

INTERNATIONAL ELECTION OBSERVATION

Serbia — Parliamentary and Early Presidential Elections, Second Round, 20 May 2012

STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

Belgrade, 21 May 2012 – This Statement of Preliminary Findings and Conclusions is the result of a common endeavour involving the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), and the OSCE Parliamentary Assembly (OSCE PA). The OSCE/ODIHR Limited Election Observation Mission (LEOM) remained in the country to observe the second round of the presidential election on 20 May.

Matteo Mecacci (Italy), Head of the OSCE PA Delegation, was appointed by the OSCE Chairperson-in-Office as Special Co-ordinator to lead the short-term observer mission. Corien Jonker (the Netherlands) is the Head of the OSCE/ODIHR LEOM, deployed from 4 April 2012.

The second round of the early presidential election is assessed for its compliance with the OSCE commitments for democratic elections, as well as with national legislation. This statement should be considered in conjunction with the Statement of Preliminary Findings and Conclusions issued on 7 May, after the first round of voting.¹ The overall assessment of the elections will depend, in part, on the conduct of the remaining stages of the election process. The OSCE/ODIHR LEOM will issue a comprehensive final report, including recommendations for improvements, some eight weeks after the completion of the election process.

PRELIMINARY CONCLUSIONS

Between the 6 May first round and the 20 May presidential run-off, contestants continued to enjoy equal opportunities for campaigning, which offered voters a distinct political choice. The media continued to provide a diversity of views, but active scrutiny of the campaign was lacking. While contestants expressed general confidence in the election process prior to the first round, from 9 May the campaign centered on allegations of election fraud made by four contestants, which other parties maintained were politically motivated. The performance of institutions in this underscored the need for a more responsive electoral dispute resolution system. Additional efforts are needed to further enhance the integrity of the electoral process, particularly with regard to the transparency of voter registration and professionalism of election administration.

The Republic Electoral Commission (REC) continued to work within legal deadlines. Its adoption of the final results from the 6 May elections and certain other decisions showed an increased polarization of its members along party lines. In a positive development and in line with international good practice, the REC posted election results by polling station on its website.

The REC continued to adjudicate all complaints in public sessions and distributed copies of complaints and draft decisions. Although certain complaints filed with the REC alleged serious irregularities, all complaints were dismissed, mainly on procedural grounds. A combination of factors diminished the effectiveness of the REC in providing legal redress and weakened its role in ensuring the integrity of the process, which could be improved in light of the OSCE commitments. The Administrative Court continued to hear cases behind closed doors.

¹ See Statement of Preliminary Findings and Conclusions for the 6 May Parliamentary and Early Presidential Elections available at: <http://www.osce.org/odihr/90335>.

In the period between the rounds, the broadcast media continued to provide a diversity of views, thus giving voters the opportunity to make an informed choice. A televised debate between the two candidates gave the voters a valuable opportunity to see these contestants discuss policy in an interactive format. Similarly to the first round, however, campaign coverage was characterized by a lack of analytical and critical reporting. One factor in this was a tendency towards self-censorship, which interlocutors partly attributed to the economic influence of state institutions in a context of a difficult financial situation.

Election day proceeded smoothly and voting took place in an orderly manner in the limited number of polling stations visited by the international observers. The PBs managed the process in a more efficient manner than during the first round. The vote count was assessed as orderly, efficient and transparent, with PBs following established procedures in all polling stations visited by international observers. The tabulation process was well-organized and quick, which enabled the REC to start announcing preliminary results a few hours after the close of polls.

PRELIMINARY FINDINGS

Background

According to official parliamentary election results announced by the Republic Election Commission (REC) on 10 May 2012, the coalition led by the Serbian Progressive Party (SNS) won 73 of the 250 seats in the National Assembly, followed by the bloc led by the Democratic Party (DS) with 67 seats and the Socialist Party of Serbia (SPS)-led bloc with 44 seats.² Women obtained 81 out of 250 seats (32.4 per cent) in the National Assembly. In the first round of the presidential vote, Mr. Boris Tadić received 25.31 per cent and Mr. Tomislav Nikolić, 25.05 per cent. As no candidate received a majority of votes cast, a second round was called for 20 May. Voter turnout was announced at 57.8 per cent for the parliamentary elections and 57.7 per cent for the presidential election.

Election Administration

Tabulation of the 6 May election results by the Republic Statistical Office was conducted in a professional and transparent manner, allowing the REC to start announcing preliminary results a few hours after the close of polls. Some Polling Board (PB) protocols were delivered to municipalities for aggregation with significant delays. A number of OSCE/ODIHR LEOM interlocutors commented that these delays, as well as various technical errors found in the protocols, could only be partly attributed to logistical challenges caused by the number of different elections held concurrently. Another reason mentioned by interlocutors was that training of the PB members, conducted by most municipalities, was not sufficient or systematic. The deadline for submission of the election materials from the PBs to the REC was very short, given the number of elections being held at the same time. This resulted in certain problems, including misplaced election materials or late delivery, which could potentially undermine voters' confidence.

The REC announced the final results of the parliamentary and of the first round of the early presidential elections on 10 May, as prescribed by law. The REC became polarized during the

² The other parties that passed the five percent threshold were the Democratic Party of Serbia (DSS) – 21 seats, the Turnover Coalition – 19, and the United Regions of Serbia (URS) – 16. In addition, the following five coalitions and parties representing national minorities passed the natural threshold: the Alliance of Vojvodina Hungarians – 5 seats, the Party for Democratic Action of Sandžak – Sulejman Ugljanin – 2, All Together Coalition, None-of-the-above Party, and the Coalition of Albanians from the Preševo Valley – 1 each.

adoption of the final results with 11 members rejecting the first round presidential election results and only 16 endorsing them.³ Adoption of final results for the parliamentary elections showed a similar voting pattern.⁴ Members voting against alleged irregularities, such as a quantity of cast ballots greater than the number of voters marked, missing control slips, or family ties between PB members. In addition, several REC members criticized the REC's inability to act on their own initiative in cases of serious violations. In a positive development and in line with international good practice, the REC posted election results by polling station on its website.⁵

The municipal and town electoral commissions (MECs) and *ad hoc* working bodies continued to perform logistical tasks before the presidential election run-off. This, once again, underscored the need to introduce legal provisions for an intermediate level of election administration.⁶ An exceptionally high number of PB members during the first round that, according to many interlocutors, contributed to overcrowding in polling stations and led to the slow processing of voters was lower in the second round. The extended composition of the PBs for the second round comprised only members nominated by the two contestants.

Voter Registration

International observers and other interlocutors noted some specific problems regarding voter registration prior to the 6 May elections. In particular, in Preševo and Bujanovac, extracts of the unified voter register (UVR) were not always printed in the official minority language (Albanian) but only in the Serbian Cyrillic script, contrary to law.⁷ This resulted in many voters not being immediately able to find their names in the voter lists and subsequent complaints filed with the REC by the Coalition of Albanians of the Preševo Valley and individual voters. Moreover, state authorities confirmed that some voters abroad were disenfranchised due to miscommunication between institutions.

For the second round, the UVR was updated based on decisions of the Ministry for Human and Minority Rights, Public Administration and Local Self-Government, adopted between 7 and 17 May. It contained 6,771,479 voters, an increase of 1,466 compared to the first round. Continued examination of the voter registration system highlighted a certain lack of clarity in the information and figures that requires further systematic review.

Campaign Environment

The electoral campaign for the second round ended on 17 May. Negotiations over government formation dominated the early stages of the run-off campaign. On 9 May, the DS and the SPS agreed to form a majority coalition in the National Assembly and Mr. Tadić also secured the backing of the SPS for the presidential run-off. On 16 May, the DSS agreed to co-operate with the SNS in the newly-elected parliament and called on voters to support Mr. Nikolić.

³ At least 15 votes were necessary to meet the simple majority requirement for the adoption of the results.

⁴ Final results of the parliamentary elections were endorsed by 20 REC members with 12 voting against.

⁵ Publication of election results at the polling-station level is an effective measure to ensure that results "are counted and reported honestly with the official results made public" in line with Paragraph 7.4 of the 1990 OSCE Copenhagen Document.

⁶ The MECs are composed of members appointed by the local assemblies following local councils' proportionality; similarly, the PBs permanent composition is formed following proportionality of the parliamentary fractions and of the local councils.

⁷ Article 7 of the Law on Single Electoral Roll states that "the first name and surname of a voter who belongs to a national minority is entered in two ways: first in the Cyrillic script and as spelled in Serbian, and after that also in the script and spelling in the language of the member of the national minority."

The campaign intensified and was overshadowed by the accusations of electoral fraud made by the SNS leadership against the DS. Mr. Nikolić accused the DS of instrumentalizing non-existent and deceased voters in the UVR in their favour. Some other contestants also expressed concern over the accuracy of the election results.⁸ (See Complaints and Appeals) Mr. Tadić termed these allegations ungrounded and an attempt to overturn the results. The SNS organized a number of protests throughout the country and announced a possible boycott of the vote. On 13 May, Mr. Nikolić announced his decision to stay in the race.

As before the first round, the campaign environment was competitive and the two candidates were able to campaign freely. There were no instances of election-related violence reported, but the tone of the campaign was more negative. Both candidates travelled extensively throughout the country and used billboards, posters, rallies, and media appearances to campaign, although to a lesser extent than before the first round. The campaign continued to focus on socio-economic issues, unemployment, and alleged corruption, as well as European integration.

The two presidential candidates split a total of approximately RSD 437 million equally in the second round (approximately Euro 3.86 million). Between the rounds, the Anti-Corruption Agency did not respond to any requests from the OSCE/ODIHR LEOM for additional information on campaign expenditures, nor did it publish any additional information about campaign financing.

The Media

In the period between rounds, the broadcast media continued to offer a diversity of views, thus giving voters the opportunity to make an informed choice. Similarly to the first round, however, the campaign coverage was characterized by a lack of analytical and critical reporting. One factor in this was a tendency towards self-censorship, which interlocutors partly attributed to the economic influence of state institutions in a context of a difficult financial situation.

During the last week of the campaign, the two candidates took part in two prime-time talk shows. A televised debate between the two candidates gave the voters a valuable opportunity to see these contestants discuss policy in an interactive format. Overall, RTS1 offered a balanced coverage of both candidates. In its prime time news, RTS1 devoted 24 and 23 per cent of the overwhelmingly positive or neutral political and election-related reporting to Mr. Nikolić and Mr. Tadić, respectively. Other monitored television channels adopted a similar approach.⁹ Monitored newspapers generally followed a similar trend, although some were clearly biased against Mr. Nikolić and openly supported Mr. Tadić.

Prior to the first round, Mr. Tadić's had participated in a programme on *Prva* TV that was nearly identical to a popular entertainment show, which gave him some advantage over his opponents. In a tardy response, the Republic Broadcasting Agency (RBA) stated on 10 May that due to time and title changes this did not constitute an entertainment program, implying that it did not violate campaign coverage regulations. At the same time, the RBA called on all broadcasters to provide balanced coverage of both candidates between the two rounds.¹⁰ On 11 May, *Prva* TV ran the same programme, this time hosting Mr. Nikolić, and hosted Mr. Tadić in another programme on 12

⁸ These were the Dveri for Life in Serbia, the Movement of Peasants and Workers, and the Alliance of Vojvodina Hungarians.

⁹ The OSCE/ODIHR LEOM monitored political and electoral coverage from 7 to 20 May during the prime-time period (18:00–24:00 hours) on public *RTS1* and *TV Vojvodina* and private television channels *Pink TV*, *B92*, and *Prva TV*, as well as in daily newspapers *Blic*, *Danas*, *Politika*, *Press*, and *Vecernje Novosti*.

¹⁰ See the RBA statement at <http://www.rra.org.rs/cirilica/article/Saoptenje-povodom-ponaanja-elektronskih-medija-od-momenta-raspisivanja-izbora>

May.¹¹

Complaints and Appeals

Following the 6 May elections, the REC received 83 complaints related to election-day procedures and the composition of the PBs. All complaints were heard and decided in open sessions with copies of complaints and draft decisions provided to everyone present. All session materials were distributed to REC members only few minutes before each session.

All complaints were dismissed by the REC, most on procedural grounds for being submitted late or by individuals not entitled by law to file complaints. Some of these alleged serious violations, including ones that could have potentially led to an invalidation of results at polling stations concerned. Some REC members proposed that these allegations be looked into by the REC on their own initiative, but this was voted down by the majority of the REC members.¹²

Mr. Nikolić submitted a complaint to the REC requesting invalidation of both national elections on the basis of an alleged disposal of some 3,000 cast ballots.¹³ This complaint was dismissed as unsubstantiated. The Serbian Radical Party's complaint requesting annulment of the final results and an investigation into all irregularities was automatically rejected because it did not garner a majority of REC members' votes.¹⁴ It appeared that instead of working to support the integrity of the process, REC members were divided along party lines in adjudicating complaints.

A combination of factors diminished the effectiveness of the REC in providing legal redress and weakened its role in ensuring the integrity of the process.¹⁵ These included very short timeframes for submitting complaints and legal provisions that the REC chose to interpret narrowly. Additionally, a Supreme Court decision disallowed the REC from invalidating election results without a formal complaint being lodged, which the REC interpreted as not allowing them to look into allegation on their own initiative.

Between the two rounds, the RBA provided the OSCE/ODIHR LEOM with detailed information regarding complaints and allowed the LEOM to observe its proceedings. Nonetheless, adjudication of complaints by the RBA continued to lack transparency for the general public. This undermines the potentially positive role it can play in remedying broadcast-related complaints.

It also appears that some complaints remained without remedy; the REC argued that they fell under the competency of the Supervisory Board that has never been established despite a legal requirement.¹⁶ The Administrative Court continued to hear cases behind closed doors, arguing

¹¹ The 11 May programme with participation of Mr. Nikolić was re-run on 13 May, while the programme with participation of Mr. Tadić was re-broadcast during prime time on the last day of campaign.

¹² The REC members cited a 2007 decision of the Supreme Court, according to which the REC "is not authorized to annul elections in a polling station *ex officio*, without a complaint being lodged."

¹³ Prosecutor's office stated that the bag with election materials had been stolen after the counting of the ballots at a polling station in Pančevo but that it could not have influenced the election results. Police has started an investigation of the case.

¹⁴ Article 23 of the REC Rules of Procedures specifies that if a decision on a complaint does not garner enough votes to be adopted, it is automatically considered as dismissed.

¹⁵ This could be improved in the light of Paragraph 5.10 of the 1990 OSCE Copenhagen Document which states that "everyone will have an effective means of redress against administrative decisions, so as to guarantee respect of fundamental human rights and ensure legal integrity."

¹⁶ For example, the REC decision 02 Number 013-583/12, dated 5 May 2012, dismissed a complaint by the Presidential Candidate Mufti Muamer Zukorlic as "not permitted" citing that "... REC has no competence

logistical issues. Between the two rounds REC decisions were appealed in 13 cases, none of which were upheld. The Police, in co-operation with the Public Prosecutor, are investigating four criminal cases of alleged violations of electoral rights.

Election Day

Election day proceeded smoothly and voting took place in an orderly manner in the limited number of polling stations visited by the international observers. The PBs managed the process in a more efficient manner than during the first round. Only one election was conducted in most polling stations, and there was a much lower number of the PB members. In the second round, some technical aspects arose again, such as quality of seals and voting screens. These could warrant additional attention.

The vote count was assessed as orderly, efficient and transparent, with PBs following established procedures in all polling stations visited by international observers. The tabulation process at MECs was well-organized and quick, which enabled the REC to start announcing preliminary results a few hours after the close of polls.

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

MISSION INFORMATION & ACKNOWLEDGEMENTS

Belgrade, 21 May 2012 – In line with OSCE/ODIHR's standard methodology for Limited Election Observation Missions (LEOMs), the LEOM focused on the longer-term electoral process without the additional deployment of short-term observers that would have provided the basis for a quantitative assessment of election day. The LEOM opened in Belgrade on 4 April 2012 with 15 experts in the core team and 12 long-term observers deployed to six regions of the country. Ms. Corien Jonker, Head of the OSCE/ODIHR LEOM, also traveled to Novi Sad, Novi Pazar, Bujanovac and Vranje, where she met with candidate representatives, local authorities as well as civil society representatives.

The Special Coordinator, Matteo Mecacci, who led the short-term OSCE observer mission, paid two pre-electoral visits to Serbia, one to Belgrade from 10 to 12 April and one to South Serbia and the Novi Pazar region from 2 to 3 May. In this context, Mr Mecacci met the leadership of political parties, representatives of election administration, civil society, media and international community. In particular, during the second pre-electoral visit to South Serbia and the Novi Pazar region, Mr Mecacci met with representatives and candidates of the Albanian and Bosniak communities. The OSCE PA carried out short-term observation in accordance with its regular procedures.

The observers visited a limited number of polling stations around the country on election day, although observation was not conducted in comprehensive fashion. On election day, 36 observers were deployed, including 10 parliamentarians and staff from the OSCE PA, and 26 long-term observers and experts from the OSCE/ODIHR. In total, there were observers from 19 OSCE participating States.

The observers wish to thank the authorities of the Republic of Serbia for their invitation to observe the elections and the REC and the Ministry of Foreign Affairs for their assistance. They also express their appreciation to other state institutions, political parties and civil society organizations for their co-operation. The observers also wish to express appreciation to the OSCE Mission to Serbia and other international institutions for their co-operation and support.

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