



REPUBLIC OF MONTENEGRO
Federal Republic of Yugoslavia
Presidential Election
22 December 2002

Parliamentary Assembly
Assemblée parlementaire



INTERNATIONAL ELECTION OBSERVATION MISSION

Statement of Preliminary Findings and Conclusions

Podgorica, 23 December 2002 – The International Election Observation Mission (IEOM), for the 22 December 2002 election of the President of the Republic of Montenegro / Federal Republic of Yugoslavia is a joint undertaking of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Parliamentary Assembly of the Council of Europe (PACE).

This statement of preliminary findings and conclusions is issued before the official announcement of election results, before election day complaints and appeals have been addressed by the administrative and judicial authorities, and before a complete analysis of the observation findings.

PRELIMINARY CONCLUSIONS

The 22 December presidential election in the Republic of Montenegro/FRY was administered largely in line with international commitments and standards for democratic elections. However, with unofficial preliminary data from various sources indicating a turnout of less than the required 50%, this first round election was void and it must be repeated.

The election was *de facto* an uneven contest with only one strong candidate and the opposition parties effectively boycotting the event. The opposition's decision deprived voters of a genuine choice and undermined the democratic process. Eleven candidates were registered. Apart from the acting President and Speaker of Parliament Filip Vujanovic, the other ten candidates lack public recognition, organizational structures, and adequate campaign funds.

Overall, the election framework is adequate and conditions to hold democratic elections exist. However, the Presidential Election Law is outdated, and has shortcomings that the previous parliament failed to address before this election was announced. The requirement that an unsuccessful first round election be immediately repeated with the same candidates lacks rationale, as the voters have already expressed their will. Neither the date for a repeat election nor the body responsible for calling the election is specified in law. Nevertheless, the election was conducted in accordance with the existing legal framework.

Among other positive elements in the election process, the following remain noteworthy:

- Representation of political parties on election commissions at all levels;
- Effective administration of electoral processes;
- Largely accurate and transparently produced voter registers; and
- Broad access for non-partisan domestic observers to monitor the polling and counting.

Free airtime and space was allocated according to the law in the highly regulated State media. In general, the media, including private electronic and print media and the main State broadcaster RTCG1, devoted negligible space and time to the election campaign. Instead, the media concentrated on other political issues, including the parliamentary majority's failure to form a government, and the arrest of the Deputy Public Prosecutor on charges of trafficking

in human beings. Outside the media, the campaign was low key with few candidates holding public meetings and rallies and only Filip Vujanovic mounting a republic-wide campaign. Overall, voters lacked sufficient information on candidates' election platforms.

As during previous occasions, observers reported an overwhelmingly positive assessment for the polling activities on election day and the vote count. However, procedures for home-bound voting were implemented inconsistently.

In view of the failed presidential elections in Serbia and Montenegro during the past three months, after the repeat elections in January, consideration should be given to removing from the legislation any provision making possible an endless cycle of repeat elections. This could be accomplished by:

- (1) removing the 50% turnout requirements altogether and instead requiring a 50%+1 vote majority support for a candidate to be elected in the first round of voting and, should this fail, a final contest between the top two candidates in a second round; or
- (2) if the 50% turnout requirement is retained for the first round and if either the threshold is not met or no candidate obtains a majority vote, to move to a second round and a final contest without any turnout requirement between the two top candidates.

Otherwise, the current system invites an election boycott from political forces wishing to undermine the process for the sake of narrow party interests and results in a cycle of repeated unsuccessful elections.

The OSCE/ODIHR and the PACE are prepared to assist the authorities and civil society of Montenegro to remedy the shortcomings and challenges identified in this statement.

PRELIMINARY FINDINGS

Background

The 20 October parliamentary election resulted in an absolute majority of seats for the coalition comprising the Democratic Party of Socialists (DPS) and the Social Democratic Party (SDP). Negotiations between the DPS and its coalition partner the SDP failed to lead to the prompt formation of a new Government. The SDP was dissatisfied with the DPS ministerial proposals and in particular the decision not to reappoint the outgoing Minister of Interior. As a result the formation of the new government was postponed until after the presidential election. During the three weeks before election day, a controversy surrounding the arrest of the Deputy Public Prosecutor on charges of trafficking in human beings was also added to the election backdrop.

The 22 December presidential election took place in the context of the recent agreement on the adoption of a new Constitutional Charter for the Union of Serbia and Montenegro, which, subject to approval of the parliaments of the Republics of Serbia and Montenegro and the Federation, will lead to the establishment of a new Assembly and other institutions for the future Union State.

On 25 November, President Djukanovic stepped down and was nominated by the DPS as Prime Minister designate. Simultaneously, Mr. Filip Vujanovic, the newly elected President

of Parliament also assumed the role of interim President. Later he was chosen as the DPS candidate for President.

The main opposition coalition comprising the Socialist People's Party (SNP), the Serbian People's Party (SNS) and the People's Party (NS) criticized this concentration of powers and called upon Mr. Vujanovic to resign all official positions to contest the elections only in his capacity as Vice-President of the DPS.

Predrag Bulatovic, leader of the SNP, declined to contest the election against any candidate other than Milo Djukanovic, who had previously announced he would not run. The SNS encouraged its coalition partners to support an independent, non-party candidate. However, the SNP and NS did not support this proposal. Close to the registration deadline, the SNP announced the coalition would not be fielding a candidate at all, a decision the SNS regretted, but accepted. Senior SNP politicians have claimed that conditions for democratic elections do not exist and encouraged their supporters not to participate as voters. The Liberal Alliance (LSCG) has demonstrated no interest in the election and decided not to register its own candidate or to support any other candidate.

These political decisions clearly served to reduce voter turnout, bringing it below the 50% required for a valid election contest. Moreover, the opposition's decision to boycott deprived voters of a genuine choice and undermined the democratic process for the sake of narrow party interests. Thus, the mere act of walking into a polling station or abstaining from the vote became a political act, exposing a voter's choice.

The political opposition alleged that municipal assemblies they controlled failed to receive the revenues to which they were entitled, thereby impacting election preparations. In Kolasin, the municipal authorities informed the Government of the Republic on 9 December that it would not be able to produce the voter register extracts for some 40 polling stations, it would not be able to print the voter invitations, it would not be able to set up the polling stations where there is no electricity, and snow removal could not be guaranteed for election day. In the end, all preparations were carried out. However, in Berane, Kotor, Niksic and Pluzine, the invitations to vote were not sent out in accordance with the law, potentially impacting voter turnout.

Legislative Framework

On 16 October 2002, four days prior to the early parliamentary elections, the former Speaker of Parliament announced the presidential elections to be held on 22 December.

While the legislative framework for presidential elections provides an adequate basis for the administration of democratic elections, the Presidential Election Law is outdated and has shortcomings that the previous parliament failed to address prior to announcing the election.

As in Serbia, the 50% turnout requirement combined with the provisions in the law for endless repeat elections inherited from the old regime in Yugoslavia in effect invited some political forces to boycott. Thus, consideration should be given to removing from the legislation any provision making possible this endless cycle of repeat elections. In addition, the requirement that a failed first round election be immediately repeated with the same candidates lacks rationale, as the voters have already expressed their will.

On 22 November, the Parliament adopted a Decision that would allow the REC and Municipal Election Commissions (MECs) to continue their work should the electoral process run beyond the expiration of their mandate on 31 December. On 2 December, Parliament adopted an “Authentic Interpretation” of ambiguous articles of the Presidential Election Law. This confirmed the requirement that a majority of the registered voters must turn out for the first round election to be valid. Otherwise the first round election must be repeated. However, neither the Authentic Interpretation nor the legislation stipulates a precise deadline for the repeat first round voting. The body or office that is competent to call the repeat voting is also not clear. Should less than the necessary number of voters participate in a repeated first round contest, a completely new election would be required. The timeframe for this election is not clarified either.

Had a majority of voters participated on 22 December, but no candidate secured a majority of votes the Authentic Interpretation clarified that in the “second-round” election, the two contesting candidates would require only a simple majority of votes cast to be elected, disregarding voter turnout. Whilst no MPs from the opposition participated in the parliamentary session that adopted the Authentic Interpretation, some criticized the interpretation’s reasoning.

Other shortcomings identified in the Presidential Election Law include:

- A lack of specific reference in the law to the method of calculating the total number of voters having cast ballots and the absence of assurances for the consistent implementation of the provisions found in the Parliamentary Election Law for determining voter turnout by the polling board; and
- An apparent anomaly whereby candidates require a majority of all “votes” to be elected (i.e. both invalid and valid votes combined). This anomaly results in an additional and unnecessary hurdle even in a two-candidate contest where the turnout requirement has been met.

In addition, a number of inconsistencies have appeared between the Presidential and Parliamentary Election Laws, the latter regulating many technical aspects of the process. An example is the discrepancy between the residency requirements for voters and candidates.

Election Administration

With few exceptions, the structure and composition of the “permanent” membership of the election commissions remained identical to the October parliamentary election.

All levels of the election administration have a careful balance of different political interests and no party or coalition is in a position to have control over the functioning of an election commission. The key positions of Chairperson and Secretary on polling Boards are allocated between the DPS/SDP and the opposition. However, in a number of municipalities the LSCG failed to nominate persons to the polling board chairperson positions. In addition, each candidate may appoint representatives to all levels of the election administration as “extended members”. Clearly, there exists a high degree of political plurality and transparency in the election process. Nevertheless, many candidates did not appoint their representatives as “extended” members at the various levels of the election administration. Thus, the responsibility for maintaining transparency fell to the commission and polling board members from the opposition.

Drawing on their prior experience, the REC and the MECs administered the process efficiently and transparently. Notwithstanding the main opposition parties' decision effectively to boycott the election, all commission members worked co-operatively to administer the process in accordance with the legal provisions. The REC complied with all legal and administrative deadlines.

While the election administration is experienced in conducting elections, some training of polling boards, particularly candidate nominated "extended members", is desirable.

The Candidates and the Election Campaign

The REC registered eleven candidates; five nominated by political parties and six by groups of citizens ("independent candidates"). All candidates were male.

Only Filip Vujanovic, candidate of the governing coalition, represented parties that have enjoyed previous electoral success in Montenegro. Candidates of the other four parties and the independent candidates either lack public recognition or have gained little support when contesting previous elections. With the exception of Mr. Vujanovic, none of the candidates could call upon a party structure to support their campaigns. As a consequence, the election contest was unusually uneven, with most candidates lacking sufficient resources to mount credible, republic-wide campaigns.

None of the parties representing the minorities in Montenegro fielded their own candidates. The Albanian parties supported Mr. Vujanovic.

Traditionally political parties in Montenegro have contested elections in earnest. Indeed, the polarization of politics and good organization of the major parties contributed to a high turnout in previous elections. The absence of significant political actors, with the exception of Mr. Vujanovic, from the contest resulted in a great degree of uncertainty about the overall success of the election.

The campaign was low-key and unusually calm. Few candidates held rallies and public meetings. Only Mr. Vujanovic displayed a significant number of campaign posters. Other candidates relied solely on free airtime and space in State owned radio, TV and *Pobjeda*. The parties of the SNP/NS/SNS coalition urged their supporters not to participate as voters, but did not call for a "boycott" *per se*. Instead, they issued critical statements against the government and Mr. Vujanovic personally. The potential for the failure of the election and the lack of a campaign counterweight lessened serious political debate. Some civil society organizations, the OSCE and Council of Europe Missions to FRY mounted campaigns encouraging citizens to vote.

On 6 December, eight candidates appealed to the Government for additional resources to be made available to all candidates, adding that, "if basic propaganda expenses are not covered, [the candidates] will consider withdrawal from the contest".

On 7 December, fifteen days after the legal deadline, the Government announced its decision to establish a €50,000 fund to reimburse the campaign expenses of candidates. However, only those candidates securing 10% or more of the popular vote are eligible to receive equal shares of the funds. Thus, possibly only one candidate would receive this money.

Election Disputes

The OSCE/ODIHR EOM received unsubstantiated allegations of undue pressure on voters to either participate or not in the election, including allegations of pressure on public employees to vote. However, the EOM is not aware of any formal complaints filed with the proper administrative or judicial authorities on this issue.

Prior to election day, the Constitutional Court was not called upon to hear any election related complaints or appeals. The REC heard one complaint about an error in the Budva voter register, which was promptly corrected.

Voter Registers

The voter registers in Montenegro continue to be maintained in a transparent manner. As stated on previous occasions, the level of transparency could be further improved if the draft registers were displayed at the polling stations for public scrutiny in advance of the election. On 11 December, the REC announced a final total of 456,981 voters registered, requiring 228,491 votes to meet the 50% turnout requirement and for a valid election contest.

The Supreme Court heard complaints regarding amendments to the voter register, which resulted to the addition of 404 names, the deletion of 154 names, and amendments or updates of 152 voters. This occurred in the prescribed time period. While further improvements are possible, the accuracy of the voter register remains well within acceptable parameters.

Media

On 2 December, the Parliament adopted the “Rules for the Media’s Presentation of Presidential Candidates During the Pre-election Campaign”. The rules are comprehensive and provide that State-owned media are obliged to cover the election campaign and provide equal and objective access to all contestants. In addition, the rules regulate the quantity of airtime, space and format of both the free and paid coverage available to candidates on State-owned media. The Parliamentary TV Channel and State radio, managed by Radio-Television of Montenegro (RTCG) broadcast special electoral programs and the newspaper *Pobjeda* printed special election-related content. The candidates’ “campaign slots” began on 4 December on the Parliamentary Channel (RTCG).

Private media are less regulated. The law requires only that they respect the pre-electoral silence and indicate paid campaign advertisements clearly, which some media failed to do. Nonetheless, private TV channel MBC voluntarily introduced free airtime for all candidates.

All candidates took advantage of their allocation of free airtime/space in the state media. However outside these highly regulated slots, the media as a whole devoted very little airtime and space to the election campaign, thus significantly limiting the amount of information on candidates and their political programs available to voters. On 20 December, an 11-candidate round table discussion took place on the Parliamentary TV channel.

Media monitoring data indicates that during the peak viewing time, TV channels devoted 7% of the broadcast to covering candidates. If the special election programs on the Parliamentary TV channel are excluded, only 1% of the monitored time was dedicated to candidates. The

mass media focused on other news items including the Constitutional Charter, the formation of the new Government and the high profile case of trafficking in human beings to the exclusion of the election. The opposition's "non-participation" in the contest reduced the coverage of campaign issues, although their statements effectively advocating an election boycott were covered extensively.

The private media covered Mr. Vujanovic at length, mostly in relation to his role as Speaker of the Parliament. Other candidates received airtime, but much less frequently. The tone of the campaign was predominantly neutral both in print and electronic media. Only Mr. Vujanovic broadcast paid advertisements.

The one-week opinion poll blackout prior to election day was breached by the daily *Publika*, which published on 15 December the results of an opinion poll forecasting the electoral results. The 24-hour campaign moratorium was breached by *Pobjeda*, *Publika*, and *Vijesti*.

As in the previous elections, the Parliament established a Board for Mass Media Supervision during the Pre-Election Campaign to monitor compliance by State and private media with the rules on coverage of election campaign. The Board is not entitled to impose fines, but provides a rapid and accessible forum for addressing complaints. In case of violation of the Law, recourse to the Courts is possible.

Civil Society

As on previous occasions, two domestic observer groups monitored the elections – the Center for Democratic Transition (CDT) and the Center for Monitoring Elections (CEMI), the latter in co-operation with the Center for Free Elections and Democracy (CeSID) from Belgrade.

The two organizations accredited over 2,200 observers, covering an overwhelming majority of polling stations. Both organized parallel vote tabulations based on a representative sample of polling stations – "quick count". Both announced voter turnout information at two-hour intervals during election day. CEMI also engaged in a pre-election get-out-the-vote campaign. CDT promoted an agreement between presidential candidates on a fair campaign, which seven candidates signed.

Election Day

The overwhelming majority of observers reported positive impressions from the polling stations they visited. Only two observation reports characterized the polling day proceedings as "poor". In 66% of polling stations visited, domestic non-partisan observers were present.

In 14% of observations, the polling stations were opened more than one hour late. In 5% of the observations, campaign material was noted within 50 meters of polling stations, and significantly there were no observations of unauthorized persons attempting to intervene in the work of the polling boards or police officers seen inside polling stations without justification. Tension was reported in 1% of observations, violence or unrest in one polling station, and intimidation in three polling stations.

Measures to safeguard the integrity of voting were implemented largely in accordance with the legal requirements. Only isolated cases of violations were noted with regards to the use of the invisible ink (1%), voters without valid IDs allowed to vote (less than 1%), voters who

are not on the list casting ballots (1.5%), and voters not marking their ballots in secret (3%). Breaches of the prohibition to announce the voter names when checking their ID was noted in 1.5% of visits, breaches of recording the identity of voters in unofficial documents in 1%, and the use of mobile phones in polling stations in 11%. Group voting marked a significant improvement over previous elections at only 2% of cases observed as opposed to 10.5% in October.

Procedure for home-bound voting were applied inconsistently with 20% of polling stations accepting verbal requests to vote at home contrary to the law, in 27% of polling stations visited requests for home-bound voting not recorded in the “event Book”, and 4% accepting requests after the 12:00 deadline on voting day.

Observers evaluated the vote count in equally positive terms with none characterizing the process “poor”. In an overwhelming majority of cases observed, procedures to safeguard the integrity of the count were implemented in general properly.

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

MISSION INFORMATION & ACKNOWLEDGEMENT

The International Election Observation Mission (IEOM) for the presidential election in the Republic of Montenegro (FRY) is a joint undertaking of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Parliamentary Assembly of the Council of Europe (PACE). Mr. Nikolai Vulchanov (Bulgaria) heads the OSCE/ODIHR Election Observation Mission. Mr. Andreas Gross, MP (Switzerland), represents the PACE.

This statement is based on the observations of 18 election observers of the OSCE/ODIHR EOM, based in Podgorica and four regional centers throughout the Republic, who have been deployed since 28 November. This statement also incorporates the election day findings of 103 short-term observers from 29 OSCE participating States reporting from some 500 polling stations out of the 1,100 around the Republic.

The OSCE/ODIHR will issue a final report on the election approximately one month after the completion of the process.

The IEOM wishes to express appreciation to the Ministry of Foreign Affairs of the FRY, the Republic Election commission, the Secretariat for Development and other Republic and municipal authorities of Montenegro for their co-operation and assistance during the course of the observation. The IEOM is also grateful for the support from the OSCE Mission in the FRY and Embassies and Consular Offices of OSCE participating States.

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