



Office for Democratic Institutions and Human Rights

**REPUBLIC OF SERBIA
(SERBIA AND MONTENEGRO)**

**PRESIDENTIAL ELECTIONS
16 November 2003**

**OSCE/ODIHR NEEDS ASSESSMENT MISSION
REPORT**

22-23 September 2003



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OSCE/ODIHR Needs Assessment Mission Report

I. INTRODUCTION

In anticipation of an invitation from the authorities to observe the presidential elections scheduled for 16 November 2003, the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) undertook a Needs Assessment Mission (NAM) to the Republic of Serbia (Serbia and Montenegro) between 22 and 23 September 2003. The NAM was headed by Nikolai Vulchanov, OSCE/ODIHR Senior Election Advisor, who was accompanied by Konrad Olszewski, OSCE/ODIHR Election Advisor.

The purpose of the NAM was to assess the conditions and level of preparation for the presidential elections, in line with OSCE commitments, and to advise on the establishment of an Election Observation Mission (EOM).

The NAM held meetings in Belgrade with representatives of the authorities, election administration, political parties and international community (see annex for list of meetings). The OSCE/ODIHR is grateful to the OSCE Mission to Serbia and Montenegro and the Serbian authorities for the support provided during the NAM.

II. EXECUTIVE SUMMARY

The presidential elections scheduled for 16 November 2003 will provide another opportunity to elect a president of the Republic of Serbia (Serbia and Montenegro). After a cycle of elections in 2002 that failed to elect a president due to voter turnout below the 50 per cent level required for valid elections, the office of the President of the Republic was assumed by the Speaker of Parliament in December 2002, to remain acting President until a new president is elected.

The OSCE/ODIHR election observation mission for the presidential elections of 29 September and 13 October 2002 (repeated on 8 December) presidential elections concluded that the conduct of elections largely met OSCE commitments for democratic elections. However, a combination of political impasse and defective legislation has led to a cycle of repeat elections which have failed to elect a president.

After the failed elections, the OSCE/ODIHR recommended a comprehensive and urgent review of all election legislation and co-ordinated efforts to improve the accuracy of voter registers before holding new elections. Although the government has subsequently undertaken significant attempts to clean the voter registers, no legislative amendments were adopted, notably regarding the voter registration system

that lacks an adequate legal framework, nor the minimum turnout requirement in presidential elections, which has been responsible for causing repeat elections.

Major political parties in Serbia protest the decision to call the presidential elections, arguing that the government should instead call early parliamentary elections to resolve promptly the ongoing parliamentary crisis. These parties declared that they would not contest the election. Failure of the main parties to nominate candidates will narrow the voters' choice, will inevitably influence the campaign, and may impact on the outcome of the elections. Another failure in electing a president may further limit public confidence in the process of democratic reforms in Serbia.

The numerous elections conducted in Serbia after the collapse of the regime of Slobodan Milosevic have shown significant progress in the sphere of transparency and accountability of the election administration, generally balanced media coverage of the campaign and good standards of polling and counting procedures on election day.

However, in order to increase public confidence in the outcome of the 16 November elections, the NAM recommends that a standard election observation mission be deployed to Serbia to assess the presidential elections in line with OSCE commitments. The OSCE/ODIHR should request from participating States the secondment of 10 long-term observers and 150 short-term observers.

III. FINDINGS

A. POLITICAL CONTEXT

The presidential elections have been called at a time of increasing political disputes between the main political parties previously co-operating within the Democratic Opposition Coalition (DOS) that successfully defeated forces of the previous regime in the 2000 parliamentary elections in Serbia. Since then, the deepening conflict between the two largest DOS coalition parties, namely the Democratic Party of Serbia (DSS) led by the President of the former Federal Republic of Yugoslavia Volslav Kostunica and the Democratic Party (DS) of late Prime Minister Zoran Djindjic, has contributed to the crisis of democratic institutions in Serbia.

The political controversies in Serbia intensified in 2002, after the decision of the Administrative Committee of the Parliament to replace the Members of the Parliament who left the DOS coalition, most of them from DSS. In May 2003, the Constitutional Court of Serbia ruled that the provision of the election law that created the legal basis for the replacement was unconstitutional and the mandates should be returned. However, the return of mandates has not been accomplished yet, thus the legality of the composition of Parliament is repeatedly questioned in Serbia. In addition, the failure of the repeated attempts to elect a President of the Republic in the autumn of 2002 left the country for almost a year without an elected president. Lately, public confidence in democratic institutions in Serbia appears to be further undermined by the election of a new Governor of the National Bank, allegedly after a fraudulent vote in the Parliament.

Major political parties in Serbia, including the DSS and the Serb Socialist Party (SPS) have protested against the decision of the Speaker of Parliament Natasa Micic to call the presidential elections, arguing that the government should instead call early parliamentary elections to promptly resolve the ongoing parliamentary crisis. Furthermore, the parties argue that conducting the presidential elections before the forthcoming constitutional reform that may terminate the term of office of the elected president, is not rational. They charge that the intention behind conducting these elections is to draw public attention away from the parliamentary elections. As a result, these parties declared that they would not contest the election. Although they will not call their supporters to “boycott” the contest, they will explain to them why they have not fielded candidates. However, failure of the main parties to nominate candidates will narrow voters’ choice, will influence the campaign and may impact on the outcome.

The authorities reject the accusations of the opposition, claiming that the presidential elections had to be called to meet constitutional requirements for an elected president to hold office. Commenting on the expected failure of the elections, the DS stresses that the holding of the elections should not depend on political considerations and it is up to candidates to mobilise their supporters to vote in order to ensure successful elections.

However, it is widely expected in Serbia that the 16 November elections will fail again, as the candidates who would run in the contest will not be “leading politicians”, thus they will be unable to attract a sufficient number of voters to meet the 50 per cent turnout requirement stipulated in the law. Another failure in electing the president may further limit public confidence in the democratic reforms in Serbia.

Since the collapse of Slobodan Milosevic’s regime, the OSCE/ODIHR observed four electoral events in Serbia. In general, the OSCE/ODIHR election observation missions assessed that the conduct of elections was overall in line with the OSCE commitments and international standards for democratic elections. The OSCE/ODIHR noted significant progress in the sphere of transparency and accountability of the election administration, generally balanced media coverage of the campaign and good standards of polling and counting procedures on election day. However, important shortcomings in the election legislation were repeatedly pointed out. The authorities have yet to address the majority of them.

B. LEGAL FRAMEWORK

The law on the election of the president of Serbia is largely a legacy from the previous regime. Although the Parliament adopted a number of amendments after the first failed attempt to elect the president, following recommendations of the OSCE/ODIHR, the legal framework still consists of provisions that allow for a cycle of failed elections.

In the report published on 18 February 2003, the OSCE/ODIHR stated that the requirement that 50 per cent of voters take part in elections in order for them to be valid was “impractical, counter-productive to the concept of participatory democracy

and opening the possibility of an endless and expensive cycle of repeat elections”. In addition, the turnout requirement has tended to encourage electoral boycotts.

Furthermore, the report noted that “the voter turnout requirement in Serbia is established not by the Constitution but by the Presidential Election Law. The Constitution envisions a presidential office that executes laws promulgated by the Parliament, unhampered by vacancy. Constitutional provisions that promote the continuity and stability of the presidential office underscore this principle and are at odds with legislative provisions that can lead to a perpetually vacant office. Thus, the OSCE/ODIHR considers that the requirement may run counter to the Constitutional obligation to have an elected president.”

After the failed cycle of 2002 elections, the OSCE/ODIHR provided a number of key recommendations to improve the electoral framework for presidential elections, including:

- The removal of any provision that can cause repeated failures of presidential elections. In particular, the requirement for a minimum voter turnout could be dropped or modified to allow the two strongest candidates to contest a second round, regardless of voter turnout in the first round.
- The right to vote should be guaranteed for the disabled, the hospitalised and those temporarily away from their homes, including outside Serbia.
- The entire process for the nomination and registration of presidential candidates should be revised. In particular, the process must be practical, enforceable and allow for transparent verification of signatures.
- A coordinated long-term effort is required to improve the process of compiling voter registers. Overall responsibility and authority for the maintenance of a single, centrally managed, voter database should be given to a single State body.
- Civil records held by municipalities should be fully computerised using uniform software with links to other municipalities so that errors can be verified.
- Control checks for potential duplicates should be conducted continuously at the Republic level, and all entries lacking part of the required data should be reviewed.

The OSCE/ODIHR recommended that the legislative amendments in the Presidential Election Law and the legislation covering voter registration system should be adopted, and the administrative process of cleaning voter registers should be accomplished, before calling new elections.

C. ELECTION ADMINISTRATION

The presidential elections will be administered by a three-tier structure: the Republic Election Commission (REC), Municipal Election Commissions (MECs) and Polling Boards (PBs). The REC is a permanent body, composed of 17 members comprising a chairperson and 16 “permanent” members. In addition, after the approval of the candidate’s nomination, each candidate in the presidential election has the right to appoint a representative as an “extended” member of the REC. There is no differentiation between the rights of the permanent and extended REC members.

A similar principle of permanent and extended membership is repeated on the Municipal Election Commission level and in the Polling Boards. In the last elections, the MECs had multiparty representation in their permanent composition, even if the parties were not represented in the municipal assembly. In general, the multiparty composition of election administration contributed in the past to the transparency of the electoral process. However, a number of political parties that do not wish to nominate candidates for the 16 November contest have expressed concerns that they will be excluded from the MECs and PBs thus the election administration process would be controlled only by those parties that have an interest in the success of the elections.

As in previous elections, the REC plans to organize polling in Kosovo, in those municipalities where a Serb population resides. For the last presidential elections, the Kosovo voter registers were compiled by those Serb institutions that continue to cover municipal level activities outside of UNMIK's formal government structures. The voter registers contained predominantly, but not exclusively, ethnic Serbs. Previously, the elections were conducted in 19 municipalities with around 260 polling stations.

D. VOTER REGISTRATION

Given the minimum voter turnout requirement for valid elections, the accuracy of voter registers plays a key role in the presidential election process. Although the legislation requires that a central voter register be established in Serbia, the law does not stipulate as to which agency should be responsible for the maintenance of a central register, or how the system should function. In addition, major problems with the quality of voter registration relate to lack of uniform software used by municipalities to maintain their databases of voters.

The quality of voter registers has been a source of controversy during the last elections, notably the DSS claimed that 600,000 "phantom voters" included in the registers prevented successful election of Vojislav Kostunica.

After the last cycle of failed elections, the Ministry for Local Self-government undertook a serious effort to improve voter registration data in all 161 municipalities of Serbia. Over 1.5 million errors were identified affecting 520,000 voters' records. However, unambiguous legislation stipulating which body is responsible for maintenance of a central voter register, and legislative provisions that enable all registered voters to vote, are still required to ensure significant progress.

E. INTERNATIONAL AND DOMESTIC OBSERVERS

Most of the NAM interlocutors welcomed the prospect of an ODIHR observation of the presidential elections. It was underlined that although the elections were likely to fail again, the presence of international observers may increase public confidence in whatever is the outcome of the election. Only the DSS representatives advised OSCE/ODIHR not to deploy observers and "not participate in this farce".

The NAM was informed that the main domestic observation organization, the Belgrade based Center for Free Elections and Democracy (CeSID) is attempting to secure funds to deploy a significant number of domestic observers for the 16 November elections.

IV. CONCLUSIONS AND RECOMMENDATIONS

The NAM recommends that an Election Observation Mission be established according to the standard OSCE/ODIHR methodology. The NAM considers that the ODIHR should request the OSCE participating States to second 10 long-term observers to follow the campaign and election preparations, and 150 short-term observers for the observation of election day proceedings.

ANNEX

List of Meetings Belgrade, September 22-23, 2003

SERBIAN AUTHORITIES

Ms. Natasa Micic, Speaker of the Serbian Parliament, Acting President of Serbia
Ms. Sladjana Prica, Director of the OSCE Department at the MFA

REPUBLIC ELECTION COMMISSION

Mr. Radoslav Bacovic, President of the Republican Election Commission
Ms. Liliana Benac, Secretary of the Republican Election Commission

POLITICAL PARTIES

Ms. Gordana Comic, Vice President of Democratic Party
Ms. Ljiljana Nedeljkovic, Chief of Cabinet to the President of Democratic Party Serbia
Mr. Zarko Obradovic, President of the Socialist Party of Serbia Deputies' Group in the Parliament
Mr. Milan Pajevic, Vice President for International Relations and **Ms. Zorana Ivankovic**, Vice President of International Affairs Committee, G17 Plus

INTERNATIONAL COMMUNITY

Ambassador Ruben Madsen, Danish Embassy in Serbia and Montenegro
Mr. Robert Norman, DHoM and **Mr. Louis Crishock**, United States Embassy
Mr. Hans E. Hageman, Counsellor and **Mr. Jeroen Kelderhuis**, Second Secretary, Royal Netherlands Embassy

OSCE Mission to Serbia and Montenegro
Ambassador Maurizio Massari, Head of Mission
Mr. Mark Davison, Deputy Head of Mission
Mr. Rory Keane, Spokesperson