



INTERNATIONAL OBSERVATION MISSION 7 NOVEMBER 2004 REFERENDUM FORMER YUGOSLAV REPUBLIC OF MACEDONIA

STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

Skopje, 8 November 2004 – The OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Council of Europe (CoE) deployed an International Observation Mission to the Referendum (IOMR) for the 7 November referendum, in response to an invitation from the Ministry of Foreign Affairs of the Former Yugoslav Republic of Macedonia. The IOMR observed the referendum process to assess its compliance with principles for democratic electoral processes, including commitments and standards of the OSCE and the Council of Europe, as well as its compliance with domestic legislation.

This statement of preliminary findings and conclusions is issued before the announcement of the final referendum results and before all complaints and appeals have been addressed by the electoral and judicial authorities. The final assessment of the referendum will depend on the manner in which these important procedures are completed.

PRELIMINARY CONCLUSIONS

The 7 November 2004 referendum in the Former Yugoslav Republic of Macedonia was generally consistent with OSCE and Council of Europe standards for democratic electoral processes. The limited cases of reported procedural or other irregularities did not appear to challenge the overall integrity of the process.

The referendum was particularly significant since the voters had to decide whether they wanted to have 123 municipalities, as envisaged in the system of municipal districting established in 1996. While the question put to the electorate in the referendum was in direct reference to the 1996 law, the result would have immediate consequence for the Law on Territorial Organization adopted in August 2004. Preliminary results clearly indicate that the referendum was not successful.

The following positive features characterized the referendum process:

- The State Election Commission (SEC) conducted its duties in an efficient and consensual manner, despite the lack of a permanent Secretariat to facilitate its work. Throughout the country, technical preparations and the appointment of Electoral Boards (EBs) generally proceeded without delay;
- The campaign took place in a calm and orderly manner, with no incidents reported to the IOMR. Campaign events such as rallies and roundtables were held throughout the

country, although parties and activists also relied strongly on door-to-door campaigning, lessening the visibility of the campaign;

- Campaigners were able to present their viewpoints through the media, and convey their message on relatively equal terms to the electorate;
- The decision of the SEC to print the ballot papers in all the languages of ethnic groups that comprise more than 20 per cent of the inhabitants of the municipality (according to the 2002 Census), should be commended.

At the same time, the following shortcomings were observed:

- The Law on Referendum and Civil Initiatives is outdated and contains only basic provisions, while at the same time, the scope of application of the Law on the Election of Members of Parliament in the context of a referendum, remained ambiguous and unclear. The complexity of interpreting and applying these different pieces of legislation to regulate the referendum process was largely resolved by the SEC;
- The lack of a clear legal regulatory framework for the campaign permitted the intervention of many subjects and parts of the community who would customarily not participate in campaign activities, contributing to polarization of the referendum issue;
- The IOMR received reports of alleged intimidation being exerted upon voters, and although largely unverified, these reports were widespread and reflected a certain atmosphere of suspicion and mistrust in the period preceding the referendum. This was reinforced by the perception that anyone going to the polling station to vote must be voting in favor of the referendum;
- The accuracy of the Voters List (VL) was again questioned by some interlocutors, although the IOMR was informed that political parties did not make use of their legal right to acquire the VL from the Ministry of Justice, and review for correction, during the time period legally permitted;
- The media discourse during the campaign was more focused on broader political issues, rather than on concrete discussion on the referendum and its potential consequences, thus reducing the informative value of the referendum coverage;
- Although voting and counting procedures were generally assessed as positive, a recurrent inattention to procedural details was observed, including 52 per cent of observed cases in which EBs failed to post result protocols as required by law.

On referendum day, observers reported that the conduct of the voting process was mostly administered in an orderly and efficient manner. However, there were limited observed instances of polling stations that either failed to open on schedule or closed down early, and a few cases of reported intimidation and ballot box stuffing. The count was generally assessed as positive, although in some cases the understanding of counting procedures appeared to be somewhat lacking, affecting the precise implementation of procedures. Instances of inattention to procedural details were also reported during tabulation at the Municipal Election Commission (MEC) level.

PRELIMINARY FINDINGS

Background

In September 2004, after a successful collection of signatures to initiate the referendum process, the Parliament adopted a decision to hold a referendum on 7 November. The initiative for the referendum had been launched in January 2004 by the World Macedonian Congress (WMC), a non-governmental organization largely known to represent the interests of the ethnic Macedonian diaspora, although active in the country. According to the WMC, this initiative was undertaken due to the disregard by the authorities for the results of local referenda held at the beginning of 2004 to oppose the newly proposed municipal boundaries, prior to the formal adoption of the Law on Territorial Organization in August 2004. This Law establishes new municipal districts by merging some municipalities, thus reducing the overall number of administrative units.

The signature collection for the referendum initiative took place throughout the country, in the offices of the Ministry of Justice, between 23 February and 23 August 2004. At the end of the process, 180,454 signatures were collected, a number well above the 150,000 required by the law for a referendum to be called. The signatures were validated by the State Election Commission (SEC) and submitted to the Speaker of Parliament in accordance with the legal provisions.

The question to be decided by the voters on 7 November was whether they wanted to have 123 municipalities, as envisaged in the system of municipal districting established in 1996. While the question put into the referendum directly referred to the 1996 law, a successful referendum would have immediate consequence for the implementation of the new Law on Territorial Organization of August 2004, which would be effectively repealed in the event of a successful referendum.

Legislative Framework

The legislative framework for the referendum was unduly complex, including reference to the Constitution, the Law on Referendum and Civil Initiatives (1998) and the Law on the Election of Members of Parliament (LEMP). The Law on Referendum and Civil Initiatives (LRCI) is outdated and very general in nature, as it contains only basic provisions. Aspects of the administration of the referendum that are not specifically regulated in this law were supposed to be implemented in accordance with the LEMP. This situation created difficulties and ambiguities in the interpretation of the laws, especially regarding the scope of application of the provisions that were supposed to refer specifically to the referendum campaign.

According to the LRCI, a legislative referendum may be announced for issues that need to be regulated by law (previous referendum) or for re-estimating a law that has previously been passed (additional referendum). The Parliament is obliged to announce a legislative referendum on issues that are under its authority when the proposal is submitted by at least 150,000 voters. The referendum scheduled for 7 November was a legislative additional referendum.

According to the legislation, the decision for a legislative referendum shall be considered adopted if more than 50 per cent of the voters on the Voter List (VL) cast ballots, and more than

50 per cent of ballots cast are for a "yes" vote. The decision reached on a legislative referendum shall be compulsory.

The voting right was protected by the fact that every citizen could submit a complaint to the respective MEC about irregularities in the voting procedures. The decision of the MEC on such complaints could be appealed to the Appellate Court. Complaints regarding the work of MECs were decided by the SEC, and appealed to the Supreme Court.

Election Administration

The LRCI provides for a 3-tiered election administration – the State Election Commission (SEC), 34 Municipal Election Commissions (MECs) and 2,973 Election Boards (EBs), one for each polling station. The members of these bodies are appointed on a principle of parity, based upon proposals by the parliamentary parties representing the ruling coalition and the opposition. While for regular elections the EBs consist of a Chairperson and 4 members, the LRCI established that the EBs for the referendum would include only 2 members. This could have created serious difficulties, especially in large polling stations with more than 1000 potential voters. A timely SEC decision addressed this issue by entitling the EBs (if they found it necessary), to task their designated deputies, normally envisaged to replace EB members in the event of their absence, with regular members' duties, except for EB voting and signature rights.

In general, the SEC was operated in an efficient and consensual manner, reaching reasonable compromise on almost all controversial issues. However, although provided for by law, a permanent Secretariat to the SEC which could have facilitated its work was not established, creating many unnecessary obstacles. The lack of funds and personnel prevented the SEC from regular publication of its decisions and their distribution to the MECs and the EBs.

While not so substantial as in previous elections, international support and assistance was provided to the SEC and other levels of the election administration, including technical support for the training of EB members and the production of the referendum day procedures manual. However, the training in general was poorly attended and rather minimal in content.

The SEC acted efficiently, upon the adoption of instructions clarifying specific procedures, and on the elaboration of the forms to be used on referendum day. However, the EB Results Protocol (Form n5) again did not provide for a tabulated format to present the numerical data. Due to financial reasons, the SEC instructions were not printed and distributed to the EBs.

The decision of the SEC to print the ballot papers in all the languages of ethnic groups that comprise more than 20 per cent of the inhabitants of the municipality (according to the 2002 Census), should be commended. Posters with voting instructions were to be displayed in all polling stations, and printed in the languages of all seven ethnic groups mentioned in the Preamble of the Constitution. However, the same approach was not adopted for the forms used for referendum day procedures, which were printed only in the Macedonian language.

Early voting by the military, persons serving prison sentences or in custody, and for internally displaced persons (IDPs) took place on 6th November, in about 39 specially organized polling

stations. Observations of early voting showed it took place without major difficulties, although voter turnout was generally low.

The VL was updated by the Ministry of Justice (MoJ) and extracts were posted at the local offices of the MoJ for public inspection. The final VL contained 1,709,536 voters, thus establishing the necessary turnout for a successful referendum at 854,769 voters. The new total of the electorate presented an increase of some 14,433 voters over the VL used for the April 2004 presidential election. It appeared that few efforts were made to improve the accuracy of the VL, apart from checking data for the 180,000 voters who signed the petition for the referendum.

The accuracy of the VL was again questioned by some interlocutors, who stated that the VL contained names of citizens who are residing abroad along with a significant number of deceased persons. Similar observations were made by the OSCE/ODIHR Election Observation Mission during the 2004 presidential election. The Law on Voters List does not provide a legal solution for automatically excluding such names from the VL. However, the Law gives political parties the possibility to acquire the VL from the Ministry of Justice for the purpose of checking for inaccuracies. The IOMR was informed that political parties did not make use of this opportunity during the time legally available to revise and update the VL.

Throughout the country, technical preparations generally proceeded in a smooth and efficient manner. The formation of EBs, the distribution of election materials and arrangements for referendum day were carried out without delay. No complaints were filed by political parties on any of these technical aspects of the referendum process.

The Campaign

The campaign on the referendum officially began on 7 October, although the campaign was officially referred to as “propaganda”, after the SEC established that it was not to be considered a campaign in the usual sense, due to the lack of registration requirements for those wishing to participate. The governmental coalition partners, the Social Democratic Union of Macedonia (SDSM) and the Democratic Union for Integration (DUI), together with the Liberal Democratic Party (LDP), announced that they would call on their supporters and members to abstain from voting.

Amongst the opposition parties, the Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Union (VMRO-DPMNE) came out strongly in favor of the referendum, claiming that a “yes” vote was not against the Ohrid Framework Agreement or decentralization, nor against Euro-Atlantic integration, but only against the manner in which the new Law on Territorial Organization was negotiated and adopted. The main opposition ethnic Albanian party, the Democratic Party of Albanians (DPA), announced that it would boycott the referendum, although at first its leadership had asserted that they would call on voters to vote “yes”, in order to demonstrate dissatisfaction with the implementation of the Ohrid Framework Agreement.

NGOs and smaller parties were also involved in the referendum. In particular, the WMC, as the initiator of the referendum, was actively campaigning for a “yes” vote, as did the Liberal Party and the Third Way coalition.

In general, the campaign took place without major incident, and in a rather low-key manner. The visibility of campaign materials was modest, with the exception of posters in the main cities and leaflets distributed during the last days of the campaign, in particular by supporters of the referendum. Political parties held rallies and roundtables across the country, in order to explain their positions to the voters and to make appeals for or against participation. All parties seemed to rely strongly on door-to-door campaigning, which lessened the visibility of their campaigning activities. It must be noted that there was practically no campaigning for a “no” vote, because all those opposing the referendum called upon the electorate to abstain or boycott it, thus depriving the electorate of a fuller discussion on the specific referendum issue of territorial organization.

The IOMR received reports of allegations about various forms of intimidation and pressure towards voters to convince them to either abstain or vote in favor of the referendum. In particular, it was alleged that pressure would be exerted on employees of State-owned enterprises, civil servants and people on social welfare. These allegations were largely unverified, but they were widespread, and promoted a certain environment of suspicion and mistrust in the period preceding the referendum day.

The lack of clear legislative regulations for the campaign caused some concern, in particular related to the issue of campaign finance and disclosure regulations. Since there was no campaign as such, and no official organizers of the campaign, it was difficult to establish which rules would apply, and to whom, concerning campaign financing and disclosure.

In addition, the absence of a clear regulatory framework for the campaign, and the decision to consider that any institution and individual could participate in it, promoted the intervention of many subjects and parts of the community, who customarily would not participate in campaigning. For instance, public comments by religious communities raised concerns among some interlocutors, and they may have contributed to the polarization on the referendum between the ethnic communities. The statements of some representatives of the international community before and during the referendum campaign were also controversial, with some considering them as interference in the internal affairs of the country, and others stating that they were simply benign comments on the future of the country.

The recognition on 4 November by the government of the United States of America on the constitutional name of the country dominated public discussion immediately prior to the referendum day, after the official campaign silence period had begun.¹

Pre-referendum Complaints and Appeals

The WMC submitted a complaint to the SEC requesting to be considered as one of the legitimate organizers of the referendum campaign, according to the applicable provisions in the LEMP. This would have enabled the WMC to appoint members to the EBs, to have authorized representatives during referendum day, and to receive reimbursement of the funds spent on the referendum campaign. However, it was established that there was no campaign, and no

¹ Since the dissolution of the former Yugoslavia, the constitutional name of the country has been the subject of international controversy.

organizers of the campaign, since everyone could conduct propaganda in favor or against the issue of the referendum. The WMC appealed to the Supreme Court against the decision of the SEC. No decision was rendered by the Supreme Court on the appeal prior to referendum day.

The WMC also submitted letters of protest to the SEC and the MOJ referring to the SEC exceeding the legal timeframe for confirming the finalized Voter List, and regarding internally displaced persons (IDP) and military voting. On 6 November, the WMC sent a letter of protest to the SEC about a rally held in Skopje on that day to celebrate the recognition of the constitutional name of the country by the government of the United States of America. According to the WMC, this rally contravened the rules on campaign silence. The SEC responded to the letter of protest stating that this matter should be resolved by the primary court, as the SEC has no authority to forbid such public events.

The Media

The electronic and print media, as a whole, provided voters with sufficient coverage about the referendum. However, mutual accusations by political parties and campaigners, speculating about taking the country backwards or closer to Euro-Atlantic integration, comments on the possible deterioration of inter-ethnic relations and on potential threats to peace and stability in the country, tended to dominate media coverage, rather than a full dialogue on the specific issue being put to the electorate in the referendum.

The legal framework for the media during the referendum campaign consisted of the LRCI, relevant provisions in the Broadcasting Law and the Recommendations for Electronic Media Coverage of the 2004 Referendum. A number of interlocutors mentioned some difficulties in the interpretation and application of the provisions in the laws referring to the referendum campaign in the media.

On 7 October the Broadcasting Council (BC) adopted the Recommendations for Electronic Media Coverage of the 2004 Referendum in an attempt to overcome the legal vacuum in the existing legislation for the referendum, and to try to ensure equal conditions between individuals or organizations campaigning for and against the referendum. According to these recommendations, the electronic media should cover different viewpoints on the referendum in a balanced manner. Special obligations were established for the public media as well as for the publication of opinion poll results and for paid propaganda.

The BC undertook monitoring of the media coverage of the referendum and sent warnings to broadcasters that provided unbalanced coverage and violated the rules on airing results of opinion polls and paid propaganda; moreover, a general reminder was sent to all electronic media to ask them to avoid "hate speech". However, the lack of a direct enforcement authority of the BC, together with the general nature of the legal framework for the coverage of the referendum in the media, reduced the potential effectiveness of such measures.

The IOMR conducted media monitoring activities whose results indicated that, while some media outlets provided a balanced picture of the two positions on the referendum, others showed a tendency to be one-sided in terms of amount of coverage as well as in terms of editorial comment.

Among the national broadcasters monitored by the observation mission, public channel MTV1 and the private TVA1, during their newscasts, devoted balanced coverage of the two positions, while TV Sitel covered supporters of the referendum with three times more coverage than those of the opponents in its news programs. MTV 3, in its main Albanian language news, provided poor coverage of the referendum campaign when compared with other national channels' informative programs. In particular, this channel devoted negligible coverage to referendum supporters. MTV1, TV Sitel and TVA1 aired debates on the referendum, inviting representatives of both camps to participate.

Qualitative analysis of national daily publications indicates that the monitored newspapers offered different viewpoints on the referendum issue. For instance, Vreme had a pro-referendum position in its editorial line, while the two monitored Albanian language newspapers, Flaka and Fakti, were inclined towards opposing the referendum, both in terms of the low amount of coverage of the supporters' propaganda activities and editorial comment.

Advertising time and space were bought by the Opposition United for the Referendum, the ruling coalition, the Citizens Movement of Macedonia, and to a minor extent, by other organizations.

Gender Issues

Participation of women in this referendum was not a high profile issue. Several prominent women politicians and university professors participated actively in public rallies and debates, often appearing in the media.

There was one woman on the SEC (out of 9 members), and representation on MECs was approximately 30 per cent, with urban areas tending to have a greater concentration of women MEC members than rural areas. On referendum day, observers reported 25 per cent of women represented on EBs.

Domestic Observers

Over 10,000 domestic observers representing 7 different organizations were accredited by the SEC. The largest observer efforts were conducted by the WMC (6,111 observers) and the domestic non-partisan organization MOST (3,700). MOST provided a thorough training for all of its observers, planning the coverage of more than 60 per cent of the polling stations. On referendum day at 22:00, MOST announced the results of a parallel vote tabulation exercise. These results unofficially projected a 26.3 per cent turnout, with 95 per cent "yes" votes and 5 per cent "no" votes.

Since political parties were unable to monitor the referendum day process, they seemed to look for other means to accredit their observers, for instance through an NGO. This may have explained the large number of observers accredited by the WMC. Even assuming that most of these observers were volunteers, their monitoring activities might have had financial implications.

Referendum Day, Vote Count and Tabulation

Referendum day was conducted in a calm and orderly manner. Preliminary results issued by the SEC record voter turnout at 26 per cent. Despite repeated concerns expressed prior to the referendum day that some polling stations may not open, the large majority of polling stations were open, according to schedule, on referendum day. In a limited number of cases, observers reported that some polling stations opened with delay, sometimes of a few hours, and in very isolated cases, failed to open at all. In other limited cases, polling stations closed down earlier than the official closing time of 19:00 hours, claiming that they were not expecting any additional voters.

Of the 803 polling stations visited, observers assessed the conduct of the polling process in 96 per cent as 'good' or 'very good'. The evaluation of the general atmosphere was positive in the majority of observations. The problems most frequently reported were missing materials, such as forms to be used by EBs, or certain negligence in duly following the required legal procedures. Other problems included family voting in 3 per cent of observations, and proxy voting reported in 1 per cent of observations.

Otherwise, the voting process was orderly in an overwhelming proportion of polling stations visited. Unusual tension was noted in 1 per cent of polling stations visited and campaign material was seen within 100 meters in 3 per cent of those visited. Four observed cases of undue influence or intimidation were reported and observers indicated four cases of ballot stuffing.

Domestic observers were noted in all polling stations visited. However, there was obvious confusion among the observers accredited by the WMC, whose presence was not very visible; the IOMR received widespread reports of these observers presenting themselves as representatives of opposition political parties.

Observers evaluated the vote count in a generally positive manner, with 89 per cent of observers describing it as 'good' or 'very good'. Four per cent of the observers reported serious irregularities during the count, and there were no reported cases of intimidation on EB members during the count. The understanding of the counting procedures by EB members was regarded as good in 60 per cent of the cases, while the counting was described as not well organized in 15 per cent of the polling stations observed. Unauthorized persons present during the count were reported in only two cases, while observers reported no cases of persons without authorization directing the work of the EBs. Other problems included difficulties in completing the required forms, and the failure to publicly post the results of the count (52 per cent of observations).

In a limited number of instances, MECs were observed to have difficulties during the tabulation process. Observers assessed the conduct of tabulation as 'bad' or 'very bad' in 15 per cent of observed cases. In most cases this was due to overcrowding and lack of sufficient understanding of procedures.

The OSCE/ODIHR observation mission will continue to follow the final stages of the tabulation process and any relevant complaints and appeals. The OSCE/ODIHR will issue a comprehensive report on the referendum approximately six weeks after the completion of the process.

*This statement is available in the English and Macedonian languages.
However, the English text is the only official version.*

MISSION INFORMATION & ACKNOWLEDGMENTS

Ambassador Friedrich Bauer (Austria) headed the long-term OSCE/ODIHR Observation Mission to the Referendum. The Council of Europe delegation comprised the Parliamentary Assembly of the Council of Europe (PACE) and the Congress of Local and Regional Authorities of Europe. Mr. Zekeriya Akcam (Turkey) led the delegation from the Parliamentary Assembly of the Council of Europe. Mr. Sean O'Brien headed the delegation from the Congress of Local and Regional Authorities of Europe.

The OSCE/ODIHR Observation Mission to the Referendum was established in Skopje on 11 October and shortly thereafter started observing the referendum process, with 12 Long-term Observers located in seven cities throughout the country.

On referendum day, the International Observation Mission to the Referendum (IOMR) deployed some 183 observers from 28 OSCE participating States, including the 8-member delegation from the Council of Europe. Representatives of embassies of OSCE participating States in Skopje and of international organizations also contributed short-term observers to the IOMR and it would like to acknowledge their assistance. On referendum day, IOMR observers visited more than 800 polling stations out of the approximately 3,000 throughout the country.

The IOMR wishes to thank the Ministry of Foreign Affairs, the State Election Commission, and other national and local authorities for their assistance and co-operation during the course of the observation. The IOMR also wishes to express appreciation to the OSCE Spillover Monitor Mission to Skopje and the Council of Europe Office in Skopje, as well as other international organizations and embassies accredited in Skopje for their support throughout the duration of the mission.

The institutions represented in the IOMR are prepared to assist the authorities and civil society of the Former Yugoslav Republic of Macedonia in continuing to improve its referendum process.

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