



## **INTERNATIONAL ELECTION OBSERVATION MISSION Republic of Serbia (Serbia and Montenegro) Parliamentary Elections 28 December 2003**

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### **Statement of Preliminary Findings and Conclusions**

**Belgrade, 29 December 2003** – The International Election Observation Mission (IEOM) - comprised of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the OSCE Parliamentary Assembly (OSCE PA), the Parliamentary Assembly of the Council of Europe (PACE), and the Council of Europe's Congress of Local and Regional Authorities of Europe (CLRAE) - for the 28 December 2003 parliamentary elections in the Republic of Serbia (Serbia and Montenegro) is issuing this statement of preliminary findings and conclusions before the official announcement of results, before election-day complaints and appeals have been addressed, and before the analysis of election-day observation findings has been completed.

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#### **PRELIMINARY CONCLUSIONS**

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The 28 December 2003 parliamentary elections in the Republic of Serbia (Serbia and Montenegro) were conducted generally in line with OSCE commitments and Council of Europe standards for democratic elections. A high number of contestants presented voters with a genuine choice and overall the election process was well administered. However, distinct challenges remain, particularly in relation to the legislative framework for elections.

A total of 19 parties, coalitions, or groups of citizens contested the elections. Due to a wide choice from across the political spectrum, these elections were seen by many as the first in which voters would be able to vote for their preferred option rather than for the party they dislike the least. The election campaign rhetoric generally remained within the parameters for campaigning in a democratic society.

Four parties included persons indicted for war crimes in their candidate lists and three indictees were actually leading party lists. While formally such candidacies do not contradict Serbian law, embracing candidates charged with war crimes conveys the clear intention on the part of some political parties in Serbia to adhere to the denounced legacy of the past.

Media coverage of the campaign was generally unbiased. The state broadcaster, RTS, complied with legal provisions for the allocation of free airtime, and its news coverage was predominantly neutral. Private broadcasters and print media provided extensive coverage of electoral issues, focusing their attention on the main contestants. However, rates charged for political advertisements were significantly higher than usual commercial rates, which may have limited the possibility for some parties and coalitions to campaign through use of the private media.

Overall, the election administration worked in an efficient and transparent manner, despite the challenge of administering an election within a legal framework that entirely omits the establishment of an intermediate level of election administration. Contestants were, therefore, only guaranteed representation at national and local levels, in the extended composition of the Republican Election Commission (REC) and in Polling Boards. The voter registers, which were partly corrected and updated in 2003, require further improvements, and a central voter register should be established, as envisaged in the parliamentary election law.

As in previous elections, international observers rated the polling and counting procedures positively in an overwhelming majority of polling stations visited, although procedural shortcomings persist, including group voting. Election day activities were also monitored by a large number of domestic non-partisan observers from the Center for Free Elections and Democracy (CeSID).

The Law on Election of Representatives (the parliamentary election law), unchanged since October 2000, still contains significant shortcomings. The OSCE and the Council of Europe recommend that a comprehensive review of election legislation be undertaken as a matter of urgency, including repeal of provisions that:

- Allow parties and coalitions to strip elected representatives of their mandates, which runs contrary to the 1990 OSCE Copenhagen Document;
- Allow parties and coalitions to arbitrarily choose which candidates from their lists become members of parliament, instead of determining the order of candidates beforehand, thus limiting the transparency of the system; and
- Effectively disenfranchise a significant portion of the electorate due to lack of special voting provisions for voters who are hospitalized, homebound, imprisoned, or temporarily abroad.

The OSCE and the Council of Europe remain prepared to assist the authorities and civil society of Serbia to overcome the remaining challenges in the electoral framework and electoral process in Serbia.

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## **PRELIMINARY FINDINGS**

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### **Background**

The 28 December parliamentary elections were called by the Speaker of the National Assembly (parliament) of the Republic of Serbia, Ms. Natasa Micic, on 13 November, three days before the most recent failed attempt to elect a President of the Republic. The parliamentary elections were held one year before the expiration of the mandate of the parliament that had been elected on 23 December 2000, following the fall of the regime of Slobodan Milosevic.

The 2000 parliamentary elections gave the Democratic Opposition of Serbia (DOS) an overwhelming majority in the National Assembly. Shortly after those elections, however, political differences among DOS parties became apparent, particularly between the

Democratic Party (DS) of the late Serbian Prime Minister, Zoran Djindjic, and the Democratic Party of Serbia (DSS) of former Yugoslav President Vojislav Kostunica. The conflict between the DS and DSS peaked in 2002, when the DOS formally expelled the DSS members of parliament from its ranks, and the parliament's Administrative Committee, based on Art. 88 of the parliamentary election law, stripped them of their mandates. Thus, the issue of controlling mandates by parties has proved to be a source of destabilization, in addition to contravening the OSCE election related commitments.

The political impasse resulting from this and other long-standing disputes among former partners in the DOS coalition has negatively influenced political life in Serbia, and has threatened to erode public confidence in the democratic process. The shock of the assassination of then premier Zoran Djindjic on 12 March 2003 further exacerbated the political environment and increased an already high level of frustration within society. Presidential elections, held in 2002 and 2003, were invalid due to insufficient voter turnout. Calls for early parliamentary elections became increasingly stronger as some parties left the DOS coalition, thus reducing the government's majority in the National Assembly. During the campaign for the 16 November 2003 presidential elections, parliament debated no-confidence motions in the Speaker of Parliament and in the government; the motions were never put to a vote, as parliament was dissolved before the debate was scheduled to resume.

### **Legislative Framework**

The parliamentary election law still contains shortcomings on which the OSCE/ODIHR has already commented in numerous reports and statements. No amendments have been made to the legislative framework regulating the elections since the last parliamentary election in December 2000. Previous OSCE/ODIHR Election Observation Missions (EOM) repeatedly called for a comprehensive review of election legislation and for repealing the provisions that contradict Paragraph 7.9 of the 1990 Copenhagen Document, which states that OSCE participating States will "ensure that the candidates who obtain the necessary number of votes required by the law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures". In spite of this, the law still contains a provision that allows parties and coalitions to strip elected representatives of their parliamentary mandates.

Following a prolonged political and legal controversy, the Constitutional Court of Serbia has ruled on three separate occasions on the issue of who has final authority over mandates of members of parliament and local assemblies. According to the Court's rulings, Article 88 (paragraphs 1 and 9) of the parliamentary election law, as well as similar provisions in the law on local elections, are not in line with the Serbian Constitution, and only an elected member can determine a premature termination of his or her mandate - not the political party or coalition on whose list the candidate was elected.

Moreover, the election law allows a party to arbitrarily choose which candidates from its list become members of parliament, instead of determining the order of candidates beforehand. This limits the transparency of the system and gives political parties a disproportionately strong position vis-à-vis the candidates. Under proportional representation systems, the order on the list usually determines the allocation of mandates; otherwise, mandates are allocated on the basis of preferential votes for candidates. The current Serbian system effectively results

in voters not knowing which candidates are likely to be seated as a result of their support for a particular party.

As the parliamentary election law only allows for voting in person at regular polling stations within the Republic, the legislation effectively disenfranchises all eligible voters who are hospitalized, homebound, imprisoned, or temporarily abroad.

Before the 28 December elections, the Republic Election Commission issued an official interpretation of Art. 81 of the parliamentary election law, regulating the establishment of a 5 per cent threshold used to distribute parliamentary mandates. In past reports and analyses, the OSCE/ODIHR commented that, *“It is not clear whether this is determined by referring to the number of signatures on the voter list, by counting the total number of ballot papers in the ballot boxes (valid or invalid) or by some other means.”* In its interpretation, the REC clarified that the threshold is to be calculated on the basis of the number of signatures on the voter registers. This allows for all votes, including invalid ones, and voters who received a ballot but did not cast it to influence the allocation of seats. As a result, such a provision also effectively raises the 5 per cent threshold in proportion to the number of invalid ballots cast.

The fact that the Court of Appeals and the Administrative Court, envisaged by the new Law on Courts adopted in 2001, have not yet been established became a source of confusion. According to the new law, from 1 January 2004, the newly established courts should take up a number of competencies that presently fall to the Supreme Court, including ruling on appeals against REC decisions. However, the new courts are not yet functional as no judges have yet been appointed. The judges of the Supreme Court declared on 26 December that they would rule on possible election complaints also after 1 January 2004, applying thereby the existing law. They are of the opinion that the parliamentary election law is a *lex specialis* which leaves complaints in the executive competence of the Supreme Court, regardless whether the new Administrative Court will be established or not.

Party and campaign financing is still regulated by the 1997 Law on Party Financing that is not sufficient to provide high standards of disclosure or regulation on this important issue. A new Law on Party Financing was adopted earlier this year, but it will only come into force in 2004.

The OSCE/ODIHR reiterates that a comprehensive revision of the legislative framework for elections is long overdue. It is a necessary challenge for both the government and opposition parties to reach consensus on new electoral rules in the near future in order to address remaining shortcomings and improve the stability and credibility of elected bodies and authorities.

### **Election Administration**

In accordance with the Law on Election of Representatives, the 28 December parliamentary elections were administered by a two-tier system: the Republican Election Commission (REC) and Polling Boards. Unlike the presidential election law, which envisages the inclusion of Municipal Election Commissions, the parliamentary election law completely omits this level of election administration. In order to find an interim solution to this shortcoming in the law, the REC created *ad hoc* Municipal Working Groups (MWGs) - intermediate bodies with technical and logistical tasks. Their members were generally

selected from the Municipal Election Commissions (permanent bodies appointed by the municipal assemblies for a 4-year term).

The REC retains overall responsibility for carrying out the elections. Its permanent membership has been extended to include a member and a deputy member representing each of the registered candidate lists. While extended representation was also provided for all 8,586 Polling Boards, the Municipal Working Groups did not have extended membership.

The REC performed its tasks in a generally constructive and transparent way. Sometimes faced with unclear legal provisions, the REC usually succeeded in reaching consensus on the interpretation of the law. However, as election day drew closer, the REC seemed to find it more difficult to reach consensus. Ambiguous and unclear provisions in the law, namely on the procedure for the appointment of extended composition of polling boards, were again not effectively tackled by the REC at an early stage. This allowed for different interpretations of procedures adopted by the contestants for submitting their lists of extended members of PBs, and increased pressure on REC technical staff already faced with tight deadlines.

### **Voter Registers**

A total of 6,511,450 voters were registered for the December elections. Because no voter-turnout requirement is in place for parliamentary elections, there has been considerably less controversy regarding the accuracy of the voter registers.

Nonetheless, shortcomings identified by the OSCE/ODIHR during previous elections still apply, and the new government and parliament should consider, in the near future, a general revision and consolidation of the relevant legislation and the registration system in place. In particular, attention should be given to providing unambiguous legislation stipulating which body is responsible for the establishment of a central voter register, as well as legislative provisions introducing uniform guidelines for its use and maintenance.

### **Participants in the Elections and the Campaign**

Due to a wide choice from across the political spectrum, these elections were seen by many as the first in which voters would be able to vote for their preferred option rather than for the party they dislike the least.

Registration procedures called on political parties, coalitions, and groups of citizens to submit to the REC an application for certification of a candidate list, together with at least 10,000 verified support signatures of eligible voters and other documentation proving each candidate's right of suffrage and business capacity. The deadline for submitting the candidatures expired at midnight on 12 December.

In order of certification, which also determines the order of appearance on the ballot, the REC registered the following parties and coalitions, including the names of the bearers of the lists:

- G17 Plus - Miroljub Labus;
- Serbian Radical Party - Vojislav Seselj;
- Democratic Party of Serbia - Vojislav Kostunica;
- Democratic Alternative - Nebojsa Covic;

- Democratic Party - Boris Tadic;
- Serbian Renewal Movement - New Serbia - Vuk Draskovic - Velimir Ilic;
- Otpor;
- For People's Unity - Borislav Pelevic - Marijan Risticvic;
- Socialist Party of Serbia - Slobodan Milosevic;
- Independent Serbia - Vladan Batic;
- Defense and Justice - Vuk Obradovic - Borivoje Borovic;
- Together for Tolerance - Canak, Kasza, Ljajic;
- Liberals of Serbia - Dusan Mihajlovic;
- Reformists - Social Democratic Parties of Vojvodina-Serbia - Miodrag-Mile Isakov;
- Socialist People's Party - People's Bloc - General Nebojsa Pavkovic;
- Citizens' Group "Economic Force of Serbia and Diaspora - Branko Dragas";
- Labour Party of Serbia - Dragan Milovanovic;
- Union of Serbs of Vojvodina - Dusan Salatic; and
- Yugoslav Left - JUL.

In addition, the All-Serbian National Interest coalition filed its application for registration on 12 December but withdrew it the following day. The list of the Yugoslav Left (JUL) was initially rejected by the REC, as its application, submitted on 12 December, lacked the necessary number of support signatures and was submitted by an unauthorized person. A JUL complaint against that decision was rejected by the REC on 14 December. On 17 December, however, the Supreme Court ruled in favor of the JUL and gave the party 48 hours to correct deficiencies in its application. The REC certified the list on 19 December.

Four of the candidate lists included persons indicted for war crimes as bearers or as candidates, including the Serbian Radical Party (SRS), whose leader Vojislav Seselj was the bearer of the list and the top candidate; the Socialist Party of Serbia (SPS), whose chairman Slobodan Milosevic was bearer and top candidate; the Socialist People's Party - People's Bloc (People's Bloc leader General Nebojsa Pavkovic was the bearer of the list and a candidate); and the Liberals of Serbia (LS) of Serbian Interior Minister Dusan Mihajlovic (Police General Sreten Lukic was No. 3 on the list). Formally such candidacies do not contradict Serbian law, as the individuals concerned have not been convicted by a court of law. However, the willingness to embrace candidates charged with war crimes, and associated with politics that resulted in extreme human rights abuses, conveys the clear intention on the part of some political parties in Serbia to adhere to the denounced legacy of the past.

Many parties and coalitions started their campaigns in late November or early December and intensified them during the last two weeks before the elections. Parties used a variety of means to convey their message to the electorate, including billboards and posters, advertisements in print and broadcast media, and campaign events held throughout Serbia. Many parties also actively campaigned at the grass-roots level, including door-to-door visits. The most visible campaigns were those of G17 Plus, DS, DSS, SRS, and Otpor. The SPS and many non-parliamentary parties started campaigning very late.

There were no serious incidents marring the campaign. Unlike in previous elections in Serbia, the campaign rhetoric remained, overall, within the parameters for campaigning in a democratic society. Several contestants complained to the OSCE/ODIHR EOM that a few

parties dominated the campaign, and that it was difficult for smaller parties to compete since their financial resources were limited.

## Media

The broad range of electronic and print media operating in Serbia provided voters with sufficient information, helping them to make an informed choice. The Binding Instructions for Broadcasters, issued by the Republic Broadcasting Agency (RBA) on 1 December 2003, regulated the campaign coverage in the electronic media. The rules set specific obligations for public broadcasting enterprises and for private broadcasters to ensure equal opportunity to all contestants. Print media are not subject to legal restrictions during the election campaign apart from the 48-hour moratorium on campaigning prior to election day.

In line with the Binding Instructions, the RBA oversaw operations of all broadcasters and was responsible for monitoring and investigating complaints about coverage of the campaign by electronic media. On 15 December, the RBA started daily monitoring of the national and local broadcasters to assess the campaign coverage.

Some political parties filed official complaints with the RBA, mainly concerning the alleged failure of some broadcasters to provide equal opportunities to all contestants, as required by the Instructions. There were complaints that some television stations almost entirely ignored certain parties or coalitions in their election programmes and daily news. The EOM was informed that in some municipalities, free television airtime was not allocated on a uniform basis.

Once the REC confirmed the complete list of contestants on 17 December, all parties and coalitions running for election were able to use special direct-access programming on the state-funded television channels RTS 1 and RTS 2, in compliance with the legal provisions on equal allocation of free airtime. The tone of the main state broadcaster's coverage remained predominantly neutral.

Private broadcasters covered the elections with a variety of different formats, including debates, thus allowing voters to assess the exchange of views of different political contestants. While the private media generally provided extensive coverage of election issues, they tended to focus on the leading political parties, with the bulk of coverage devoted to DS, SRS, G17 Plus and DSS, which received a total of 43 per cent of the time allocated to politics. The tone of the campaign of private broadcasters was predominantly neutral.

In all monitored print media, the DS received 21 per cent of the political coverage, while SRS, G17 Plus and DSS received 9 per cent each. The SPS was close behind with 6 per cent of the newspapers' space allocated to its activities. The activities of other parties and coalitions were given considerably less coverage. All dailies gave extensive coverage to the activities and statements of government members. Reporting on the government and on the DS was visibly negative in *Balkan*.

Some parties and coalitions made extensive use of paid advertisements, both in private and public media. However, rates for political advertising were significantly higher than usual rates for commercial advertising, thus potentially limiting the possibility for some parties and coalitions to campaign in the media.

During the campaign silence a number of media outlets covered candidates in their capacities as ministers.

### **Election Day**

As on previous occasions, international observers rated the polling and counting procedures positively in the overwhelming majority of polling stations visited. The polling in around 37 per cent of polling stations visited was assessed as excellent, and in another 53 per cent as good. As in previous elections, the main problems observed were difficult access to polling stations (noted in 12 per cent of visits) and group voting (13 per cent). In addition, observers noted that 18 per cent of polling stations visited were overcrowded. There was relatively high voter participation of around 60 per cent.

In a few isolated cases, observers noted that persons not on the voter register were allowed to vote, and that polling boards were not always checking for traces of indelible ink on voters' fingers. Reportedly, a number of Roma internally displaced persons from Kosovo, who were registered for previous presidential elections, could not be found on the voter lists on 28 December. Observers also reported that voters did not always produce the required identification documents, and that the polling station layout often did not ensure the secrecy of the vote. In the municipality of Tutin, observers noted an incident of election-related violence, and a general lack of adherence to procedures, in particular widespread group voting and invisible ink often not applied. There were also reports that in at least two polling stations in Kosovo Polje municipality, several hundred votes were cast on behalf of ethnic Albanians who apparently never went to these polling stations.

The counting process was assessed as excellent or very good in 65 per cent of polling stations visited. However, observers noted that procedures were not always fully followed.

Election-day activities were also monitored by a large number of domestic non-partisan observers from CeSID.

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### **MISSION INFORMATION AND ACKNOWLEDGEMENTS**

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The OSCE/ODIHR Election Observation Mission (EOM) is headed by Nikolai Vulchanov (Bulgaria). The delegations of the OSCE Parliamentary Assembly (OSCE PA), headed by Mr. Ihor Ostash (Ukraine), of the Parliamentary Assembly of the Council of Europe (PACE), headed by Mr. Murat Mercan (Turkey), and of the Congress for Local and Regional Authorities of Europe (CLRAE) of the Council of Europe, led by Mr. Gunter Krug (Germany) joined the IEOM on 26 December. This statement is based on the findings of 24 election experts from the OSCE/ODIHR EOM, based in Belgrade and five regional centers in the Republic of Serbia (including in Kosovo) since 27 November, and 178 observers from 33 OSCE participating states, including 14 from the OSCE PA, seven from PACE, and six from CLRAE. Observers reported on election day from some 840 out of 8,586 polling stations.

The OSCE/ODIHR will publish a comprehensive report on the parliamentary elections, including recommendations, within a month after the election process is completed.

The EOM wishes to express appreciation to the authorities of the Republic of Serbia and of Serbia and Montenegro, including the Speaker of Parliament, the Ministry of Foreign Affairs, the Republican Election Commission, the Ministry of Interior, the Ministry of State Administration and Local Self-Government, and other republican and municipal authorities for their co-operation and assistance during the course of the observation. The EOM is also grateful for the support of the OSCE Mission to Serbia and Montenegro and embassies of OSCE participating States accredited in Belgrade.



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