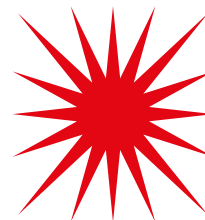


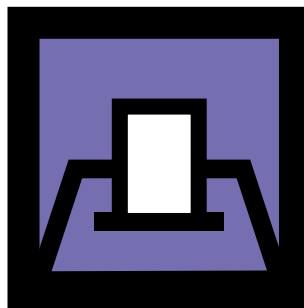
Assessment of Serbia's progress in meeting the political criteria in the scope of the EU negotiation



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Elections in Serbia- Simulation of Democracy



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Elections in Serbia – Simulation of Democracy

The elections in Serbia were held in a very particular environment unprecedented so far. Freedom House declared Serbia a hybrid democracy.¹ The Report on Serbia mentions that the reasons for this assessment, among others, were poor electoral circumstances, abuse of public resources and pressure on the state institutions. These were the reasons why a part of the opposition has been boycotting the work of the Parliament as far as the beginning of 2019, which later on resulted in boycotting the elections. The democratic decline continued as all election activities were interrupted due to the epidemic, so the activities were carried out in two phases.

The elections for the MPs of the National Assembly of the Republic of Serbia, elections for the deputies in the Autonomous Province of Vojvodina Assembly, as well as the elections for local self-government assemblies were called on 4 March 2020. From that day, the domestic observers were monitoring all pre-election activities while the international observers monitored them only partially. However, since the breakout of the COVID-19 infectious disease, the state of emergency was declared on 15 March, and soon all election activities were interrupted,² as well as the observation missions in Serbia.³

Although Serbia was in the state of emergency for almost two months, that did not stop some political actors from carrying out a campaign outside of the campaign. Their activities included officials campaigning, distribution of humanitarian aid, but also short-term pecuniary disbursements. Such actions, in parallel with the media domination of the ruling parties and active boycott of the elections by the group of the opposition parties, affected the final results of the polls. The state of emergency was terminated on 6 May, and the election activities continued on 11 May 2020. A new date for the elections was set for 21 June 2020. As the election process continued, the observation missions continued their observation of the election campaign.

OSCE/ODIHR, as an international organisation participating in the observation, did not participate in its full capacity this time, so the elections were observed in a limited form. Due to expressed concern for the election process and failure to meet previous recommendations which the mission had made, for the first time since 2007 the mission had initially planned to observe the elections in full capacity. However, due to the epidemiological situation, the mission reduced the period of the observation, which prevented systematic and all-inclusive observation of the elections. The limited mission missed an opportunity to monitor all election processes which could have facilitated the making of all the necessary recommendations.

The period before the elections was marked by the dialogue on the electoral circumstances between the government and the opposition. After years of neglecting this topic which finally came back to the agenda, the outcome of the dialogue was yet limited in its range. Some laws regulating the abuse of public resources were amended and made more precise, by defining public resources and providing the definition of the content of the

1 Freedom House, "Freedom in the world 2020 - Serbia" <https://freedomhouse.org/country/serbia/freedom-world/2020>

2 Insajder, "RIK adopted a decision on interruption of all election activities" <https://insajder.net/sr/sajt/vazno/17301/>

3 Crta, "CRTA observation mission withdraws all observers from the field and appeals for the elections to be postponed" <https://crt.rs/posmatracka-misija-crte-povlaci-posmatrace-sa-terena-i-apeluje-na-odlaganje-izbora>

election campaign within the meaning of its financing. Although there was an agreement that the laws regulating the election system would not be amended in the election year, these amendments nevertheless happened, as the Law on Election of MPs and the Law on Local Elections had been amended. Such amendments to the law represent a particular type of election engineering with the aim to tailor the amendments to influence the will of the opposition parties to abandon the boycott and participate in the election race.

The key for the quality of the election process is the work of the independent state institutions, such as the Regulatory Authority for Electronic Media and Anti-Corruption Agency. Along with other organisations which carry out the monitoring of the election process, CRTA had ascertained an apparent lack of pluralism of political actors in the media, non-observance of the representation without discrimination, and also established that the Regulatory Authority for Electronic Media performed a non-transparent and biased media monitoring during the election campaign. The Anti-Corruption Agency processing of complaints and the manner it had interpreted the law, brings an inevitable conclusion that during the decision-making process the law was applied only selectively and that the decisions and imposing of measures were carried out inconsistently.

The election process in Serbia is followed by many controversies regarding the electoral roll. Precisely due to this, in 2019, the work on its verification commenced. However, this process was halted due to the need to make an impact assessment regarding the personal data protection that was only subsequently submitted in May 2020. Stalling the work on the verification of the electoral roll stands out as yet another unsuccessful attempt to systematically solve the problems pertaining to it.

Legislative framework

In 2019, the process of amending the laws regulating the election matters was initiated. Before this process, the dialogue on the elections was organised by the Faculty of Political Sciences of the University of Belgrade and Open Society Foundation, as a preparation for the 2020 elections. Among other, the participants gathered in this dialogue were expert civil society organisations working on the election matters,⁴ representatives of the ruling coalition and opposition parties, as well as the members of the academic community.

The participants of the dialogue had an opportunity to discuss recommendations of the domestic and foreign organisations regarding the improvement of the election process. One set of recommendations related to change of practice without amendments to the laws, while the second set of recommendations focused on law amendments that were relevant for the quality of the electoral circumstances. In the course of the discussion, the problems in the election practice were mapped referring to the abuse of public resources and the officials campaigning. As one of the outcomes of the dialogue, in December 2019, the amendments to the four laws regulating this subject matter were adopted, as follows: Law on Public Enterprises, Law on Financing Political Activities, Law on Anti-Corruption Agency and Law on Prevention of Corruption.⁵

4 CRTA, GESID and Transparency Serbia.

5 Anti-Corruption Agency Law from 2009 was replaced by the Law on Prevention of Corruption. This Law refers to the work of the Anti-Corruption Agency, which was adopted in May 2019, and its application started in September 2020.

Although the idea of these negotiations was to observe the principle of not amending the election laws in the election year, the election laws were nevertheless amended in 2020. In 2019 the amendments were made to the laws relevant for the improvement of the election process, while the amendments in 2020 represented an attempt to influence the opposition parties that were boycotting the elections, which was the difference between these two stages of the legal amendments. Amendments to the Law on Election of MPs and Law on Local Elections, which amended the election system, happened only a month before the elections were called, despite all the examples of good practice and recommendations of the international organisations. Amendments to the Law on Election of MPs changed the distribution of mandates, reducing the election threshold for distribution of mandates for the electoral lists from 5% to 3%. Manner of distributing the mandates for the national minority parties, as the election threshold does not apply to them, was also amended by increasing their quotients for 35%. In addition to these two changes, the quotas for less represented gender in the electoral list were also amended, as they were increased from 30% to 40%. This election practice is not in line with the Code of Good Practice in Electoral Matters of the Venice Commission⁶ and OSCE standards for implementing elections.⁷ Amendments to the Law on Local Elections reduced the period for calling local elections to no later than 45 days before the deputies mandates would end.

Since the outbreak of the COVID-19 epidemic, the election laws were amended once again which allowed the municipal administrations to authenticate the signatures of the electoral lists, in order to reduce the burden to public notaries and courts. Such legal amendment was unfair to the participants who submitted signatures of support before the outbreak of the pandemic and interruption of the election activities. In the end, it seems that the amendments to the laws regulating the election matters that happened in 2019 were not sufficient to essentially influence the good practice, while the amendments from the election year represent a particular type of election engineering and the attempt to influence the boycotting part of the opposition to join the election race nevertheless.⁸

Electoral roll

The situation with the electoral roll is one of the most controversial topics of the election process, as merely before any election it becomes a basis for spreading disinformation, and affects the citizens' lack of trust in the election process.⁹ As a result of the dialogue at the Faculty of Political Sciences, a recommendation followed which concerned the verification of the electoral roll. Also, in addition to the verification, a need was established to carry out training of the clerks who work on updating the electoral roll.

6 Venice Commission, Code of Good Practice in Electoral Matters, Opinion No. 190/2002 [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev2-cor-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev2-cor-e)

7 OSCE standards for implementing elections <https://www.osce.org/files/f/documents/O/d/13956.pdf>

8 Ilić, Vujo. "Why change the threshold, if you mean boycott?" *Istinomer*. <https://www.istinomer.rs/analize/zasto-menjas-cenzus-a-mislis-na-bojkot/>

9 CRTA, Survey "Citizens participation in the democratic processes in Serbia in 2018" <https://crtars.istrazivanje-ucesece-gradjana-u-demokratskim-procesima-u-srbiji-2018-godine/>

The process of electoral roll verification started on 26 September 2019 when the Working Group was established involving the representatives of the government, competent ministries, statistical offices, representatives of the civil society, as well as the representatives of the academic community, and the entire process was monitored by the representatives of the international observation missions.¹⁰ The Working Group assignment was to investigate options and manners of carrying out verification, analysis and validation of the accuracy of the Single Electoral Roll. Process of verification should involve four elements: statistical analysis, field inspection “from roll to citizens”, also field inspection “from citizens to roll” and following the implementation of these three steps, the conclusions and recommendation would be made. Several meetings of the working group followed, where the legal and statistical matters were deliberated, but the process was interrupted since the impact assessment regarding the personal data protection was missing.

Although the original idea was to complete all the work on verification of the Single Electoral Roll by the end of December 2019, it failed to happen, and the impact assessment on the personal data protection was submitted only in May 2020. The impact assessment was done by the Ministry of Public Administration and Local Self-government and delivered to all the participants from the Working Group. In the impact assessment, it was concluded that the actions envisaged by the verification would not have a more significant impact on the personal data protection, so the participating parties have to sign the agreement and undertake to respect the standards of personal data protection. Following this step, it remains for the Commissioner for Information of Public Importance and Personal Data Protection to give an opinion on the given assessment. At the moment of writing this report, the verification process was still in this phase.

The training of clerks from city and municipal administrations who are working on the updating of the electoral roll was held on 18 September 2019.¹¹ The representatives of the Government, ministries, OSCE/ODIHR as well as the representatives of ORTA, were present at the training. On this occasion, the IT workers from the Sector for Registers of the Ministry of Public Administration and Local Self-government held a training on the use of the platform that the clerks are using during their work, but on this occasion, there were no responses to the systematic and more complex problems that the clerks are facing such as the unification of their actions and also the improvement of the software they are using.

All the actions taken to effectively implement the verification of the electoral roll as well as the technical improvements of updating the roll had remained either incomplete or were completed unsuccessfully. The training was implemented in such a manner that it was doubtful whether the representatives of the authorities were sincerely ready to respond to such challenges and to actively work on solving the problems related to the electoral roll. All the controversies associated with the electoral roll only intensify the citizens’ lack of trust in the election process.

10 Decision on establishing the Working group for verification of the Single Electoral Roll <http://www.pravno-informacioni-sistem.rs/SIGlasnikPortal/eli/rep/sgrs/vlada/odluka/2019/69/5>

11 Ministry of Interior (MI), “Tomašević: MI has been committed to update the electoral roll in cooperation with Ministry of Public Administration and Local Self-government” <https://cutt.ly/NigMLpY>

Elections and media

The Regulatory Authority for Electronic Media oversees the activities of the electronic media. It is responsible for ensuring equal opportunities for candidates' representation, as well as truthful and objective informing of the citizens on the election activities. During the Faculty of Political Sciences dialogue, the expert organisations presented the recommendations which referred to establishing more clear rules for this authority to operate during the pre-election campaign. A significant problem, which was also indicated by the European Parliament,¹² was the rump composition of REM Council, which was operating as a six-member instead of nine-member Council since 2017. Representatives of the ruling coalition undertook to elect the remaining members, so on 27 December 2019, the Assembly elected the remaining three members.¹³ Afterwards, in January 2020, two members of REM Council submitted their resignations and shortly after new members were elected.

In response to the necessity to adopt acts which closely regulate the practice, on 7 February 2020, REM adopted a Rulebook prescribing the code of conduct for public media services during the pre-election campaign. However, in essence, it failed to respond to the problems arising from practice which had been indicated before, as this Rulebook did not include the commercial media and the monitoring of the broadcasted public officials' activities who are either candidates or representatives of the electoral lists. Only a non-binding Recommendation was adopted regarding the commercial media, so REM missed an opportunity to establish firm rules of conduct for the commercial media during the election process.¹⁴ Also, what has been a problem for many years in the election process, a disproportionately higher representation of the ruling party in the media, has been even intensified by failing to monitor the activities of the public officials who are candidates in the elections.

The problem of non-observance of the representation without discrimination was detected in this electoral cycle as well. Article 47 of the Law on Electronic Media prescribes general obligations of the media service providers related to the programmatic content, as during the pre-election campaign they are obliged to ensure representation without discrimination to all registered political parties, coalitions and candidates.¹⁵ REM has powers to impose measures to all the actors who fail to observe this obligation, however, REM Council never used these powers in its former practice.¹⁶ Media monitoring carried out by CRTA observation mission indicated a severe lack of media pluralism, as most of the time televisions with national frequency were imbued with the content which featured the representatives of the government. Huge imbalance between the government and the opposition was reflected in

12 Delegation of the European Union to the Republic of Serbia, "Joint Press Statement after the Second Inter-Party Dialogue in the National Assembly of the Republic of Serbia on Improving the conditions for holding Parliamentary Elections" <http://europa.rs/joint-press-statement-after-the-second-inter-party-dialogue-in-the-national-assembly-of-the-republic-of-serbia-on-improving-the-conditions-for-holding-parliamentary-elections/?lang=en>

13 CRT, "Media in Serbia: In defence of the existing situation" <https://crt.rs/mediji-u-srbiji-u-odbrani-postojeceg-stanja>

14 REM, "Recommendation adopted for commercial media services providers during the pre-election campaign" <http://www.rem.rs/sr/arhiva/vesti/2020/03/usvojena-preporuka-komercijalnim-pmu-tokom-predizborne-kampanje#gsc.tab=0>

15 Law on Electronic Media, Article 47 https://www.paragraf.rs/propisi/zakon_o_elektronskim_medijima.html

16 CRTA, "Media in Serbia - In defence of the existing situation" <https://crt.rs/wp-content/uploads/2020/03/Mediji-u-Srbiji-U-odbrani-postojeceg-stanja.pdf>

the fact that the representatives of the ruling majority had almost 75% of the time in five televisions with national frequency, and during the state of emergency, this percentage reached 91%.¹⁷

Degradation of REM and its inefficiency had been additionally exposed by the media monitoring this authority had carried out. The last time REM published results of media monitoring was during the 2014 election for MPs. Despite all efforts of the domestic and international observation missions for REM to reclaim its institutional role and enable all participants to have fair approach without discrimination, the results of the first media monitoring carried out by REM after six years were both biased and non-transparent.¹⁸ CRTA analysis identified four problematic elements in the monitoring carried out by REM. The first thing is the narrow and arbitrary scope of monitoring of the programme, without clear criteria for selecting the programmes and actors that should fall under the monitoring scope. It resulted in the fact that the officials campaigning, as one of the most alarming negative phenomena, did not fall under REM's radar. The second would be the flawed comparative approach, where the problem of comparing different forms of media was detected as well as the comparison between unequal duration of the programmes in various media. The third would be neglecting the roles of actors and the tone, and in the end, the fourth is the lack of transparency as the entire REM monitoring is shaped in the form of a very brief and condensed document.

Such a situation in Serbian media and the manner REM systematically failed to respond to the existing problems is a result of the political influence exerted on both the media and REM. Lack of pluralism of the political actors in the media and non-observance of the representation without discrimination only worsened the media deterioration. Regulatory Authority for Electronic Media only arbitrarily supervises the activities of the electronic media, which is visible from its non-transparent and biased media monitoring. This authority is thus losing its purpose, as the media are being turned into a playground for the ruling political parties.

Officials campaigning and abuse of public resources

In the course of the dialogue at the Faculty of Political Sciences, and after the meeting in the National Assembly of the Republic of Serbia mediated by the European Parliament, the participants have established that the area regulating the financing of the election campaign was not sufficiently regulated. Based on the findings that the expert organisations, as well as the observation missions, had established during the previous electoral cycles, the proposals were made for the improvement of the campaigns financing in the context of the abuse of public resources and the officials campaigning. The outcome of this dialogue included the amendments to the definition of the officials campaigning, as well as to what is considered to be a public resource, as this was later on included through the amendments in the laws regulating this area. However, the proposal of the amendments which refers

17 CRTA, "Preliminary report on monitoring the Election Day of the 2020 parliamentary elections" <https://cрта.rs/wp-content/uploads/2020/06/Preliminarni-izve%C5%A1taj-o-monitoringu-izbornog-dana-za-parlamentarne-izbore-2020.-godine.pdf>

18 CRTA, "REM election monitoring in 2020: Biased and non-transparent" <https://cрта.rs/izborni-monitoring-rem-a-u-2020-godini-pristrastan-i-netransparentan>

to a more precise definition of the officials campaigning that CRTA had sent to the MPs was not adopted.¹⁹ So the laws were amended, but the definition of the officials campaigning was not defined as precisely as it had been requested. As amending the election laws is not the only fact that would contribute to the improvement of the electoral circumstances, it is necessary to change the practice of the Anti-Corruption Agency hence to ensure the full application and the respect of the laws.

Anti-Corruption Agency processes the citizens' complaints referring to the parties and the officials disallowed activities. Within that meaning, a complaint may be filed if there is reasonable doubt that the referred actors had been implementing the officials campaigning or abusing the public resources. During the election process, CRTA filed 22 complaints to the Agency which identified 20 violations of the provisions of the Anti-Corruption Agency by the public officials and 18 cases of the violation of the Law on Financing Political Activities. By processing the complaints pertaining to the Law on Anti-Corruption Agency, in 11 cases, the Agency decided there had been no grounds for instigating the proceedings, while in 3 cases it had imposed the measures. Also, by processing the complaints pertaining to the Law on Financing Political Activities, in 12 cases the Agency established there had been no grounds for instigating the proceedings, while in five cases it found there had been an infringement of the law.²⁰ In total, seven complaints concerning the violation of the provisions of both laws are still ongoing in the Agency, so its' response is still anticipated.

Although the Agency decides on the complaints in a timely manner, certain inconsistencies had been detected in their processing, as well as the Agency's manner of interpreting the law.²¹ In the cases of the two complaints submitted against political parties, for making videos in the premises of the public institutions, the Agency imposed different measures. Serbian Progressive Party was imposed with a measure of warning, while against the Social Party of Serbia, the Agency had submitted a request for initiation of offence proceedings. The Agency untimely processed and decided on the complaint against the Prime Minister of the Republic of Serbia who was reported to the Agency in 2019 that she had been carrying out the officials campaigning and abusing the public resources. The response to this complaint only came in June 2020 when the complaint was dismissed as unjustified.

Based on the former processing by the Agency, it has been demonstrated that it adopts decisions on the complaints timely and that at the moment of writing this report it had publicly announced in total 36 decisions on all the complaints which represent a promotion of the good practice and the transparency of its work. However, it remains controversial that it only selectively applies the law in its decisions and that it has been implementing decisions and imposing measures inconsistently.

19 CRTA, Amendments to the Proposal of the Law amending the Law on Anti-Corruption Agency <https://crtars/wp-content/uploads/2019/11/Amandmani-na-predlog-zakona-o-izmenama-i-dopunama-Zakona-o-agenciji-za-borbu-protiv-korupcije.pdf>

20 CRTA, CRTA's complaints <https://crtars/crtine-prijave/>

21 CRTA, "Long-time observers report – reporting for period 25 May-14 June 2020" <https://crtars/izbori-2020-izvestaj-dugorocnih-posmatraca-za-period-25-maj-14-jun-2>

Campaign and Election Day

Since the elections were postponed due to the epidemic, the second date for the elections was 21 June 2020, despite the appeals to avoid having elections due to epidemiological reasons. After the new date for the elections was set, no epidemiological assessment for organising the elections was made, while the official recommendations for implementing the activities on the Election Day were anticipated until the very last moment. The Government of the Republic of Serbia adopted a Conclusion on the manner of carrying out the elections only a few days before the elections, so the members of the election committee were obliged to carry protective masks and gloves. At the same time, the voters had been only advised to wear masks.²²

This election process in Serbia will always be remembered as after the state of emergency was terminated, all election activities continued in a minimal form, and the political actors moved to the alternative ways of communication – social media, video communication and phone calls.²³ The traditional methods of running campaigns such as rallies, public debates and panel discussions were significantly reduced or nearly left out by some political actors precisely due to the entire situation caused by the coronavirus.

Serbian Progressive Party won by a landslide at all levels, as they won the majority of votes in two in majority opposition cities in Serbia, Šabac and Paraćin. Taking into consideration the manner of political actors running the campaign, also the boycott, but the general fear of the infectious disease as well, it is no surprise that the turnout was somewhat lower than 49% of the total number of voters which is the lowest turnout in the parliamentary elections since the democratic changes in 2000. It is worrying that the final results were anticipated for two weeks after the elections were finished as they had to be established and announced by the Republic Electoral Commission.²⁴ Although the elections were repeated at 234 polling stations, there is no excuse for RIK as it failed to announce the results for the remaining polling stations in Serbia.

Results of the parliamentary elections are a confirmation of the lack of media pluralism and absolute presence of the ruling party in both traditional media and the virtual space as mentioned above. The electoral list Aleksandar Vučić - “For Our Children” won 188 out of 250 MPs mandates, the electoral list Ivica Dačić “Socialist Party of Serbia (SPS), United Serbia (JS) Dragan Marković Palma” won 32 mandates and the electoral list Aleksandar Šapić - “Victory for Serbia” won 11, while four minority parties won 19 MPs mandates in total. Some experts warn that due to such election results, Serbia could become a one-party state, which is very risky since due to such atmosphere, there is a greater danger of the formal cancellation of pluralism.²⁵

22 NI, “RIK: Masks will be provided for all voters, ballots divided per districts” <http://rs.n1info.com/lzbori-2020/a611112/RIK-o-pripremana-za-izbore.html>

23 Serbian Progressive Party: “Vučić: Serbia is growing, we are fighting for the future of Serbia” <https://www.youtube.com/watch?v=eXqZnIWvETo>

24 Complete results of the election of MPs for the National Assembly in 2020 <https://www.rik.parlament.gov.rs/tekst/9386/ukupni-rezultati-izbora-za-narodne-poslanike-narodne-skupstine-2020-godine.php>

25 NI: “Jović on elections: situation of high risk for the government” <http://rs.n1info.com/lzbori-2020/a616302/Jovic-o-izborima-Vrlo-riskantna-situacija-za-vlast.html>

According to the information from both domestic and foreign observation missions, the highest number of irregularities was detected during these elections, almost twice as high in comparison to the previous electoral cycles.²⁶ It can be further deduced that the quality of the election process downgraded and that the recommendations for the improvement of the election must be redefined so that the election process could improve. The results achieved so far had not demonstrated the desired effects.

Yet another election, a celebration of democracy, or in this case, a simulation of democracy in Serbia, finished. The circumstances of holding the elections were unique. The atmosphere before the elections had been called, and also during the campaign, was characterised by the boycott of some of the opposition parties. The reasons for a boycott were poor electoral circumstances and long years of deterioration of the democratic institutions in Serbia. The backsliding of democracy was confirmed by many organisations, among them Freedom House, which this year assessed Serbia as the hybrid regime. The epidemic has affected the entire world, and it has also made an impact on the elections in Serbia as the election activities were interrupted for almost two months. This interruption was favourable for the representatives of the ruling political structure as they carried on collecting the political points. The laws regulating the election matters were tailored in the election year to potentially convince the opposition, which was in the boycott, to nevertheless participate in the elections. The failure of law amendments is reflected by the fact that, despite all the efforts to improve the regulation pertaining to the abuse of public resources and the officials campaigning, the abuse happened nevertheless, and the public authorities responded to that arbitrarily. The simulation of democracy is again confirmed by the lack of will to complete the initiated actions regarding the verification of the electoral roll, as all the activities pertaining to that had been stopped. It is not a surprise that citizens lost their trust in the electoral roll long ago. The media had been turned into the playground for the ruling political parties, thus contributing to the disappearance of pluralism of the political actors, which in the end had the most enormous impact on the election results. With the view of all the circumstances, this election year could be characterised as the worst so far compared to the previous election years.

The circumstances of the election had been quite particular, which is visible in the example of Serbian Progressive Party virtual rally. In front of the President of Serbia, who is the first on their list, although not an MP candidate, we see hundreds of screens. On these screens, we could see the visitors of this virtual rally, but their interaction with the President was limited to applause, and the entire event was broadcasted on the national frequency television. This simulation of a rally represents a simulation of democracy in which the previous elections were held – it was staged, unfair and dishonest.

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