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Observation of the constitutional referendum in Serbia (28 and 29 October 2006)

Report

Ad hoc Committee of the Bureau of the Assembly

Rapporteur: Mr Alexander FOMENKO, Russian Federation, Group of the Unified European Left

The Constitutional Referendum held in the Republic of Serbia on 28 and 29 October 2006 was, in general, conducted with due respect for Serbia's democratic commitments to the Council of Europe.

The vote took place in a peaceful and orderly manner. The atmosphere was clearly conducive to a democratic expression of the will of the electorate and reflected the broad cross-party and cross-community agreement on the need for a new Constitution, despite calls for a boycott from some quarters. In the run-up to the vote, media, both print and electronic, offered a variety of opinions, allowing citizens to take a well thought-out decision. However the authorities took full advantage of the absence of the media silence provision for the voting days to try and boost the turnout and the vote in favour of the new Constitution.

However, the decision to hold an early vote on the Constitution did not allow the political parties to conduct a proper awareness-raising campaign, enabling substantive public debate. There was not enough training for electoral officials, who were not used to administering a vote spread over two days. Further issues of concern were inadequate seals on the ballot boxes, polling booths that potentially compromised the secrecy of the vote and the quality of the voter lists.

I. Introduction

1. Following the adoption by the National Assembly of the Republic of Serbia, on 30 September 2006, of a new Constitution, and upon invitation from Mr Marko Danilović, Secretary of the Serbian Republican Electoral Commission, the Bureau of the Assembly decided, on 6 October 2006, to constitute an *ad hoc* Committee for the observation of the referendum and appointed me as its chairperson and rapporteur.

2. Based on proposals by the political groups in the Assembly, the *ad hoc* Committee was composed as follows:

Socialist Group (SOC)

Mr Piotr Gadzinowski
Mr Pär Axel Sahlberg

Poland
Sweden

Group of the European People's Party (EPP/CD)

Mr Pedro Agramunt	Spain
Mr Andrzej Grzyb	Poland
Ms Danuta Jazłowiecka	Poland
Mr Mustafa Ilicali	Turkey
Mr Andrea Rigoni	Italy
Mr Oliver Šambevski	"the former Yugoslav Republic of Macedonia"

Alliance of Liberals and Democrats for Europe (ALDE)

Ms Helena Bargholtz	Sweden
Ms Jelleke Veenendaal	Netherlands
Mr Andrej Zernovsky	"the former Yugoslav Republic of Macedonia"

European Democrat Group (EDG)

Mr Ruhi Açıkgöz	Turkey
Mr Christopher Chope	United Kingdom

Group of the Unified European Left (UEL)

Mr Alexander Fomenko	Russian Federation
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The **Secretariat** was ensured by:

- Mr Vladimir Dronov, Head of Secretariat, Interparliamentary Co-operation and Election Observation, Senior Advisor to the President of the Assembly;
- Mr Yann de Buyer, Head of the Administrative and Finance Unit, Directorate of General Services of the Assembly;
- Mr Chemavon Chahbazian, Administrator, Parliamentary Assistance Unit;
- Mr Bogdan Torcatoriu, Administrator, Co-Secretary of the Committee on the Environment, Agriculture and Local and Regional Affairs;
- Mr Angus Macdonald, Press Officer;
- Ms Daniele Gastl, Assistant;
- Mr Franck Daeschler, Logistics Officer.

3. The Parliamentary Assembly of the Council of Europe was in the rather unique situation of being the only international institution formally to observe the referendum. Hence the particularly high public interest in its findings and the heavy burden of political responsibility on this observation mission.

4. I would like to express my appreciation for the work of the Secretariat (including the staff from the Council of Europe's Office in Belgrade) which, in the absence of any support normally received from ODIHR that was not present in the field this time, accomplished all the preparatory work, including the complicated logistical arrangements that enabled the ad hoc Committee to perform a full-scale observation mission. This underscores the fact that the Assembly has developed its own full-fledged observation capabilities and is fully equipped to act alone.

5. The ad hoc Committee met from 26 to 30 October 2006. It held, *inter alia*, meetings with:

- Mr Predrag Marković, Speaker of the National Assembly of Serbia,
- the National Delegation of Serbia to the PACE,
- Mr Marko Danilović, Secretary of the Republican Electoral Commission,
- Ambassadors of member states of the Council of Europe,
- staff of the Council of Europe Office in Belgrade,
- representatives of the European Commission Delegation in Belgrade,
- representatives of national councils and regions,
- representatives of civil society;
- representatives of the media.

6. The programme of the meetings of the ad hoc Committee appears in [Appendix 1](#).

7. On voting days, the ad hoc Committee split into 10 teams which observed in and around Belgrade, as well as in and around Nis, Novi Sad, Novi Pazar, Vršac and Vranje. It could not observe the vote in Kosovo, as UNMIK had announced it would not support the holding of the referendum in this UN-administered territory.

8. Since the ad hoc Committee was not part of an international election observation mission, it used its own observation forms, jointly developed by the Venice Commission and the ODIHR.

9. The press release issued by the ad hoc Committee after the referendum appears in Appendix 2.

10. The ad hoc Committee wishes to thank the National Assembly of Serbia, the Russian Ambassador to Belgrade representing the Chairmanship of the Committee of Ministers of the Council of Europe, as well as the Council of Europe Office in Belgrade, for their co-operation with, and support to, this observation mission.

II. Political and legal context

11. The need to adopt a new constitution was long overdue given that the previous constitution adopted under the Milosevic regime on 28 September 1990 no longer reflected political realities in the wake of the break-up of the federal state of Yugoslavia. The urgency of the matter became even greater following the referendum in Montenegro 3 June 2006 that resulted in the dissolution of the state-union of Serbia-Montenegro.

12. That said, the hasty manner in which the referendum was organised was apparently determined by political expediency, in particular the need to have a provision in the new Constitution that declares Kosovo an integral part of Serbia ahead of the publication of the outcome of the UN final status talks.

13. On 30 September 2006, the 242 members of the Serbian Parliament present at a special session unanimously voted in favour of the adoption of the new Constitution and decided submit it to a referendum on 28 and 29 October 2006. The two main political party rivals, as well as other parties represented in the parliament, were unanimous on this important issue. The decision to spread the vote over two days, unprecedented in Serbia, was dictated by the need to have a turnout of over 50 percent of registered voters.

14. The current Law on the referendum was adopted in Serbia in 1994 and had not been submitted to the Venice Commission for opinion. The actual vote on 28-29 October was conducted on the basis of rules and instructions worked out by the Republican Electoral Commission (REC).

15. Given the short time between the adoption of the new Constitution by the Serbian Parliament and the referendum, the Venice Commission has not yet produced its opinion on the text of the Constitution, but will do so shortly following a request of the Monitoring Committee at its meeting of 16 October 2006.

16. During its meetings with representatives of NGOs and national councils, the ad hoc Committee noted the following shortcomings: lack of transparency in the process of the elaboration of the new Constitution and a hasty adoption of the text by the Parliament without a proper public debate, which resulted in low public awareness of the substantive provisions of the new Constitution and led to a certain voter apathy on the voting days.

17. Some political parties not represented in the Parliament, as well as national councils (notably, the Albanian National Council) and NGOs called for a boycott of the referendum. These calls were heeded by voters in certain regions, in particular, those with a high ethnic Albanian population.

18. The Kosovo Albanians allegedly wanted no part in the referendum and were not on voters' lists. According to the REC, they did not seek to be put on the lists in the first place and obstructed any efforts by the REC to that effect.

19. UNMIK had distanced itself from the holding of the referendum in Kosovo, stating it would neither support it, nor prevent anyone wishing to vote from voting. It further stated it would not allow any actions that could be perceived as provocative or destabilising.

III. Run-up to the referendum

20. The ad hoc Committee was informed by the Secretary of the Republican Electoral Commission (REC) that:

- 8600 Polling Stations were organised in Serbia; 40 Polling Stations were organised abroad to provide for diaspora voting;
- the number of voters registered was 6 393 385 (including voters registered in detention centers and military camps, in Kosovo and abroad);
- the deadline for registration was 12 October with the possibility of having the voters' lists amended until 25 October. No complaints had been received after the closing of the lists on 25 October;
- each Polling Station Committee (PSC) was composed of 5 members and 5 substitutes, representing different political parties.

21. The Secretary of the REC informed the ad hoc Committee that accreditation had been given to 1335 domestic observers (mostly from the Centre for Free Election and Democracy – CeSID) as well as to 68 foreign observers (26 from the PACE, 35 from the European Union Monitoring Mission (EUMM) and 7 members of the Russian Duma, who were invited on a bilateral basis by Serbian MPs).

22. Media, both print and electronic, offered a variety of opinions, allowing citizens to take a well thought-out decision prior to the vote. However, the limited time between the adoption of the new Constitution by the National Assembly and the referendum did not allow the political parties to conduct a proper awareness-raising campaign, enabling substantive public debate.

23. No media silence period was observed. Representatives of the REC explained that, since all political parties represented in the Parliament agreed on the Constitution, there was no need for a media silence period.

24. This allowed authorities to use television, especially on Sunday afternoon, to exhort the citizens of Serbia to vote by showing politicians, singers, actors and even the Patriarch voting and saying that Serbs must vote for the Constitution.

IV. The Vote

25. The ad hoc Committee split into 10 teams which visited 318 Polling Stations (PS), representing a total number of 446 245 voters registered on the voters' lists.

26. All teams were given free, unhindered and full access to all PS visited, including those in detention centres and military camps. They were also able to visit PS during the night after the closing of the PS and before their opening the following day.

27. Generally, the atmosphere was calm and no serious or widespread tensions were observed.

Shortcomings observed

28. A number of shortcomings in the voting process were observed:

- ballot boxes were in general sealed with a normal string and a plastic wax or plastecene that could easily be taken off and put back. The imprint of seals themselves was hardly legible. In fact, in some PS, coins were used as seals. In 7% of the PS visited, ballot boxes were not sealed at all;
- voters lists were badly out-dated; it was noted that the late Mr Milosevic was still on the list at his PS. One of our teams met a Serbian displaced person who moved from Kosovo in 1999, but who was still not on the voters' list and was directed by officials from the Municipal Electoral Committee (MEC) in Belgrade to vote at her PS in Kosovo;
- the secrecy of the vote was not always ensured, as in most PS, folded cardboard was used to screen off the polling booth. In 3% of the PS visited, the secrecy of the vote was considered as not being ensured at all (no polling booths).

29. In the specific case of the constitutional referendum, where it was expected that the large majority of voters exercising their right to vote would vote "yes" and where no reciprocal control among members of the

PSC was in fact necessary, the non-secrecy of the vote, the improper sealing of ballot boxes or even the presence of only a single member of the PSC next to the ballot box should not necessarily be considered an indication of fraud. However, the situation would be entirely different for a parliamentary or presidential election. Therefore, these shortcomings must be corrected in advance of the forthcoming elections.

30. In Tutin, a village in Sanjak, one team observed that numbers beside voters' names were circled on the voters list but that there were no signatures. PS commissioners' answers on the turnout were vague and there were noticeably more ballots in the ballot box than there were signatures on the voters' list. Ballot box stuffing was suspected in this PS.

31. This was also the case in another PS in Novi Pazar (also in the Sanjak region), where a team was present both at the closing on Saturday evening and at the opening on Sunday morning. It reported an obvious increase of around 20-25% of the number of ballots in the box during the night.

32. Instances of ballot box stuffing were also reported to PACE observers by CeSID: in the Veliki Trnovak village, close to Bujanovac, and in the Presevo Valley, where allegedly more than 100 ballot papers were reportedly seen in the ballot box, while there were no signatures on the voters' list. The ad hoc Committee was not in a position to confirm these allegations.

33. Group and/or family voting were observed in 2% of PS visited.

34. In 1% of the PS visited, unauthorised persons were present.

35. On the whole, though, the ad hoc Committee, based on the entirety of its observations, regarded the foregoing cases as isolated cases, with no impact on the overall result.

The two-day voting issue

36. The voting in this referendum was spread over two days, instead of one day as is commonly the case. The PS closed on Saturday at 20h00 and re-opened on Sunday at 07h00. All the voting materials, including ballot boxes, voters' lists and unused ballot papers had to stay in the PS overnight, the PS being locked and PSC members guarding the PS and their voting materials in shifts.

37. A protocol (specifying the total number of voters on the voting list, the numbers of voters who had voted before Saturday at 20h00 and the number of ballot papers remaining) was supposed to be signed by all 5 PSC members and attached to the ballot box. All figures had to be checked again on the Sunday morning before the re-opening of the Polling Station at 07h00.

38. This procedure was rarely followed. Some Chairpersons of the PSC were even unaware of the existence of this protocol. In some PS, hand-written improvised protocols were used, while in others no protocol was used at all. The ad hoc Committee concluded that there was a regrettable lack of information, communication and training on this particular issue.

39. It took however note that our observers were able to visit the PS during the night.

Other observations

40. Domestic observers were present in 3% of the PS visited.

41. No exit poll activities were observed.

42. The size of the ad hoc Committee was not large enough to enable a comprehensive assessment of the vote count. However, in those PS where we did observe the vote count, no irregularities were detected.

43. The rapporteur is aware that a group of NGOs (Helsinki Committee for Human Rights, Lawyers' Committee for Human Rights, Youth Initiative for Human Rights and the Humanitarian Law Center) have produced an "Analysis of irregularities that occurred during the Referendum". According to this analysis, the process of confirming the Constitution was marked by the following irregularities: Albanians from Kosovo were not included in the voters' register and they received a barely formal call for signing in the voters' register; the authorities in charge of the referendum process included only the representatives of parties that supported the endorsement of the Constitution; the referendum process was accompanied by a highly aggressive and negative campaign directed against a group of political parties and NGOs that called for the

boycott; the turnout was very poor until the afternoon hours of the second day, when it surprisingly improved; the greatest number of incidents occurred in the period of several hours before the closing of the PS etc. The rapporteur will refrain from commenting on this analysis as he can only report on the ad hoc Committee's own observations and findings.

V. Results

44. The REC announced the final results of the referendum on the new Constitution on 3 November 2006. 54.91% of the electorate (or 3 645 517 voters) voted at the referendum. 53,04% of the electorate (or 3 521 724 voters) cast their ballots in favour of the referendum. On 8 November 2006, the official proclamation of the new Constitution was made by the Serbian Parliament.

VI. Conclusions and recommendations

45. The Constitutional Referendum held in the Republic of Serbia on 28 and 29 October 2006 was, in general, conducted with due respect for Serbia's democratic commitments to the Council of Europe.

46. The vote took place in a peaceful and orderly manner. The atmosphere was clearly conducive to a democratic expression of the will of the electorate and reflected the broad cross-party and cross-community agreement on the need for a new Constitution, despite calls for a boycott from some quarters. In the run-up to the vote, media, both print and electronic, offered a variety of opinions, allowing citizens to take a well thought-out decision. However the authorities took full advantage of the absence of the media silence provision for the voting days to try and boost the turnout and the vote in favour of the new Constitution.

47. The Kosovo Albanians allegedly did not seek to be put on voters' list and did not want to participate in the referendum. UNMIK did not support the holding of the referendum in Kosovo.

48. However, the decision to hold an early vote on the Constitution did not allow the political parties to conduct a proper awareness-raising campaign, enabling substantive public debate. There was not enough training for electoral officials, who were not used to administering a vote spread over two days. Further issues of concern were inadequate seals on the ballot boxes, polling booths that potentially compromised the secrecy of the vote and the quality of the voter lists.

49. The ad hoc Committee calls on the authorities concerned to make sure that the following conditions are met before the forthcoming parliamentary and presidential elections in Serbia:

- the introduction of a credible system of ballot box sealing;
- the provision of proper polling booths to ensure the secrecy of voting;
- the proper updating of the voters' lists.

50. Better training for electoral officials should also be provided to ensure full awareness of election protocols.

51. Having regard to these conclusions, the ad hoc Committee underscores that, should the Bureau decide to observe the forthcoming elections in Serbia, a pre-electoral mission would be called for.

Appendix 1

**AD HOC COMMITTEE TO OBSERVE THE CONSTITUTIONAL REFERENDUM
IN THE REPUBLIC OF SERBIA
28-29 October 2006**

PROGRAMME

Wednesday, 25 October 2006

Arrival of the members of the ad hoc Committee

Hotel Majestic

Obilićev Venac 28

Belgrade 11000

Republic of Serbia

Tel: +381 11 3285 777

Fax: +381 11 3284 995

(unless otherwise specified, all meetings will take place in Hotel Majestic)

Thursday, 26 October 2006

Hotel Majestic

- 14.00 Opening of the meeting by Mr Alexander Fomenko, Head of the Ad Hoc Committee
- 14.30 Briefing by Mr Denis Huber, Special Representative of the Secretary General in Belgrade and Head of Office
- 15.30 Briefing by EU Commission Delegation in Belgrade:
 . Mr David Cullen, First Secretary and Head of Political Civil Society and Information Section,
 . Ms Sandra Babić, Political Advisor
- 16.15 Meeting with the National Delegation of Serbia to PACE (Parliament Building)
- 17.15 Meeting with Mr Predrag Marković, Speaker, National Assembly of the Republic of Serbia (Parliament Building)
- 19.00 Meeting with Council of Europe Ambassadors, hosted by Mr Alexander Alekseev, Ambassador of the Russian Federation representing the Chairmanship of the Committee of Ministers of the Council of Europe

Friday, 27 October 2006

- 09.00 Meeting with Mr Marko DANILOVIĆ, Secretary, Republican Electoral Commission
- 10.00 Meeting with NGOs:

 - Forum Iuris (Novi Sad; legal think tank)
 - Belgrade Center for Human Rights
 - Standing Committee of Towns and Municipalities)
 - CESID (Centre for elections and democracy)
 - Serbian Association of Judges
 - Centre for Regionalism (Novi Sad)
 - Helsinki Committee for Human Rights (Belgrade; Novi Sad)
- 11.00-11.15 Coffee break

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- 11.15 Meeting with the Media representatives
- 12.00 Meeting with representatives of the different regions of Serbia
- 13.00 Departure for the teams deployed outside Belgrade

Saturday, 28 October 2006 and Sunday 29 October 2006

Observation of the Referendum

Monday, 30 October 2006

- 08.30 Debriefing of the Ad Hoc Committee
- 12.00 Press Conference
- Afternoon Departure of the members of the Ad Hoc Committee

Appendix 2

Constitutional referendum conducted, in general, with due respect for Serbia's Council of Europe commitments

Belgrade, 30.10.2006 – The Constitutional Referendum held in the Republic of Serbia on 28 and 29 October 2006 was, in general, conducted with due respect for Serbia's democratic commitments to the Council of Europe, concluded a delegation of observers from the Council of Europe Parliamentary Assembly (PACE).

The delegation, headed by Alexander Fomenko (Russia, UEL), lauded the peaceful and orderly conduct of the vote. The atmosphere was clearly conducive to a democratic expression of the will of the electorate. The delegation further noted the broad cross-party and cross-community agreement on the need for a new Constitution, despite calls for a boycott from some quarters. Media, both print and electronic, offered a variety of opinions, allowing the people of Serbia to take a well thought-out decision.

However, a politically-motivated decision to hold an early vote on the Constitution did not allow the political parties to conduct a proper awareness-raising campaign, enabling substantive public debate. By the same token, there was not enough training for electoral officials, who were not used to administering a vote spread over two days. Other concerns included inadequate seals on the ballot boxes, polling booths that potentially compromised the secrecy of the vote, and the quality of the voter lists.

The delegation split into teams which observed in and around Belgrade, as well as Nis, Novi Sad, Novi Pazar, Vršac and Vranje. It could not observe the vote in Kosovo, as UNMIK had announced it would not support the holding of a referendum in this UN-administered territory.

Given the short time before the adoption of the new Constitution by the Serbian Parliament and the Referendum, the Council of Europe has not yet been able to evaluate its contents, but will do so shortly.

The delegation will produce a detailed report on this observation, including detailed recommendations, which will be presented to the Standing Committee of the Parliamentary Assembly on 17 November 2006.

The delegation was in Serbia at the invitation of the Republican Electoral Committee and had meetings with the Speaker of Parliament Predrag Marković, the Secretary of the Republican Electoral Commission Marko Danilovic, party representatives, the media and civil society.

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