

Analysis of Irregularities that Occurred During Referendum Organized for the Purpose of Confirming Republic of Serbia's Constitution

Introduction

Serbian Parliament adopted on 30 September 2006 the text of the new Serbian Constitution¹ and called the referendum for the purpose of confirming it² on 28 and 29 October 2006.

The process of confirming the Constitution was marked by numerous irregularities. For instance, the text of the Constitution underlines that Kosovo "is an integral part of the territory of Serbia", but Kosovo Albanians were not included in the voters' register and they received a barely formal call for signing in the voters' register.³ The authorities in charge the referendum process included only the representatives of parties that supported the endorsement of the constitution.⁴ The referendum process was accompanied by a highly aggressive and negative campaign directed against a group of political parties and non-governmental organizations that called for the boycott of the referendum process⁵. The turnout was very poor until the afternoon hours of the second referendum day when it surprisingly improved. The greatest number of incidents reported by citizens to the civil society organizations and political parties, which are against the endorsement of the constitution, occurred in the period of several hours before the closing of the polling stations.

A group of four non-governmental organizations, Helsinki Committee for Human Rights (Helsinki Committee), Lawyers' Committee for Human Rights (YUCOM), Youth Initiative for Human Rights (YIHR), and the Humanitarian Law Center (HLC), gathered in the Impunity Watch (IW) research initiative⁶, conveyed a joint analysis of the new Republic of Serbia's Constitution endorsing process and came to the identical conclusion. The way in which the referendum was conducted challenges the legitimacy of confirming the Constitution and thus the existence of people's will to accept this document as the highest legal act of their country. This sequence of events represents essential obstacle to establishing democratic rule of law in Serbia.

Because of the aforementioned reasons, we felt it was our duty to inspect and conduct further analysis of the aforementioned aspects that, according to our assessment, violate the achieved level of establishing democratic rule of law in Serbia.

Research and analysis overview is as follows:

¹ Republic of Serbia National Assembly' official web page, *First Special Republic of Serbia National Assembly's session in 2006*, >http://www.parlament.sr.gov.yu/content/lat/aktivnosti/skupstinske_detalji.asp?Id=1154&t=A<, visited on 02 November 2006

² *Decision Calling a Republic Referendum to Endorse the New Constitution of the Republic of Serbia, supra n.2*

³ B92, News, *Kosovo Albanians and Voters' Register*, B92 web page, >http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=10&dd=12&nav_category=11&nav_id=215138<, visited 1.11.2006.

⁴ REC (Republic Electoral Commission), Documents, REC web page > http://www.rik.parlament.sr.gov.yu/engleski/propisi_frames.htm, visited on 01 November 2006, : LDP legal team, Report on Calling the Referendum nad organizing the elections for endorsing the Republic of Serbia's Constitution from 31 October 2006, LDP web page, ><http://www.cedajovanovic.com/code/navigate.php?Id=618><, visited on 02 November 2006.

⁵ Analysis includes the period from 26 to 31 October 2006.

⁶ IW is a new international initiative that helps civil society organizations in post-conflict countries in strengthening democratic rule of law by fighting impunity for serious violations of international law.



1. Broad and Inconsistent Interpretation of the Referendum Process Legal Frame

The referendum process is regulated by the Law on Referendum and People's Initiative⁷, while appropriate provisions of the Members of Parliament Electoral Law is applied to issues not regulated by this law.⁸

Republic Electoral Commission (REC) that was, based on the National Assembly's Decision Calling the Referendum,⁹ in charge of the referendum process¹⁰ acted in violation of the existing legal frame and decided that provisions related to the electoral silence pursuant to Art. 5 of the Members of Parliament Electoral Law¹¹ will not be applied to this referendum¹² even though the application of this article was mandatory. Such decision is based on the theory publicly promoted during the campaign that provisions related to electoral process could not be entirely applied to the referendum.¹³ Besides legal frames, the justification in representing such interpretation is also violated by the fact that National Assembly did not establish a special Referendum Commission, as Law on Referendum¹⁴ demanded, but authorized the existing Republic Electoral Commission (REC), originally in charge of the regular electoral process, to organize the referendum process.¹⁵

Even before the voting began, the REC stated that "it is not unusual for voting process not to be annulled if evaluated that certain irregularities, such as the minor number of irregular ballots, would not affect the final results of the voting process"¹⁶ therefore announcing that certain irregularities would be tolerated. Representatives of non-governmental organization Centre for Free Election and Democracy (CeSID) claimed that REC made a decision on tolerating possible surplus of ballots in ballot boxes, which is utterly against the law.¹⁷

2. Referendum Process Authorities' Structure and Independent Monitors' Presence

On 02 October, the REC created a Guide for Referendum Process¹⁸ and delegated broad authorities to themselves, which, among the rest, include the appointment of electoral boards' members¹⁹ and discretion right to issue official authorizations to local monitors²⁰.

Two parliamentary political parties, Civic Alliance of Serbia (GSS) and Social Democratic Union (SDU), from the anti-referendum coalition, made a public critique regarding the objectivity of the REC's work stating that this commission abused its

⁷ Law on Referendum and People's Initiative, Official Gazette 48/94 and 11/98

⁸ Art 42 of the Referendum Law, *supra* n.7; Members of Parliament Electoral Law, Official Gazette number 79/92 and 83/92.

⁹ Decision Calling the Referendum, *supra* n.2

¹⁰ *Ibid*, Art 5.

¹¹ Art 5. Law on Electing Members of Parliament, *supra* n.8.

¹² LDP Report, *supra* n.4.

¹³ B92, Poligraf, *Pos-referendum Messages and Morals*, 30 October 2006, B92 web page, <http://www.freeb92.net/info/emisije/poligraf.php?yyyy=2006&mm=10&nav_id=217894> visited 2.11.2006

¹⁴ Član 13. Zakona o referendumu, *supra* n.7

¹⁵ B92, Poligraf, *supra* n.13; DANAS, J.L. Matić: *Public Broadcasting Service Violated the rules of democracy*, 30 October 2006; REC, Documents, *supra* n.4.

¹⁶ DANAS, REC spokesperson Miodrag Petrović's statement, *Noćne sesije bude sumnju (Night sessions bring doubt)*, 26.10.2006.

¹⁷ Art 60 and 71 of the Elections Law, *supra* n.8; DANAS, *Night sessions*, *supra* n.15.

¹⁸ *Guide for Republic Referendum Process for Confirming the New Republic of Serbia's Constitution*, Official Gazette number 84/2006

¹⁹ Art 14, *Guide for Referendum Process*, *ibid*

²⁰ Art 29, *Guide for Referendum Process*, *ibid*



position by making a decision to establish electoral boards²¹, by which these two political parties were not placed on the list of parties, whose representatives should be members of electoral boards. After several objections had been filed, REC reconsidered its decision, but GSS and SDU were very dissatisfied with the small number of members they could delegate to electoral boards, based on the new decision²² and refused to take part in the referendum process²³.

Based on the aforementioned facts, it is hard to make a clear conclusion that REC made its decisions motivated exclusively by the need of providing organization and legality of the referendum process. In view of the very extensive interpretation of the provisions regulating referendum process and the statements given by some REC members, who unambiguously showed their support to the voted Constitution²⁴, one could say that the professionalism could be considered questionable in a great deal of this authority's decisions.

3. Sudden Change of Turnout Trends

According to the generally consistent reports presented in the media during the referendum by REC and CeSID, only 17.5% of registered voters voted by the end of the first referendum day. On the second day, by the late afternoon hours, this percentage increased to 26%, after which, at around 17:00, turnout suddenly increased to 41.9% and before the polling stations were closed, as REC reported, the new Constitution was confirmed by the votes of 52.31% voters. The total number of registered voters who voted at the referendum was 54.19%.²⁵

The results presented by the representatives of political parties that called for the boycott of the referendum and whose activists were located in front of the polling stations where they monitored the turnout, mainly coincided with the results presented by REC and CeSID at the general and local level until 17:00 of the second referendum day when differences between these reports became significant.²⁶ Hence, Liberal Democratic Party (LDP) claims that the turnout was 49.7% at the most²⁷, while Party for Sandžak stated in their report that, according to their data, the turnout of Sandžak citizens at this referendum was 20% at the most²⁸, while it was publicly broadcasted, according to the official information, that 59% percent of voters voted.²⁹

4. Incidents During the Voting Process

The referendum was monitored by a total of 1,403 local and international independent monitors, out of which 26 were from the Council of Europe (CoE), 35 from the

²¹ REC, Decision number 014-101/06 made on 02 November 2006

²² By this decision GSS had a rights to delegate 0,8% and SDU 0,4% of the total number of electoral boards' members, by which they had opportunity to monitor only 1,2% of the total number of polling stations, REC, Decision, number 014-182/06, made on 13 October 2006.

²³ *Irregularities in the work of REC and state authorities' abuse for the urpose of falsiefying the results of the referendum*, GSS web page, Press Releases, ><http://www.gradjanskisavez.org.yu/srp/saopstenja.php>< visited on 31 October 2006

²⁴ At the press conference held on 30 October 2006, REC President, Mihailo Rulić, gave the following statement: "As a citizen, a

I am very happy to live in Serbia today in symbolical and formally-legal sense, REC web page

>http://www.rik.parlament.sr.gov.yu/latinica/saopstenja_frames.htm<, visited on 02 November 2006

²⁵ REC, Press Releases, REC web page >http://www.rik.parlament.sr.gov.yu/latinica/saopstenja_frames.htm<, visited on 02 November 2006; CeSID, *Referendum Confirming the Republic of Serbia's Constitution*, CeSID web page, ><http://www.cesid.org>< visited on 01 November 2006.

²⁶ B92, News archive for 28 and 29 October 2006, B92 web page, ><http://www.b92.net/info/><, visited on 31 October 2006; YIHR Interview with Jelena Milić, a member of the International Relations Forum

²⁷ LDP Report, *supra* n.4.

²⁸ Party for Sandžak press release index number 02/117-29-10/06, 29 October 2006.

²⁹ 100 PLUS Radio station, News, *Around 60% of voters voted in Sandžak*, 100 Plus radio station web page, ><http://www.radiostoplus.com/vesti.html>< visited 1.11.2006.



European Union Monitoring Mission in Belgrade, 7 monitors from the largest parliamentary groups of the Russian Federation Duma and 1,335 CeSID monitors.³⁰ The referendum was conducted at a total of 8,385 polling stations³¹.

The CoE reported that the referendum was well conducted in general, with certain minor remarks, but that the report with detailed analysis is expected soon.³² However, a very small number of foreign monitors, a total of 68, was not enough to cover the necessary number of polling stations during the two-day-long voting process necessary for their assessment to represent a base for providing solid legitimacy of the referendum. In the response to the letter sent by the Helsinki Committee, YUCOM, and YIHR to the CoE³³ in view of the referendum legitimacy evaluation, it was stated that the final official evaluation was not yet given, that they would take into account objections filed by these organizations, and that only after that the final report would be adopted.³⁴

CeSID Executive Director, Zoran Lučić, stated that they had noted great irregularities, such as voting in the name of persons who were not present at the polling stations, "family voting"³⁵, and so on, at 8, out of 600 polling stations where they had their monitoring teams, but that the general result of the referendum would remain unchanged even if votes from these polling stations were discarded³⁶. However, it seems impossible to claim that the percentage of irregularities shown on this sample, which is 1.3%, would not significantly affect the final referendum result, especially if we have in mind that more than 50% of voters had to vote for the Constitution in order for it to be confirmed³⁷, and according to the official result only 52.31% of voters voted in favour of the Constitution³⁸. Furthermore, the question is: Was it possible that the percent of irregularities could be higher at the polling stations where there were no independent monitors? CeSID representatives evaluated that "the referendum was organized and conducted in the poorest manner in comparison to all elections organized since the year of 2000"³⁹. They noted that the big problem was the allocation of campaign money and the use of that money for "political promotion" and appearance in electronic media during the referendum campaign under the name of political parties, which is against the law.⁴⁰ Media also reported the existence of irregularities related to the voters' registers in the Serbian consulates and embassies abroad.⁴¹

³⁰ Republic of Serbia National Assembly's press release, *International and local control over the referendum process is conducted by 1,403 monitors and 32 interpreters*, 29 October 2006, National Assembly's web page, >http://www.parlament.sr.gov.yu/content/lat/aktivnosti/skupstinske_detalji.asp?Id=558&t=I<, visited on 01 November 2006.

³¹ RTS, *CsSID preliminary: Constitution Confirmed*, 29 October 2006, RTS web page >http://www.rts.co.yu/jedna_vest.asp?belong=&IDNews=165523<, visited 1.11.2006

³² CoE, *Constitutional referendum conducted, in general, with due respect for Serbia's Council of Europe commitments*, 30 October 2006, the Council of Europe web page, ><http://assembly.coe.int/ASP/Press/StopPressView.asp?CPID=1836><, visited on 02 November 2006.

The letter published in Danas journal on 03 November 2006.

³⁴ Internal document available in the Helsinki Committee, YUCOM, and YIHR archives

³⁵ One person votes for other family members, who are not present at the polling station

³⁶ B92, News, *Who Did Not Vote at the Referendum*, 31 October 2006, B92 web page, >http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=10&dd=31&nav_id=217912<, visited on 01 November 2006

³⁷ RTS, *CsSID preliminary, supra* n.30.

³⁸ Official web page of the Republic of Serbia Government, News, Politics, *A total of 52.31% voters voted for new Constitution of Serbia*, ><http://www.srbija.sr.gov.yu/vesti/vest.php?id=58572><, web page visited on 01 November 2006

³⁹ B92, News, *CeSID: Two Steps Behind*, 31 October 2006, B92 web page, >http://www.b92.net/info/vesti/u_fokusu.php?id=122&start=0&nav_id=217578<, visited on 01 November 2006.

⁴⁰ B92, News, *Money and General or Political Parties' Interests*, 01 November 2006, B92 web page >http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=11&dd=01&nav_category=11&nav_id=218046<, visited 1.11.2006

⁴¹ B92, News, *Voting Omissions in Diaspora*, 29 October 2006, B92 web page, >http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=10&dd=29&nav_category=11&nav_id=217646<, visited 2.11.2006.



Many citizens addressed YIHR and YUCOM reporting the incidents that occurred during the voting process. They claimed that they were present when electoral board members allowed certain citizens to vote without personal identification documents or to vote for their family members, who were not present at the polling station. Hence, Marija Marković from Jagodina described that she was present at the polling station when some people said they did not bring their personal ID cards. Electoral board members looked at each other and said that it was not a problem and that they could vote anyway. Another person from the same town, Bojan Janković, saw when a man approached the electoral board members and “asked them how was the voting progressing and if the referendum would be successful”. He added that his wife and daughter stayed at home and asked if he could vote for them. Electoral board allowed him to do so. Adel Slatina from Priboj said that he heard when a member of electoral board, Ivana Damjanović, called for citizens to come and vote even without personal ID cards. Two witnesses described an incident that occurred in front of the Polling station no. 74 in Jagodina when a member of electoral board verbally and physically assaulted an LDP activist, who stood in front of the polling station and registered how many citizens came to vote in the referendum.⁴²

A member of one electoral commission in Pančevo, said that members of electoral board at his polling site did not sign the control list at the beginning of the voting process, that deceased persons were in the voters’ register, and that on the second referendum day, due to the poor turnout, the members of the electoral board visited some voters’ homes, among which Roma family Dauti, “and put pressure on them to vote. They told an old Roma woman to bring other family members’ ID cards (some of them were not at home and some were working abroad) and vote in stead of them, which she did”. The witness also said that several hours before the polling station closed, one of the board members turn off the ultraviolet lamp, which serves to prevent multiple voting, with explanation that the battery was weak. From that moment they did not conduct any further checks. “During the process of counting ballots, one electoral board member selected, from the pile of irregular ballots, the ones on which citizens did not circle any option and circled option YES”.⁴³

Citizens also reported that political parties’ symbols were posted in the immediate vicinity of polling stations, which is against the law.⁴⁴ Some reported that they saw police officers entering some polling stations in uniform even though the law prohibits the presence of police at the polling stations⁴⁵. Some citizens also noted that the Radio television of Serbia (RTS) First Channel and several other stations broadcasted in the afternoon of the second referendum day the call for citizens allowing them to vote with health care cards⁴⁶ and to vote after 20:00 if they are in the vicinity of the polling station, which is against the law.⁴⁷

Representatives of political parties from the boycott coalition presented similar incidents reported to them by their activists and other citizens⁴⁸. These parties also

⁴² IW (YIHR), series of interviews conducted in the period from 30 October until 02 November 2006.

⁴³ IW (YUCOM), series of interviews conducted in the period from 30 October until 02 November 2006.

⁴⁴ Art 55 *Electoral Law*, *supra* n. 8. prescribes that “at the polling station and in the radius of 50 meters from the polling station, it is forbidden to post political parties’ symbols or other propaganda material”

⁴⁵ Art 58 *Electoral Law*, *supra* n.8.

⁴⁶ Health Care ID card does not have a photo and it is not a valid identification document

⁴⁷ IW (YIHR, YUCOM), IW (YIHR), series of interviews conducted in the period from 30 October until 02 November 2006; Art 18. *Zakona Referendum Law*, *supra* n.7. prescribes that after the time designated for voting expires, only voters, who are present at the polling station, can vote.

⁴⁸ IW (YIHR), Interviews with GSS representatives, 31 October 2006; LDP Report, *supra* n. 4.



presented the recording of the voting without personal ID cards and voting for other person made by their activists.⁴⁹

5. Media Campaign

Referendum campaign was aggressively directed against the referendum boycott coalition political parties' leaders and several non-governmental organizations⁵⁰. Four days prior to the beginning of the referendum, on 24 October 2006, Kosovo Serb National Council representatives⁵¹ and a group of students from Kosovska Mitrovica protested in front of the LDP's premises in Belgrade, shouted and threatened "We will kill Čeda"⁵². Traditional Albanian hat, known as „keče“, was shown on the posters behind the stage as a symbol of enemy and all "traitors" wore it⁵³. Participants in the protest wore T-shirts with insignias of the Special Operations Unit, whose members are charged with the murder of Serbian Prime Minister.⁵⁴ Certain printed media published affirmative reports regarding this protest.⁵⁵ *Politika* journal condemned this protest, qualifying it as a "provocation and, in many ways, inappropriate action", but they highlighted in the remainder of the text that the supporters of the boycott are "breaking this community apart"⁵⁶. Two days prior to the referendum, demonstrations in Kosovska Mitrovica in support of the draft Constitution were organized. Citizens, who gathered there, praised Ratko Mladić, a Hague indictee. Aleksandar Popović, a Minister in the Serbian Government and Democratic Party of Serbia Vice-President, was among the speakers at these demonstrations, as well as Serb Radical Party Secretary General, Aleksandar Vučić, and a member of the Serbian Socialist Party Main Board, Ivica Dačić.⁵⁷

On Sunday, 29 October, the second referendum day, *Glas Javnosti* Daily published a readers' letter: "Boycott in Service of Independent Kosovo". The journal's stance that those boycotting the referendum contribute to Serbia's losing of Kosovo becomes quite clear already from the title. That same day *Press* Daily published the statement given by Bora Đorđević, a rock musician, titled "Who do you support, Patriarch or Lesbians?"⁵⁸ In the afternoon hours of that same day, the campaign started resembling hate speech. It was suggested to citizens through electronic media that Kosovo Albanians and their leaders were preparing to celebrate the failure of the referendum⁵⁹. In addition, printed media published the following day how citizens were coming to vote in order to "prevent Shiptars from celebrating"⁶⁰. That evening the Republic of Serbia National Assembly Chairman, Predrag Marković, stated from the Assembly's rostrum that "the failure of referendum would represent the admission of protectorate and dictatorship"⁶¹.

⁴⁹ *Referendum Theft - LDP recording*, available at the following address,

><http://www.youtube.com/watch?v=XBqD5sflB8c&mode=related&search=<>, visited on 02 November 2006.

⁵⁰ Čedomir Jovanović, Nataša Mičić, Žarko Korać, Nenad Čanak, Sonja Biserko and Biljana Kovačević Vučo

⁵¹ Serb National Councils's leader, Milan Ivanović, and a member of the state negotiation team for Kosovo and DSS official, Marko Jakšić supported the protests.

⁵² „Čeda“ is a well-known nickname of the leader of the LDP, which led the referendum boycott campaign

⁵³ Nataša Mičić, Nenad Čanak, Sonja Biserko, Nataša Kandić and Goran Svilanović were marked as "traitors".

⁵⁴ Insults for those Boycotting, 24 October 2006, B92 web page,

>http://www.b92.net/info/komentari.php?yyyy=2006&mm=10&dd=24&nav_id=216785<, visited 1.11.2006.

⁵⁵ KURIR, *Shiptar Lobby*, 25 October 2006

⁵⁶ POLITIKA, *Breaking Community*, 26 October 2006

⁵⁷ B92, News, *Demonstrations for Constitution in Kosovska Mitrovica*, 26 October 2006, B92 web page,

>http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=10&dd=26&nav_category=11&nav_id=217110<, visited on 01 November 2006.

⁵⁸ Đorđević said to the citizens, who still have second thoughts: "What are they having second thoughts about? They have Patriarch Pavle on one side and Ceda Jovanovic, gays, lesbians, and other scum on the other. So let them choose Serbia they want".

⁵⁹ B92, *Poligraf*, *supra* n. 13.

⁶⁰ *Glas javnosti*, *Off to Polling Stations at Five Minutes to Eight*, 30 October 2006

⁶¹ *Glas javnosti*, Serbian National Assembly Chairman Predrag Marović's statement, 30 October 2006



Conclusion

Based on the joint research and analysis that we conducted within the IW platform, we came to the conclusion that the referendum was not conducted in line with the democratic procedures, by which the legitimacy of the highest legal act in the country became questionable. The atmosphere in which the endorsement of Constitution and the referendum campaign were conducted contained serious elements of culture of impunity promotion. We believe this situation is very worrisome. It represents obstacle to further democratization and development of the society in general and we are calling for the respective state authorities and International Community to find a solution for the present situation. Our organizations will continue monitoring and analyzing this problem. We will also actively work on creating the resolution of the problem.

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