



Office for Democratic Institutions and Human Rights

## REPUBLIC OF SERBIA

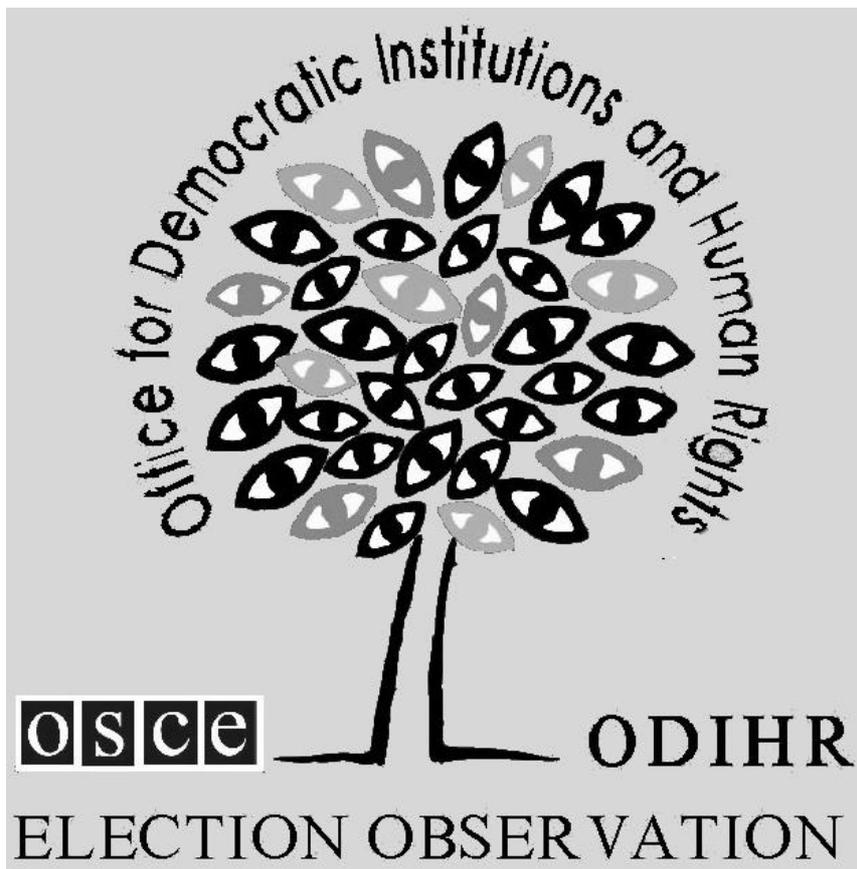
PARLIAMENTARY ELECTION

SEPTEMBER 21, 1997

AND

PRESIDENTIAL ELECTION

SEPTEMBER 21 AND OCTOBER 5, 1997



# TABLE OF CONTENTS

|  |    |
|--|----|
| INTRODUCTION .....   | 3  |
| SUMMARY OF CONCLUSIONS .....   | 4  |
| THE LEGISLATIVE FRAMEWORK.....                                       | 4  |
| The Introduction of a Regionally Proportional System .....           | 5  |
| The Law on the Election of Representatives .....                     | 5  |
| Law on Electing the President of the Republic .....                  | 7  |
| REGULATIONS FOR OBSERVATION .....                                    | 8  |
| THE ELECTION ADMINISTRATION .....                                    | 9  |
| Composition of Election Commissions.....                             | 9  |
| Duties and Responsibilities of the Republic Election Commission..... | 9  |
| Location of Unit Election Commissions and Polling Boards .....       | 10 |
| Voter Registration .....   | 10 |
| Registration of Candidates.....                                      | 11 |
| Ballot Paper Production, Distribution and Security .....             | 11 |
| Counting and Aggregation.....  | 12 |
| Distribution of Mandates .....                                       | 14 |
| The Media.....   | 14 |
| Election Days .....  | 16 |
| RECOMMENDATIONS.....   | 17 |

## **INTRODUCTION**

Upon receipt of an official invitation on August 14 to the OSCE Chairman-in-Office from Mr. Milan Milutinovic, Federal Minister for Foreign Affairs of the Federal Republic of Yugoslavia, the OSCE sent a Needs Assessment Mission to Belgrade between 21-26 August, 1997. The OSCE established an Election Observation Mission immediately following the initial assessment, in order to observe the pre-election period. The mission observed the election preparation, campaign, balloting, counting, aggregation and verification during the period August 27 - October 10.

Mr. Anthony Welch was appointed as the OSCE On-site Co-ordinator for the Election Observation Mission, and Mr. Nikolai Vulchanov, the ODIHR Election Advisor, served as the technical advisor to the Election Observation Mission. The OSCE long-term observation was supported by approximately 30 long-term observers from Austria, Denmark, Finland, France, Germany, Greece, Italy, Norway, Slovenia, Sweden, the United Kingdom and the United States of America.

During the parliamentary election and the first round of the presidential election on September 21, 156 short-term observers from 22 OSCE participating States were deployed. The OSCE Parliamentary Assembly participated in the observation mission with 39 parliamentarians from 19 OSCE participating States. Ms. Bjorg Hope Galtung of Norway led the Parliamentary delegation.

During the second round of the Presidential election, 25 short-term observers were deployed.

The OSCE would like to acknowledge the co-operation on the part of the authorities throughout the Election Observation Mission. The authorities did attempt to respond to all requests for clarifications of the election regulations. The main political parties were willing to meet with the OSCE Election Observation Mission upon request. The only exception was the Serbian Radical Party who refused to meet OSCE representatives.

### **Gonzalez Report - December 1996**

Following the disputed 1996 Municipal Elections, the Chairman-in-Office appointed the former Spanish Prime Minister, Mr. Felipe Gonzalez, as his Personal Representative. Mr. Gonzalez's report has served as a point of reference during the Election Observation Mission.

The Gonzalez Report of December 27, 1996, emphasised "a crisis characterised by mistrust and a lack of proper communication between the authorities and parties in power, on the one hand, and the political forces of the opposition represented in parliament on the other".

As Mr. Gonzalez concluded in his Report to the OSCE Chairman-in-Office, there are "...in particular, deficiencies (of a structural nature) in the electoral system that make it possible to falsify or circumvent the sovereign will of the citizens, problems in the administration of justice that are calling into doubt, in the eyes of the citizenry, the independent operation of the justice system, and finally the obstacles confronting the independent information media and the serious difficulties standing in the way to free and fair access to the public media."

Some of the main opposition parties chose to boycott the elections because they did not consider that the Gonzalez recommendations had been seriously addressed.

## **SUMMARY OF CONCLUSIONS**

The OSCE has completed its observation of the Presidential and Parliamentary elections in the Republic of Serbia and has concluded that the serious issues raised in the Gonzalez Report still remain unresolved. While the election day procedures at polling station level were for the most part carried out in an adequate manner, an election process is not a one day event, and the overall election process is fundamentally flawed. While this election did represent a limited attempt to address some of the recommendations of the Gonzalez Report, the election process was neither transparent nor uniformly administered, and offers a distinct procedural advantage to the incumbent. The following points are of particular concern to the integrity of the election process:

- The Election Law governing the election process is vague and ambiguous on a number of crucial points in the process, and the Republic Election Commission failed to issue clear guidelines, which could have alleviated this problem. Furthermore, the division of Serbia in 29 constituencies with the introduction of a regionally proportional election system was elaborated very late and passed without sufficient transparency and lacking a broad political consensus.
- The Election Administration, at the central and regional levels, did not set forth clear guidelines necessary for achieving a transparent and uniform process, and its regulations were often not in line with the text of the election law. The fact that a large part of the present election administration also administered the disputed 1996 municipal elections, including the Chairman of the Republic Election Commission (REC) and 198 out of 464 Commissioners at Unit Election Commission (UEC) level, did not instil confidence in the process.
- The State Television and Radio are still strongly biased in favour of the ruling party. The obstacles identified in the Gonzalez report for independent broadcasters to register for frequency licensing still remain.

## **THE LEGISLATIVE FRAMEWORK**

The present Election Laws and supplementary regulations do not permit a uniform and transparent process. The Election Laws are vague on many crucial aspects of the election process, and need to be supplemented by clarifications of the Republic Election Commission (REC). Some of these rulings have been published in the *Book of the 1997 Election Regulations - Final Texts*. However, the fact that other essential supplementary rulings are currently substituted by oral agreements between state institutions has a seriously negative effect on the credibility and integrity of the process.

The failure by the Republic Election Commission to communicate clear written election administration guidelines to the 29 Unit Election Commissions (UEC's) resulted in a lack of uniform procedures in the implementation of the election law. In turn, the approximately 10,000 Polling Boards at polling station level (polling station commissions) could not administer a uniform procedure despite their efforts.

### **The Introduction of a Regionally Proportional System**

The late amendments to the election system shortly before the election itself were significant, introducing to Serbia a regionally proportional system with a 5% regional threshold. The

Serbian parliament approved the division of the country into 29 constituencies at the end of June 1997. The number of mandates to be distributed totals 250.

Disagreement with these amendments was presented as among the most important arguments for the boycott of the elections by some of the opposition parties. Most of them, even those participating in the elections, claim that the regionally proportional system spread over 29 constituencies largely favours the ruling party. The new Law for Electing Representatives was passed without a broad consensus of the potential participants in the election.

In general a regionally proportional election system favours two types of parties: [a] parties with significant uniform influence all over the country and [b] parties with substantial regional influence. It is, however, not favourable for newly emerging parties who are in the process of developing nation-wide structures, because such parties cannot utilise their votes in those constituencies where their support is less than 5% of the valid votes.

### **The Law on the Election of Representatives**

This law is vague on many procedural guidelines necessary for a transparent and uniform process. Most importantly:

- **Art. 33: Composition of Commissions.** Election commissions at both Republic and Constituency level have a core membership (permanent commission members), augmented in the period after the submission of nominations, by representatives of contesting parties (expanded commissions). The final paragraph of Article 33 states that “no political party or other political organisation may have more than half the members in permanent makeup of any authority for carrying out the elections.” However, the permanent core staff of the REC, UEC’s and Polling Boards are not asked to officially declare any party affiliation, nor were they willing to state their party affiliations. Since many of the judges and lawyers who make up these commissions are state employees, in the Serbian context their status as independent public servants, and the integrity of Article 33, could be questioned. (See Election Administration Section Below)
- **Art. 71: Production, Distribution and Security of Ballots.** One of the most fundamental ways to instil confidence in an election process is to create an atmosphere of security, transparency and confidence throughout the production, distribution and control of the ballot papers. However, Article 71 elaborates no written procedure on the sensitive issue of ballot production and security, nor are there sufficient supplementary regulations. In response to an OSCE inquiry for clarification on ballot issues, the REC responded in writing and cited details in the law that exist neither in the English nor Serbian texts. OSCE representatives discussed the process with party representatives from the expanded Polling Boards and Commissions and all those spoken with had no information about the production, distribution and security of the ballot as elaborated by the REC in its letter to the OSCE. The REC’s letter to the OSCE attempted to detail the process, but the REC failed to share this information in a clear written guideline to the UEC’s, political parties and to the electorate.
- **Art. 84: Military Voting.** This legal provision does not adequately detail the process of military voting, and there are no supplementary written regulations. The REC stated that there was an oral agreement with the Ministry of Justice and the Ministry of Defence that set forth the rules for voting in the barracks. For example, according to an oral regulation,

a three-officer body was appointed by the base commander to administer the voting of conscripts in the barracks. The OSCE Election Observation Mission attempted to clarify military voting procedures, and requested a meeting with military representatives which was only granted on September 20, the day before the election. The OSCE was informed by the Major-General in charge of information for the military that the “military comprises 4-5% of the electorate or nearly 300,000 persons; everyone votes, it is their civic duty, 100% voting; and both special military mail and regular post are used.” The Major-General presented the OSCE representatives with an undated, unsigned and unstamped regulation, in contrast to all other official regulations which were all signed, dated and bore the official seal of the governmental entity. This particular order did not appear to be official and failed to detail the process for military voting. Conscripts were supposed to have their vote mailed back to the district of residency. However, voting in the military barracks took place on both the Saturday before election day, and election-day itself, producing a technical impossibility for the mail to be received in the district of residency in the time prescribed by law. Out of a supposed 100% conscript turnout, only around 6,000 mail votes were received back in the districts. It should be noted that this sum also included the votes for the prison voters.

- **Art. 89: Mail Voting.** The mailed votes are not accounted for if they arrive after the deadline of 8:00 p.m. on the day after the elections. However, due to postal delays, there is no time to integrate many mail votes into the vote count and aggregation process. Such cases were reported by OSCE observers in Belgrade. Moreover, the Serbian version of the Book of the 1997 Election Regulations, which serves as an instruction manual for all election commissions, does not contain the forms PRS-13/dop and NP-19/dop which are the “minutes” for recording voting by mail although these forms were published in the Official Gazette. The REC stated that the UEC’s do not need written procedures for the counting of mail ballots or how to achieve this in the time proscribed under the article. The OSCE Election Observation Mission found that voting by mail is a fundamentally non-transparent and non-uniform process lacking any semblance of order or procedure.

An example of lack of procedure, and even judicial misconduct carrying strict penalties according to Article 116 paragraph 2, was reported by an OSCE observer in Subotica. All the mail votes were opened by a commission member (a life appointed judge), who after opening the envelopes matched the certificates of suffrage with the ballots. In addition, for those mail votes cast by convicted prisoners, he proceeded to describe the crimes committed by the person and how long he had sentenced him/her for. Those mail votes that did not have certificates of suffrage were put in piles and eventually all counted as valid votes because Article 84 did not require a certificate of suffrage. This incident was explained in detail to the REC but was dismissed with the explanation that certificates of suffrage are not required by the law. However, according to the official REC regulations the certificate of suffrage is required to validate a mailed ballot.

- **Art. 92: Delivery of the Results (“Minutes”), Ballots and Election Materials after the Count in the Polling Stations.** Instead of delivering the “minutes”, ballots and election materials to the UEC offices as required by law, the Polling Boards were instructed to deliver them to a UEC representative in the relevant municipal office. From this moment on, only the UEC representative was in charge of the sensitive election materials. This is completely contrary to the law which states that sensitive election materials should be delivered to the electoral commission, but not to individual representatives of the

commission visiting the municipalities. Furthermore, the issuance of the forms PRS-15 and NP-21, which serve as receipts for polling station results (although failing to contain the results of the votes for the parties/candidates at polling station level) was not a uniform procedure. (See Section on Counting and Aggregation).

- ❑ **Art. 99, 100: Publication of Results.** The publication of the election results in 24 hours after the receipt of the materials from the UEC was not accomplished. On October 10 the observers were given part of the UEC “minutes” for the postal voting. The temporary data published in the mass media were in such a form that one could not establish any concise conclusion concerning any part of the electoral process. The fact that during the election night and the day after the voting only political parties gave partial results also does not instil confidence in the work of the REC. It has also to be noted that the publication of the results from southern Serbia, (Vranje, Kosovska Mitrovica, Pristina and Pec) was further delayed compared to the rest of the country.

### **Law on Electing the President of the Republic**

This is a short law, which refers all general electoral procedures to the Law for the Election of Representatives. There are aspects to this law which require much greater clarity. For example:

- ❑ according to the Law on Electing the President of the Republic, all the work of the Unit Election Commissions shall be carried out by the Republic Electoral Commission.; however, it is not clear not clear how this applies to the crucial vote count and aggregation procedures;
- ❑ there is no transparency in the process of checking the 10,000 signatures necessary to nominate a candidate;
- ❑ for the second round, it is not clear whether the requirement for 50%+1 voter turn-out should hold;
- ❑ the rules for the validity of the election of the President could presume an indefinite number of elections due to the requirement for 50% + 1 voters’ turnout;
- ❑ it is not clear whether the “majority of votes” means all votes cast or only the valid votes;
- ❑ it is not clear whether the expanded make-ups of the UEC’s and the Polling Boards, nominated for the first round, would operate in the second round, or if the expanded election commissions should only comprise party representatives from the two remaining candidates running;
- ❑ it is not clear, after an unsuccessful election, what the deadline is to proclaim a new election.

During the first round of the Presidential election, no candidate won a majority of the votes and a second round was held pursuant to Article 7. No written procedures existed for this second round, and again the REC failed to promulgate sufficient rules or directives. The lack of clear written rules resulted, for example, in UEC’s with some political party representatives of the expanded Polling Boards participating and other UEC’s operating under the assumption that only the two parties with an interest in the second round could be represented. This lack of uniform procedure was evident at polling station level and led to numerous complaints being filed by parties, despite a denial of this by the REC.

Procedures were also lacking during the first round of voting, when a voter only wanted to vote in the Parliamentary election and not in the Presidential election. The REC did not issue

any written guidelines to clarify this point, and stated only that it was up to each of the 29 UEC's to determine how to handle the issue. This created a complete lack of instruction on this issue and a corresponding lack of uniform procedures. It was reported that some voters, who wished to vote for only one of the elections, were told they had to cast a ballot for both the Presidential and Parliamentary contests. Alternatively, some Polling Board members circled the voter's name on both voter registers, even if the person requested and received a ballot for only one of the elections. In the case of the Presidential election, this boosts the numbers of the voters for the 50% + 1 voter turnout needed to have a valid election.

## **Regulations for Observation**

### ***International Observers***

The REC issued a written permission for OSCE observers to be present at all stages in the electoral process, despite the fact that the *Instructions for the Implementation of the Law on the Election of Representatives and of the Law on the Election of the President the Republic*, Chapter VI, limit the scope of the international observation to the polling station level. OSCE election observation methodology requires a long-term observation of the process in its entirety, and that short-term observers follow the election process through all stages of the election administration. In response to a written OSCE inquiry, the REC wrote a letter granting the OSCE full access and the right to receive a copy of the results ("minutes").

### ***Domestic Observers***

A serious concern is the absolute exclusion of domestic non-partisan observers from the election process in the Republic of Serbia. This restriction runs contrary to the spirit of the OSCE Copenhagen Document which states that the presence of both foreign and domestic observers can enhance the process. Whereas party observers are often only concerned with observing narrow party interests, non-partisan civic observers are interested in observing the integrity of the election process as a whole. There is at least one civic organisation in Serbia with the necessary training, organisation and willingness to undertake this important civic duty, for example, the Centre for Free Elections and Democracy (CeSID). CeSID members applied for accreditation as domestic observers for the elections but were denied observer status.

## **THE ELECTION ADMINISTRATION**

### **Composition of Election Commissions**

The Republic Electoral Commission (REC) is the pre-eminent electoral administrative body in the Republic of Serbia. Its permanent core-staff members are appointed for a four year mandate and are named to their posts by the Parliament. They comprise jurists that are normally Supreme Court judges with life appointments. In addition to the permanent staff, the REC is augmented by an expanded make up of party representatives who join the Commission late in the process.

Likewise, the Unit Election Commissions (UEC's) are composed of a permanent staff with a four year mandate, who are joined one week prior to the election by an extended make-up of party representatives on the Commission. Similar rules apply for the approximately 10.000 Polling Boards. The permanent staffs of the UEC's are appointed by the REC and are selected mainly among the judiciary. The permanent staff of the Polling Boards who administer the election at polling station level are appointed by the UEC's.

However, many of the judges and lawyers that compose the Republic and Unit Election Commissions are state employees, and the permanent makeup of election commissions may not be composed of independent public servants but dominated by persons who may be sympathetic to the ruling party. Since in turn they appoint the Polling Boards which administer the election at polling station level, there is the serious potential for election commissions at all levels in Serbia to be selected in a biased manner.

The expanded staff of the REC, UEC and Polling Boards consist both of the core-staff and the additional party representatives. The party representatives are selected from those parties who have fulfilled certain preconditions connected with the registration of candidates. It should be noted that the party representatives on the expanded staff do not participate in the decision-making process during the pre-election period since they only join the commissions within seven days of the election day. They may be present on the commissions meeting on election day but do not administer the election in its entirety.

Valid decisions of the election commissions must be voted by the majority of the members present.

### **Duties and Responsibilities of the Republic Election Commission**

A National Election Administration is responsible for administering the election independently, impartially, transparently and uniformly. In Serbia the duties and responsibilities of the REC are set forth in the election law. It has wide-ranging authority to issue rulings, decrees, directives or promulgate a procedural framework necessary for the 29 Unit Electoral Commissions (UEC's) to administer the elections transparently and uniformly throughout the Republic.

The REC failed to either recognise or to meet its responsibilities in administering a transparent and uniform process. The election laws were not being enforced or carried out uniformly throughout the 29 UEC's, and the UEC's had the ability to construe the law to their individual interpretations. The REC did not take the responsibility to issue clear written procedures explaining in detail the implementation of the law. Where the REC did attempt to elaborate procedures, often these procedures were not in line with the law (see for example the certificates of suffrage, in the Section on Mail Voting, p.5). This created an unstable and unpredictable electoral environment in which political parties and candidates in Serbia competed for these elections.

The REC received complaints, which were confirmed by the Election Observation Mission, that only members of certain parties on UEC's and Polling Boards were being paid for their services. The REC issued a directive that all Polling Board members should be treated equally. However, as indicated by reports that followed from Constituency 26 in Vranje, only commissioners representing the Socialist Party of Serbia received payment. The REC was apparently unable to insure payment uniformly to Polling Boards, and was therefore unable to fulfil its duties according to Article 112.

### **Location of Unit Election Commissions and Polling Boards**

Offices of the UEC's and Polling Boards are supposed to be located and organised by the municipal authorities. There are, however, reports that in many opposition controlled

municipalities the offices of the UEC were moved into buildings of regional divisions of the state administration. The same is valid for the “intermediate distribution/collection points” for the election materials, e.g. in the constituencies of Sabas, Nis, Belgrade. In addition, in certain areas in southern Serbia, e.g. the constituencies of Vranja, Pristina, Kosovska Mitrovica, Pec, some polling places were located in private property recommended by local activists of the ruling party.

### **Voter Registration**

A national voter register should be a public document that establishes the nation-wide list of all eligible voters according to the maxim “one person, one vote”. In Serbia, the preparation of the voter registers (“electoral rolls”) is the duty of the municipalities, and it is said that they are prepared in the corresponding municipal offices for each separate municipality. A voter register has to be issued for each polling place. According to article 14, voter registers are said to be public documents. In practice however, the registers are not displayed in public places and there is only a right to inspect them in the premises of the authorities.

It is not clear how it is guaranteed that the name of each voter appears on just one voter register. The accuracy and completeness of the voter registers are especially important in Serbia because: [a] on election day, voters whose names are not in the rolls, are not allowed to vote; [b] on election day, voters identify themselves with different ID papers and [c] voters do not countersign in the electoral roll to certify that they voted.

According to electoral, state and municipal officials, the guarantee of the maxim “one person, one vote” is supposed to be the unique ID number issued to each citizen of the Federal Republic of Yugoslavia by the Ministry of Interior. The Ministry of Interior is also responsible for the national residency register of the population, reportedly used to establish the voters register. In this case, the quality of the voter register is highly dependent on the efficiency of the work of the staff of the Ministry of Interior and the degree of co-operation between this staff, the municipal administration and the citizens.

Many complaints were made to the Election Observation Mission on the quality of the voter register for previous elections including: [a] multiple occurrence of the same name in one or several voter registers, [b] occurrence of names of deceased persons or people living abroad who were marked by the Polling Boards as having voted, [c] absence of names of young people who have reached voting age. The Election Observation Mission was able to verify some of these claims.

### **Registration of Candidates**

Candidates for Representatives can be nominated by political parties, coalitions of parties and groups of citizens. In addition to these, however, it is also permissible for a group of parties to nominate joint lists without registering a coalition in advance. The number of parties, party coalitions, groups of parties and groups of citizens which were registered by the REC for participation in the elections was 89.

It is not clear in the case of a group of parties submitting a joint list, whether all parties are entitled to individual representatives in the expanded makeup of the election commissions. This question particularly concerns the ruling party, which, together with two other parties,

submitted joint lists in all constituencies, but was reported to have its own representatives on the expanded makeup of the commissions.

Each list of candidates is grouped according to the party that nominated them. In addition to the actual list, a party may designate a carrier of the list who is generally a well known personality or member of the party campaigning on behalf of the list. The carrier confirms in writing his/her consent to be the carrier of the list. The carrier of the list of the group of parties that included the ruling party was the Federal President of Yugoslavia. By giving his written consent to be carrier of that list, the Federal President became directly and prominently involved in the election campaign. This particular case raises the question of whether or not Article 97, Paragraph 4 of the Federal Constitution has been violated.

### **Ballot Paper Production, Distribution and Security**

As mentioned above, one of the most fundamental ways to instil voter confidence is to create an atmosphere of security, transparency and confidence throughout the production, distribution and control of the ballot papers. This includes the selection of the paper, the ballot security features, the printing, counting, sealing and delivery of the ballots. All of these crucial aspects of ballot production and security were lacking. There were no clear regulations for the ballot production, and there was not a clear chain of custody when distributing the ballots to the UEC's and the Polling Boards. The simple fact that it was virtually impossible to verify the actual number of ballots printed, attests to the lack of confidence in this crucial aspect of the election process.

The Election Observation Mission was officially informed that the printing house, Politika, is a corporation where the President of the Parliament, and acting President of Serbia, is Chairman of the Board. The fact that a prominent political figure is the Chairman of the Board of the company charged with printing the ballots did not promote voter confidence. Furthermore, as the law requires that the ballots be prepared and stamped by the Unit Election Commissions (UEC's), the central preparation of the ballot may be in contradiction to Article 71 of the Law.

Article 71, paragraph 2 stipulates that the number of printed ballots has to be equal to the number of voters and no reserve quantities of ballots are required. However, paragraph 3 of the same article, states that the REC shall determine the number of reserve ballots. The Election Observation Mission was informed about a decision which was taken to provide reserve ballots amounting to 0.5% of the number of registered voters; however there appeared to be no written evidence of this decision.

The Law stipulates that in municipalities with national minorities, the languages of which are in official use, the ballots shall also be printed in these languages. Each submission of a list of candidates allows the party to name a person to be present during the printing, counting and packing of the ballot papers and their delivery to the election authorities. Two opposition parties refused to send their representatives due to the absence of necessary safeguards in the printing procedures.

The major potential problem in the polling procedures lies in the fact that, at the printing house, the ballot papers are pre-printed with the validating stamp. At present, the Law requires that, before these ballots are issued to Polling Boards, they should be stamped by the UEC's. However, the stamping at the polling place is the security mechanism that can best prevent ballot stuffing by leaving all unstamped ballots invalid. If this is not undertaken, there

is no check against misuse of the ballot papers outside of the polling station. According to the REC's letter to the OSCE Election Observation Mission "the ballot papers are not stamped, or signed by the commissioners before they are given to the voters to vote".

The problem of having stamped, valid ballot papers leaving the central printing house is exemplified by the official complaint filed by the Liberal Democratic Party of Serbia. Representatives of this Party informed the OSCE Election Observation Mission that a local newspaper had published a facsimile of a ballot paper for the September 21 election, where the name of the presidential candidate of the Socialist Party and the number of the leftist coalition were circled in the constituency of Valjevo. The only way to avoid potential risk of fraud or ballot stuffing is for an official stamp specific to the polling station to be placed on the ballots as they are handed to the voters.

### **Counting and Aggregation**

Counting of ballots takes place in the polling places after the closure of the polls. After the counting of the votes, the Polling Board is required to fill the results of the vote in a "minute" (or protocol) in six copies. The first copy is to be delivered to the UEC, the second has to be displayed in a public place, while the rest have to be handed to those four parties that have received the largest number of votes in the polling place. The results of the vote are entered in the "minutes" only in digits, but not in words.

The Law stipulates that once the Polling Board has completed the "minutes", it has to transfer all election materials to the corresponding UEC. The UEC is then supposed to sum up the results in the form of a "minute" for the whole constituency and to distribute the mandates. The procedure of the vote aggregation for the elections of the Representatives continues from the UEC to the REC who is responsible for summing up the results from the UEC's to obtain the national results.

The officials producing the "minutes" at the polling station level have no direct access to the process of aggregating the figures from their polling station at the constituency level. Article 92 stipulates that "... the polling board shall immediately and no later than 18 hours after the moment of closing of the polling place, deliver the following to the electoral commission: minutes on its work, together with the extract from the electoral roll; unused, and, separately, used ballots...". In the *Instructions for the Implementation of the Law on the Election of Representatives and of the Law on the Election of the President of the Republic*, Section IV a, Point 6, however, it is said that "...The electoral commission will define the places where the electoral material will be delivered by the polling board ...". Thus it becomes clear that the delivery of the election materials in practice is organised so that the Polling Boards do not uniformly go to the offices of the corresponding UEC.

Contrary to the Law, but in line with the *Instructions*, an "intermediate level" is often introduced in the delivery procedure. Each UEC has to publish the list of these "delivery points" in the Official Gazette, which are usually the corresponding municipal offices. The president of the Polling Board, or a member of this Board, proceeds to the "delivery point" where they hand-deliver the election materials to two members of the UEC or their deputies. The latter have to formally check the contents of the "minutes" and transport the accumulated election materials from all polling places of the particular municipality to the office of the UEC where the aggregation is supposed to take place.

In addition to this, according to Point 4 of the same Section of the *Instructions*, it is the President of the Polling Board or a member appointed by the Polling Board, who executes the delivery procedure. It is the opinion of the Election Observation Mission that this violates the spirit of the Law in the sense that the delivery procedures together with the due responsibilities are transferred from the entire multiparty Polling Board to one of its members, the same being valid for the UEC recipients of the election materials.

Moreover, it is not possible to certify that the figures aggregated at the UEC level for a particular polling place are the same as the ones established during the count in that polling place. The forms NP-21 (for the election of the Representatives) and PRS-15 (for the Election of the President) serve as receipts confirming the delivery of the polling station “minutes” and election material by the Polling Board representative to the UEC / or his representative at the intermediate level. These forms do not include the results of the elections at that polling station, or the voter turn-out. The UEC representative signing the receipt only confirms the delivery of the material, but does not endorse the results of the elections at the polling station level. There is, therefore, a break in the chain of accepting responsibility for the accurate aggregation of the results.

OSCE observed this delivery procedure in several municipalities and constituencies. In the Municipality of Velika Plana, Smederevo Election Unit, the Polling Boards correctly delivered their election materials to representatives of the UEC. The latter, according to the Law, should fill in the receipt forms, sign, stamp them and hand them to the Polling Board. In this case, however, one of the UEC representatives, a District Court Judge and member of the permanent make-up of the UEC, signed the blank forms and gave them to the Polling Boards. Neither seemed concerned by the fact that the forms were signed empty and were not stamped, as required by the Law.

The aggregation of the results for the election of Representatives of each individual constituency takes place in the office of the UEC, after the Polling Board “minutes” have been delivered there. The procedure is computerised and conducted by officials from the Republic Institute for Statistics (RIS) in the presence of the UEC members. However this procedure takes place in the absence of any Polling Board representatives, who have produced the results after the vote count in the polling stations. Thus the Polling Boards cannot witness or/and prove to the voters from their particular polling station that the same figures, which were established in the polling station count, were accurately input in the computer in the UEC.

The situation is compounded by the fact that the software used for the aggregation permits the computer operator to correct erroneous inputs, but this operation is not recorded automatically in the database. This raises further concerns for the transparency of the aggregation procedures.

The aggregation of the results for the election of the President is characterised by similar problems, especially since Article 5 of the Presidential Law transfers the role of the UEC to the REC. Literally, this means that the Polling Boards have to deliver their election materials to the REC. According to the existing practice, however, the delivery takes place via two “intermediate” levels - the municipalities and the UEC.

### **Distribution of Mandates**

After the parties have been apportioned the corresponding numbers of mandates in accordance with the election system, these mandates have to be awarded to individual candidates. The current procedure is that 1/3 of the mandates are awarded to candidates from the party lists according to their order in the list. The remaining 2/3 of the mandates are awarded to candidates from these lists according to internal party rules. Such a procedure does not contribute to the transparency of the election because it allows for eventual deals on the award of mandates to take place after the election.

## **THE MEDIA**

The very basis of democratic governance requires that the electorate be able to make informed choices. It is therefore of concern that two of the major recommendations made in the Gonzalez Report on equal access to the state media and the development of independent electronic media have not been implemented. The OSCE Election Observation Mission would like to express its thanks to the European Institute for the Media, a specialised media monitoring agency which provided comprehensive information on the Media situation in Serbia.

The OSCE Election Observation Mission has confirmed that the state owned media is monopolised by the government, and almost exclusively presents the government's point of view. This problem is exacerbated by the fact that the government has made it practically impossible for independent broadcasters to register for the necessary broadcast frequencies.

While informing the electorate, the parties are allocated time according to their representation in parliament. However, according to the law, only parties taking part in these elections are given the right to inform the electorate of their programs / candidates. As a result, those parties boycotting the election are excluded from the campaign and its official media coverage.

The implementation of the law is regulated by agreements signed between the media and political parties. For state owned media, the government is also a party in the respective agreement. The law provides for a special institution, the Supervisory Committee, appointed by the Parliament (with expiring mandate) which monitors the media during the campaign period. The Supervisory Committee consists of ten members, half of which are composed by the incumbent government, while the rest are proposed by the major political parties. This gives the incumbent a clear majority in the Supervisory Committee.

Article 5 of the Law on Elections stipulates that the media are supposed to report "equitably" about the parties and candidates. This clause applies to state-owned media, as well as to all privately owned media. According to the Supervisory Board, the Agreement of 30 July 1997 does not only apply to special electoral programmes, but also to regular news and current affairs coverage.

According to the European Institute for the Media (EIM), "as the quantitative monitoring unequivocally reveals, the news broadcasts on RTS were not impartial at all, and therefore did not comply with the regulations. In addition, the amount of time allocated to "government activities" clearly served the interest of the ruling coalition and hence also breached the agreement". This information is all the more serious, since state television is by far the main source of information and only state-controlled RTS can broadcast over the whole territory of the country.

According to the EIM quantitative monitoring team, the time for special electoral programmes on state-owned RTS was allocated according to the regulations, and this is indeed an attempt at fairness. However, due to the length of the broadcasts and the format of the presentations, it was estimated that very few people watched these programmes, making news reporting the main source of information on the election campaign.

Studio B, created as an independent channel in 1990, lost its independence when Belgrade City Council took office in February 1996, and changed again its editorial line when Belgrade City Council changed again in 1997. A further example of its lack of independence and control by the City Council was the removal of the Director and Editor in Chief between the two rounds of the Presidential Election. Studio B covers less than a third of the territory of Serbia and even combined, local television stations do not reach the same huge audience as RTS.

Transmitters still belong to the state and frequencies are distributed by the Federal Ministry of Telecommunications, while registration at the Republic Ministry of Information and an “opinion” of the Serbian Ministry of Transport and Communication are required. The EIM team also noted that the criteria for distribution of licences and frequencies continue to obstruct the development of an independent private electronic media. The non-distribution of frequencies/licences and the fact that transmitters remain in the control of the state have been of crucial importance in preventing independent broadcasters from reaching their full potential audience.

As far as non-state electronic media is concerned, there is some opportunity to express diverse opinions but this is limited to localised coverage and lacking a Republic-wide distribution, due to the aforementioned restriction on frequencies. It is estimated that only about one third of the population has access to alternative electronic media (television and radio with a news programme).

All non-state owned radio have partial coverage which is usually less than 25% of the territory / population of the country. The only exception seems to be Radio B-92 Network with approximately 70 % coverage of the territory of Serbia. Most importantly, independent radio can never hope to replace television in providing the great majority of the population with their main source of news.

As mentioned by the European Institute for the Media, the Serbian print media allow a diversity of voices to be heard. There is little or no censorship. Nonetheless, the licensing and control of television and radio networks mean that diversity of political expression in the powerful electronic media is seriously restricted. Non-state related newspapers have frequent problems with the print and ink supplies and distribution.

The OSCE Election Observation Mission has concluded that the two recommendations in the Gonzalez Report, equal access on the state media and a negotiated accord about the distribution of frequencies, have not been implemented.

## **ELECTION DAYS**

Despite a lack of clarity in many of the voting day procedures as described in the law and regulations, those responsible for administering the election in the polling stations performed

their duties in an efficient manner in most of the country. Following a de-briefing of the observers, two patterns emerged from the Election Day, one for the majority of the country and the other for southern Serbia (Vranje, Kosovska Mitrovica, Pristina and Pec).

In most parts of the country, Election Day procedures at polling station level were administered in a relatively efficient manner. However, despite the overall positive image of the election day, a statistical analysis of the observer questionnaires did raise a number of issues of concern.

While 69% of the observer questionnaires indicated that voting was conducted correctly, 31% reported irregularities. Among the most disturbing observations was that in 29% of the polling stations observed, members of the expanded boards were not present at the opening of the polling stations. This figure of all Polling Board members not present in the polling station visited raises to 38% during election day. In 18% of the polling stations observed, it was established that a single party or coalition had a majority on the Polling Board. Other observations included open voting outside the polling booth (13%), more than one person in the booth (23%) and voting without appropriate ID (16%). Observers also reported that at the opening in 8% of the polling stations, not all voting materials required by law were available.

During the vote count, 18% of the polling stations observed did not have all members of the Polling Board present. In 23% of polling stations, the Polling Board did not determine the number of unused ballots and pack them securely before opening the ballot box, as required by law. In 43% of the polling stations, the data for the unused ballots and the invalid ballots were not entered into the “minutes” before the establishment of the number of valid votes for the Presidential candidates or the Parliamentary candidate lists. In only 62% of the polling stations observed were the copies of the “minutes” displayed in a public place after the count. In general, in 79% of the polling stations, observers reported correct performance of the count procedures, while in 21% irregularities were reported.

During the Second Round of the Presidential Election, observers reported a similar situation to the first round. However, due to the fact that there were less observers, a statistical processing was not conducted.

A different pattern emerged in southern Serbia where the performance of the election administration at polling station level was highly questionable. During the debriefing of observers after the second round, it was reported that vast discrepancies existed between the number of votes cast at the same polling station during the first and second rounds of the Presidential election. There were examples of polling stations which did not open at all, for example polling station number 52 in the village of Busovato and 54 in the village of Toponica (Kosovska Kamenica, Vranje). Serious concerns about the integrity of the voter registers, and intimidation and threatened violence against OSCE observers were also reported. In one instance, members of both UEC’s and Polling Boards refused to provide the results and incorrectly stated that the Observers were not entitled to have them. Not only were many observers refused the documentation detailing the results, but in Pec they were even confronted with physical violence. A written apology from the REC for this incident was received by the Election Observation Mission.

In southern Serbia, the effects of the boycott by the Albanian minority were more significant given the Regionally Proportional System. The very serious irregularities that were reported in the administration of the election could serve to further distort the actual results.

## **RECOMMENDATIONS**

The OSCE Election Observation Mission would like to offer the following recommendations:

### ***The Election System -***

The recent introduction of the Regionally Proportional Election System based on 29 districts should be re-assessed. A more transparent and inclusive process should be conducted when establishing or amending election legislation, so that all parties can have greater confidence in future elections.

### ***Composition of Election Commissions -***

The Serbian authorities should consider amending their electoral law to ensure full-fledged multi-party election commissions at all levels throughout the entire election process. While it is recognised that political parties can presently place members of the commission on the expanded staff, this is no substitute for full fledged multi-party commissions. The current appointment of two-tiered election commissions consisting of a permanent core staff who actually administers the election, and party representatives on the expanded commission, results in the marginalisation of the latter. The decision-making mechanism for the election administration at all levels should require that decisions are based on more than a simple majority.

### ***Application of the Election Laws -***

Although the election laws are vague in many respects, a common interpretation and standard application of the law could permit uniform and transparent elections. The REC should issue timely and regular rulings and communicate these rulings within 24 hours to the Unit Election Commissions (UEC). The Election Administration, at the central and regional levels, did not set forth clear guidelines necessary for achieving a transparent and uniform process. The REC should work on a permanent basis from the announcement of the elections until the instalment in office of the newly elected officials.

### ***Voter Register -***

A review should be made of the way in which the election authorities, throughout the country, compile the voter register. The voter registration process is best assured by a permanent, well-maintained and regularly updated voter register. This process would be greatly assisted if the national residency register of the Ministry of Interior was regularly updated and made continuously available to the municipalities. The right to easily inspect the voter register should be ensured in practice as well as in the law, and the process for amending the register should be explained to the electorate.

### ***Ballot Production, Distribution and Security -***

Safeguarding the integrity of the ballot is essential for instilling confidence in an election process. All details concerning the number of ballots to be ordered to the printing house should be contained in an official regulation of the REC, guaranteeing complete accountability for the ballot order, production, packing and delivery process. The law should be amended to

provide that the ballot papers should be validated by stamping each of them, at the time of issue in the polling station, with a unique stamp for each polling station. The law should also be amended to provide for a public tender for the purchase of the ballot paper and for the printing of the ballots. Detailed requirements should be issued before the tender is identified.

#### ***Candidate Lists -***

The law could be amended to ensure that the lists of candidates are finalised before the election campaign, so that the electorate can make informed choices based on full knowledge of the candidate lists.

#### ***Media -***

The state media should become truly de-politicised and obstacles to independent media coverage lifted. The problems of licensing regulations, governing the independent media, need to be urgently addressed. The order and content of television news items, which heavily favoured the ruling party in this election, also need to be addressed. The tendency towards selective coverage of opposition campaign events should be corrected, as this, in many cases, distorts political parties' campaign messages.

#### ***Vote Count -***

The transparency of the vote count and aggregation procedures should include the public posting of results for each polling station at that polling station immediately upon the completion of the count. The receipt forms (PRS-15 and NP-21) which confirm the delivery of the polling station results by the Polling Board representatives (which should include three Polling Board members representing different political parties) and the transfer of the results to the Unit Election Commission (which should also be represented by three members from different political parties) should be amended to include all the results for the particular parties and candidates and the voter turnout, in addition to the data already contained in them. These forms should be carbon backed and issued in three copies - one for the Polling Board, one for the unit election commission, and the third should be returned to the polling station and displayed next to the second copy of the minute as described in Article 91 a paragraph 4. All figures in the "minutes" and the receipts in the above form should be written in digits and in words.

#### ***Computer Software-***

The software used for the vote count at the unit and central level should be safeguarded against all possible unauthorised operations. In order to improve the efficiency and confidence in the software and the computer processing of the results, the Serbian authorities should consider opening a public tender so that the specific expertise of professional and academic groups from Serbian institutions could compete to offer their services.

#### ***International Observers-***

Clear guidelines should be set articulating the rights and obligations of international observers throughout the election process, in line the OSCE Election Observation Methodology.

#### ***Domestic Observers-***

The Serbian authorities should also take all necessary steps to ensure accreditation of non-partisan civic observers in future elections, as stated in paragraph 8 of the OSCE Copenhagen Document.