polling stations. In one polling station a disgruntled voter destroyed the voter register, making it impossible to determine the number of voters who had voted.

After the announcement of the final results of the second round on 15 October, the REC dismissed its remaining extended members and announced that the whole election process should be repeated. This required new elections to be called by the Speaker of the Parliament. The DSS immediately challenged this decision, arguing that the total number of registered voters adopted on 26 September included at least 600,000 "phantom voters", implying that a sufficient number of the true total of registered voters had voted and that therefore the election was valid. The evidence for this claim consisted of comparison between preliminary census results and numbers of registered voters. The DSS also questioned the inclusion of voters who were temporarily resident overseas. However, the complaint did not contain specific examples of inaccuracies nor refer to the significantly different manner and purpose for which the census records were prepared. The appeal was rejected by the REC on 17 October, partly on procedural grounds. The DSS appeal with the Supreme Court was rejected as ungrounded on 20 October.

#### C. POST-8 DECEMBER

Following the repeat voting, the REC rejected nine complaints related to the work of polling boards, alleging minor polling and counting irregularities, errors in voter lists, and breaches of the campaign silence. In one polling station in the municipality of Zemun, the vote was invalidated because the number of ballots found in the ballot box exceeded the number of signatures on the voter list by four. The REC decided not to repeat polling in this polling station since it would not affect the outcome.

However, a number of more significant complaints were lodged around this time by the DSS. Two days before election, the DSS submitted a similar complaint to one made after 13 October, claiming that the total number of registered voters was inflated by around 450,000. On 10 December, the Supreme Court rejected the complaint on the basis that municipalities and not the REC are responsible for the accuracy of the registers.

On election day, the DSS filed a complaint claiming obstacles in scrutinizing the CD-ROM containing the voter registers due to inadequate hardware. The REC on 10 December rejected this complaint as well. Following further inspection of the computerized and consolidated voter register, on 11 December, the DSS lodged another complaint alleging that the total number of voters had been inflated by 853,553. The DSS called for these voters to be removed from the approved total number of registered voters, which, if done, would have meant that a sufficient number of voters had taken part in the election. The complaint was rejected by the REC on 12 December and, on appeal, by the Supreme Court.

From its own inspection of the register, the OSCE/ODIHR considered that the majority of identifiable errors and inaccuracies tended to be administrative mistakes that should not prevent

those named from voting. Moreover, the DSS did not complain when the provisional voters registers were consolidated by the MSALSG on 29 November.

The DSS sharply criticised the REC in relation to a destruction of ballot papers from the 29 September and 13 October elections. The parliamentary election law requires that all election material be kept for at least four years. However, the REC Instruction adopted on 11 November 2002, provided that ballot papers and other non-essential election material can be destroyed after a failed election as soon as new elections have been called. These instructions were adopted unanimously.

It is not clear when the material was destroyed. The REC was informed at its session on 21 November about the proposal to destroy the ballot papers. Only one member of the REC, from the SRS, raised an objection citing the parliamentary election law. The REC Secretary justified the destruction with the financial expense of storing several tonnes of paper and noted that polling station results were accepted without remarks in the polling station minutes and therefore the minutes were sufficient proof of the correctness of election results in each polling station. The DSS did not raise the issue until the REC session on 7 December.

#### XIII. RECOMMENDATIONS

The OSCE/ODIHR recommends a comprehensive review of election legislation. The OSCE/ODIHR refers to the final reports of its previous EOMs in Serbia and FRY and also offers the following recommendations for consideration.

Recommendations concerning the provisions relating to parliamentary elections are not included in this report. Nevertheless, these will be relevant if and when the Parliament addresses the legislation. In reviewing these recommendations, reference should also be made to OSCE/ODIHR EOM reports and to the Assessment of Legislation in the Republic of Serbia (April 2001). Particular attention should be given to ensuring adequate representation of political parties representing national minorities, and that independent candidates can compete in parliamentary elections. The problem of party control over the mandates of deputies elected by popular vote has to be resolved. The OSCE/ODIHR has also published a number of reports that could assist the competent authorities, including 1) Guidelines for Reviewing a Legal Framework for Elections (January 2001), 2) Guidelines to Assist National Minority Participation in Election Processes (January 2001), and 3) Resolving Election Disputes in the OSCE Area (July 2000).

#### A. THE LEGAL FRAMEWORK

- 1. The legislative inconsistencies between the presidential and parliamentary electoral systems should be removed. Steps should be taken to incorporate the improvements made to the presidential election law to the parliamentary election law well in advance of scheduled parliamentary elections in 2004. In particular, the Municipal Election Commissions should be incorporated in the election administration structure of parliamentary elections.
- 2. Consideration should be given to the removal of any provision that can cause repeated failures of presidential elections. In particular, the requirement for a minimum voter turnout in the first round could be dropped or modified to allow the two strongest candidates to contest a second round, regardless of voter turnout in the first round.

- 3. The right to vote should be guaranteed enabling out-of-polling station voting for disabled, hospitalized and those temporarily away from their homes, whether they are overseas or outside Serbia.
- 4. The winning candidate should require a majority of the valid votes cast, disregarding invalid votes.
- 5. The 30-day minimum period between the calling and holding of presidential elections is too short
- 6. The rights of domestic and international observers should be guaranteed in law, and the criteria for their accreditation stipulated clearly.
- 7. The parliamentary election law should be amended to clarify issues related to the keeping of non-essential election materials.

#### B. ELECTION COMMISSIONS

- 8. The relevant law should be amended to clarify the rights of extended members of election administration bodies during a presidential election. In particular, it should be made clear whether the extended composition continues throughout the second round of election.
- 9. The parliamentary election law should be amended to ensure that a polling board may only be dissolved by the REC, and only after a formal complaint regarding serious violations.
- 10. Consideration should be given to ensuring a better level of political pluralism on election administration bodies, including polling boards.

#### C. CANDIDATE NOMINATION AND REGISTRATION

11. The entire process for the nomination and registration of presidential candidates should be revised. In particular, the process must be practical, enforceable and allow for transparent verification of signatures.

#### D. CAMPAIGN AND THE MEDIA

- 12. Greater transparency and accountability should be ensured for the allocation and the use of public funds to candidates for campaign expenditure. Similar provisions should be instituted for private funding.
- 13. The law should ensure for candidates equal access to media outlets under fair conditions, including equal terms of payments for advertising.
- 14. The parliamentary election law should be amended to clarify the role of the Media Supervisory Board. Responsibility to monitor the media and the enforcement of penalties should be clarified.

#### E. VOTER REGISTRATION

- Page: 23
- 15. A co-ordinated long-term effort is required to improve the process of compiling voter registers. A single, centrally managed civil database for the Republic should be considered. Overall responsibility and authority for its maintenance should be given to a single State body.
- 16. Civil records held by municipalities should be fully computerised using a uniform software program with links to other municipalities so that errors can be verified.
- 17. Control checks for potential duplicates should be conducted continuously at the Republic level, and all entries lacking part of required data should be reviewed.
- 18. The parliamentary election law should be amended to require voter lists to be publicly accessible at polling stations in advance of an election.
- 19. Political parties should have access to the voter registers, but only if safeguards are introduced to protect citizens' right to privacy.

#### F. ELECTION DISPUTES

- 20. A thorough review of the election disputes resolution process should be conducted to ensure an efficient, inclusive and transparent process.
- 21. Appeals to the Supreme Court should be heard in open sessions and the parties to the appeal should have the right to present their case directly or through legal representation.

#### G. ELECTION DAY

- 22. Polling Stations should be selected to ensure they are of a suitable size and offer unimpeded access to elderly and disabled voters. The quality of voting screens should be standardised.
- 23. The training of polling board members should ensure the proper conduct of all voting and vote count procedures prescribed by law. As a priority, a serious effort to prevent "group voting" should be undertaken by the REC.

#### APPENDIX: SUMMARY OF OFFICIAL RESULTS

#### (a) 29 September First Round

The REC announced the official first round election results on 1 October 2002.

Number of voters registered in the voters' register	6,553,042	100%
Number and % of voters recorded as voted	3,637,062	55.50%
Number and % of invalid ballots	74,534	2.05%
Number and % of valid ballots	3,559,964	97.95%

Candidates	Name of the submitter (party, coalition, group of citizens)	Number of votes	% of number of voters who	% number of all registered
			voted	voters
VOJISLAV KOŠTUNICA	DSS	1,123,420	30.89	17.14
MIROLJUB LABUS	"Best for Serbia – Miroljub Labus"	995,200	27.36	15.19
VOJISLAV ŠEŠELJ	SRS	845,308	23.24	12.90
VUK DRAŠKOVIĆ	SPO	159,959	4.40	2.44
BORISLAV PELEVIĆ	SSJ	139,047	3.82	2.12
VELIMIR-BATA ŽIVOJINOVIĆ	SPS	119,052	3.27	1.82
NEBOJŠA PAVKOVIĆ	Group of citizens	75,662	2.08	1.15
BRANISLAV-BANE IVKOVIĆ	Socialists for the return to the base	42,853	1.18	0.65
VUK OBRADOVIĆ	Social democracy	26,050	0.72	0.40
TOMISLAV LALOŠEVIĆ	Group of citizens	25,133	0.69	0.38
DRAGAN RADENOVIĆ	"Society of free citizens"	8,280	0.23	0.13

#### (b) 13 October Second Round

The REC announced the official second round election results on 15 October 2002.

Number of voters registered in the voters' register	6,553,042	100%
Number and % of voters who have voted	2,979,254	45.46%
Number and % of invalid ballots	65,427	2.20%
Number and % of valid ballots	2,913,041	97.80%

			% of	% number
Candidates	Name of the submitter	Number	number of	of all
Carididates	(party, coalition, group of citizens)	of votes	voters who	registered
			voted	voters
VOJISLAV KOŠTUNICA	DSS	1991947	66.86	30.40
Dr MIROLJUB LABUS	"Best for Serbia – Miroljub Labus"	921094	30.92	14.06

#### (c) 8 December Repeated First Round

The REC announced the official repeated first round election results on 10 December 2002.

Number of voters registered in the voters' register	6,525,760	100%
Number and % of voters who went to the polls	2,947,748	45.17%
Number and % of voters who voted (i.e. ballots found in box)	2,946,716	45.16%
Number and % of invalid ballots	80,396	2.73%
Number and % of valid ballots	2,866,320	97.27%

Candidates	Name of the submitter (party, coalition, group of citizens)	Number of votes	% of number of voters who voted	% number of all registered voters
VOJISLAV KOŠTUNICA	DSS	1,699,098	57.66	26.04
VOJISLAV ŠEŠELJ	SRS	1,063,296	36.08	16.29
BORISLAV PELEVIĆ	SSJ	103,926	3.53	1.59

#### ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (ODIHR) is the OSCE's main institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Document).

The ODIHR, based in Warsaw, Poland, was created as the Office for Free Elections by the OSCE Heads of State or Government at the 1990 Paris Summit. In 1992, the name of the Office was changed to reflect an expanded mandate to include human rights and democratisation. Today it employs over 80 staff.

The ODIHR is the lead agency in Europe in the field of **election** observation. It co-ordinates and organizes the deployment of thousands of observers every year to assess whether elections in the OSCE area are in line with national legislation and international standards. Its unique methodology provides an in-depth insight into all elements of an electoral process. Through assistance projects, the ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include the following six thematic areas: rule of law, civil society, freedom of movement, gender equality, trafficking in human beings and freedom of religion. The ODIHR implements more than 100 targeted assistance programs, seeking both to facilitate and enhance State compliance with OSCE commitments and to develop democratic structures.

The ODIHR **monitors** participating States' compliance with OSCE human dimension commitments. It also organizes several meetings every year to review the implementation of OSCE human dimension commitments by participating States.

The ODIHR provides advice to participating States on their policies on **Roma and Sinti.** It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies. The Office also acts as a clearing-house for the exchange of information on Roma and Sinti issues among national and international actors.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR <u>website</u>, which also contains a comprehensive library of reports and other documents, including all previous election reports and election law analyses published by the ODIHR.