



Office for Democratic Institutions and Human Rights

**ASSESSMENT OF THE LAWS ON PARLIAMENTARY
AND PRESIDENTIAL ELECTIONS
IN THE REPUBLIC OF SERBIA (FRY)**



Warsaw
26 April 2001

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ASSESSMENT OF THE LAWS ON PARLIAMENTARY AND PRESIDENTIAL ELECTIONS IN THE REPUBLIC OF SERBIA (FRY)

Warsaw, 26 April 2001

This report provides an assessment of two laws of the Republic of Serbia, the Law on Elections of Members of Parliament and the Law on Elections of the President of the Republic.¹ The parliamentary election law was adopted in October 2000. The presidential law dates from 1990.

Under the Constitution of Serbia, the National Assembly is a unicameral body and consists of 250 members directly elected by secret ballot for a term of four years. The president is elected directly by secret ballot for a term of five years.

Most of the key issues relating to the election and recall of the president are regulated by reference to the parliamentary election law. The report therefore focuses on the content of that law.

The following comments draw on the observations and recommendations set out in the Final Report of the OSCE/ODIHR on the parliamentary elections held on 23 December 2000. In various respects that report is a source of encouragement: certain issues that were poorly regulated in the law (such as safeguards for multi-party election administration) proved not to be problematic in the practice of that election. However, the mere fact that problems did not arise in a particular election does not remove the need to address shortcomings in the election legislation. If appropriately formulated, improvements in the legislative framework will help to ensure that all elections in Serbia are more likely to meet international standards in the future.

OSCE/ODIHR has published 1) Guidelines for Reviewing a Legal Framework for Elections, January 2001,² 2) Guidelines to Assist National Minority Participation in Electoral Process, January 2001,³ and 3) Resolving Election Disputes in the OSCE Area, July 2000.⁴ These guidelines could assist the competent authorities in the effort to improve their election legislation.

I. SUMMARY

1. The Law on Elections of Members of Parliament of Serbia includes a number of important safeguards to promote democratic election practices. In particular, there are numerous measures designed to enhance transparency in the organisation and conduct of the election and to protect the security of the ballot. However, in several significant areas, the law fails to comply with OSCE commitments and international standards.
2. The report includes the following recommendations.

¹ The laws were published in *Sluzebni Glasnik Republike Srbije* No. 35/2000 (parliamentary election law) and No. 1/1990 (presidential election law; amendments in No. 79/1992).

² Available in English, Russian and Serbian.

³ Available in English, Russian and Serbian

⁴ Available in English.

- i) There should be an interim level of electoral commissions between the Republic level (Republic Electoral Commission – REC) and precinct level (polling boards – PBs).
- ii) The rules on the formation of electoral commissions create a serious potential risk of partisan election administration, although this was not a particular problem in the December 2000 elections.
- iii) The procedures and rules for authenticating signature lists in support of a candidate list should be clarified.
- iv) The law should permit and regulate the participation in the electoral process of both international and non-partisan domestic observers.
- v) The law should be amended to include considerably greater regulations to promote free and equal access to the mass media.
- vi) Polling boards should only be dissolved on polling day if there has been a serious violation of the law which impacts on the integrity of the election.
- vii) The REC should be required to publish a breakdown of results by polling stations that could be cross-referenced against result protocols obtained from PBs by party and candidate representatives.
- viii) Measures are required to extend the vote to those who cannot attend the polling stations for reasons of disability or owing to professional commitments on polling day.
- ix) Voters and other interested parties must have an opportunity to appeal directly to a court in the protection of their electoral rights. The present rules are wholly inadequate for dealing with situations where the applicant needs a prompt remedy determined by an impartial tribunal.
- x) The mandate of an elected member of parliament should not be withdrawn because they cease to be members of the party on whose list they were elected.

II. LAW ON PARLIAMENTARY ELECTIONS

A. Election Administration

3. Electoral administration bodies operate at just two levels, the Republican Electoral Commission (REC) and the polling boards (PBs). Each polling board runs the election at a single polling station. In the last elections there were 8,722 PBs.
4. Experience in the December 2000 elections suggests that there is a clear need for a formal intermediary level of election administration between the REC and the PBs. This will improve coordination between the REC and the polling stations, accelerate the processing of results and therefore lead to an earlier announcement of the results. It will also address the over-centralised present arrangements for the adjudication of disputes, so that appeals against the decisions or omissions of a PB can be determined initially by the intermediary electoral commission.

5. In practice the REC set up a number of "working groups" which in effect provided an intermediary level of co-ordination between the REC and the PBs. However, it is important that this situation is formally established in the law. Amendments are needed to ensure that the powers, functions and responsibilities of the intermediary electoral commissions are clearly defined, to ensure that they are properly accountable and work with adequate transparency safeguards, and to ensure that there is broad political participation and/or monitoring of their work.
6. The REC and PBs operate in permanent and extended composition. Political parties and other submitters of candidate lists are entitled to nominate a single representative in the extended composition of the REC and of each PB. These members appear to have equal voting rights with members of the permanent composition. They participate in the work of the REC and the PBs just for the duration of the election campaign and the processing of results. Decisions are made by a simple majority.
7. No party or political organisation is permitted to have more than half its members in the permanent composition of the REC or PBs.
8. The 17 members of the permanent composition of the REC are appointed for a term of four years by parliament. Candidates are nominated by the political party groups within parliament. Each member of the REC has a deputy. The permanent composition of each PB comprises three members appointed by the REC.⁵
9. All members of electoral commissions should be guaranteed the opportunity to participate in full in the administration of the election. Such guarantees are particularly important for members appointed in the extended composition of the REC and PBs. In order to provide such guarantees the law should stipulate the right of all members to be notified in good time of sessions, to be provided with full access to election documentation, and to attend and to participate on an equal basis in all sessions. None of these rights are protected in the law.
10. It is not clear in the translation provided when the members of the extended composition begin their work. Moreover, the law does not indicate which of the functions entrusted to the REC and PBs are to be discharged by the full, extended composition. The law should be amended to ensure that the extended membership begin to contribute to the work of the commissions at the earliest possible opportunity.
11. The law identifies various circumstances in which a PB can be dissolved on polling day.⁶ These includes such instances as where a member of a polling board fails to re-explain the voting procedure when requested or where there has been campaigning within 50 metres of the polling station. It is highly unlikely that such failures would necessarily justify the draconian response of disbanding the PB. It is recommended that the REC or intermediary electoral body should have the power to disband the PB only if the violation is deemed to be serious and may have had an impact on the overall integrity of the election.

⁵ Article 34(8)

⁶ See Articles 55 and 69

B. Appeals, Complaints and Violations

12. The law should protect the right of a voter to a fair hearing in a court of law as a means of obtaining an effective remedy. It does not appear to do so. A voter who believes his/her rights have been violated by a PB must appeal first to the REC and await its decision. There are no guarantees of a fair hearing at any stage of this process. Only when the REC has ruled on the complaint can the voter appeal to a court, in this case the Supreme Court of Serbia. Inevitably this protracted process raises an obvious risk of the denial of justice. This is a particular problem if a voter needs a remedy within hours rather than days. If voters are to have an effective remedy determined by a court that will ensure a fair hearing, they must be permitted to apply directly to a court at the appropriate level.
13. As indicated above, the appeal procedure within electoral commissions will be substantially enhanced if appeals can be made from a PB to an intermediary electoral commission.
14. The time limit on appealing decisions of an electoral commission should take into account any delay between the adoption of a decision and the notification of the decision to the person affected by it.
15. The law includes a range of criminal violations and penalties designed to promote and protect voters' rights. In the translation provided, Article 108 of the law punishes those who, in breach of Article 5(3) publish predictions of the results in the 48 hours preceding polling day. However, the law does not appear to identify penalties for those who engage in election campaigning during that period, which is also prohibited in Article 5(3). The law should be amended to remedy this omission.

C. Transparency Safeguards

16. The law includes an extensive range of safeguards designed to promote transparency and openness in the preparation and conduct of parliamentary elections.
 - i) Once they are in place, extended members of the REC and PBs are able to monitor the activities of these bodies on behalf of political parties that have submitted a candidate list.
 - ii) Submitters of candidate lists are permitted to have a representative monitoring the printing of the ballot papers.⁷
 - iii) A copy of the results at the polling station is required to be displayed at the polling station (although this part of the law fails to require that this is done without delay).⁸
 - iv) Each representative of a list submitter at a PB is entitled to a copy of the PB result protocol. The representatives for the submitters with the fourth highest results are entitled to a protocol immediately. Others are entitled to a protocol within 12 hours. However, the REC does not appear to be required to publish a table showing the PB results, which would allow the parties to ensure that the results are correctly entered.

⁷ Article 60

⁸ Article 76

- v) Submitters of candidate lists may inform the REC of the name of the person authorised "to attend statistical data processing" at the REC.⁹ The legal right of that person to attend and monitor the processing of the results should be spelled out more clearly.

17. Article 32 of the law provides:

"The work of election administration bodies shall be public.

Persons monitoring the work of election administration bodies shall act in accordance with the rules prescribed by the Republic Electoral Commission..."

Unfortunately the law does not elaborate further those categories of person who are entitled to monitor the work of election administration bodies. In particular, it makes no provision for the participation of either international or non-partisan domestic observers. In practice, it would appear that both domestic and international observers played a full part in the December 2000 elections. One domestic observer organisation (CeSID) deployed several thousand observers on polling day. However, it is strongly recommended that this situation is regularised in the law itself, so that the scope of the rights and duties of domestic and international observers is clearly set out.

D. Suffrage, Voter Lists and Special Voting

18. The Constitution of Serbia refers to citizenship of Serbia (as distinct from citizenship of the Federation). Article 42 of the Constitution provides: "A citizen who has reached the age of eighteen shall have the right to vote and to be elected to the National Assembly and to other agencies and bodies". Article 10 of the parliamentary election law places further restrictions on the passive and active voting right: a (Serbian) citizen must be a Yugoslav citizen, must have "business capacity" and must be permanently resident in the Republic of Serbia.
19. The law does not exclude from voting those who are in places of detention by reason of alleged or proven criminal acts. The law must therefore be taken to permit voting by such persons. Accordingly arrangements are needed (possibly in REC regulations) to ensure that adequate provision is made to facilitate such voting.
20. The law takes a very restrictive approach to special voting procedures. Apart from certain arrangements for members of the army,¹⁰ there are no special arrangements such as advance, proxy or postal voting or the use of mobile ballot boxes, for those who are unable to vote at their own polling stations for health or other incapacity reasons. Nor are there any such arrangements for those who are directly involved in the conduct of the elections as administrators, police officers, domestic observers and the like. It is understood that this restrictive approach has been taken for the legitimate purpose of reducing the risk of abuse and manipulation. However, the absence of such arrangements unfairly denies voting rights to a very large number of voters. It is recommended that some alternative voting arrangements are introduced, protected by appropriate safeguards to reduce the risk of abuse.

⁹ Article 79

¹⁰ See Article 73

21. Computerised voter lists are required to be kept by municipal authorities as part of a central system.¹¹ The law recognises the right to inspect and request alterations to the register and provides some detailed rules on the inclusion of voters' details and the introduction of amendments. Voters are permitted to challenge a refusal to amend the register to an administrative court. Unfortunately the law does not include specific provision for the public display of voter registers well in advance of the election. Such provisions should be added to ensure greater accuracy of voter lists and to reduce the need for last minute challenges.

E. Candidate Lists

22. Members of the National Assembly are elected in a Proportional Representation (PR) system of candidate lists in a single republic-wide constituency. Lists of candidates may be submitted not only by political parties, coalitions, and other political organisations but also by groups of citizens.¹²

23. In order to be registered a list must be supported by 10,000 voters' signatures. Article 43 provides that every signature must be authenticated in a municipal court, for which a fee will be charged.

24. It is strongly recommended that the law provides a clear indication of what kind of authentication is envisaged. It is possible to submit signature lists to varying degrees of scrutiny, from checking for errors on the face of the document (e.g. counting the number of signatures or ensuring that the voter's details appear next to the signature) to checking with voters to confirm that they did sign the list. The inclusion in the law of criteria for checking signature lists would not only provide a uniform system of scrutiny for all parties and lists; it would also avoid the use of arbitrary criteria as a means of excluding a particular list.

25. The 1990 Copenhagen Document of the OSCE includes an express commitment to allow citizens to seek political office as representatives of political parties or individually.¹³ Unlike the federal parliamentary election law (the law governing elections to the parliament of the FRY), the present Law does not appear to include any express prohibitions of lists with just one, independent, candidate. However, it may be expedient to clarify in the law that a candidate list may include the name of just one candidate.

F. Allocation and Withdrawal of Mandates

26. The systems of PR adopted is the d'Hondt model.¹⁴ This method is employed in a number of established democracies. However, it is well-known and readily demonstrable that this particular model of PR has the general effect of favouring a party with a large majority at the expense of smaller parties.¹⁵ This is therefore an important consideration when assessing the overall effect of the election legislation. For instance, the tendency of this system to preserve the dominance of the majority party makes it particularly important that the majority party should not enjoy dominant control over all electoral commissions.

¹¹ Article 12

¹² Article 4

¹³ Paragraph 7.5

¹⁴ For a brief guide, see "Electoral Systems: A world-wide comparative study", Inter-Parliamentary Union, 1993, p.3.

¹⁵ *ibid*, p.11

27. Mandates are only allocated to a candidate list if sufficient votes have been cast for that list to meet the threshold set out in the law. This is presently defined as 5% of the voters who have taken part in the election in the national constituency.¹⁶ It is not clear whether this is determined by referring to the number of signatures on the voter list, by counting the total number of ballot papers in the ballot boxes (valid or invalid) or by some other means. It is recommended that the threshold is defined as 5% of the total number of valid votes cast.
28. In a system where mandates are allocated by PR in a single constituency there is a danger that national minorities may not be adequately represented. In particular, a national minority may have significant numbers in a particular region but insufficient numbers throughout the republic to meet the 5% threshold requirement. Whilst it is acknowledged that eight representatives of national minorities were elected in December 2000 as candidates on the DOS coalition list, it is recommended that consideration be given to adopting measures to enhance the representation of national minorities generally. Reference might usefully be made on this issue to the "Guidelines to Assist National Minority Participation in the Electoral Process", OSCE/ODIHR, January 2001.
29. If the threshold requirement has been met, the law provides no rule on the allocation of mandates as between candidates on the list. Ordinarily, seats are allocated to candidates in the order in which they appear on the list. This is a valuable rule, as it allows voters to see who is most likely to be elected if they cast a vote for that list. It is recommended that such a rule is introduced into the law.
30. Moreover, the law presently provides that a mandate shall expire if the elected member of parliament ceases to be a member of the political party or coalition on whose candidate list s/he was elected.¹⁷ This rule raises obvious problems. Once elected, deputies should be accountable primarily to the voters who elected them, not to their political party. This flows from the fact that they hold a mandate from the people, not from their party. The fact that a deputy has resigned from or has been expelled from the party should therefore not entail their expulsion from parliament. It is therefore recommended that this provision is removed.

G. Campaign: Media

31. The provisions in the law dealing with access to the media are generally rather brief and leave too much of substance to be dealt with in subordinate acts or by the supervision board envisaged in Article 100. In particular, the law provides little by way of ensuring that participants in the parliamentary elections are guaranteed equal access to the media.
32. Article 5 touches on this issue where it states: "It is the duty of the media to ensure equal representation in information among all the submitters of candidate lists and the candidates from the lists." However, the law does not provide sufficient substance in support of this statement. It makes no distinction between state and private media. It makes no provision on payment for campaign broadcasts. It provides no indication of whether broadcasts or printed media are to be provided free of charge or, if paid for, whether broadcasters and publishers are required to offer equal rates to all participants. It provides no principles or rules by which broadcast and other facilities are to be distributed as between parties and other list submitters.

¹⁶ Article 81

¹⁷ Article 88

33. Whilst the recent elections suggest that use of the mass media in the election campaign was not problematic, it is recommended that these issues are addressed in the law.

H. Campaign Finance

34. The only apparent provisions in the law on campaign finance are found in Article 103, which provides (in the translation provided):

"The funds for the financing of election campaign shall be provided, amounting to 1,000 average net pays paid to employees in the economic sector of the Republic of Serbia for the month preceding the month when the election is called for which the data have been officially confirmed.

The funds referred to in paragraph of this Article shall be allocated in proportion to the number of seats won in the election."

35. This provides no guidance on whether private sources of finance are permitted, and if so, of what kind and subject to what limits. It is not clear whether the reference to the number of seats won in the election refers to the previous election, which would obviously favour the established majority party at the expense of all others, or the election being fought, in which case the allocation of campaign funds will come too late. It is suggested that this Article would benefit from considerable expansion and clarification in order to address such issues.

I. Voting and Counting

36. The body responsible for maintaining the voter register is required to issue certificates of suffrage.¹⁸ It would appear that these are required by those seeking inclusion on a candidate list but not by voters on polling day.

37. Voters are required to cast their votes on authenticated ballot papers.¹⁹ It is not clear whether "authentication" in this context means the use of special stamps, official signatures or some other method, or is merely a reference to the use of watermarked paper.²⁰ It is recommended that the law clarifies the method of authentication. It would also be expedient to include a requirement to use sequentially numbered ballot papers stubs or detachable coupons, as this provides a relatively simple safeguard against improper interference.

38. The law includes an express prohibition on the presence of unauthorised persons.²¹ Police officers may only enter to restore order when invited in by the chairman of the PB.

39. Security of the ballot is promoted by the insertion of a control slip at the beginning of voting by the members of the PB. If the number of ballot papers found in the ballot box is later found to be greater than the number of persons who voted, the polling is repeated.

¹⁸ Article 23
¹⁹ Article 55
²⁰ See Art 60
²¹ Article 58

40. Article 68 states that the voter must state his name and hand over his invitation to the polls and his Identification Documents. It is recommended that the law indicates what forms of identification are sufficient. More importantly, the law should make it clear whether the failure to present an invitation has any consequences of any kind.
41. Article 73 appears to establish the principle that as a rule, military voters vote in the nearest civilian polling station their barracks. This ensures that such voting is subject to the usual civilian measures of control and supervision.
42. It is strongly recommended that the REC be required to produce a table indicating the results in each polling station. Only in this way will representatives of the parties be able to check that the results they have in the PB protocols (records of the polling station results) have been correctly entered by the REC.
43. PBs are permitted up to 18 hours to submit their results and materials to the REC. It is not clear in the translation provided whether the materials must be sent by the PB or received by the REC within this time limit. If it is the former, 18 hours seems to be far too long, particularly given that polling stations serve no more than 2,500 voters.²²

III. LAW ON PRESIDENTIAL ELECTIONS

44. As already indicated, most of the rules on the conduct of presidential elections and of the pre-election campaign are contained in the parliamentary election law. Accordingly, most of the concerns identified above apply equally to the presidential election law.
45. There are no legal obstacles for those who seek to run as independent candidates rather than candidates for a particular political party.
46. Candidates for president may be nominated by political parties, other political organisations or groups of citizens. There is no definition of those "political organisations" which enjoy the right to nominate presidential candidates. If this term is not defined elsewhere in Serbian legislation, a definition should be included in the present law.
47. In all cases nominations must be supported by at least 10,000 voter signatures. As with the parliamentary election law (see paragraph 17 above), it is strongly recommended that the law includes clear regulations on the procedures for verifying such signatures.
48. Article 4 states that the president of the National Assembly calls elections for president of the Republic. This rule is taken from Article 78 of the Constitution of the Republic. Under Article 86 of the Constitution the election must take place not later than three days before the expiry of the term of the incumbent president. Where the president's term expires for whatever reason prematurely, new elections must be held within 60 days of such expiry (Article 87 of the Constitution). For the sake of clarity, it may be desirable to incorporate all of these rules into the law. More importantly, the law should include a deadline for the calling of the election (as opposed

²² Art 52

to the holding of the election), given that no such deadline appears to be provided in existing legislation or in the Constitution.

49. A presidential election is deemed invalid if less than half the total number of voters in the republic have voted (Article 6). However, there is no indication of how this calculation is to be determined. This matter may benefit from clarification in the law. Moreover, the law does not spell out the consequences where less than half the voters participate in the first round of voting. For instance, it may be necessary to add to Article 7 the words: "or if less than half the total number of voters in the Republic went to the polls", [voting shall be repeated within 15 days].
50. The law leaves entirely unresolved the question of how to deal with an election where, even after repeated attempts, less than 50% of the voters participate. Clearly the Republic cannot be left without a president indefinitely. It may be necessary to concede that if turnout falls below 50% in a repeat election, the elections will be valid nonetheless.
51. Additional or "autonomous" articles of this law were adopted in 1992 to deal specifically with the 1992 presidential elections. These addressed very briefly the issue of campaign finance. It is strongly recommended that permanent rules are added to the law dealing with the distribution of funds for campaigning and limits on the use of such funds. At present there appears to be no legal constraint or guidance on presidential campaign finance. Equally, rules on access to the media may be required to deal with issues relating specifically to presidential elections, taking into account the concerns expressed above.