



Office for Democratic Institutions and Human Rights

## REPUBLIC OF MONTENEGRO

### PRESIDENTIAL ELECTION 5TH AND 19TH OCTOBER 1997

#### FINAL REPORT



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**RECOMMENDATIONS**

## 1. INTRODUCTION

In accordance with the invitation from the President of the Assembly of the Republic of Montenegro, Mr. Svetozar Marovic, the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) observed the 5th October Presidential Election in the Republic of Montenegro and the subsequent second round held on 19th October 1997.

Mr. Jan Edøy (Norway) was seconded to the ODIHR as the On-site Co-ordinator and the core staff election experts included Mr. Peter Hatch (United Kingdom) and Roumen Maleev (Bulgaria). Mr. Patrick Keogh (Republic of Ireland) was seconded as the logistic and deployment officer.

A total of 61 observers were deployed to observe the October 5th polling day. These included 7 long-term observers, who were joined by 49 short-term observers prior to election day. In addition 5 representatives from the European Community Monitoring Mission (ECMM) took part as short-term observers on polling day.

A strong presence was maintained for the Second Round with the core staff co-ordinating and supporting the activities of 7 long-term observers together with 25 short-term observers who arrived two days before polling day. ECMM also participated during the Second Round.

A total of 23 participating States were represented as follows: Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, the former Yugoslav Republic of Macedonia, Netherlands, Norway, Poland, Slovenia, Sweden, Switzerland, United Kingdom and United States of America.

In recognition that a successful observation exercise may only be achieved through the full co-operation and assistance of all those involved in the electoral process, the OSCE/ODIHR Observation Mission in Montenegro is pleased to report that this co-operation was forthcoming from all levels of the electoral administration, and from the Ministries and other public administration bodies.

The deployment plan for short-term observers for both the first and second rounds was designed to ensure a wide and representative coverage of the various parts of Montenegro. The observers covered all 21 Municipalities in the first ballot with over 300 Polling Stations visited out of a total of 879. Some of these Polling Stations were visited more than once during Election Day. For the second round observers covered 18 Municipalities and visited about a quarter of the total number of Polling Stations.

## **2. SUMMARY**

**The OSCE has completed its observation of the Presidential election in the Republic of Montenegro and it has concluded that from an overall administrative and technical point of view the election was generally well conducted. Therefore it can be said that the final result reflects the will of the voters.**

**The election was held in an atmosphere of peace and calm. It is important to note the turnout of 68% for the first ballot and an even higher turnout of 73% for the second ballot.**

**An election process in any country may be subject to imperfections and infractions and Montenegro is no exception in this respect. Whilst of concern the culmination of such imperfections and infractions was not of a level to bring into question the final result.**

**The electoral laws provide a reasonable framework for participation in the election and for their administration and conduct. However there is an absence of clear and detailed legal and administrative provisions, particularly in respect of the electoral procedures in the event of a second round. There were administrative and procedural shortcomings, particularly concerning the registration of electors and in respect of the late introduction for the second round of an additional measure for recording the electors' signature on attendance at the polling station on polling day.**

**The interpretation of the legal provisions was not wholly correct and uniform particularly in respect of:**

- determination of eligibility to stand as a candidate**
- composition of the Polling Station Committees (PSC's) as regards permanent and extended membership**
- presence of candidates' representatives at an early stage on the extended membership of the electoral bodies.**

**Registration of electors was a main issue at this election. The Registers used on 5th October contained many errors and omissions. However, it is encouraging to note the administration's awareness of this deficiency, although somewhat belated, and a desire to attempt to remedy the situation in time for the second round on 19th October. These measures did serve to uphold the paramount principle that each and every eligible voter be able to cast their ballot.**

**The OSCE recognises the important part played by the representatives of the candidates as members of the electoral bodies. It is noted that particularly during the second round there was full representation and participation on all electoral bodies by the representatives of the two candidates, especially on polling station level. Each member of an electoral body had the right to have his or her complaint recorded in the Polling Committee's Record and a further right to refuse to sign the**

**Record in the event of any irregularities. There was a right of all members of electoral bodies to have a copy of the respective protocols. Decisions taken by the electoral bodies were open to review within a prescribed timescale through a mechanism for claims and appeals both at levels within the electoral administration and before the judiciary.**

**The presence of the candidates' representatives as participants and monitors of the process, especially at polling station level, was crucial and provided the essential safeguard to ensure fairness, transparency and proper conduct of the process.**

**Thus there was a series of checks and safeguards built into the process to provide the required level of transparency and to ensure the proper conduct of the election.**

### **3. THE LEGAL AND ADMINISTRATIVE PROVISIONS**

#### **3.1. Scope and Purpose of the Electoral Law**

The election for the President was conducted in accordance with the following:

- Constitution of the Republic of Montenegro
- The Law of Election of the President (49/92)
- Certain Provisions of the Law of Election of Councilmen and Representatives in the Assembly (Parliament) (Nos. 49/62, 16/95 and 21/96)
- Law of the Register of Electors (49/92)
- Law on Public Information (May 93)
- Appointment of Republican Elections Commission
- Ordinances, Rules, Instructions and Opinions in respect of:
  - (i) Number and Duration of Broadcasts for Equal Presentation of Presidential Candidates and their Programmes
  - (ii) Content and Appearance of Forms used in the Process of Nominating Candidates and Carrying out Election – Related Activities
  - (iii) Content and Appearance of the Extract from the Register of Electors and the Manner of Compiling it
  - (iv) Designating and Setting up Polling Stations, the Manner and Conduct at Polling Stations and Measures to provide for the Secrecy of Voting
  - (v) Rules for Voting by Post (i.e. Voting outside the Polling Station by persons not able to attend in person, involving the delivery of ballot papers (and envelopes) by the Polling Station Committee on Polling Day for completion by the electors concerned)
  - (vi) Uniform Standards for Ballot Boxes and Ballot Paper
  - (vii) Promulgation, Content, Form and Display of the List of Candidates
  - (viii) Exercise of the Right of Observers to monitor the work of the Organs administering the Elections
  - (ix) Work of the Republican Elections Commission
- Previous Practices (opinions/instructions) of Republican Elections Commission.

### **3.2. The Calling of the Election for President and the Election Timetable**

In accordance with Article 80 of the Constitution, the election was called by the President of the Assembly on 23rd of July 1997. This decision fixed the date for the poll to be held on 5th October 1997. Article 3 of the Law for the election of the President provides that there shall be no less than 60 and no more than 90 days between the day of calling and the day of polling. Thus a period of 74 days was provided for the electoral process leading up to polling day.

### **3.3. Election of the President**

The President is elected by the citizens by direct and secret vote for the term of office of 5 years, at the expiration of which the term of office ceases in accordance with Article 81 of the Constitution. According to Article 86 of the Constitution, persons having been previously twice elected as President may not stand in Presidential elections. Every Yugoslav citizen aged 18 or over and resident in Montenegro for at least one year prior to election day has the right to be elected President. In putting forward their candidatures each candidate must have the support of at least 2,000 signatures of electors. The Laws provide for a first ballot and for a possible successive second ballot using a majority formula. In order to be elected President on the first ballot, 50% or more of the total registered electorate must participate in the election and a candidate must secure a majority of more than half of the votes cast. In the event of a second ballot, which is held two weeks after the first ballot, the two candidates with the most votes in the first ballot compete for the Presidency and the candidate obtaining the majority of the votes cast is elected, provided that half of the registered electors or more take part in the second ballot. In the event of less than half of the registered electors taking part in the second ballot, the entire electoral procedure has to be repeated.

### **3.4. Constituencies, Municipalities and Polling Station Areas**

For Parliamentary purposes, Montenegro is divided into 14 constituencies. For the election of the President, the whole of Montenegro constitutes one sole constituency. However, for the purpose of administering the election for the President the electoral arrangements are carried out on a Municipality basis and there are 21 Municipalities. The 21 Municipalities are further divided into 879 polling areas with a polling station for each area.

### **3.5. Electoral Administration**

#### **3.5.1. Electoral Bodies**

The Electoral Laws provide for three kinds of electoral bodies with responsibilities for the preparation and conduct of the election.

These are:

Republican Election Commission (REC) – based in Podgorica  
Municipal Election Commissions (MEC's) – one for each of the 21 Municipalities  
Polling Station Committees (PSC's) – one for each of the 879 Polling Stations.

Each Commission and Committee is composed of permanent members and, in line with one of the basic features of competitive elections, there is provision for the competing political interests to be represented on the extended composition of each electoral body.

### 3.5.2. Permanent Members

The Republican Election Commission (REC)

Appointed for a 4 year term by the Montenegrin Assembly: the Chairman, the Secretary and 5 Members.

The Chairman (and his deputy) is appointed from the ranks of distinguished holders of Judiciary.

The Secretary is a full time employee of the Republican Authority and an election expert.

The 5 Members (and their deputies) are appointed from the judiciary and other distinguished lawyers.

Municipal Election Commissions (MEC's)

Appointed for a 4 year term by the respective Municipal Assembly: the Chairman, the Secretary and 3 Members.

The Chairman (and his deputy) are appointed from the judiciary (where there is no bearer of judicial office in a particular Municipality, the Chairman (and his deputy) is appointed from the ranks of graduate lawyers).

Polling Station Committees (PSC's)

Appointed at the time of the election and for each election by the respective Municipal Election Commission no later than 10 days before polling day: the Chairman and 2 members.

There is an absence of provisions as regards the persons deemed suitable (i.e. magistrates, lawyers, jurists and persons of blameless reputation) to fill such positions.

### 3.5.3. Extended Composition

At the time of an election 3 days after the publication of the list of validly nominated candidates each competing political interest may propose to the respective electoral body (i.e. the REC for representation on the REC and the MEC's for representation on the respective MEC and PSC's in the Municipality). Such representation is limited to one representative (and one deputy in the event of absence) per candidate per electoral body. In the event of a candidate not appointing an authorised representative within 5 days prior to polling day that candidature forfeits the right to representation.

### 3.5.4. Deputies



Deputies are appointed to the permanent membership of the electoral bodies in the event of absence. Additionally the REC determined on 2.11.96 that a deputy may be appointed to each authorised representative on the extended composition of each electoral body and may act only in the event of absence of the respective authorised representative.

#### 3.5.5. Role and Responsibilities of Electoral Bodies

In accordance with the electoral provisions the REC is charged with the lawful administration of elections and the unified observance of the various electoral provisions, involving the co-ordination of the work of the MEC's. Each MEC is charged with the lawful administration of elections within its Municipality. Each PSC is responsible for the polling and counting activities at its respective polling station.

### **3.6. Ministries and Local Public Administration Bodies**

The work of the Commissions and Committees is supported by the various Ministries at central level and by local public administration (the Mayors, Town Hall Secretaries, etc.) in each of the Municipalities.

### **3.7. The Judiciary**

The courts in Montenegro are supervised by the Republican Ministry of Justice. The Supreme Court and the Constitutional Court are the highest courts in Montenegro and final appeals lie with the Yugoslav Federal Court and, in constitutional matters, to the Federal Constitutional Court.

### **3.8. Right to Vote and Registration of Electors**

#### 3.8.1. Voting Right

In accordance with the Electoral Law, Yugoslav citizens aged 18 or over with civil capacity and residing in the Republic of Montenegro for at least 6 months prior to polling day have the right to vote. (Note: Article 32 of the Constitution of the Republic of Montenegro stipulated that "Every citizen of Montenegro who has reached the age of 18 shall be entitled to vote...".)

#### 3.8.2. Registration of Electors

##### 3.8.2.1. Qualification for Registration

Registration of an Elector is a right and a civic duty and in accordance with the Law of the Register of Electors, all citizens aged 18 or over are entered in the Register of Electors according to their place of residence. In addition, the REC in collaboration with the

Ministry of Interior and the Ministry of Justice arrange through the Secretariat for those persons who will become 18 on polling day to be registered. An elector may be entered in the Register in only one Municipality.

Entered in the Register are also citizens of Yugoslavia who temporarily live abroad and these persons are registered for their last place of residence.

Citizens undertaking national service in the army or taking part in military exercises are entered in the Register for their last place of residence.

Citizens serving prison sentences are entered in the Register for their last place of residence.

Persons deprived of civil capacity by irrevocable court order cannot be entered in the Register.

#### 3.8.2.2. Preparation of the Register

The Register of Electors is updated in the year of the election. This is undertaken by the local public administration in the Municipality (i.e. the Secretariat for Elections).

#### 3.8.2.3. Inspection, Claims and Appeals and Conclusion of Registers

Within three days of calling the election, the Secretariat for Elections in the Municipality informs the citizens, by public notice or through the media, that they can inspect the Register and ask to be entered or deleted or to have changes, amendments or corrections made. Any request for changes to the register must be supported by proper evidence and a decision is made within 24 hours of the request. Registration appeals may be presented directly to the Supreme Court of Montenegro by the Secretariat within 24 hours of receipt of the appeal and the Court must make a decision within 24 hours of receipt by the Court. The Court's decision is final.

The Register of Electors is concluded no later than 15 days before polling day. Within 24 hours the respective MEC is informed and within a further 24 hours the MEC sends details of the total number of electors to the REC. Within a further 24 hours the REC publishes the electorate figures by Municipality and for the whole of Montenegro. There is no central Register of Electors for Montenegro.

New entries in, deletions from, amendments to, changes or corrections may be done only by order of the Supreme Court and not later than 48 hours prior polling day.

#### 3.8.2.4. Register Extracts for Polling Station

A verified extract of the Register is compiled by the Secretariat for the Municipality and one for each polling station. Each extract contains the ordinal numbers of the voters, their full names, sex, date of birth and their place of residence/address. The extracts are compiled in alphabetical named order. The title page of each extract contains the name of the Secretariat, the date of compilation and the designation of the polling station. The last

page of the extract includes data on the number of pages and the number for the electors of the polling station.

In respect of those electors who cannot cast their vote in person at the polling station, separate extracts are made and verified by the MEC based on data supplied by the Secretariat for Elections in the Municipality.

Special lists of registered electors are compiled for army barracks and the lists are published by the MEC.

### **3.9. The Ballot Paper**

In accordance with Article 10 (Presidential) and Article 73 (Parliamentary) the REC is charged with monitoring the preparation and verification of ballot papers and determines the number of reserve ballot papers. The REC prescribes the detail of form and appearance of ballot paper as well as the mode and control of printing and handling ballot papers. Article 11 (Presidential) provides that all ballot papers are of the same size, shape and colour and are duly verified by the REC. On 31.07.97 the REC published instructions as regards content, size, shape and colour, authentication, number of ballot papers required as determined by the MEC's (which number has to be equal to the number of electors for the respective Municipality) and as regards determination by the REC of total ballot papers and reserve supply for issue to each MEC.

### **3.10. Polling Stations**

Polling stations are designated by the MEC's on proposals by the Secretariat for Elections in the respective Municipality no later than 15 days before polling day and details are published no later than 10 days before polling day. Up to 2,500 electors can be allocated to a particular polling station.

### **3.11. Polling, Counting, PSC Protocols, Scrutiny and Tabulation of Results**

#### **3.11.1. Polling**

Polling hours are from 0700 to 2000 hours and Articles 68 and 69 (Parliamentary) provide for dissolving and suspending the poll. Detailed instructions on the work of the PSC's before polling day, during polling hours and for the counting procedure were issued by the REC to all MEC's and in turn to PSC's.

The Electoral Law provides for a control slip mechanism including the establishment of an empty ballot box, and for the marking of the polling station register extract by circling the ordinal number of the elector having established the elector's identity. The elector is required to produce his or her identity card or other personal document. The REC's instructions provide for the means of identity other than an identity card, to include a personal photograph, register number or number of identity card. There is a further

requirement for each elector to hand to the PSC his or her polling information paper, which is distributed to each registered elector prior to polling day by the Secretariat for Elections in the respective Municipality (Article 67).

The voting procedure is explained to each elector by the PSC Chairman, especially the marking of the ballot paper by circling the ordinal number in front of the name of the candidate of the elector's choice. After voting the elector folds the ballot paper and places it into the ballot box under the control of the PSC members.

There are provisions for persons to be assisted in voting (i.e. blind, illiterate or disabled persons) by a companion and for voting by post (outside the polling station) where the elector is unable to attend in person by reason of old age, weakness, home or hospital treatment of serious illness, for reason of a business trip or studying away from normal residence. In order to vote by post the elector is required to inform the PSC's in writing no later than 12 noon on polling day.

There is a provision for electors serving in the army to vote at their military units and this provision also applies to persons in custody.

### 3.11.2. Counting

Counting takes place at the polling station after the end of polling. There is provision for:

- checking the presence of the ballot box control slip
- establishing and recording the total number of ballot papers received
- enumeration and recording of the unused ballot papers
- counting and recording the number of ballot papers in the ballot box
- determination and recording of the number of electors issued with ballot papers by reference to the marked Register
- identification and adjudication on the doubtful ballot papers
- enumeration and recording of the invalid ballot papers
- sorting and counting the valid ballot papers and recording the total votes for each candidate
- balancing the figures.

The work of each PSC is entered in an official Record (Protocol) into which is entered not only the figures referred to above but also:

- details of the first voter who checked the ballot box control slip
- details affecting the regular voting procedure and any interruption or prolongation of voting
- details of observers presence
- details of candidates' authorised representatives who left the polling station during the voting
- the time of the closing of poll
- details of any complaints to any of the polling and counting activities

- signature of each member of PSC or details of any member who was absent or refused to sign the record
- a provision for each PSC's member to receive a copy of the Record.

There is a second protocol (Report) recording the number of votes for each candidate, which is signed by the PSC, Chairman. The data required to be entered in this report must be the same as that entered in the Record.

All the figures in the Protocols are entered in numeric and in words.

Article 94 (Parliamentary) provides for the delivery of the Protocols, and of the election material, to the respective MEC by the PSC upon establishing the results and no later than 18 hours after the close of poll. In the Guidelines issued by the REC to PSC's there is a provision for the PSC Chairman and two authorised representatives of the candidates with the most votes to accomplish this delivery task.

### 3.11.3. Scrutiny and Tabulation of the Results

Upon receipt of the PSC protocols and electoral material the respective MEC conducts a scrutiny of the data and establishes the results for the Municipality. Article 15 (Presidential) requires each MEC to deliver its Protocol and Report to the REC within 12 hours after the latest time (18 hours) for delivery of PSC's Protocols and Reports to the MEC.

Article 15 (Presidential) requires the REC to calculate the results of the election of the President immediately upon receiving the MEC's Reports.

## 3.12. Campaign and Media

### 3.12.1. Electoral Law provisions

There is provision in the electoral law (Parliamentary) under Articles 6 and 49 to 63 and in the electoral law (Presidential) under Article 21 for campaign and media activities.

The campaign and media provisions in the law cover:

- right of candidates to the public information media, equal time on Radio-Television of Montenegro for presentation and exposition of candidates and their electoral programmes
- an exclusion as regards presentation in commercial, entertainment or similar programmes other than in news or other political information news items
- space and equal conditions in respect of the press public enterprise Pobjeda
- equal treatment as regards Radio-Television of Montenegro announcements of scheduled rallies
- indication by mass media that promotions on a commercial basis were paid for

- agreement between the media representatives, the REC and candidature representatives for presentation of political information and specialised programmes in an independent and objective manner and impartiality of presenters
- rules in respect of all media funded by the state or the local public administration
- organisation of conferences and other public gatherings in conformity with the regulations on public order and peace and reporting of such activities
- preparation and display of campaign posters, photographs leaflets etc. without special permission at places designated by the Municipal administration
- broadcasting the decisions on claims against the media
- prohibiting broadcasting/publishing results of public opinion polls and similar activities on the 7th day and thereafter prior to polling day as well as preliminary results before the close of poll
- prohibiting funding of electoral campaign by foreign persons, institutions and companies
- start of campaign the day after publication of validly nominated list of candidates
- end of campaign 48 hours before polling day.

### 3.12.2. Rules

On 7th August 1997 the REC published a set of Rules governing the number and duration of broadcasts for equal presentation of Presidential candidates and their programmes on Montenegrin Radio and Television, adequate space and columns in the Pobjeda Daily and full and true informing on the course of the electoral process. The rules govern promotion of the candidates' programmes, promotional gatherings, special broadcasts from promotional gatherings, announcement of promotional gatherings, press conferences, candidates' statements, face-to-face debates of the candidates and the setting up and work of a Media Control Committee.

### 3.12.3. Media Control Committee

The Media Control Committee was composed solely of authorised representatives from each of the competing political interests. The Committee's task was to ensure observance of the Rules as well as reporting publicly any violation of the Rules.

## **4. OBSERVATION FINDINGS AND CONCLUSIONS**

### **4.1. Administration of the Electoral Process**

1. From an overall administrative and technical point of view this election was generally well conducted. Due recognition is given to the Members of the Electoral bodies who played an essential role in the provision of effective and efficient electoral administration. The close co-operation between the members of the electoral bodies and the candidates' representatives was particularly significant and the respective Ministries and local public administration ably supported the electoral bodies.

2. It is encouraging to note that there was a willingness on the part of the electoral administration and the public administration to discuss problems associated with the organisation of the electoral process. There was an acceptance of deficiencies and a strong desire for an evaluation of the relevant legal provisions and a review of the procedures with a view to effecting improvements in the overall process.

3. The provisions of an Instruction Booklet for PSC members helped to ensure efficiency, consistency and uniformity of practice in the Polling Stations and this initiative should be commended. However when preparing such a document, greater care should be taken to ensure that the instructions are fully in accordance with the legal provisions. Instruction 2.9 “The authorised representatives of candidates observe the voting process from the places the Chairman of the PSC determines for them” together with a layout plan showing the location of such representative away from the PSC table, is contrary to the requirement for full participation by the candidates’ representatives on the extended membership of the PSC’s.

Polling day findings revealed that in practice the members on the extended composition of the PSC’s not only observed the process on behalf of their respective Candidates but took an active part in the polling station procedures.

#### **4.2. The Legal Provisions**

Under the legal and administrative provisions section of this report, the various Laws, Ordinances, Rules and Opinions are listed in respect of the Presidential election. A number of the provisions lack definition and clarity and are therefore open to interpretation.

Thus there is a need to review certain of the respective laws and enact more detailed provisions as well as to define and clarify the various aspects of the electoral process, so as to avoid misinterpretation and to ensure uniformity and consistency.

#### **4.3. Registration of Electors**

Registration of Electors is central to the work of local and parliamentary democracy and observation findings revealed the need to improve the registration of electors’ exercise in Montenegro.

In the first round, it was observed that many citizens were:

- either wholly omitted from the Municipality Register, or
- their entries appeared on the Municipality Register for their previous address, or
- their entries appeared in the Municipality Register but the entries did not appear on the extracts for their respective Polling Station, or
- their entries were incorrect by reason of spelling errors etc.

Citizens whose entries did not appear on the Polling Station extract or their entry was incorrect, were directed to the Municipality in order to have their entries checked and if found to obtain a certificate to enable them to vote. Thousands of citizens were subjected to this procedure as evidenced by the long queues at the Municipality offices on polling day.

It was not possible to differentiate between those citizens who were wrongly omitted from the Registers and those who had not taken the opportunity to exercise their right to be registered. However in the given circumstances it was clear that some action needed to be taken, otherwise many thousands of citizens would have been denied their right to vote. This was recognised by the REC and the Ministry of Justice as well as the judiciary. The OSCE Election Observation Mission's opinion was sought by the REC to whom it was emphasised that the overriding consideration throughout any supplementary registration exercise to add new entries to the Registers, or to delete duplicate entries in respect of deceased persons, was to maintain a high level of transparency and openness. In particular, to ensure that the competing political interests and the citizens have confidence in the additional exercise. From an observation point of view, it was made clear that the following or a similar procedure could help to overcome the difficulties:

- Publication of the Register of Electors as amended by the Certificates issued by the Municipalities for the Election on 5th October and including all claims prior to 20th September and any new entries, deletions from, amendments to, changes or corrections by Court order made no later than 48 hours prior to polling day on 5th October.
- Publication should be wide and extensive within each Municipality and, if possible, at Polling Station level.
- Publication should be accompanied by a Voter Education exercise inviting citizens who have not registered to do so as a civic duty.
- A deadline should be set by which citizens not included in the Register as published may make a claim to be included in a Supplementary Register.
- Supplementary Registers should be published and made available to the competing political interests to enable any claims or objections to be made to the Court no later than 48 hours before Polling Day.
- Supplementary Register Pages should form a part of the Register Extracts for each Polling Station but should be on separate page(s).

It is encouraging to note that measures were taken in an attempt to improve the completeness and accuracy of the Register in time for the Second Round on 19th October. It was determined that any claims to be entered in the Registers should be made to the Municipality, where the required evidences of identity and residence were checked. However it was also determined that all such claims had to be subject to appeal to the Supreme Court in accordance with Article 7 of the Law of the Register of Electors, which provides for new entries in, deletions from, amendments to, changes or corrections of, to be done only by order of the Supreme Court and no later than 48 hours before polling day.



It is not stipulated in the law that this provision applies only to the first round of an election.

It is acknowledged that if the additional registration exercise had not taken place many thousands of citizens would have been denied their right to vote. It is believed that some 13,000 appeals were lodged with the Supreme Court. However it is difficult to maintain a high level of transparency when such measures are undertaken in so short a period. No matter how well intended and non-discriminatory, such a practice should be avoided at future elections.

#### **4.4. Civic Education**

Given the state of the current Register of Electors as regards completeness and accuracy and the apparent lack of action on the part of citizens in checking their entries in the Register, combined with the failure in many cases to give the required notification of change of residence, a civic education exercise is called for, focusing on the importance of the right to register as an elector and the civic responsibility of all citizens to be registered as voters.

#### **4.5. Eligibility to Stand as a Candidate**

The electoral law defines the criteria for determination of eligibility to stand as a candidate and Article 5 of the Law of Election of the President provides "... individual political parties or groups of citizens may propose no more than one candidate for the election for President of the Republic....".

Following the split in the Democratic Party of Socialists (DPS) and submission of nomination papers from the incumbent President, Momir Bulatovic, and the Prime Minister, Milo Djukanovic, in August, the REC justified that both Mr. Bulatovic and Mr. Djukanovic were considered as candidates of two different political parties. This was because Mr. Bulatovic was considered a member of a DPS registered at federal level and Mr. Djukanovic was a member of a DPS registered and only operating in Montenegro.

On the basis of a complaint with reference to Article 5 in the Electoral Law from one faction of the DPS, the Montenegrin Constitutional Court cancelled and overruled the decision made by the REC. The Montenegrin Constitutional Court based its decision on the fact that only political parties registered in Montenegro can nominate candidates. On 18th August, Mr. Bulatovic lodged a complaint to the Federal Constitutional Court on the basis that his constitutional right to stand as a candidate was being violated. On 10th September 1997 the Federal Constitutional Court declined the complaint and decided to abolish Article 5 of the Electoral Law. And the REC accepted two candidates from DPS in the election.

It is of concern therefore that Article 5 was abolished by the Federal Constitutional Court thus overruling the decision of the Constitutional Court of Montenegro in order to

provide for more than one candidate to be nominated from political parties or groups of citizens contrary to the legal provision in force at the start of the election process.

#### **4.6. Repeated or Fresh Elections**

In the commentary of the Law of Election of the President of the Republic, Article 16 of the Law is clarified as regards the criteria for holding repeated elections (2nd Round) and entirely fresh elections.

The essence for holding repeated elections (2nd Round) and entirely fresh elections because of a turnout of less than 50% is based on the principle that it is only the citizen-electors that can, by their vote, elect that Presidential candidate who has the support of the majority of the total electorate, that is of those who, in expressing their will, express themselves in the role of their constitutionally guaranteed civil sovereignty.

The provisions of the law (Articles 105-107 (Parliamentary)) in respect of repeated and fresh elections are unclear. There needs to be a clear definition of the terms “Repeated” and “Fresh” and the criteria for each should be more particularly defined.

Repeated elections are understood to mean

(Article 106) an election at a polling station, where such election has been invalidated and in such an event the repeated election must take place within 3 days of the decision to repeat

(Article 107) an election in a Constituency or Municipality where such election has been invalidated and in such an event the repeated election must take place within 15 days of the decision to repeat

Fresh elections are understood to mean that the whole election process takes place again and this term may also apply to pre-term elections (i.e. held before the end of mandate), which are also referred to as Early elections in Article 109 (Parliamentary).

#### **4.7. Nomination of Candidatures**

Article 8 of the electoral law (Presidential) provides for the list of nominated candidates to be compiled by the REC in the order of candidates as determined by drawing lots within 48 hours following the expiry of the latest day for submission of nomination papers (i.e. no later than 20 days before election day).

Article 46 of the electoral law (Parliamentary) stipulates that within 24 hours after the submission of each nomination the REC must decide as to its validity and if there is a defect, to allow 48 hours for the papers to be corrected by the nominating party. If the nomination papers do not fulfil the conditions of the law or if the deficiencies in the papers have not been corrected within the prescribed time, the REC will pass within the next 48 hours, a decision on refusal to promulgate such nomination.

The above provisions are contradictory. According to this provision (Article 8), nominations closed on 15th September and the list of nominated candidates was required

to be compiled on 17th September in the order of candidates as determined by drawing lots. However the provision in Article 46 for corrections to nominating papers means that up to 16th September the REC may decide on defects to nominations and up to 18th September the nominating party may re-submit corrected nomination papers and up to 20th September the Commission may pass a resolution on refusal. Furthermore the submission of nomination appeals to the Constitutional Court delayed the compilation of the list of candidates, which was not completed until 20th September. Thereafter there is a requirement to publish in the Official Gazette the list of validly nominated candidates.

#### **4.8. Political Parties not Competing**

Leaders of the following political parties, which include the main opposition parties in the Parliament, signed a Charter on 25th August 1997 to the effect that their parties would not be putting forward candidates at the Presidential election: - (a) People's Party, (b) Liberal Alliance of Montenegro, (c) Party of Democratic Action, (d) Democratic League in Montenegro, (e) Democratic Union of Albanians, (f) Social Democratic Party of Montenegro.

#### **4.9. Composition of Polling Station Committees**

In Montenegro, there is provision for the competing political interests to be represented on the Commissions and Committees. Thus candidatures' representatives are able to play an essential role in safeguarding the electoral process. The electoral law provides for such representation on the extended compositions of the electoral bodies whereas there is provision for independent impartial membership of the permanent compositions. An instruction was issued on 19th September 1997 by the Republican Election Commission to Municipal Election Commissions to the effect that permanent members of Polling Station Committees should be appointed upon the proposal of the political parties submitting candidacies. This Instruction was contrary to the spirit of the law and was in contradiction of a determination of the REC on 18th October 1996 (Ref. 313) that the appointment of the permanent composition of the PSC's is the exclusive competence of the MEC's.

Accordingly a number of MEC's either did not comply at all with the REC's Instruction or reached a compromise and complied in part only. Thus there was an element of confusion and lack of uniformity in practice.

It is of concern that under paragraph 2 (Principles) of the REC Instruction, it was stated

“..... and satisfies the principles, standards and requirements of the International Security and Co-operation in Europe – OSCE – Presidential Election 1997.”

It was incorrect of the REC to include such wording in its Instruction to the MEC's thereby lending credence to such an Instruction. In fact this Instruction was contrary to the opinion, which was sought by the REC and given by the Election Observation Mission when seeking clarification of this particular provision of the law.

#### **4.10. Presence and Participation of Members on Extended Composition of Electoral Bodies**

The delayed presence of candidates' representatives, particularly on MEC's, to just 5 days before polling day prevented their ability to participate in all aspects of the election administration. The decision of the REC, notified to MEC's (Ref. 01-189), that such representation should be simultaneous as regard all candidacies is also contrary to the spirit of the law, and prevented participation at an early stage after the publication of the list of validly nominated candidates on 20th September.

#### **4.11. Independence and Impartiality of Electoral Bodies**

The complete independence and impartiality of the Election Administration is essential to the proper conduct of the electoral process. The best ambassadors for the legitimacy of the electoral process are the members of the commissions and the polling station committees both permanent members and extended members. Electors need to have confidence in the process and this was secured during the Second Round with full representation and participation by the representatives of the candidates particularly at polling station level. Each member had the right to have his or her complaint recorded in the Polling Station Record and with the further right to refuse to sign the Record. Thus there was the essential safeguard to ensure fairness and transparency.

However, there is a need to include a more detailed provision in the electoral law as regards the independence and impartiality of all the members of electoral bodies in the performance of their duties under the law.

#### **4.12. The Ballot Paper**

Article 11 of the electoral law (Presidential) provides for the ballot paper to be verified by the REC. The ballot paper was not only authenticated by the REC but that body took upon itself the responsibility for the ordering as well as the supply and delivery of paper for the printing of the ballots for the Second Round. It is considered that this task should have been executed on behalf of the REC, as the supervisory body, by the appropriate body of the public administration.

#### **4.13. Media**

Coverage of the political campaign by the main sources of information, Montenegrin and Serbian Television, as well as the print media was not well balanced and the prejudicial effect this can have is of concern.

It should be noted that the electoral law provisions on the media do not apply to the public Serbian media neither at national nor at Federal level.

There are provisions regulating media coverage, and a supervision body comprised of the candidates authorised representatives was established to ensure observance of the Rules.

Article 20 of the Rules provided for the first session of the Committee to be held on 16th September 1997 and Article 12 provided for the start of the promotion of the candidates programmes on 17th September 1997. However the publication of the final list of validly nominated candidates must take place no later than 15 days before the polling day (i.e. 20th September 1997). Therefore such a body of candidates representatives may be constituted no later than 20th September.

The list of validly nominated candidates was determined on 20th September following adjudication by the Constitutional Court on a number of appeals. Accordingly the first meeting of the Committee, under the Chairmanship of the REC, with all competing political interests represented and with a representative of the Secretariat for Information, took place on 20th September 1997, when the sequence of promotions in all the media was determined by drawing lots. The promotion of candidates programmes started on 22nd September on radio and television and on 23rd September in Pobjeda Daily.

A proposal of the internal regulations of the Committee and of the related administrative matters was prepared by the Secretariat for Information and adopted at a meeting of the Committee on 25th September again under the Chairmanship of the President of REC. The draft internal regulations, as amended by the introduction of the qualified majority vote by two thirds of members present, were approved unanimously and agreement was reached on the rotation of chairpersons.

Subsequently meetings were held on 26th September and 28th September. In the Second Round, although an attempt was made to summon a meeting, no such meeting was held. The uncertainty as regards the participation of representatives of all those candidates competing in the First Round was hence not cleared.

There is apparent scepticism about the ability of such a politically composed body to effectively fulfil its duty. As a consequence there is also an apparent lack of interest in the participation of such proceedings.

#### **4.14. International and Domestic Observers**

In recognition that international and domestic observers play an essential part in establishing and safeguarding public confidence in the electoral process, it is of concern that there is no specific and detailed provision in the electoral laws for such a presence and participation. Article 22 of the electoral law (Parliamentary) makes scant reference to “... other persons monitoring the operations of electoral bodies shall act according to the rules of conduct laid down by the REC”.

#### **4.15. Out of Polling Station Voting – Old Age, Illness etc.**

While the provisions for out of polling station voting (postal voting) are a well intended effort to create an inclusive process by endeavouring to maximise enfranchisement there is a need to review these provisions as regards the transparency of the procedures when visiting those electors on polling day who are unable to attend the polling station in person by reason of old age, weakness, home or hospital treatment of serious illness.

Article 85 of the electoral law (Parliamentary) provided for this exercise to be conducted by the PSC "through its agent" whereas the Instructions issued to PSC's by the REC stipulate that this is undertaken "through its commissioner, who is one of the deputies of the members of the PSC".

#### **4.16. Voting by Post – Persons on Business Trips and Students**

The absent voting provisions for electors on a business trip or those studying away from their normal residence cannot be carried out in practice, given that Article 87 (Parliamentary) stipulates that such electors must contact the PSC for the polling station for which they are registered and to request the sending of the required material in order to vote. In practice such persons are excluded from the electoral process.

#### **4.17. Voting by the Military and Persons in Custody**

There is provision in the electoral law Article 87 (Parliamentary) for electors doing their national service in the army or taking part in military exercises or carrying out their duties in the units of the Yugoslav army, to cast their votes in such units or institutions. Special lists are drawn up for each Municipality. The Secretariat for the Register of electors of the Municipality in which a soldier is registered as an elector (i.e. his last place of residence) is obliged to send the necessary material for voting to the military unit or institution in which the soldier is serving. Voting takes place under the supervision of a Military Commission. On the conclusion of the voting at the barracks the Military Commission delivers the voting papers in sealed envelopes to the respective MEC's, in which the soldiers are registered as electors.

There is no provision in the electoral law for the voting procedure to be monitored by the candidates' representatives and at a certain number of barracks, voting took place on the day before polling day. Thus, this exercise, which could have been much simpler given that there is one sole constituency for the Presidential election, was not conducted in a transparent manner. There is a similar concern in respect of postal voting by persons in custody. The published final results of each MEC reveal that over three quarters of all those electors (i.e. soldiers and prisoners) registered to vote by post either did not vote or their voting papers did not arrive at the respective MEC by the hour fixed for the close of poll (i.e. 2000 hours).

#### **4.18. Voting After the Hour Fixed for the Close of Poll**

There were difficulties of administration, particularly with the late introduction of the safeguard of additional Register extracts for recording the electors' signature at the polling station in the second round. Members of the MEC's, PSC's and the local public administration worked long hours to ensure that everything was ready for polling day. This additional measure led to long queues at many polling stations and many voters had to wait a long time in order to cast their ballot. The introduction of any such additional safeguard late on in the electoral process should be carefully considered not only as regards the legitimacy of such a measure, but also the effect any such measure may have on the administration and proper conduct of the electoral process, particularly in the polling stations.

In recognition of the difficulties, which faced those PSC's with high electorates, it is concluded that the practice of ensuring the fundamental right of every elector to participate in the election and to vote for the candidate of their choice was conducted in a non-discriminatory manner.

#### **4.19. Tabulation and Consolidation of Results for each Municipality at each MEC**

The tabulation and consolidation of polling station results took place at each MEC with the involvement of the candidates' representatives. In order to support this activity statisticians were deployed by the Secretariat of Development to operate computers and to tabulate the results using the software specifically designed for the purpose. The software provided for a record in the computer for each protocol and there is the safeguard of a record of any subsequent alterations to the original record with a separate record on the computer.

The procedure for scrutiny and tabulation of PSC results included:

- MEC receiving and checking the PSC Protocols
- adjudication on claims
- checking the data for arithmetical errors and whether the figures balance
- statisticians entering into the computer the figures from the Protocols and printing out the results for each polling station, which figures were then checked against the Protocols by the Members of the MEC
- each candidates' representative received a copy of the computer printout
- transmission of data from each MEC (except one MEC which did not have this capability) to the Secretariat for Development, which body consolidated the results for information of the REC
- delivery of the MEC's Protocols and Reports to the REC.

Observation findings revealed that these procedures at MEC level worked well and were conducted with candidates' representatives having the opportunity to monitor the proceedings, which were carried out in an open and transparent manner.

#### **4.20. Announcement of Results by the Republican Election Commission**

Article 15 of the electoral law (Parliamentary) requires the REC to immediately calculate the results of the election upon receipt of the reports of all MEC's. There was no delay in the announcement of the results for the First Round. However it is of concern that despite the early conclusion of the procedures at MEC level and a simpler ballot in the Second Round and the submission of Reports by those bodies in good time to the REC, there was a lack of communication and in turn a lack of transparency on the part of the REC as regards the final results, which were not made known officially until late evening on Tuesday 21st October 1997.

#### **4.21. Second Ballot**

There being no candidate securing a majority of the total votes cast, a second round of voting took place on October 19.

The polling and counting processes for the First Round in respect of two polling stations in Bar were repeated on 9th October. This was because there were more ballot papers in the ballot box than number of electors entries marked in the Register extracts to show that such persons had attended and were issued with ballot papers.

### **5. RECOMMENDATIONS**

#### **The Legal Framework and Administrative Procedures**

There is an overriding need for consolidation of the existing legal framework, with clear and precise laws as well as rules and regulations, which further expand on the laws, and define and clarify the various technical and administrative aspects of the electoral process.

#### **The Election Timeframe**

A more realistic timetable in the Election Law for election-related deadlines should be established.

#### **The Introduction of Additional Safeguards**

The introduction of an additional safeguard requiring voters to sign their name to the register, led to a delay in the close of poll, particularly at those polling stations with over 1,500 electors. Such safeguards should already be envisaged in the Election Rules and Regulations, thus avoiding their late introduction and accompanying administrative delays.

#### **The Voters Register**



There is a need to review the fragmented practices and procedures, to produce a central Register for the whole of Montenegro and not on a purely Municipality basis. There is need to conduct a registration exercise so as to update the Registers in order improve their completeness and accuracy. There should be one central body with overall responsibility for registration and close liaison between this body and the relevant central and local public administration in order to ensure effective procedures for the administration and computerisation of registration. Such a vital part of the democratic process should not be left to each Municipality to undertake this exercise separately without control and clear direction from the centre. It is essential to enforce uniform practices and procedures, and introduce the required measures for publication, claims, appeals and a high level of transparency.

### **Electoral Bodies**

The electoral law should be clarified in respect of the presence and participation of candidates' representatives, and should provide for their full participation on all electoral bodies at each and every stage of the electoral process.

There is also a need to include a more detailed provision in the electoral law as regards the independence and impartiality of the permanent members of electoral bodies in the performance of their duties under the law.

### **Public Administration**

There is a need to review the provisions of the law in respect of the powers and competencies of the electoral bodies, and to define more clearly the roles of the various Ministries and other public administration bodies. A distinction must be established between electoral administration on the one part and executive and logistical operations on the other part.

### **Ballots**

It is recommended that each ballot paper should be authenticated with an official stamp, unique for each Polling Station, and each ballot paper stamped at the time of issue to each elector.

### **Civic Education**

A civic education exercise is called for, focusing on the importance of the right to register as an elector and the civic responsibility of all citizens to be registered as voters.

### **Nomination Procedures**

There is a need to review the provisions in respect of the nomination procedure with a prescribed timetable providing for:

- start of nominations
- close of nominations
- publication of provisional list of candidates
- period for (i) claims against rejection and (ii) claims of objection to acceptance to the Commission and subsequent appeal to the Court
- publication of the final list of validly nominated candidates.

### **The Media**

It is important to strive for a more equitable and unbiased formula in respect of both the print media and the radio and television media, so as to permit contestants reasonable access and coverage for the contesting points of view to be equitably communicated. In the realisation that larger and better financed parties and candidates may be able to purchase media time or space an equitable formula should be reached to ensure that all the contesting points of view be fairly and equitably communicated.

It is considered that improvements can be made in respect of media coverage with regards to distinguishing between coverage of campaign events and other events such as state affairs.

### **The Media Control Committee**

Consideration should be given to review of the legal provisions in respect of Media control with a view to establishing a more effective body comprising of independent members and representatives of the competing political interests.

### **The Election Campaign**

Although there is provision in Article 59 of the electoral law (Parliamentary) there was an indiscriminate display of campaign posters on traffic signs etc. Consideration should be given to more detailed legal provisions in respect of the designation of places for display and proper control over such activities by the public administration.

### **Out of Polling Station Voting**

It is considered that the conduct of out-of-polling-station-voting should not be performed by one person. It is suggested that provision should be made for the designation of a specified number of deputies of PSC Members, not excluding the Members of the extended composition, to undertake this task jointly and in such a way as to maintain the secrecy of voting.

### **Voting by Military, by Post and by Persons in Custody**

Consideration should be given to measures with required practical solutions for an inclusive, controlled, transparent and uniform process, in respect of persons voting in the military, by post, and persons in custody.

### **International and Domestic Observers**

Whilst it is encouraging to note that observation by international and domestic organisations was welcomed it is considered that for future elections the electoral law should provide for observation by international and domestic observers with full participation at all levels of the electoral process.

### **Announcement of the Final Results**

All parts of the electoral process should be carried out in an open and transparent manner and this includes the final totalling of the results at REC level. Any delay in publication of results, either in part, or as a whole, will lead to doubt and suspicion. It is imperative that the competing political interests, the media and particularly the citizens be kept fully informed at this critical stage of the process.

### **“Repeated” or “Fresh” Elections**

In respect of “repeated” or “fresh elections”, there is a need for a clearer definition of these terms.