



**Republic of Serbia
Federal Republic of Yugoslavia
Presidential Election
29 September 2002**



INTERNATIONAL ELECTION OBSERVATION MISSION

Statement of Preliminary Findings and Conclusions

Belgrade, 30 September 2002 - The International Election Observation Mission (IEOM) for the 29 September 2002 election of the President of the Republic of Serbia / Federal Republic of Yugoslavia is a joint undertaking of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Parliamentary Assembly of the Council of Europe (PACE).

This statement of preliminary findings and conclusions is issued before the official announcement of election results and before election day complaints and appeals have been addressed by the administrative and judicial authorities. Preliminary data indicates that a second round will be required. Should a second round of elections be confirmed, the OSCE/ODIHR Election Observation Mission will remain in the Republic of Serbia and will issue a second preliminary statement the day after the second round. The OSCE/ODIHR will issue a final report on this election approximately one month after the completion of the process.

PRELIMINARY CONCLUSIONS

The first round of the 2002 presidential election in the Republic of Serbia, Federal Republic of Yugoslavia, was concluded on 29 September largely in line with international commitments and standards for democratic elections. However, shortcomings noted during the 2000 parliamentary elections persist, in particular with regards to legislation inherited from the previous regime.

The conduct of the second round, and the role of the election administration and judiciary in completing the election process, will be instrumental in formulating the IEOM's final conclusions on the extent to which the entire electoral process meets international commitments and standards for democratic elections.

This election is a significant test for the main political tendencies in Serbia. The election also marks the departure from office of the current President, who was indicted in 1999 by the International Criminal Tribunal for Yugoslavia.

With 11 candidates competing in the election and two front-runners, voters in Serbia had a genuine choice. The campaign remained calm throughout, although at times some candidates went beyond acceptable limits in their rhetoric.

Regrettably, the legislative framework for this election has not been amended since the October 2000 changes, despite repeated recommendations from OSCE/ODIHR. The most significant shortcomings in the legislation include ambiguous and conflicting provisions, a 50% turnout requirement that can lead to repeat elections without an outcome, and the omission of an intermediary election administration body between the Republic Election

Commission (REC) and the Polling Boards. These shortcomings should be remedied urgently before any new elections after the second round. In addition and on the longer run, the voter register uncertainties must be addressed.

The State-owned RTS 1 fulfilled its legal obligations to provide free airtime to all candidates and overall provided sufficient, largely unbiased campaign coverage to enable voters to make an informed choice. The private media also offered a variety of political opinions. However, the two front-running candidates received the larger proportion of media coverage. The advertisement campaign “Proud of Serbia”, promoting the successes of the Serbian Government, was also given extensive coverage, especially in the electronic media, including during the 48-hour campaign moratorium period before election day.

Polling was conducted in Kosovo with the participation of predominantly the Serb population, but no campaigning was possible in the territory.

On election day, the Center for Free Election and Democracy (CeSID) deployed more than 10,000 domestic non-partisan observers. However, three other civil society organizations were denied accreditation.

Preliminary data indicates that the voter turnout was around 56%. No candidate having obtained a majority of the votes, frontrunners Mr. Kostunica and Mr. Labus will compete in a second round within 15 days. Observers gave an overwhelmingly positive evaluation for the polling activities on election day, with group voting reported as a continuing challenge. The vote count and the tabulation of the results at the Working Groups were evaluated in equally positive terms.

The institutions represented in the IEOM are prepared to assist the authorities and civil society of Serbia to overcome the remaining challenges, in particular with the long overdue overhaul of the legislative framework for elections.

PRELIMINARY FINDINGS

Background

The Government of Serbia embarked on a long process of reforms following the Democratic Opposition of Serbia (DOS) coalition’s parliamentary election victory in December 2000. These reforms aimed at reversing the heritage left over from the previous regime. However early on, tensions within the governing DOS coalition became apparent, with a larger faction of the coalition member parties supporting Prime Minister of Serbia Zoran Djindjic and a smaller group supporting the Democratic Party of Serbia (DSS), headed by Federal President Vojislav Kostunica. Since early 2002, political discourse in Serbia has been dominated by the discord between the two leaders, the constitutional arrangements between Serbia and Montenegro, and cooperation with ICTY. In early summer 2002, the DSS was formally expelled from the DOS coalition.

For the presidency of Serbia, Mr. Djindjic together with a majority of parties remaining in the DOS coalition supported the candidacy of Miroljub Labus, nominated by a group of citizens called “Best for Serbia – Miroljub Labus”. The DSS candidate for the presidency is Mr. Kostunica. Nine other candidates are also competing in the election. The current president

of Serbia, Milan Milutinovic is not a candidate. He was indicted by the International Criminal Tribunal for Yugoslavia (ICTY) in 1999.

Legislative Framework

The Law on the Election of the President of the Republic (Presidential Election Law) was adopted in 1990 and has not been amended since 1992. The Law on the Election of Members of Parliament (Parliamentary Election Law), adopted hastily in October 2000, also regulates many aspects of the presidential election process. Whilst acknowledging that the 2000 Parliamentary Election Law marked some progress over previous legislation, in particular regarding the transparency and integrity of the process, OSCE/ODIHR reports have highlighted shortcomings in both acts.

The Presidential Election Law stipulates in Article 6 that a candidate wins when s/he receives “the majority of votes from the voters who voted, ... if at least half of the total number of the constituents of the Republic cast votes.” Thus, two conditions must be fulfilled for a candidate to be successful: (1) 50% of the registered voters must turn out on election day, and (2) a candidate must obtain more than 50% of the ballots cast. Yet, the requirement that both conditions must be met for a successful election has been the source of groundless speculation. However, Articles 6, 7, 8 and 9 of the law, indeed lack precision, contradict other provisions, and may lead to repeat elections without an outcome:

- Article 6 is ambiguous with regards to whether “the voters who voted” must be counted from the ballots in the ballot box or from voter signatures on the voter register;
- Articles 6 and 9 stipulate that the winning candidate must receive a “majority of votes from the voters who voted” without specifying if the latter includes only valid votes – if invalid votes are also included, this anomaly could lead to a situation where a candidate in a second round may have the plurality of votes, but not the majority;
- Article 9 does not stipulate the timeframe within which the “election procedure [must be] repeated in entirety” if turnout requirements are not met in the second round;
- The turnout requirements can lead to repeated attempts to elect the president without success if less than 50% of voters go to the polls on each occasion; and
- Given the uncertainties of the voter lists, in particular in Kosovo, the turnout figures may be disputed.

Other important shortcomings in the legislative framework for this election are in the Parliamentary Election Law. The OSCE/ODIHR has offered extensive comments on this law that can be accessed on the website at www.osce.org/odihr.

One of the shortcomings that the OSCE/ODIHR has criticized on previous occasions is the omission in the legislative framework of options for registered voters who are unable to attend a polling station in their place of permanent residence on account of physical disability, hospitalization, travel, imprisonment or detention, and displacement from Kosovo to Montenegro. Not only does this disenfranchisement of voters violate a fundamental right, but also it will have an impact on the turnout requirements.

Election Administration

The National Assembly of Serbia appointed the REC on 5 June 2002. The outgoing REC was appointed for a four-year term in 2000 shortly before the parliamentary elections. The legal basis for the early termination of the previous REC mandate is unclear. The law provides that no political party, coalition or “other political organization” may have a majority of the permanent members of the REC. The exact political makeup of the current REC is not known. Nonetheless, all candidates, once registered, were entitled to “extended” members on the REC with full voting rights. However, some of these extended members joined after important decisions had already been taken.

The candidate registration process was contentious. Some contestants questioned the adequacy of procedures to regulate the collection of 10,000 supporting signatures and the REC’s scrutiny of nomination documents within 24 hours of receipt. Also, questions were raised about the inconsistent interpretation of provisions for submitters of nominations to correct within 48 hours “deficiencies which are an obstacle to the proclamation” of a candidate. These inconsistencies led to several appeals to the REC and two to the Supreme Court. The REC and the Supreme Court both rejected challenges to the nomination of certain candidates on the grounds that they were submitted too late, and neither addressed the substance of the challenges. This created a perception that some candidates were registered on tenuous grounds.

The REC’s ability to function was restricted because decisions could only be taken if supported by a majority of members eligible to vote. As a result, when members abstained, were absent, or deliberately stalled, decisions could not be adopted, leading to missed deadlines.

The REC overcame the omission of legislative provisions for intermediate administrative bodies by establishing ad hoc “Working Groups” to serve the function. However, unlike during the 2000 elections, the political composition of these groups was not clearly defined, with some political parties complaining about lack of transparency in the functioning of working groups. Nonetheless, the working groups carried out their duties efficiently and provided information as required.

These working groups nominated to the REC the members of polling boards. However, the nomination procedure was less than transparent, was subject to local level inter-party agreements, and prompted numerous complaints. Regardless, all political interests contesting the election were able to nominate members to polling boards in their extended composition.

The Campaign

The campaign outside the media was relatively low key. Overall the campaign environment remained calm, although isolated cases of intimidation, mostly concerning local level campaign “poster wars”, and isolated cases of violence were reported. The 11 candidates toured the country holding rallies and meeting with voters. The campaigns of Vojislav Kostunica, Miroslav Labus, Vojislav Seselj and Vuk Draskovic were the most intense. Some candidate supporters conducted grass-roots campaign activities including door-to-door

canvassing. During the latter stages of the campaign, candidates addressed minority issues and campaigned in minority communities.

The political debate between Vojislav Kostunica and Zoran Djindjic intensified during the pre-electoral period, although the latter was not a candidate. President Kostunica was critical of the Serbian government's performance and the DOS decision to strip the DSS of some 45 parliamentary mandates. Prime Minister Djindjic responded with an advertisement campaign called "Proud of Serbia" to promote the successes of the Serbian Government. The campaign language of some candidates, at times, went beyond acceptable limits of rhetoric, venturing into nationalist discourse. Some candidates chose to engage in negative campaigning.

The Serbian Government provided a campaign fund of 11 million Dinars to be divided equally among the 11 contestants. Controls on the use of this fund as well as the use of additional funding from private sources are not sufficient.

Election Disputes

Prior to election day, relatively few substantive complaints and appeals were filed with the REC with the exception of those concerning candidate registration and the composition of polling boards.

The process to address election disputes requires a complete overhaul. Currently, legislation dating back to the previous regime requires the *in camera* handling of administrative disputes, including appeals against REC decisions. Not even parties to the dispute are allowed to attend these hearings. Moreover, the appeals process is overly centralized. Complaints concerning election day irregularities must be appealed directly to the REC. Thus, the REC may face a large number of complaints to address within relatively tight deadlines.

Voter Registers

The responsibility to compile and maintain the voter registers is vested in the municipal authorities, which are obligated to update the registers by 31 March each year. Citizens over the age of 18 are included in the voter register on the grounds of permanent residence as recorded by the police. Therefore, the two main sources for updates to the voter register are the municipal civil status books (for births, deaths, marriages and citizenship) and the police records (for registered / de-registered permanent residence). However, in addition to the efficiency of the administration, the accuracy of voter registers depends substantially on the timely reporting of civil events by citizens.

The law stipulates that each voter's record may be entered only in one polling station extract of the voter register. In the absence of a computerised republic-wide database for registered voters, this provision of the law may be difficult to enforce. However, during the review period for this election, the Ministry of Local Self Government purged some 50,000 potential duplications by merging the existing municipal voter registers.

On 26 September, the REC announced 6,552,598 registered voters, including *inter alia* eligible voters residing temporarily abroad, predominantly Serb voters in Kosovo, and IDPs

from Kosovo temporarily residing outside the administrative borders of the province, but in municipalities within Serbia.

On a number of occasions during the campaign period, some political parties expressed concerns that alleged inaccuracies in the voter registers may have an impact on the 50% turnout requirement. However to date, the EOM has received only a single complaint referring to a very small number of names of allegedly deceased persons included in the voter register of the Vrnjacka Banja Municipality. The EOM is reviewing this complaint.

The voter registers were available for public scrutiny from 22 July until 13 September. During this period, voters could check the registers in the municipal offices or in the *mijestna zajednica* (local community) and request changes through an administrative procedure. However, the procedures for public scrutiny were not uniform. Between 14 September and 26 September, changes in the voter registers were possible only via a judicial procedure.

Kosovo and Internally Displaced Voters

Polling was organized in Kosovo, with 107,999 voters registered in some 268 polling places across 19 municipalities. Initially, the Government of Serbia suggested that all residents of Kosovo be included in the voter lists. However, the UN Mission in Kosovo (UNMIK) declined a request by the Government of Serbia to hand over the voter lists that are to be used for the 26 October 2002 municipal elections in Kosovo, organised by UNMIK and the OSCE Mission in Kosovo (OMIK). Consequently, in the absence of reliable data on registered voters, and mindful of fraud in Kosovo in the context of Federal and Republic of Serbia elections prior to October 2000, the Serbian authorities decided to compile voter lists containing predominantly, but not exclusively, ethnic Serb voters in Kosovo. The criteria for compiling this register and the data included were less than reliable. On 17 September, the EOM deployed three observers to Kosovo and monitored proceedings there on election day.

Internally Displaced Persons (IDPs) are entitled to participate in voting on the territory of Serbia in the place of their temporary residence. However, some 18,000 IDPs from Kosovo in Montenegro could only vote if they returned to Kosovo.

UNMIK decided that campaigning by presidential candidates would not be permitted in Kosovo, leading to protests from some candidates. Nonetheless, voters in Kosovo were able to access political information through the Belgrade-based electronic media.

Media

In July 2002, Parliament adopted a new law on broadcasting. However, this law has no impact on the legal framework for the current election. The legal provisions regulating the presidential election campaign lack sufficient detail and do not ensure equal coverage for candidates.

In a positive development, Radio Television of Serbia (RTS), the Government, and political parties signed an agreement on 10 August 2002 to regulate the State media's campaign coverage at the national level. This agreement provides 45 minutes of free airtime on State-owned TV and 30 minutes on State-owned Radio to all registered candidates. All candidates are able to inform the public about their pre-election activities in a program called *Izborna*

Hronika. In addition, RTS broadcast one free advertisement spot daily for each candidate. The agreement does not allow debates between presidential candidates before the 1st round of election. Private media are not regulated by this agreement. Candidates can and have placed paid advertising on private and public media.

Candidates Kostunica and to some extent Labus received more coverage in all electronic media than the other candidates, with much time devoted to their official activities as office holders. This was particularly evident before their registration as candidates. After the registration, Kostunica continued to receive more extensive coverage than other candidates and was presented as a candidate and as President of FRY in all electronic media. The advertisement campaign “Proud of Serbia”, promoting the successes of the Serbian Government, was also given extensive coverage, especially in electronic media, including during the 48 hour campaign moratorium period before election day.

In contrast with the parliamentary elections in December 2000, when RTS 1 news programs favored DOS both in terms of quantity and quality, the 2002 campaign coverage of State-owned RTS was characterized by mainly neutral coverage of candidates and political subjects. In accordance with the 10 August agreement, RTS 1 provided equal presentation of candidates and their platforms in election-related programs and also broadcast one daily advertisement free of charge for candidates who submitted clips. Other RTS 1 programs, including news and current affairs, devoted 29% of the total time to candidates and political subjects, covering them without bias. However, more extensive coverage (36%) of Kostunica was apparent.

Kostunica and Labus also received widespread coverage (39% each) on privately owned TV PINK. Whilst Kostunica was showed in a mostly negative light, Labus was presented in an extremely positive light. In addition, TV PINK broadcast live Labus’ final campaign rally on 26 September. Privately owned TV BK dedicated 23% of its coverage to Labus with a rather positive tone, and 38% to Kostunica with a slightly negative tone. TV BK also devoted more time to the other nine candidates. These privately owned media covered the Serbian Government in positive terms. The Federal TV station YU INFO gave Kostunica 38% of its coverage.

While granting Kostunica and to a certain extent Labus more coverage, the print media offered readers a more diverse range of views than the electronic media. *Nacional* devoted equally large amounts of space to three candidates – Kostunica (22%), Labus (23%) and Seselj (19%). Whilst *Nacional* presented information about candidates by focusing on scandals, *Politika*, *Vecernje Novosti* and *Blic* provided mostly neutral coverage of all candidates, with *Blic* adopting a critical approach.

The campaign was not a prominent feature in regional media apart from the coverage of candidates’ local political rallies. Some local media were reluctant to broadcast political issues altogether because of concerns about the upcoming distribution of broadcasting licenses.

Civil Society

The REC refused the applications of three domestic observer groups, including the Center for Democratic Transition, Otpor, and the Center for Research and Protection of the Natural,

Cultural and Ethnological Heritage of Kosovo, on the grounds that the organizations concerned were not primarily involved in election observation.

The Center for Free Elections and Democracy (CeSID) deployed more than 10,000 non-partisan observers to a majority of polling stations including in Kosovo, and conducted both a “quick count” and a parallel vote tabulation (PVT).

Election Day

Preliminary data indicates that the voter turnout was around 56%, thus fulfilling one of the requirements of the Presidential Election Law (Article 6). According to unofficial results, the frontrunner candidate was Mr. Kostunica, followed by Mr. Labus. Not having obtained a majority of the votes cast, the two will compete in a second round within 15 days.

The overwhelming majority of observers reported positive impressions from the polling stations they visited. Less than 1% of the observation reports characterized the polling day proceedings as “poor”. In 74% of polling stations visited, domestic non-partisan observers were present.

In only 5% of the IEOM’s observations, campaign material was noted within 50 meters of polling stations, in only 3 cases campaign activities were noted inside polling stations, in only 6 cases unauthorized persons were attempting to intervene in the work of the polling boards, in only 1 case police officers were seen inside polling stations without justification, and tension, unrest, intimidation or violence were noted in less than 1% of observations.

Measures to safeguard the integrity of voting were implemented in accordance with the legal requirements. Only isolated cases of major violations were noted with regards to the use of the invisible ink (2%), voters not signing the voter register (1%), voters not producing valid IDs (3%), voters who are not on the list casting ballots (2%), and voters not marking their ballots in secrete (1%). However, group voting was again high at 19% of cases observed, and in a high number of polling stations visited (42%) at least some personal identification numbers (JMBG) were missing on the voter registers. Also, access to polling stations was noted as difficult in 10% of observations and some polling stations were difficult to find.

Observers evaluated the vote count in equally positive terms with only 2% characterizing the process “poor”. In an overwhelming majority of cases observed, procedures to safeguard the integrity of the count were implemented properly. With regards to the Working Groups observed, there was no report of “poor” performance.

*This statement also is available in Serbian.
However, the English text remains the only official version.*

MISSION INFORMATION & ACKNOWLEDGMENTS

Mr. Nikolai Vulchanov (Bulgaria) heads the OSCE/ODIHR Election Observation Mission. Mr. Thomas Michael Cox (MP, United Kingdom) represents the Parliamentary Assembly of the Council of Europe (PACE).

This statement is based on the observations of 28 election experts of the OSCE/ODIHR EOM, based in Belgrade and nine regional centers throughout the Republic as well as Kosovo who have been deployed since 2 September. The statement also incorporates the election day findings of some 230 short-term observers from 37 participating States reporting from some 1,000 polling stations out of 8,600 around the country.

The IEOM wishes to express appreciation to the Ministry of Foreign Affairs of the Federal Republic of Yugoslavia, and to the Ministry of Interior of Serbia, the Ministry of State Administration and Local Self Government, the Republic Election Commission, and other Republic and Municipal authorities of Serbia for their cooperation and assistance during the course of the observation. The IEOM is also grateful for the support from the OSCE Mission in the FRY and Embassies of OSCE participating States accredited in Belgrade.

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