



OSCE/ODIHR
ELECTION OBSERVATION MISSION
Repeat Presidential Elections, Montenegro
(Serbia and Montenegro)
9 February 2003

STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

Podgorica, 10 February 2003 – The OSCE Office for Democratic Institutions and Human Rights (ODIHR) Election Observation Mission (EOM) for the 9 February 2003 repeat election for the President of the Republic of Montenegro (Serbia and Montenegro) issues this statement before the official announcement of results, before election day complaints and appeals have been addressed, and before a complete analysis of the election day observation findings. This statement should be considered in conjunction with the statement of preliminary findings and conclusions issued on 23 December 2002, after the first round of voting.

PRELIMINARY CONCLUSIONS

The 9 February 2003 repeat presidential election in Montenegro again failed to produce the required 50% turnout, and was marred by the opposition's continuing boycott limiting voters' choice as well as unacceptable pressure on State employees to vote. However, the administration of the election generally was in line with international standards.

Statements by officials of the senior governing party, the Democratic Party of Socialists (DPS), that public employees had an obligation to vote went beyond acceptable norms of campaigning, supporting allegations that some citizens were coerced into voting against their will. Prime Minister Milo Djukanovic's statement on the eve of the election that there should be no consequences to the act and manner of exercising the right to vote was a welcome assurance.

After the failed 22 December 2002 poll, major political parties scrutinized and copied election materials, including voter lists, to record information on voter participation. While not against the law, however with only one strong candidate in the contests, the mere act of entering a polling station or abstaining from the vote revealed a voter's political choice, potentially subjecting the voter to pressure and further fueling allegations of coercion.

Continuing political tensions during the pre-election atmosphere affected the public's confidence in the election process. The main election issue became whether the 50% turnout would be met. Otherwise, again the election campaign was low key and there was a marked absence of substantive debate. Outside the free airtime, the media devoted little time to the candidates. Despite financial difficulties, the elections were administered efficiently and transparently.

As during previous occasions, observers reported an overwhelmingly positive assessment for the polling activities on election day and the vote count. However, homebound voting was high and procedures were implemented inconsistently. Based on a partial parallel vote count, two domestic non-partisan observer groups reported a voter turnout of around 47%.

The shortcomings in the election legislation, detailed in previous OSCE/ODIHR reports and statements, should be addressed without delay. The legal requirement that 50% of registered voters must turn out for a valid first round election, otherwise the exercise must be repeated, has resulted in a cycle of unsuccessful elections and should be abolished before another presidential election is scheduled. In addition, the Republican leadership and the REC should issue strict instructions to prevent any repetition of overt or covert pressure exerted by State or party officials on public employees to participate in the vote, and breaches of such inappropriate actions during the current and future elections should be thoroughly investigated and prosecuted in accordance with the law.

The OSCE/ODIHR stands ready to assist the authorities and civil society of Montenegro to remedy the shortcomings identified in this statement and earlier reports.

PRELIMINARY FINDINGS

Background and Political Context

The same eleven candidates who ran in the void 22 December 2002 election contested the 9 February 2003 repeat polls. The 22 December election produced an unusually one-sided result, with Filip Vujanovic, the Speaker of Parliament and acting President, a candidate of the governing coalition, gaining some 84% of the vote, while his closest challenger, independent candidate Dragan Hajdukovic, received around 6%. Nine other candidates shared the remaining few votes.

A combination of factors contributed to the failure of the 22 December elections, including an outdated legislation, the longstanding failure of Parliament to amend the law and the opposition boycott.

The DPS expected that the 50% turnout could be achieved on 9 February, suggesting that a number of circumstances may have contributed to the failure of the 22 December election, including scheduling the contest close to the holiday period, uncertainty caused by delays in forming the new Government, and the failure to persuade parties of national minorities to endorse the governing coalition candidate. Conversely, the opposition was confident the election would once again fail to reach a 50% turnout and appeared to insinuate that it could succeed only through coercion of voters.

In addition to controversies related to voter participation, the election took place in the context of the recent agreement on the Constitutional Charter transforming the Federal Republic of Yugoslavia into the union of Serbia and Montenegro, and the human trafficking affair allegedly involving the Deputy Public Prosecutor.

The Candidates and the Election Campaign

As noted in the 23 December 2002 OSCE/ODIHR statement, the decision by the major opposition parties not to register candidates significantly narrowed the choice available to voters. With the exception of Filip Vujanovic, none of the candidates could call upon a party structure to support their campaigns and they lacked sufficient resources to mount credible campaigns. Thus, once

again the election was an uneven contest. The profile of the eleven candidates remained low-key and their campaigns lackluster. These factors reduced the potential for serious political debate.

The main election issue became whether the 50% turnout requirement would be met. The opposition coalition again urged their supporters to abstain and issued statements critical to the Government in general, and to Mr. Vujanovic personally.

In a new development in Montenegro, officials of the senior governing party, Democratic Party of Socialists (DPS), made statements that public employees were compelled to vote, and that their failure to participate may have “detrimental consequences”. These statements went beyond acceptable norms of campaigning. They constitute the exertion of undue influence and are at odds with international standards for democratic elections. Furthermore, they supported the opposition’s well-publicized and recurrent accusations that campaigning to participate in the vote was occurring in the workplace and that some citizens, including opposition supporters, were coerced into participating in the vote, ostensibly against their political convictions.

The DPS counter-alleged that as a result of the opposition’s election boycott, its supporters also experienced pressure not to vote, especially in municipalities under opposition control. The EOM received some evidence to substantiate the allegations, but these cases could not be verified without bringing them before the competent authorities, and the EOM could not substantiate them. Regardless, the mutual recriminations raised political tensions, marred the pre-election atmosphere and lessened the public’s confidence in the election process.

A statement from Prime Minister Milo Djukanovic on 7 February that “the right to vote is the inalienable right of all citizens and it exclusively depends on their will [with respect to] whether and how they would exercise that right” and no one will suffer any consequences as a result was a welcome assurance. However, the print media failed to cover the statement.

Legislative Framework

Although the legislative framework provides an overall adequate basis for democratic elections, the Law on the Election of the President (“the presidential election law”) is outdated and has serious shortcomings, including a failure to provide sufficient regulation for a repeat election and to stipulate when this contest should be held.

The legal requirement that 50% of registered voters must turn out for a valid presidential election or face a repeat first round polling may result in an endless cycle of repeated elections. Moreover, the provisions encourage an election boycott by political forces wishing to obstruct the process. While a number of OSCE participating States require a minimum voter turnout in a first round for presidential elections, a second round is held in these States if the turnout requirement is not met. A winner is then determined. Only in Serbia and Montenegro, the election is repeated if the turnout requirement is not met.

Before a new presidential election is scheduled, the following should be addressed:

- The provisions requiring repeat elections if the 50% turnout requirement is not met should be removed;
- The mandate of the current election administration bodies with respect to a new election should be clarified, guaranteeing at the same time balanced political representation;
- The requirements for calling and scheduling repeat elections must be clarified;
- The calculation of the total number of electors who voted should be based on the number of ballots in the box;
- When determining the winner, only the majority of valid votes, excluding invalid votes, should be considered;
- Inconsistencies between election laws concerning candidate eligibility, candidate registration and the procedures for establishing results should be reconciled;
- Provisions for voting outside the polling station should be tightened; and
- Provisions should be added to allow the updating of voter registers between election rounds.

Other concerns outlined elsewhere in this report and in previous OSCE/ODIHR EOM reports should be addressed in the context of a general revision of the electoral legislation in Montenegro after the presidential election process is completed.

Election Administration

The administrative preparation for elections was marked by financial difficulties. The REC received insufficient funds to cover its obligations for the failed December election and feared that delayed payments to polling board members might hamper the organization of the repeat poll. However by 28 January, the REC had received the outstanding funds for the December election.

The provisions of the law for scheduling the repeat election are not clear and the REC decision of 30 December to schedule the repeat election for 9 February was contentious. The majority of the REC members presented pragmatic arguments in support of the 9 February date, stating that candidates require time to prepare effective campaigns, given more time the electorate may reconsider, “voter fatigue” may be reduced, and the REC requires time to administer the process and obtain the Government funding. The opposition maintained that the date was inconsistent with the legislation, expressed concern that the application of election deadlines would be confused and that the voter register would be too inaccurate.

The structure and composition of the multi-party election administration remained unchanged for the repeat election and most registered candidates had their representatives appointed as “extended” members. Drawing on their experience, the REC and MECs administered the process impartially, efficiently and transparently. Observers reported generally good co-operation between members of election commissions.

However, the REC did not address the OSCE/ODIHR recommendation after the October 2002 parliamentary election to review and clarify the rules on voting outside a polling station (homebound voting). These provisions are open to abuse. After 22 December, the EOM became aware of procedural irregularities, including instances of Polling Boards paying home visits on

election day when voters had not requested ballots. Observers noted also that the number of homebound voters had increased during recent elections.

As the election legislation allows candidate representatives and parliamentary parties to inspect, copy and keep used election material, including signed voter lists, after the December election, political parties reportedly compiled lists of voters who did or declined to exercise their franchise. The EOM verified that, in 18 out of 21 municipalities, sealed election material had been opened at the request of parties and the material copied in 15 municipalities. This practice may seriously compromise the privacy of citizens and the secrecy of the vote, protected elsewhere in the legislation, in particular in the context of an election limited to only one front-running candidate and when boycott was a major political controversy.

Following the December election and in accordance with the law, the Government reportedly established a €50,000 fund to reimburse candidates' campaign expenses if they gained at least 10% of the votes. The only candidate who met this threshold was Filip Vujanovic. However, as the REC did not formally announce the number of votes or percentages secured by candidates in the December contest, the decision to reimburse €25,000 to Mr Vujanovic lacks legal basis.

In a letter addressed to the Government, seven candidates complained that the provisions on reimbursing campaign expenditure were being interpreted restrictively. They argued that all candidates should receive an equal share of the fund, and indicated they might withdraw from the February contest. In the end, only Obrad Markovic attempted to withdraw from the election, but the REC rejected his application, submitted after the legal deadline.

Voter Registers

The legislation does not provide for amending the voter register after the lists were closed on 12 December 2002 for the 22 December election and the election register was not amended to take account of changes in residence, deaths and the coming of age of new electors.

Disputes, Complaints and Appeals

Citizens alleging they had been subjected to undue pressure generally were unwilling to bring formal cases before the competent judicial authorities. Other than publicizing allegations, political parties and most civic organisations did little to assist persons concerned. However, the Montenegrin Helsinki Committee announced it would offer free legal advice to anyone wishing to seek legal remedies with respect to election-related complaints. While some opposition parties have expressed lack of confidence in the judiciary's impartiality, only through using the established judicial and administrative mechanisms that the veracity of allegations can be assessed and the credibility of the process tested.

The EOM followed the allegations closely, meeting with complainants, most of whom alleged campaigning to vote in the workplace, oblique threats concerning their security of employment and other forms of discrimination resulting from their reluctance to vote. While similar allegations were made during previous elections, the number of complaints significantly increased

during the run up to the February election, they emanated from a broader spectrum of interlocutors and were received across a wider geographical area.

Article 2 of the parliamentary election law applicable in this case stipulates that “No one has the right ... to take a citizen to account for voting, or to ask him who he has voted for or why he has not voted.” Breaches of this provision are punishable by fines or up to one year in prison (article 115). Other related violations are punishable under provisions contained in the Criminal Code and other legislation. The EOM is not aware of any prosecution on the basis of such coercion.

Following the 22 December poll, only four complaints were filed with MECs. All four were rejected and none were appealed to the REC. Two serious violations during the 22 December election were reported in the local media. One concerned a polling station in Kolasin municipality, where 15 voters signed a statement alleging that, although they did not vote, ballots were cast on their behalf. The second concerned a doubtful 95% turnout at a polling station in Podgorica municipality. Such irregularities are extremely rare in Montenegro and should be fully investigated to establish if breaches of the law indeed occurred. To date, no action has been taken by the local prosecutors or the election administration.

Following the 22 December election, the opposition complained that citizens were called by telephone on election day, urging them to vote and that electors’ personal details were recorded by party activists when entering polling stations. In the deeply divided political context of Montenegro, such actions in the vicinity of polling stations may be perceived as threatening and should be avoided in future elections. In fact, the law prohibits such activities within the polling station.

On 14 January, a group of four individuals challenged the constitutionality and legality of the REC’s decision regarding the date of the repeated election, filing an appeal with the Constitutional Court. On 25 January, the Court rejected the appeal on procedural grounds.

Media

The “Rules for the Media’s Presentation of Presidential Candidates During the Pre-election Campaign” adopted by Parliament on 2 December were applied to the repeat election. These are comprehensive and provide that State-owned media are obliged to cover the election campaign and provide equal and objective access to all contestants. State-owned TV Parliament and Radio CG, managed by Radio-Television of Montenegro (RTCG), broadcast special electoral programs and the public newspaper *Pobjeda* printed a special election-related section.

Private media are less regulated. The law requires only that they respect the pre-electoral silence and clearly mark paid electoral advertisement as such. Some TV stations and newspapers failed to respect the latter requirement.

Consistent with previous practice, Parliament established the “Board for Mass Media Supervision” to monitor compliance by State and private media with campaign regulations. The OSCE Mission to Serbia and Montenegro assisted the Board. No complaints were addressed to the Board during the campaign.

The campaign in the media commenced on 25 January with candidates broadcasting their free campaign spots on TV Parliament, but the quality of most presentations remained unsophisticated. Outside the free airtime, the media granted the election campaign little coverage, thus significantly limiting the amount of information on candidates and their political programs.

The private media covered incumbent Filip Vujanovic's activities at length, mostly in relation to his role as Speaker of the Parliament. Overall, the tone of the print and electronic media's campaign coverage remained politically neutral. Only Filip Vujanovic and Dragan Hajdukovic placed paid advertisements. Other candidates relied solely on free airtime and space in State owned radio, TV and *Pobjeda*. One candidate complained to the EOM that the cost of political advertising on State TV was considerably more expensive than commercial TV stations. This was verified, but no complaint was lodged with the Media Board.

TV Pink, *Vijesti* and *Publika* violated the 24-hour campaign moratorium by publishing and broadcasting invitations to the public to take part in the voting.

Civil Society

As on previous occasions, two domestic observer groups monitored the elections, albeit in reduced numbers – the Center for Democratic Transition (CDT) and the Center for Monitoring Elections (CEMI), the latter in co-operation with the Center for Free Elections and Democracy (CeSID) from Serbia.

Both organized a “quick count” based on a sample of polling stations and announced voter turnout information at two-hour intervals during election day.

Election Day

On election day, weather conditions in some mountain areas hampered the organization of the poll and may have contributed to a reduced turnout. Mostly as a result of the weather, but also because of disputes between polling board members, some 74 polling stations were not opened, affecting 6,515 voters or 1.43% of the total number of registered voters in the Republic.

As on previous occasions, the overwhelming majority of observers reported positive impressions from the polling stations they visited. Only two observation reports characterized the polling day proceedings as “poor”. In 52% of polling stations visited, domestic non-partisan observers were present.

“Homebound” voting was again high – in 9% of polling stations visited 5-10% of registered voters requested such voting, a problem also noted during the 22 December vote. Although requests for homebound voting could not be accepted after noon on election day, 9% of polling stations visited continued to accept such requests after the deadline. Contrary to the law, 15% of polling stations visited accepted verbal requests. In some cases (12%), political parties collected the homebound voting requests and presented to the polling boards. The REC stated in a decision dated 7 February that “it is not of essential importance who submits a request to the polling board, what is important is that a person wants to vote and that the reasons for asking to cast a vote by envelope

are in line with the election regulations.” Although the collection of homebound voting requests by political parties is not against the REC clarification, in the Montenegrin context such activities by political parties can be subject to abuse and may be best avoided.

In 1% of the observations, campaign material was noted within 50 meters of polling stations, and significantly there was only one observation of police officers in the vicinity of a polling station. Tension was reported in 3% of observations, but violence or unrest in none of the polling stations visited. However, in 2% of polling stations visited party officials were observed outside polling stations keeping a record of voters entering the premises.

Measures to safeguard the integrity of voting were implemented largely in accordance with the legal requirements. Only isolated cases of violations were noted with regards to the use of the invisible ink (4%), and voters not marking their ballots in secret (7%). Breaches of the prohibition to announce the voter names when checking their ID was noted in 2.5% of visits, breaches of recording the identity of voters in unofficial documents and the use of mobile phones in polling stations in only one polling station. Group voting continued to mark a significant improvement over previous elections at only 2.5% of cases observed as opposed to 10.5% in October.

Observers evaluated the vote count in equally positive terms with only one characterizing the process “poor”. In an overwhelming majority of cases observed, procedures to safeguard the integrity of the count were implemented in general properly.

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

MISSION INFORMATION & ACKNOWLEDGEMENT

The OSCE/ODIHR Election Observation Mission (EOM) is headed by Nikolai Vulchanov (Bulgaria). This statement is based on the findings of 17 observers of the OSCE/ODIHR EOM, based in Podgorica and four regional centers throughout the Republic, who have been deployed since 28 November. This statement also incorporates the election day findings of 65 observers from 22 OSCE participating States reporting from some 300 polling stations out of the 1,100 around the Republic.

The OSCE/ODIHR will publish a comprehensive report on the presidential elections, including recommendations, within a month after the process is completed.

The EOM wishes to express appreciation to the Montenegrin authorities, including the Ministry of Foreign Affairs, Republic Election Commission, Secretariat for Development, Ministry of Justice, Ministry of Interior and municipal offices for their co-operation and assistance during the course of the observation. The EOM is also grateful for the support from the Ministry of Foreign Affairs of Serbia and Montenegro, OSCE Mission in the FRY and Embassies and Consular Offices of OSCE participating States.

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