

# East European Constitutional Review

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applied only when they do not contradict Art. 13 of the "Transitional Provisions" of Ukraine's Constitution, which states that "the current procedure for arrest, holding in custody, and detention of persons suspected of committing a crime, and also, for the examination and search of a dwelling place or other possessions of a person is preserved for five years after this Constitution comes into force." Therefore, Arts. 106, 107, 177, and 190 of the Code of Criminal Procedure, which regulate procedures of detention, arrest, and searches, will remain in force until the new legislation is passed or until June 28, 2001, five years after the passage of the Constitution.

**Yugoslavia** Serbia still has no president, as the October 5 run-off elections were invalidated by a turnout below the required 50 percent of qualified voters. Four major political blocs dominated the electoral campaign for both the presidency and Parliament: The Socialist Party of Serbia (SPS)-United Yugoslav Left (UYL)-New Democracy (ND) bloc headed by Slobodan Milosevic, Serbian Revival Movement (SRM) headed by Vuk Draskovic, the Serbian Radical Party (SRP) headed by Vojislav Seselj, and the Anti-Election Boycott group headed by Zoran Djindjic's Democratic Party (DP), Democratic Party of Serbia (DPS), and Vesna Pesic's Civil Alliance of Serbia (CAS).

As a monarchist who doles out fierce anticommunist rhetoric while defending the country's Serbian Orthodox tradition, Draskovic proposed holding a referendum to ask Serbian citizens if they prefer a republic or a monarchy. Former paramilitary leader Seselj promised to tear up the Dayton Accords and, in the past, has refused to meet with international election monitors. Lilic, a front man for Milosevic, warned that a vote for his party was the only path to peace, promising that his party alone could guarantee the Dayton Accords. None of the candidates offered a concrete economic program.

The opposition coalition—the parties and organizations that united under the banner "Together" last November and successfully forced Milosevic to validate the elections which ousted his own party from power in several municipalities—collapsed by the time of the elections. Moving away from its "Together" partners, Draskovic's SRM went even further on October 1 when, teamed up with SPS and SRP members on the Belgrade City Council, it successfully engineered a no-confidence vote in Belgrade Mayor Zoran Djindjic (DP) and installed vice-mayor Milan Bozic (a SRM member and close ally of Draskovic) as acting mayor. SRM accused Djindjic of siphoning off city funds to companies run by DP insiders, using the post to campaign for his party in the presidential elections, and turning his office into the anti-election headquarters. With this move, Draskovic seemed to have retaliated against Djindjic, who did not support his candidacy for the Serbian

presidency. (See *EECR*, Yugoslavia Update, Vol. 6, Nos. 2-3, Spring-Summer 1997.)

The 110-member City Council must now elect a new mayor. The same day that the board ousted Djindjic, the new city leadership voted to dismiss the management board and chairperson of the Studio B independent television station on charges that they were pro-Djindjic. Studio B has frequently been a political battleground. In 1995, the station was taken over by the government on charges that it had been illegally privatized. One of Djindjic's first moves as mayor was to release the station from government control. (See *EECR*, Yugoslavia Update, Vol. 6, No. 1, Fall 1996.) Chair of the station, Lila Radonjic, who resumed work at the station when Djindjic wrested it from state control, has now lost her job again. Radonjic alleged that her latest dismissal was clearly political, as Bozic had warned her just before her dismissal to stop broadcasting reports about the parties boycotting the elections.

Another issue plaguing the opposition coalition involved 22 unverified federal mandates from the November 1996 federal parliamentary elections. According to the 1992 Law on the Elections of Federal Members of Parliament, all coalition partners must confirm and sign the allocation of parliamentary seats among the members of the coalition—the first one-third of the candidates are accepted by law while the party designates the remaining two-thirds either according to their own party regulations or on the basis of a coalition agreement. In the federal parliamentary elections, candidates ran on party lists and seats were awarded on a proportional basis. According to the initial "Together" agreement, a proportional percentage system was established giving 10 mandates to SRM, 6 to DP, 4 to DPS, and one each to CAS and Democratic Center. After the election, the parties refused to sign-off on a distribution of seats, however. Draskovic went so far as to claim the remaining mandates for the SRM, on the grounds that the other coalition partners had not adhered to the initial agreement.

The OSCE report concerning the irregularities in the November 1996 local elections call for fair elections, a free and independent media, and a "dialogue" between the government and the opposition on the general elections. (See *EECR*, Yugoslavia Update, Vol. 6, No. 1 Winter 1997.) These recommendations were never acted on. On June 4, a group of twelve opposition parties issued an ultimatum listing the conditions necessary for their participation in the September 21 presidential and parliamentary elections, including agreements that Milosevic would not run for a third term as president of Serbia, that the government not push through the law increasing the number of electoral units (see below), that a roundtable on electoral conditions be held, that elections be monitored, and that the impartiality of the media be guaranteed.

Milosevic complied only with one demand, that he not seek a third term for the Serbian presidency. In

response, on June 19, the twelve parties—which included DP, DPS, CAS, and DS—decided to boycott the elections. Although it was to be expected that the right-wing Serbian Radical Party, led by Seselj, did not take part in this agreement, a surprise came when the Serbian Revival Movement, led by Draskovic, did not join the boycott. Draskovic's unforeseen participation lent Milosevic's SPS the necessary credibility for the upcoming elections. SRM managed to attract more votes than the other opposition parties. For example, SRM received 10 of the 22 seats won by "Together" in last year's federal parliamentary elections. The remaining 12 seats were split between four other parties.

Opposition parties were also busy protesting the Serbian government's new electoral law passed this summer. Passed on July 18 amidst heated debate in the Serbian Parliament, the law—proposed with a package of other electoral laws (Law on Parliamentary Representatives and Law on Financing of Political Parties)—increased the number of electoral districts from 9 to 29 and reconfigured the Kosovo electoral units by incorporating them into electoral units in southern Serbia. The opposition argued that the law on electoral units substantially changed the proportional system in such a way that, for example, up to 45-50 percent of parliamentary seats could now be obtained with some 30-35 percent of the votes. The territories were divided in a way that disadvantaged certain political, social, and ethnic groups. For example, in Vojvodina, Serbia's Hungarian minority was split into several different units. Electoral units had unequal numbers of voters, suggesting that SPS was well informed about which social and political groups were concentrated in which areas.

When the package of bills was introduced, opposition MPs reacted with strategic outrage, submitting over 2000 amendments in an attempt to block the bill's passage. Because amendments must be considered individually, this move would have dragged out the legislative procedure so that the old election law would still have been in force for the September 21 elections. Speaker of Parliament, Dragan Tomic (SPS) lumped the proposed amendments into four groups, so they would not have to be discussed one by one. This further angered opposition MPs, who claimed that the move violated legislative procedure. Tomic then went even further and prohibited the continued participation of opposition MPs in the session on the grounds that they were obstructing Parliament. The electoral unit bill was passed with 128 votes in favor from the remaining 131 MPs.

Immediately after the bill passed, opposition parties (excluding Draskovic and SRM) lodged a motion at the Constitutional Court challenging the constitutionality of the adopted law, arguing that the legislative procedure at its passage was irregular, and did not comply with the Rules of Parliamentary Procedure. In mid-October, by a vote of 7 to 1, the Constitutional Court declined to hear the case on the grounds that Rules of Parliamentary Procedure were not a

constitutional issue, and consequently, did not fall within the competence of the Constitutional Court.

On September 21, voters went to the polls to name Serbia's new president and to fill 250 parliamentary seats. With a turnout of 57.5 percent, the opposition boycott failed. According to the final results in the parliamentary race, the SPS-UYL-ND coalition won 34.25 percent of the votes for 110 seats, Seselj's SRP won 28.7 percent of the vote for 82 seats, and Draskovic's SRM won 19.2 percent for 45 seats. Thirteen other seats were split between other parties.

With SRM's and Draskovic's participation in the parliamentary and presidential elections, the unsuccessful anti-election campaign of 12 opposition parties, the fall of Djindjic as Belgrade mayor, and the still pending dispute regarding the 22 federal seats won by "Together," the reform coalition has definitively collapsed. There remain some pockets of cooperation on the local level throughout Serbia. But, as Vesna Pesic recently put it, "what was known as the democratic opposition in Serbia went through a crisis that ended in its final and total dismemberment and collapse."

As provided by the Serbian Constitution and the Law on the Election of the President of the Republic (Arts. 6-9), a minimum of 50 percent plus 1 of the registered voters must vote in order for the presidential election to be valid. If no candidate obtains a majority of votes cast in the first round, a second round of elections is necessary. In the second round, at least 50 percent plus 1 of the voters must vote.

A total of 17 candidates entered the presidential electoral race, including SPS-JUL-ND candidate former Federal President Zoran Lilic, SRP candidate Seselj, and SRM candidate Draskovic. The first round of presidential elections was successful, with 57.47 percent of voters participating. Although most thought Zoran Lilic would be a shoo-in, he only obtained 35.7 percent of the votes, while Seselj obtained 27.28 percent, and Draskovic came in third with 20.64 percent. The second round of presidential elections—a run-off between Lilic and Seselj—took place on October 5. But this second round was not successful, as only 48.97 percent of the registered voters showed up to vote. The results of the first round were inverted, Seselj coming in as the victor, with 49.10 percent of the votes. Lilic ran a close second, with 47.90 percent. Although invalid, Seselj's victory came as an unpleasant surprise for many, sending shivers not only throughout many segments of the population, but throughout the ranks of the SPS itself. It is common knowledge that Seselj and his SRP were creations of Milosevic in the period of his pro-nationalist policy (1991-94). However, times have changed, and many wonder if Milosevic is capable of containing Seselj, publicly acknowledged as his "most-respected political rival."

Institutionally, the unsuccessful presidential elections opened a wide constitutional gap, for no constitutional or legal provisions provide for repeat elections. Particularly

unclear is the time limit within which the repeat presidential elections must be held. There are many interpretations, some even setting the date for February or March of next year. Other issues surrounding the repeat presidential elections are equally unclear: Are repeat elections new elections, with everything starting again—such as candidacy signatures and the campaign? Who is eligible to run in the repeat elections—only the two candidates who competed in the second rounds, all candidates that competed in the first and second round, existing and new candidates, or only new candidates? And finally, what happens if the repeat elections too are unsuccessful?

The abortive presidential elections in October also created a situation incompatible with the separation of powers principle ostensibly central to the political and legal institutions of Serbia. The office of president is now occupied by an acting president, the Speaker of Parliament. But with the election of a new parliament, a new speaker must be elected. According to the Constitution, the first session of the new Parliament is convened and presided over by the most senior deputy until a new speaker is elected. Thus, the office of the Speaker of Parliament is a *pro tempore* position until the new Speaker is elected. This means that the office of the president will be executed on a *pro tempore* basis by the acting president who is, at the same time the *pro tempore* senior deputy acting provisionally as Speaker of Parliament. An even more uncertain and confused situation will ensue if the new Speaker of Parliament is not elected (for example in the case of parliamentary obstruction) and if the "repeat" presidential election fails again.

On October 21, Speaker of Parliament Tomic announced that presidential elections will take place on December 7. The elections would begin anew, allowing new candidates to be named. The Central Electoral Commission registered candidates until November 17. Earlier, on October 22, Djindjic and DPS leader Kostunica said that their boycott of the presidential elections would continue because the government had not met their earlier demands. On November 2, SRM once again nominated Draskovic as its candidate. SRP also renamed its previous candidate, Seselj. The SPS-UYL-ND bloc, however, did not rename Lalic, nominating instead Milan Milutinovic as its candidate. Milutinovic is currently a member of SPS's main committee and is the federal foreign minister.

Montenegro also held presidential elections. Like Serbia's two elections, the Montenegrin elections were a test of Milosevic and his staying power, as tension has been mounting within the ruling Democratic Party of Socialists (DPS), between anti-Milosevic Prime Minister Milo Djukanovic and pro-Milosevic President Momir Bulatovic. The tension caused the DPS to split into two factions, causing confusion within both party rank and file and potential voters, one faction headed by Milica Pejovic-Djuric (supporting Milo Djukanovic), and the other by Momir

Bulatovic. (See *EECR*, Yugoslavia Update, Vol. 6, Nos. 2-3, Spring-Summer 1997.)

The political friction between Djukanovic and Bulatovic culminated in a battle over the candidacy for the presidency, resulting in a tug-of-war between the Constitutional Court of Montenegro and the Federal Constitutional Court. The Montenegrin Law on the Election of the President of the Republic provides that there cannot be two presidential candidates from the same party. On August 4, Milo Djukanovic submitted his candidacy application, which was accepted by the Montenegrin Electoral Commission. A few days later Momir Bulatovic, on behalf of the DPS, also submitted his application, which was also accepted by the commission.

The Djukanovic DPS faction responded with a complaint to the Constitutional Court of Montenegro. The Court accepted this complaint and, on August 14, the Electoral Commission annulled Bulatovic's application. Bulatovic then took the issue to the Federal Constitutional Court, claiming that his basic political right (Art. 34) to run for office was breached by the decision of the Montenegrin Constitutional Court. Controversy arose over the competence of the Federal Constitutional Court to decide on this matter, as the Federal Constitutional Court has constitutionally prescribed competence only over issues concerning federal election disputes (Art. 126), meaning that the Federal Constitutional Court had no constitutional grounds for resolving this dispute. In his appeal to the federal court, Bulatovic argued that this was not only a republic electoral question, but also a matter of protecting his fundamental political right to be run for office, a right granted by the federal Constitution (Art. 34), and therefore under the jurisdiction of the federal Constitutional Court.

On September 10, the federal Constitutional Court ruled unconstitutional the Montenegrin Law on the Election of the President of the Republic which limits parties to one candidate. In other words, Bulatovic had won. On September 14, the Electoral Commission reversed its decision to annul Bulatovic's candidacy application, formally acknowledging him as a presidential candidate of the DPS.

In a move to prevent further escalation of political tension, the Djukanovic DPS decided not to contest this new decision. The Montenegrin presidential elections were set for October 5, with six other candidates participating. According to the official results of the first round, Bulatovic won 47.45 percent of the votes while Djukanovic won 46.72 percent. On October 19, Montenegrin voters went back to the polls, and Djukanovic won by 6,000 votes. After the first round of elections, the Supreme Court of Montenegro announced that over 13,000 applications for the correction of voter registers were submitted, of which practically all were accepted, raising doubt as to which of the two candidates tampered with the registers. After his loss in the second round, Bulatovic immediately filed two

complaints. The first claimed that Supreme Court correction of voter registers between the two rounds is not allowed, and the second, that the Central Election Committee's decision permitting voting after official closing times of polls was a breach of electoral procedure. In Podgorica, the capital of Montenegro, for example, polls stayed open until past midnight, even though official closing time is 8 pm.

On October 22, the Montenegrin Constitutional Court rejected Bulatovic's complaint of electoral fraud. Bulatovic claimed Djukanovic-supporters had illegally tampered with voter registers between the two rounds of voting. The court ruled that Bulatovic had not filed his objections on time. The court did not rule on the Central Electoral Committee's decision to extend voting during the second round of elections, arguing that this issue did not fall within the court's competence.

As president of the Federal Republic of Yugoslavia, Milosevic's formal powers include little more than the prerogative to nominate judges and the chief of the National Bank. He lost an important ally when Momir Bulatovic

failed to win the Montenegrin presidency. In recent months, moreover, three of his closest associates, among the wealthiest businessmen in Serbia, have been murdered. (See the article by Uros Komlenovic in this issue.) But, as the acting head of the Socialist Party of Serbia, he is in control of the most significant political machine in the former Yugoslavia. His profile as the spokesman for the greater Serbian community also gives him access to international institutions as well as foreign governments, and requires other politicians in the FRY to lobby for his support. Milosevic benefits from a disorganized and self-defeating opposition composed of monarchists, communists, and liberals. Few know the reach of Milosevic's networks in the Serbian underworld and the strength of the political influence such connections can muster. He certainly has a remarkable ability to recreate himself, first as hard-line communist, then as virulent nationalist, now as defender of the Dayton Peace Accord. The formal power of the federal presidency may be modest by Milosevic's standards, but, with time, he will no doubt recraft the office more to his liking.

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