



**Republic of Serbia
Federal Republic of Yugoslavia
Presidential Election – Second Round
13 October 2002**

OSCE/ODIHR ELECTION OBSERVATION MISSION

Statement of Preliminary Findings and Conclusions

Belgrade, 14 October 2002 – The OSCE/ODIHR Election Observation Mission (EOM) for the election of the President of the Republic of Serbia / Federal Republic of Yugoslavia issues this second statement of preliminary findings and conclusions before the official announcement of election results and before election day complaints and appeals have been addressed by the administrative and judicial authorities. This statement should be considered in conjunction with the statement of preliminary findings and conclusions issued on 30 September after the first round of voting.

PRELIMINARY CONCLUSIONS

The two rounds of the 29 September and 13 October 2002 presidential elections in the Republic of Serbia, Federal Republic of Yugoslavia, were conducted largely in line with international commitments and standards for democratic elections. However, as stated after the first round, shortcomings persist, in particular with regards to legislation inherited from the previous regime.

With preliminary data indicating around 46% turnout on election day, well below the 50% required, the second round was void and the entire electoral process must be repeated. In accordance with Article 86 of the Constitution, “the election for the President of the Republic must take place not later than 30 days before the expiration” of the current office holder’s mandate on 5 January 2003. The election law requires a minimum 45-day notice for the election. Thus, if the new election is to take place on or before 6 December, it should be announced on or before 22 October to allow for the 45-day notice.¹

As noted previously, the election legislation contains significant shortcomings that have the potential of undermining the democratic process in Serbia. In the long-run, a comprehensive review and amendment of all election laws is necessary, and a coordinated effort is required to improve the process for compiling voter registers. In the meantime and before announcing the new elections on or before 22 October, the following provisions of the election laws should be changed urgently:

¹ A controversy has emerged as to when the current office holder’s mandate expires. While the current President appears to have taken the oath of office on 29 December 1997, there are indications that he did not take office until 5 January 1998. For the determination of the chain of events to call the new elections, the OSCE/ODIHR uses the later of the two dates. However, should the earlier date be agreed, then first the laws should be changed as recommended in this statement, and only after that should the new elections be announced, giving the required 45-day notice.

- Article 9 of the law on presidential elections requiring a 50% turnout for the second round should be repealed as it promotes boycott by unsuccessful candidates in the first round, may undermine voter confidence in elections, is contrary to the spirit of the Serbian Constitution, and could ultimately lead to a constitutional crisis in the Republic with repeated attempts to elect the president without success;
- Article 6 of the law on presidential elections should be clarified to require the counting of ballots in the ballot box rather than voter signatures on the voter register in order to determine “the voters who voted”;
- Articles 6 and 9 of the law on presidential elections should be clarified to require the counting of only valid ballots in order to determine a “majority of votes from the voters who voted”; and
- The omission of an intermediary election administration body between the Republic Election Commission (REC) and the Polling Boards should be remedied by replacing the current *ad hoc* Working Groups with the Municipal Election Commissions.

The Republic Election Commission (REC) struggled to implement legislation that includes conflicting and ambiguous provisions, at times permitting political rather than legal considerations to prevail. REC meetings were open to accredited observers and the media, however some sensitive issues were addressed in informal and closed meetings.

The campaign for the second round was low key with political issues unrelated to the election at times overshadowing the candidates’ campaigns. The calls by some first round candidates and political parties for their supporters to boycott the second round of voting generated much speculation as to whether the 50% turnout requirement would be met, creating an uncertain election atmosphere.

The State owned RTS1 campaign coverage continued to improve, with viewers offered well-balanced, politically neutral information on the platforms of the two candidates. In a welcome development, the candidates participated in a live televised debate. Private media continued to offer a variety of political opinion, with less overt bias than noted previously.

As for the first round of voting, the overwhelming majority of observers evaluated the voting process in positive terms, with only minor and isolated irregularities reported. The vote count and the Working Groups were evaluated in equally positive terms.

The OSCE/ODIHR is prepared to assist the authorities and civil society of Serbia to overcome the remaining challenges, in particular with the long overdue overhaul of the legislative framework for elections.

PRELIMINARY FINDINGS

First Round Findings and Conclusions

On 30 September, the OSCE/ODIHR jointly with the Parliamentary Assembly of the Council of Europe published a Statement of Preliminary Findings and Conclusions on the first round voting that took place on 29 September. The first round statement can be accessed on the OSCE/ODIHR website at www.osce.org/odihr and its findings and conclusions are not

repeated herein. As such, the present statement addresses developments since the first round of voting.

First Round Results

The processing of first round election results was efficient and transparent. The REC was able to announce the official results well within the legally established deadlines. On 1 October, the REC announced that no candidate had secured a majority of votes in the first round and that the top two candidates, Vojislav Kostunica and Miroljub Labus, would contest the second round of voting on 13 October.

All REC members were able to receive electronic copies of consolidated polling station results. While some candidates brought complaints to the REC and appeals to the Supreme Court on other issues, none challenged the accuracy of the REC's aggregation of results.

Turnout Requirement for Second Round

The presidential election law of Serbia states that the candidate who receives the majority of votes is elected President, provided that at least half of the total number of voters in the Republic went to the polls. If a candidate is not elected in the first round, then the top two finishers from the first round compete in a second round run-off. The candidate who receives the majority of votes in the second round is elected President, again provided that at least half of the total number of voters in the Republic went to the polls. If half of the registered voters do not turn out in the second round, then the law requires that the entire electoral process begin anew. This requirement for a voter turnout of at least 50% of the registered voters in the second round is not practical, may undermine voter confidence in elections, is contrary to the spirit of the Constitution of Serbia, and could ultimately lead to a constitutional crisis in the Republic.

The Constitution of the Republic of Serbia envisions a Presidential Office that executes laws promulgated by the National Assembly, unhampered by vacancy. This is underscored by the constitutional provisions setting forth the fundamental principles for presidential elections. Thus, the Office of President is for a term of five years, an incumbent President could seek a second term, and the President is elected by direct election and secret ballot. Further, to support continuity and stability, the following constitutional provisions are included: (1) extension of the President's term in the event of immediate danger of war or state of war, (2) removal of the President only by a supra-majority vote of the National Assembly and subsequent majority vote in a popular recall election, and (3) the holding of an election to fill the Presidential Office no later than thirty days before the expiration of the current term.

The current legislative requirement for a voter turnout of at least 50% of the registered voters in the second round is contrary to this constitutional requirement of stability and continuity. Further, the current requirement could lead to a constitutional crisis as Article 87 provides for the President of the National Assembly to temporarily fill a vacancy under the limited circumstances set forth in Article 87. Article 87 does not address the problem of a vacancy created when the people's choice for President cannot be honored due to a legislatively imposed requirement that a certain percentage of voters show up at the polls. Thus, the current requirement could lead to a constitutional crisis.

The current requirement for a voter turnout of at least 50% of the registered voters in the second round also undermines the confidence of the public in the legitimacy of elections. In a second round run-off election, it is quite possible for a candidate to receive substantially more votes than the other candidate, but be deprived of the Presidential mandate because the voter turnout was less than the required 50%. Those citizens taking the responsibility to vote and participate in elections should not have their collective will thwarted by a group of citizens who do not vote in the elections or who cast invalid ballots. In fact, the current voter turnout requirement grants those who choose to stay at home or who cast invalid ballots significant power to veto election results.

Finally, the current requirement for a voter turnout of at least 50% of the registered voters in the second round is not practical. Most democracies go through periods of “voter fatigue” and there will be some elections where the voter turnout is low. However, a President elected by the express will of those voting, regardless of the turnout level in the second round, is certainly preferable to a perpetually vacant office and endless elections.

For the above reasons, which are not exhaustive, the current requirement for a voter turnout of at least 50% of the registered voters in the second round of the presidential elections should be repealed. There is no constitutional prohibition on immediate repeal of this legislative burden before the new elections. Article 9 of the law on electing the President makes it clear that the entire electoral process begins anew, including a minimum 45-day notice requirement for a new election date, and a new registration of candidates with signature collection and validation. Thus, the amendments to the election law would be justified so long as done before the announcement of the new presidential elections and the amendments are necessary to correct anomalies, ambiguities and contradictions in the laws. Further, such amendments could have immediate effect in accordance with Articles 120 of the Constitution of Serbia.

Resolution of Election Disputes

The REC rejected approximately 40 complaints alleging polling irregularities during the 29 September first round election. All but two of these were concerned with minor issues, and were not pursued further by the complainants. The exceptions were a complaint concerning significant errors in the voter register for Kosovo municipalities and a complaint by the SRS. The REC rejected the first complaint on procedural grounds and the complainant did not appeal. The second complaint gave rise to appeals.

The SRS complaint filed with the REC called for the annulment of the election results, alleging various violations, including irregularities in the candidate nomination and proclamation process, improper termination of extended members of election administration bodies representing unsuccessful first round candidates, irregularities in the compilation of a centralized voter register, shortcomings in the functioning of the media Supervisory Board, and violations on election day. The REC dismissal of the complaint on jurisdictional grounds was appealed to the Supreme Court.

The Supreme Court upheld in part the SRS appeal, however rejected the request to annul the election. The Court ruled that the REC should have addressed the substance of the

complaint. In a new decision, the REC addressed the substance and rejected all claims. The SRS appealed against the REC decision and lost at the Supreme Court.

Overall, the legal framework establishes a fairly expedient mechanism for handling of pre-election complaints and appeals. However, in the absence of intermediary level commissions, had there been a large number of election day complaints and appeals the system would have failed. The well-managed and transparent polling processes prevented any possible problems.

Election Administration for the Second Round

After proclaiming the candidates for the second round, the REC dismissed the extended members of the REC and polling boards appointed by the nine unsuccessful first round candidates. With eight members voting against, the decision was controversial and possibly at variance with the election law which stipulates that the election administration “shall operate in extended composition ... until the conclusion of the elections”. The REC argued that since it had approved a new candidate list, those appointed to the election administration bodies by candidates unsuccessful in the first round no longer fulfilled the legal requirements of membership. The Supreme Court upheld the REC decision.

The dismissal of the nine extended REC members altered its balance and decisions could be adopted more readily. However, REC decisions became more contentious with the DSS complaining about some decisions and the membership of polling boards.

Voter Registration

Voter registers could not be updated between the two election rounds and the omission of eligible persons noted in the context of the first round remained problematic. Those who reached voting age between the two rounds were also excluded. The accuracy of voter registers is of critical importance in establishing if 50% of eligible citizens have participated in the election and hence the validity of the election.

Voters and political parties lack confidence in the accuracy of the voter register. Also, responsibility for coordinating and correcting voter registers is fragmented and ambiguous. Prior to the first round, extracts of the voter register were displayed locally so that voters could request amendments. With the exception of Kosovo, these amendments were generally incorporated in the voter lists used on polling day. Political parties also had access to the registers at local level. However, the absence of a regularly maintained central voter register prevented any effective inspection of multiple entries and other flaws across local voter register extracts. Thus, the voter registers were the subject of allegations and complaints, but no evidence was produced in support.

Campaign for the Second Round

The campaign was relatively low-key with the main focus being the 2-hour televised debate between the candidates on 9 October. Other developments, such as the on-going emergence of new parliamentary groupings, speculation concerning early parliamentary elections, and continuing acrimony surrounding the decision by the DOS presidency to terminate early the

mandates of 45 DSS parliamentarians, at times overshadowed the election campaign. Candidates' local grass-root campaign seemed less intensive than previously.

The decision by two of the defeated first round candidates Vojislav Seselj and Borislav Pelevic as well as some political parties to call on their supporters to boycott the election created an uncertain election atmosphere and much speculation concerning whether the 50% turnout requirement would be achieved. Both remaining candidates, most parties in the DOS coalition, civil society organisations, the Orthodox Church, international organizations and labor unions urged voters to turn out on election day.

As noted previously and in addition to the call for boycott, the omission of options in the legislative framework for registered voters who are unable to attend polling stations in the place of their permanent residence owing to physical disability, hospitalization, infirmity, travel, employment abroad, imprisonment or detention and displacement from Kosovo into Montenegro may also impact on voter turnout and hence the outcome of the election.

Media Coverage for the Second Round

During the second round campaign, the electronic and print media provided both candidates with a broadly equal amount of campaign coverage. The overwhelming majority of this airtime covered Kostunica and Labus as presidential candidates rather than as federal officials. Kostunica increased the amount of paid advertising broadcast compared to the first round, resulting in a generally equal presentation of both candidates.

RTS 1 continued to provide candidates with one free advertisement spot a day. While the station did not broadcast many special election related programs, candidates' pre-election activities were presented within regular news programs that offered voters well-balanced, politically neutral coverage of both candidates. On 9 October, the single debate between both candidates took place over a two-hour period, broadcast on State-owned TV and radio as well as a wide range of local media outlets.

TV channels YU INFO and TV BK also provided mostly balanced and equal coverage of both candidates. In comparison with the period before the first round, TV PINK decreased the coverage of both candidates by approximately 50% and in general provided noticeably less information on politics. Following a pattern noted previously, TV PINK continued to give Labus support, frequently portraying Kostunica negatively.

Apart from the last three days of the campaign during which both candidates were portrayed in rather negative terms, the print media provided largely equal coverage to both candidates.

The 50% turnout requirement for the second round was in media focus during the last days of the campaign with some politicians, civil society representatives and some members of the international community urging voters to turn out and others urging boycott. On 9 October when the debate of the two candidates was to take place, TV PINK and TV BK dedicated a significant part of their main news programs to statements by politicians supporting a boycott and expressing opinions that the debate was insignificant.

The EOM was informed of an allegation that the newspaper *Nacional* violated the 48-hour campaign moratorium.

Election Day & Aggregation of Results

Preliminary data indicates around 46% voter turnout for the second round, some 10% less than for the first round. Thus, the requirement of the Presidential Election Law, Article 9, for a 50% turnout was not met and the entire election process must be repeated.

As for the first round of voting, the overwhelming majority of observers evaluated the voting process in positive terms, with only minor and isolated irregularities reported. However, group voting was reported in 15% of visits to polling stations, infractions of the secrecy of the ballot was reported in 13% of visits, and voters not producing valid IDs in 6% of visits.

The vote count and the Working Groups were evaluated in equally positive terms.

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

MISSION INFORMATION & ACKNOWLEDGMENTS

The OSCE/ODIHR Election Observation Mission (EOM) is headed by Nikolai Vulchanov (Bulgaria). This statement is based on the observations of 25 long-term members of the EOM, based in Belgrade and nine regional centers throughout the Republic as well as Kosovo who have been deployed since 2 September. The statement also incorporates the election day findings of 114 short-term observers from 27 participating States reporting from some 500 polling stations out of 8,600 around the country.

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

The EOM wishes to express appreciation to the Ministry of Foreign Affairs of the Federal Republic of Yugoslavia, and to the Ministry of Interior of Serbia, the Ministry of State Administration and Local Self Government, the Republic Election Commission, and other Republic and Municipal authorities of Serbia for their cooperation and assistance during the course of the observation. The EOM is also grateful for the support from the OSCE Mission in the FRY and Embassies of OSCE participating States accredited in Belgrade.

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