



**Office for Democratic Institutions and Human Rights**

**REPUBLIC OF CROATIA  
PARLIAMENTARY ELECTIONS  
23 NOVEMBER 2003**

**OSCE/ODIHR ELECTION OBSERVATION MISSION REPORT**



**Warsaw  
20 January 2004**

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**REPUBLIC OF CROATIA  
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**I. EXECUTIVE SUMMARY**

The 23 November elections to the Parliament (Sabor) of the Republic of Croatia were conducted generally in line with OSCE commitments and international standards for democratic elections. However, despite improvements in the process, some issues remain outstanding, including: the legislative framework for elections; the short time frame available for election administration, the accessibility of out-of-country voting (especially for refugees in Serbia and Montenegro and in Bosnia and Herzegovina) and a lack of transparency on the issue of campaign spending.

These elections, the fourth for the Sabor since Croatia gained independence in 1991, were carried out in a generally calm and low key political atmosphere. The elections were notable in that the next government will lead negotiations on Croatia's interest to join the European Union. In that context, the Election Observation Mission noted a broad, informal consensus among stakeholders in the election process (political parties, non-governmental organisations and State authorities) that the election campaign debate would focus mostly on socio-economic issues.

In general, election officials should be credited for overseeing the election in a professional manner. The campaign period was generally orderly with few reports of election-related irregularities.

The Law on the Election of Representatives to the Croatian Parliament (Election Law) was amended in certain respects for these elections, but the overall legislative framework for the elections has been retained. The Law provides an adequate basis for the conduct of the elections, although the short electoral period and absence of permanent election administration contributed to late promulgation of polling procedures which created difficulties in terms of communicating them effectively to election participants. Improvements in the legal framework have been noted in areas such as the system of special representation for national minorities and the complaint and appeal process, but several unclear and problematic aspects remain.

Election procedures expanded eligibility to vote beyond statutory requirements for Croatian citizens living abroad. Nevertheless, some voters may have been unable to provide the requisite proof of citizenship, and the number and distribution of polling stations available in some countries, especially Serbia and Montenegro, was disproportionate to the number, circumstances and status (as refugees) of many of these voters.

Special representation for national minorities has been expanded from 5 to 8 mandates, including three representatives to be elected by the Croatia's Serb minority. The State Election Commission (SEC) took a positive step in demonstrating an appropriate regard for the interest of minority voters by providing them with precise information on their ability to choose either a constituency or minority ballot.

The electronic and print media, as a whole, provided voters with a variety of political views and candidates were able to present their platforms and convey their message freely. The public HRT television and radio channels fulfilled their legal obligations to provide free airtime for presentations of the contestants, and maintained sufficient campaign coverage without bias.

The OSCE/ODIHR stands ready to work with the authorities and civil society of the Republic of Croatia to assist in remedying the issues identified in this report.

## **II. INTRODUCTION AND ACKNOWLEDGEMENTS**

The OSCE/ODIHR Election Observation Mission (EOM) was invited by the Croatian Ministry of Foreign Affairs to observe the elections to the Croatian Sabor (Parliament), the fourth since Croatia gained independence in 1991. The Election Observation Mission was headed by Mr. Ian Mitchell (Canada) and consisted of 7 experts based in Zagreb, and 12 long-term observers deployed in 6 regional centres: Rijeka, Split, Zadar, Osijek, Varazdin and Sisak.

The OSCE/ODIHR EOM analysed the legislative framework, the election administration and the media, and followed the election campaign. As recommended by an OSCE/ODIHR Expert Team report shortly before the elections, the pre-election environment did not warrant the deployment of a full observation mission. Therefore, the EOM did not deploy short-term observers to monitor the election day proceedings.

The EOM wishes to express appreciation to the Ministry of Foreign Affairs of the Republic of Croatia, the State Election Commission, other national and local authorities and non-governmental organisations, in particular the domestic election monitoring organisation GONG, for their assistance and co-operation during the course of the observation mission.

## **III. LEGAL FRAMEWORK**

### **A. BACKGROUND**

Under the 2001 Constitution, the Croatian Parliament is a unicameral body which consists of between 100-160 members, directly elected on the basis of universal and equal suffrage through secret ballot. The actual number of parliamentarians, and the method of their election, is established through law.

The elections are regulated by a body of legislation, most of which remains substantially unchanged since the 2000 elections. A number of regulations also forms part of the electoral framework. These include a parliamentary regulation on the conduct of media with a national concession, the Electoral Code of Ethics and the decisions, mandatory instructions and 'Reminders' (regulations) issued by the SEC.

Parliamentary elections, including the date for such elections, are called by the President of the Republic. The announcement of elections must be made at least 30 days prior to election day.

## **B. ELECTORAL SYSTEM**

The electoral system remained basically unchanged from the 2000 parliamentary elections. This is the first election held without changes to the electoral system since Croatia became independent in 1991.

Under the Election Law, the Sabor consists of:

- 140 members elected through proportional representation (PR) contests conducted in 10 geographical constituencies containing approximately equal numbers of registered voters, from each of which 14 parliamentarians are elected. To obtain a seat, parties or coalitions must have obtained at least 5% of the total valid votes cast in that constituency. Award of the mandates is through the d'Hondt method;
- Eight (8) representatives of Croatia's 22 recognised national minorities<sup>1</sup> are elected by members of those communities in a single national constituency. Mandates are awarded to individual candidates on the basis of first-past-the-post; and
- An additional number of members elected, based on PR, in a single constituency in which the votes of Croatian citizens who are not permanent residents of the country are applied. The actual number of parliamentarians elected in this way depends on the number of voters who cast ballots in this constituency, such that the number of votes needed to obtain a mandate is the same as the average number needed in the regular geographical constituencies (Art. 41).

In order to contest the elections in each of the 10 regular constituencies, registered political parties and other nominating organisations – including coalitions of political parties, or groups of voters – submit lists of candidates for all the available mandates. Nominees are not required to be residents of the constituency.

Nominations of candidates are submitted to the SEC, no later than 14 days after the announcement of elections. In the case of nominations by voters, the submissions must be accompanied by 500 voter signatures.

## **C. ELECTION LAW**

The Election Law was amended in some respects prior to these elections. The amendments<sup>2</sup> reflect the dissolution of the former parliamentary House of Counties and enactment of the

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<sup>1</sup> Art. 16 of the Election Law. The distribution is as follows: 3 seats for the Serbian national minority; 1 seat for the Hungarian national minority; 1 seat for the Italian national minority; 1 seat for the Czech and Slovak national minorities; 1 seat for the Austrian, Bulgarian, German, Polish, Roma, Romanian, Ruthenian, Russian, Turkish, Ukrainian, Vlach and Jewish national minorities; and, 1 seat to the Albanian, Bosniac, Montenegrin, Macedonian and Slovenian national minorities.

<sup>2</sup> Croatian Parliament, Decision No. 01-081-03-1249/2 (2 April 2003)

Constitutional Law on National Minorities, which *inter alia* increased special representation of minorities in Parliament. In addition, some amendments were included to address other issues that had arisen under the original law, including the consistency of the provisions on election complaints and judicial appeals.

Despite the recent amendments, the Election Law is relatively little changed from the previous (1999) version, under which the last parliamentary elections were conducted. This is withstanding the detailed comments and recommendations made by OSCE/ODIHR and other organisations at that time.

While the Election Law contains many positive features, it continues to reflect the following deficiencies:<sup>3</sup>

- Lack of Clarity

Some aspects of the Election Law remain unclear. This includes the provisions concerning the timing of appointments to the SEC and Constituency Election Commissions (CEC - see below), the term of appointees, and the conditions of their tenure – *i.e.*, whether they are protected from removal without sufficient cause. It is also unclear whether the SEC and CECs continue to operate between election periods and what their role would be during this time.

- Insufficient Detail

In several areas, the legislative provisions appear insufficiently detailed. This is particularly true of the provisions on financial reporting by election contestants, and for voting and counting procedures in the polling stations. (It should be pointed out, however, that there are additional financial reporting provisions in the Law on Political Parties; and that more detail about polling station procedures is contained in the mandatory instructions and “Reminders” published by the SEC during recent elections.)

- Problematic Provisions

The Election Law also contains problematic provisions which resemble those in the legislation of other post-Yugoslav States. One example is the provision regarding the mandatory annulment of results and conduct of repeat elections in polling stations where it is found that the number of ballots in the box exceeds in any way the number that should have been cast according to the records of the polling. While the number of polling stations affected is usually small, the annulment of results at even a single polling station leads to a delay in the announcement of final results. This occurred during the most recent elections, when the results at one polling station were annulled based on a single extra ballot counted, and the award of mandates was delayed.

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<sup>3</sup> For a more detailed analysis, see *Croatia - Legal Framework For Parliamentary Elections - OSCE/ODIHR Review, December 2003*

#### IV. ELECTION ADMINISTRATION

In general, election officials should be credited for overseeing the election in a professional manner. The principal concern regarding the administration of the elections remains the short electoral time frame and the disproportionate provision of polling stations for refugee and other voters out-of-country.

##### A. ELECTION ADMINISTRATION STRUCTURE

The structure of election administration remained unchanged from the 2000 parliamentary elections. Elections are administered by a four-tier system of independent bodies, including: the State Electoral Commission, Constituency Electoral Commissions, Municipal and City Electoral Commissions (MEC and CiEC), and Voting Committees (VC).

The standing membership of the SEC consists of a president and four members, all of whom also have deputies. The President of the Supreme Court serves *ex officio* as President of the SEC, and the other members and the deputies are appointed by the Constitutional Court from among the membership of the Supreme Court and other “distinguished lawyers who must not be members of political parties (Art. 45, Election Law).”

There is no provision in the Election Law concerning the timing of the appointment of the standing membership of the SEC, the terms of its members or their rotation, or the tenure of the members. This means that (as prior to the 2000 elections) the membership could turn over shortly before an election.<sup>4</sup> It also could permit members (except for the President) to be arbitrarily removed.

The SEC has full legal authority to “look after the legal preparation and implementation” of parliamentary elections (Art. 48, Election Law), including through issuing regulations (“mandatory instructions”) for election bodies. In the course of its tenure the SEC promulgated 13 mandatory instructions to cover different issues in the electoral process.

During an election period, after the publication of the candidates’ lists, the membership of the SEC is “augmented” through designation of three representatives each for the majority (ruling) and opposition groups in Parliament. Once they commence their service with the SEC, the party representatives have the same rights and duties as the standing members (Art. 46.2, Election Law). However, the fact that they were only able to join the SEC 16 days after elections were called may have reduced their effectiveness. The pattern of core and expanded membership, complete with nomination of political party representatives in keeping with the parliamentary majority and opposition, is repeated at the each of the lower levels of election administration.

A CEC was established for each of the ten national constituencies, and constituency number 12 for national minority groups. The SEC carried out the functions of a CEC for the diaspora constituency (no. 11) itself. It should also be noted that, despite their “standing” character, there are no provisions in the Election Law concerning the timing of appointment; term, tenure and turnover; or permanent functions of the core memberships of the CECs.

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<sup>4</sup> See OSCE/ODIHR, 2000 Final Report, *op. cit.*

A total of 474 MECs/CiECs were appointed. At the lowest level of election administration, 6795 Voting Committees were established countrywide. Smaller political parties, especially those representing some national minorities, voiced concerns that the largest parties in the parliamentary majority and the opposition had established coalitions to ensure that they were effectively represented by at least one commission member, but that this had excluded smaller parties. The EOM was unable to confirm any such systematic underrepresentation.

## **B. GENDER AND MINORITY PARTICIPATION**

Both the SEC and lower level election commissions informed the EOM that there is no consolidated information with regard to participation in election administration by minorities and women, as there is no requirement for this in the Election Law. However, some EOM long term observers reported anecdotal evidence of low representation of minority groups in the electoral bodies in their areas of responsibility. They were also able to note that women were highly represented in the election administration structure. In some regions, it was noted that at the Voting Committee level in particular, approximately 60 – 80 % of members were female.

## **C. THE SHORT ELECTORAL TIME FRAME**

The elections were officially called on 20 October 2003, following the dissolution of the Parliament. The SEC operated in a short electoral time frame. Given the constraints imposed by this timescale, the SEC performed its duties in an efficient and timely manner. All of the EOM's interlocutors expressed full confidence in the professionalism and impartiality of the SEC.

Despite the high level of confidence, the short electoral time frame impacted on the elections in two important areas, provision of training and effective participation by political party members. Firstly, EOM long-term observers reported the lack of a systematic and comprehensive training program for Voting Committees in particular. The late adoption, lack of sufficient detail, and late introduction of the "Reminders", effectively the Voting Committee handbook, created a situation where only the VC President and his/her deputy received any direct training on the election procedures. The others, importantly those from political parties, were often without any direct exposure to training on the "Reminders" through the channel of the State Election Commission structure. This was largely left to political parties, resulting in a wide variance in the preparedness of VC members. EOM long term observers also noted that across different polling stations there were different understandings as to how many ballot boxes should be used for the different minority ballots. Although there is no suggestion of irregularity, it is clear that there was insufficient training to ensure consistency.

Secondly, the expanded membership of political party members in election commissions was less effective due to a lack of time available to fully acquaint them with changes in electoral procedure. In principle, the provision for expanded membership of the electoral bodies to include party representatives is an effective system to guarantee checks and balances of the electoral process. However, these members joined the election commission structure late in the process with only a very short period for them to make a formal contribution. Long-term observers in the field reported the low-level participation by party representatives who acted more as observers rather than active members of lower level commissions and VCs.



The SEC does not function officially outside electoral periods. Some level of permanent functioning by an election administration is highly desirable,<sup>5</sup> since it enables electoral issues to be addressed on an ongoing basis. The establishment of a permanent election administration would have special benefits in Croatia, particularly in view of the short electoral period. Not only must administrative and logistical arrangements be made very rapidly, but in order to be effective, civic education, voter information, and election worker training programs have to be implemented expeditiously. With respect to putting election administration functions on a permanent basis, a range of institutional alternatives and the views of a broad section of society, particularly the NGO community, should be considered.

#### **D. VOTER REGISTRATION**

According to figures released by the SEC on 22 November, a total figure of 4,371,608 citizens were registered for the 2003 elections; 3,578,715 were registered for the constituency lists, 393,844 have been inscribed in the minority lists and 399,049 for out-of-country lists.

Voter registration is regulated by the Law on Lists of Voters of 1992, which was not amended for this election. Voter registration was performed under the supervision and implementation of the Ministry of Justice, Administration and Local Self-Government. The voter registration process is mostly a passive system. The voter lists are kept by municipal offices and are updated principally based on police data on residency and registers of births, marriages and deaths. The list of citizens residing abroad is kept by the Municipality of Zagreb. There was a notable variance between the results of the 2001 census data and the voter register. Greater effort should be made by the responsible Ministry to ensure that a clear explanation is made public on this matter.

OSCE/ODIHR observation of the 2000 elections found that there were some defects in voter registers. It also concluded more generally that – at least in certain circumstances – the registers were not sufficiently open to inspection by voters and other interested parties. The EOM for the 2003 elections found less evidence of defects in registers and took note of improvements in voter inspection and correction procedures. Information could be obtained by phone and fax including in diplomatic missions and consulates abroad. In spite of its newness, this system proved to be quite effective and represents an improvement in promoting transparency and accuracy in the registration system.

Absentee voting could be exercised by obtaining a voting certificate from the competent municipal offices. The voting certificates enable eligible voters to have their names temporarily added to the list of voters in their place of temporary residence. This option was also available for residents temporarily abroad. Absentees were required to obtain the certificate from the municipal office of their permanent residence in Croatia. The Voting Certificate could also be requested by fax (even from abroad in case of external absenteeism). In this case, they would be mailed to the citizens at their home address.

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<sup>5</sup> See, e.g., OSCE/ODIHR, “Existing Commitments ...”, Part One, Par. 4.4.

## E. NATIONAL MINORITY VOTING

Under the Election Law as enacted in 1999, a voter from a national minority could choose whether to vote for the relevant minority representative or to vote instead in his/her regular constituency. This choice was somewhat limited, however, by the procedural necessity to transfer registration to the minority list prior to the elections, and sometimes also to vote at a special polling station.

Under the 2002 Election Law, however, the provision guaranteeing that minority voters could vote in the regular elections was deleted.<sup>6</sup> It is not clear whether this deletion was intended to require minority voters to vote only in their special elections. However, it could at least be interpreted as authorising the SEC to implement regulations with that effect. However, there is a constitutional provision which might prevent the adoption of such a policy.<sup>7</sup> During the 2003 elections, the SEC decided to permit minority voters to choose a general or special ballot, but this decision was reflected only in its “Reminders” on polling station procedures, and not included among its mandatory instructions.

Some issues that arose in connection with the implementation of minority voting included:

- Extracts from the voter register for use at polling stations were divided into a regular extract, and six separate extracts for voters from each group of national minorities entitled to special representation. Some minority voters were distressed to find themselves automatically assigned to a special extract without having requested special registration. The SEC informed the EOM that technical reasons prevented them from compiling a single extract at the VC level and that no alternative model was suggested by any interested party.
- Despite being registered on special extracts, relatively few voters from these groups actually voted for special minority representation – choosing instead to vote in the regular elections. The fact that most minority voters vote in the regular elections means that the number of votes required to win a special minority mandate can be very small, which may undermine the perceived importance and legitimacy of these mandates.
- During the elections, the SEC also decided to permit multiple-candidate voting (up to three choices) by Serb voters, and included guidance on an appropriate definition of an invalid ballot, (more than three candidates circled) in its “Reminders”. There appears to be some inconsistency, however, between the latter decision and a provision of the Election Law (Art. 67.3) under which a ballot is considered invalid if more than one candidate list or candidate is voted for.

## F. OUT-OF-COUNTRY VOTING (OCV)

The Election Law provides for OCV in Croatian diplomatic and consular facilities abroad, and certain other locations. OCV was exercised in 155 polling stations in 51 countries worldwide.

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<sup>6</sup> Parliamentary Election Law, 2003, Art. 17; 2003 Amendments, Art. 16

<sup>7</sup> Constitution, Art. 15 (3): “Besides the general electoral right, the special right of the members of national minorities to elect their representatives into the Croatian Parliament may be provided by law.”

## 1. Legal Issues

For these elections, as in previous national elections, the SEC issued both a mandatory instruction and a “Reminder” for election officials on this subject. The legal basis for the procedures used for OCV remains complex, however, and the SEC’s actions remained subject to application.

Under Mandatory Instruction No. 12 of the SEC, “voters” who present certain evidence (of Croatian citizenship, personal identity, and proof of residence abroad) would be permitted to vote in OCV voting sites without presenting a voting certificate. There are two different types of such voters – permanent residents abroad, who may obtain ballots for voting in Constituency 11; and residents living abroad for a longer time<sup>8</sup> than just temporary absence from Croatia, who may obtain ballots for voting in constituencies 1-10, or also constituency 12 if they are from a national minority.

Instruction No. 12 was incorporated into a “Reminder” on polling station procedures for these sites<sup>9</sup>. In addition, the Reminder indicated that once the necessary evidence is presented – For voters without residence in Croatia: “If the voter is not present in the voter list, the ... voting committee shall register the voter under a new number in the voter list.” For voters who are staying for a longer period abroad, but have residence in Croatia: “[T]he voting committee shall give [the] voter an appropriate ballot ...”

These provisions have the benefit of potentially expanding eligibility for voting by Croatian citizens residing abroad beyond the requirements of law, but also seem to exceed applicable statutory provisions. Under the Law on Voter Lists (Art. 2), citizens of Croatia obtain the right to vote only on the basis of being registered in the list of voters. The voter list is not compiled by the SEC, but by the Ministry of Justice, Administration and Local Self-Government and other bodies co-operating with it.

The Law on Voter Lists (Art. 20) also provides for the preparation of separate lists of registered voters for use at OCV sites. When a voter with residence in Croatia is not included in the voter register at a polling station, that law (Art. 31) requires that s/he must obtain a voting certificate from the local authorities in the area of his/her residence in order to vote.

While these provisions appear to be contrary to the SEC’s directives, the legal situation is in fact more complex:

The SEC for the 2000 parliamentary elections adopted an instruction under which all voters with residence in Croatia would be required to obtain a voting certificate from their local authorities in order to vote abroad. The requirement for certain persons residing abroad (including refugees) to obtain a certificate in order to vote was criticised by OSCE/ODIHR and other organisations, especially as it was difficult or impossible for such persons to obtain the certificate at that time.

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<sup>8</sup> Sometimes translated as “habitual residence”.

<sup>9</sup> SEC, Reminder for the Work of Voting Committees for the Election of Representatives [etc.] for Polling Stations Abroad, V.1 (13 November 2003)

The requirement to obtain a certificate was challenged by a group of voters residing abroad, and the Constitutional Court ruled that the instruction would be upheld, but interpreted to apply only to persons with temporary, not habitual, residence abroad.<sup>10</sup> Instruction No. 12 in these elections was also the same as an instruction (no. 7) issued by the SEC for the 2000 presidential elections, so the current approach follows an established practice of not requiring voters with longer-term residence abroad to obtain a voting certificate.

In any event, the current Instruction No. 12 did not remove the remaining obstacles to voting abroad, especially for refugees. In order to qualify for OCV under the instruction, a voter must present proof of citizenship, identity and residential status; with respect to citizenship, valid evidence had to be presented.<sup>11</sup> Many refugees may have either lost their citizenship documents or failed to renew them after they expired while the individuals were abroad.

## 2. Implementation

The number of polling stations in Serbia and Montenegro was raised to 6. However, these remained within the same 3 cities – Belgrade, Subotica and Kotor - as in past elections. In Bosnia and Herzegovina, the number remained unchanged at 30 polling stations in 15 different locations. Given that the ethnic Serb Croatian citizens (refugees), concentrated overwhelmingly in Serbia and Montenegro, have been particularly disadvantaged when accessing the electoral process in the past, the 6 polling stations made available were disproportionate to their number, circumstances and status.

## V. DOMESTIC OBSERVATION

GONG, the main Croatian non-governmental organisation dealing with election issues, organised a country-wide observation campaign with some 3000 static observers and 63 mobile teams. As part of their monitoring exercises, GONG undertook a parallel vote tabulation. They also undertook a high-profile civic education program with well-publicised telephone help lines for voters, both prior to and during election day. In this regard, GONG had a major role in channelling information to the electoral authority.

The presence of GONG at the VC level and the high level of acceptance it enjoyed with the stakeholders in the election process (political parties, voters and the State authorities) was one factor in OSCE/ODIHR's decision not to request short-term observers for the EOM. The SEC communicated to the EOM on a number of separate occasions their respect for the opinions of GONG. Similarly, all political parties respected their participation in the process.

GONG's role in providing expertise in the area of elections and, most importantly, in advocacy for reform of the legislative framework for elections remains an important and positive factor in Croatia's democratic development.

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<sup>10</sup> Complaint of F. Stanic *et al.*, Decision of 31 December 1999

<sup>11</sup> Letter from I. Crnic, President, State Election Commission, 21 November 2003

## VI. CAMPAIGN ENVIRONMENT

### A. BACKGROUND

The official campaign began on 6 November, following the publication of the full candidates' lists in the national press. The elections were contested by a total of 359 separate party, coalition and independent candidate lists for the 10 electoral constituencies within Croatia and the diaspora constituency (for voters with permanent residence outside of Croatia). The 8 Sabor seats reserved for national minorities were contested by 43 individual candidates.

Altogether, a total of 5,105 candidates stood for election, ranging in ages from 18 to 84. Women represented 25% of all candidates. An average of 34 candidates competed for each mandate, 7 more than in the 2000 elections. In the diaspora electoral constituency, 14 parties, 5 coalitions and 4 independent candidates' lists registered for the elections.

### B. ELECTORAL CONTESTANTS/PLATFORMS

Overall, the tenor of the campaign was muted. Isolated incidents of nationalist rhetoric at the rallies of smaller, mostly non-parliamentary parties were reported to the EOM. On the national level, a consensus appeared to exist across the political spectrum on the need for Croatia to fulfil its international obligations to join the European Union and NATO as soon as possible. The main issue of the campaign was the economy.

The election campaigns conducted by most of the parties were professional and well-organised. The campaigns of the leading parties were very prevalent in the media. Campaign materials, posters, billboards, etc., were highly visible throughout the towns and cities, less so in rural areas.

The main national parties contesting the elections were, from the outgoing government, Prime Minister Ivica Račan's Social Democratic Party (SDP), the Croatian Peoples' Party (HNS) and the Croatian Peasants' Party (HSS). On the opposition side, the main parties were the Croatian Democratic Union (HDZ), the coalition of the Croatian Social Liberal party (HSLs) and Democratic Centre (DC), and the Croatian Party of Rights (HSP). The largest regional party contesting the elections was the Istrian Democratic Union (IDS), in a pre-electoral coalition with the SDP. A feature of the elections was the various regional coalitions formed by national and regional parties in particular electoral districts. HDZ and HSS were the only main national parties not to form coalitions with smaller parties.

For the first time, the two main parties representing the Serb minority in Croatia campaigned for the diaspora constituency. This appears to have contributed to increased participation by Croatian citizens of Serb origin currently living in Serbia and Montenegro and Bosnia and Herzegovina. Some leading Croat parties, such as the SDP and the HNS, did not participate in the election for the diaspora constituency, instead concentrating their efforts within Croatia proper.

Public opinion polls appeared regularly in the national press. However, there was some confusion as to the level of support enjoyed by the different parties as some polling agencies reported percentage levels of support for parties on a nation-wide basis, whereas other

agencies attempted to translate percentage levels of support into constituency seat allocations based on the d'Hondt method.

### C. CAMPAIGN FINANCING

Throughout the campaign, a number of media outlets ran articles investigating the overall cost of the election campaign. Furthermore, campaign financing emerged as an issue between the parties.

There is no official limit on campaign spending. The Election Law requires parties to report, with respect to their campaign financing, only on the approximate amount of funds that they intend to spend for this purpose (Art. 31.1). Estimates of the cost of particular parties' campaigns vary widely, and the parties are not required to make a specific disclosure on their campaign spending. The reported prevalence of in-kind donations may substantially distort estimates on political party spending, further reducing transparency of this element in the election process.

Parties holding seats in the Sabor on 31 December 2002 had the right to compensation for their electoral advertising expenses. Non-parliamentary parties which win seats in the Sabor are also compensated in this manner (Art. 29-34, Election Law). Parties receive an amount equal to the annual amount they receive from the State budget, in effect, doubling their support from the State in an election year (Art. 19, Law on Political Parties). This money is shared out to the parliamentary parties on a pro-rata basis depending on the number of deputies that they had in the outgoing Sabor. For these elections, the parties received 180,721 Croatian Kuna (HRK) for every male Sabor representative, and 10% more for every female representative, or 198,793 HRK. When compared to the amounts that the parliamentary parties received from the state budget for 2003, then notwithstanding regular expenses, the parties were in a position, thanks to state contributions alone, to spend in excess of their "expected" campaign expenses.

Many interlocutors indicated that they had doubts about the amount the parties declared that they would spend on their campaigns. This became particularly clear when it was noted repeatedly that access to media advertising for political parties was freely available, and limited only by the party's ability to pay. It was not possible for the EOM to verify these claims. However, the lack of transparency in campaign financing, and the remarkable use of paid advertising by the largest parties suggests an area of the election process which should receive greater scrutiny.

### D. CAMPAIGN INCIDENTS

Campaign incidents were rare. None of the competing parties reported that they had been intimidated or prevented from campaigning through intimidation. However, a number of prominent politicians of the governing coalition, HNS President Vesna Pusic and HSS President Zlatko Tomcic, Minister of the Interior Sime Lucin (SDP) and SDP President and outgoing Prime Minister Ivica Racan, received letters containing death threats in the days leading up to the election.

A number of other campaign events were noticeable more for their media coverage rather than for the limited effect they may have had on the electoral environment. These included

eggs being thrown at Government Vice-President Slavko Linic and SDP Split-Dalmatia County Vice-President Marin Jurjevic by a member of the Croatian Pure Party of the Rights (HCSP) at an SDP rally in Imotski in the 10<sup>th</sup> electoral district on 9 November. In the aftermath, SDP blamed HDZ for provoking the incident through HDZ leader Ivo Sanader's "inflammatory" speeches. HDZ condemned the incident, and rejected the SDP's accusations. An egg was also thrown at HNS President Vesna Pusic during a campaign rally in Split on 16 November.

## E. SANCTIONS

The campaign silence period began 24 hours before the election day and lasted until the closure of the polling stations. The Chairperson of the State Election Commission publicly expressed his frustration at numerous violations of the campaign silence period by several political parties. In particular, he noted that the legal framework of the elections provided the possibility for moral condemnation of these acts, but no provision for sanction or enforcement. This represents a significant weakness in the present structure of campaign regulation.

## VII. MEDIA AND THE ELECTIONS

### A. MEDIA LANDSCAPE

The media environment in Croatia features a wide range of media outlets. Electronic media, above all national television broadcasts, are the most popular source of public information. After a long period of domination by the publicly owned broadcaster HTV, the first commercial television stations with a national concession (TV NOVA) began broadcasting in 2001. There are also numerous local and regional TV and radio stations. The most popular newspapers are the privately owned dailies *Vecernji List* and *Jutarnji List*. The publicly owned daily papers are *Slobodna Dalmacija* and *Vjesnik*.

### B. LEGAL FRAMEWORK

The legal framework regulating the media underwent some developments during 2003. However, few of these changes were in effect during the electoral period. Of particular note were the Law on Electronic Media, adopted 15 July, and the Law on the Media, enacted on 1 October. In February 2003, the Sabor adopted a Law on Croatian Radio and Television (HRT) that established a new regulatory framework for the public broadcaster. Again, the new Broadcasting Council of HRT, the regulatory body that appoints management and Editors-in-Chief, organized its first meeting only on 14 November, and therefore did not have a direct impact on the conduct of the media during the campaign.

Whilst the provisions of the Election Law (Art. 26 – 28) concerning media during the campaign are rather brief, they require Parliament to adopt a set of detailed regulations governing the media coverage of the campaign period.<sup>12</sup> The regulations stipulated that national electronic media, both public and privately owned, should provide contestants with

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<sup>12</sup> On 16 October the Sabor adopted 'Rules of Procedure for Electronic Media with National Concession in the Republic of Croatia during the Election Campaign'.

free time to present their platforms. While the regulations provided the specific amount of the free time for contestants in the TV channels, the radio stations, in particular those privately owned, were not bound by the amount of time that they had to provide to the candidates and thus the length of their programs differed. In addition, contestants were given the right to use paid advertisements.

The Regulation stipulated that broadcasters' reports of the contestants gatherings and election campaign activities must be placed in special programs outside of the regular news programs. Television reports should be up to 2 minutes in duration; in addition, political parties had a right to a 5-minute spot without the mediation of journalists. HTV was obliged to provide each party, coalition, independent list and representatives of the national minorities with 45 minutes of free time. Furthermore, one representative of each list in the constituency in which he was competing was given a share in a 50-minute debate. The private television station, TV NOVA, was obliged to provide contestants with 15 minutes of free time and a representative of each list in each constituency was given a share in a 20-minute debate.

Neither the private nor the public media welcomed the Regulation and considered it inappropriate. HTV reported to the EOM that television audience ratings for these presentations were very low. The result of the Regulation was, for the public media, the marathon broadcasting of political parties' platforms. This model of programming lacked effectiveness as a tool of public information and also reduced the airtime available for political analysis. Immediately following the election, an HTV representative informed the EOM that HTV would produce a critical report on the impact of the Regulation and submit it to the HRT Broadcasting Council, for further submission to the Sabor.

Representatives of the private media as well as a number of the organisations such as the Croatian Helsinki Committee for Human Rights and the Croatian Journalists' Association also expressed their disagreements with the unattractive broadcasting format required by the Regulation and the requirement from the private media outlets to air free-of-charge programs.

The privately owned nation-wide broadcaster TV NOVA submitted on 29 October 2003 a complaint to the Constitutional Court claiming that the Regulation was in contradiction with free market principles as well as freedom of expression and its implementation would inflict serious financial costs on their business. At the time of writing, the decision of the Constitutional Court was pending. TV NOVA refused to fulfil the Regulation and instead implemented its own standards for the equitable coverage of the campaign. This highlighted the absence of a regulatory body with the competence to enforce the Regulation. It should be noted that TV NOVA's non-compliance with the Regulation was not widely condemned.

Other private media with national concession – radio stations *Narodni Radio* and *Otvoreni Radio* followed the regulations and provided contestants with the free time, although also expressed their disagreements with the regulations.

### **C. FINDINGS OF THE MEDIA MONITORING**

The EOM conducted media monitoring of television stations and print media outlets. The TV channels monitored were: HTV 1 and HTV 2 - (public) and TV NOVA (private). The monitored "daily" newspapers included: *Vecernji List*, *Jutarnji List*, *Slobodna Dalmacija*,



*Glas Slavonije, Novi List and Vjesnik*; the monitored weeklies: *Globus, Nacional* and *Feral Tribune*.

The electronic and print media, as a whole, provided voters with a variety of political views and candidates were able to present their platforms freely. They generally dedicated the largest share of coverage to the Government and to the established political parties. Contestants were portrayed largely in a neutral light.

## 1. Electronic Media

The public HRT network of television and radio channels fulfilled its legal obligations to provide free airtime for contestants' presentations. In its regular news programs, HTV maintained balanced political coverage without bias and portrayed contestants, political parties and other relevant political actors in a neutral light. The largest share of airtime in HTV news programs (35 per cent) was given over to presentation of the Government. This share was growing in the last week of the campaign. President Mesic received 4 per cent of the political coverage. The State Election Commission was given 5 per cent. HTV also aired extensively the voter education spots produced by GONG. SDP and HDZ received equal amounts of time (13 per cent) in the HTV news programs. Their leaders were the most frequently presented politicians. Four other parties, HSS, HNS, HSLD-DC and HSP, each received between 8 – 5 per cent of airtime.

The privately owned TV NOVA dedicated 33 per cent of the political coverage in its news programs to the Government. HDZ received 20 per cent and SDP, 16 per cent of the news coverage on this TV channel. Mr. Racan (SDP) was given the biggest amount of time from all the politicians; however he was presented as a Prime Minister as well as the leader of his party. Mr. Sanader (HDZ) received the second largest share of time. HSS received 9 per cent and HSP 6 per cent of airtime in the news programs. A number of other parties received between 1 per cent and 3 per cent. TV NOVA portrayed political parties and other subjects in a rather neutral way, though the amount of information with a negative connotation, especially concerning the portrayals of the SDP and HDZ, was generally higher in comparison with HTV programs.

Some contestants, above all the established parties, used their right to place paid advertisements in media broadcasts and print media outlets on an extensive basis. HDZ had by far the largest share of paid airtime on television channels monitored by the EOM. Other parties that often used the possibility to place paid advertisements were HSLD-DC, HB-HIP, HNS, HSP and SDP.

## 2. Print Media

Newspapers provided voters with a variety of political views, though with a focus on the leading political parties – HDZ and SDP. Newspapers, and especially the weekly journals, were more critical of contestants than electronic media.

The two most popular dailies, the privately owned *Vecernij List* and *Jutarnij List* dedicated the most column inches to SDP – approximately 30 per cent. *Jutarnij List* gave 29 per cent to HDZ, 13 per cent to the Government, 12 per cent to HSS and 8 per cent to HNS. *Vecernij List*

provided HDZ with 16 per cent and Government with 21 per cent. Three other parties - HNS, HSP and HSS were given space between 8 per cent and 5 per cent.

Two newspapers controlled by the State - *Slobodna Dalmacija* and *Vjesnik*, both provided the Government with the biggest share of their coverage (25 per cent and 21 per cent respectively). *Slobodna Dalmacija* furthermore provided 20 per cent to SDP, and 14 per cent to HDZ. An additional 9 per cent was given to HNS and 7 per cent to HSS. *Vjesnik* gave both SDP and HDZ equally 18 per cent of its space; HSS was given 8 per cent, HNS 7 per cent and HSP 5 per cent.

In two important regional newspapers, *Novi List* and *Glas Slavonije*, the largest coverage was given to HDZ (25 per cent and 23 per cent respectively). In *Novi List* SDP was given 21 per cent and Government 17 per cent. *Glas Slavonije* gave 19 per cent to the Government and 18 per cent to SDP. Also HSS was given significant share – 14 per cent of the politically relevant coverage. *Glas Slavonije*'s portrayal of HDZ was rather positive.

Following a similar pattern, the weekly publications *Globus*, *Nacional* and *Feral Tribune* dedicated the most attention to the main political parties SDP and HDZ. Also the Government was given a large share of coverage. Of the smaller parties, HNS and HSS were given significant attention in *Globus* and *Nacional* while HSLs – DC received significant coverage in *Globus* and *Feral Tribune*. The main political parties and Government were presented largely in a neutral or negative light. The most negative portrait of all the parties and Government was evident in *Feral Tribune*.

#### **D. FREEDOM OF EXPRESSION**

Although the election campaign was largely free of the direct and indirect pressure on the media that had characterised earlier parliamentary elections, the Croatian Journalists' Association (HND) noted a concern in this regard. They protested against the statement of the leader of HDZ, I. Sanader during an election rally in Osijek on 16 November that Croatian (public) Radio would be able to "lie" only until 23 November. HND expressed its concerns in regards of this statement and indicated that Mr. Sanader threatened freedom of expression, as well as reportedly announcing that his party would directly interfere in media affairs after it came to power. HDZ however denied this HND interpretation of Mr. Sanader's statement.

### **VIII. ELECTION DAY PROCEDURES**

The EOM did not include a short-term observation component. Rather, 12 long-term observers (6 teams) were deployed; therefore no systematic observation of polling and counting procedures was undertaken.

In-country polling took place on Sunday 23 November from 07.00 to 19.00 in 6,795 polling stations. OCV took place on both 22 and 23 November in 51 countries at 155 polling stations.

Voting took place in a calm atmosphere and no major problems were reported to the EOM. However, the design of the voting booths and the layout of the polling stations were, in some

cases, ineffective for guaranteeing the secrecy of the vote. EOM long-term observers reported a general impression of the elections being a “routine” process and well administered.

## IX. ELECTION DISPUTES AND JUDICIAL SUPERVISION OF THE ELECTION

In past elections, it was understood that complaints about election procedures must be presented to the SEC, and that judicial appeals from SEC decisions could be made exclusively to the Constitutional Court. There was some concern, however, about the clarity of the related provisions in the Election Law and whether some complaints and appeals might be pursued in another manner.

The complaint and appeal provisions of the Election Law (Arts. 83-89) have now been amended so that they are clearer and appear to be entirely consistent with the corresponding provisions of the Constitutional Law on the Constitutional Court. It is now specified that only a decision by the SEC can be appealed, and that judicial appeal is only available to the Constitutional Court. Also, the right of voters to appeal to the Court, provided there is a group of at least 100 persons doing so, has been inserted into the Election Law as well as retained in the Constitutional Court Law.

In addition to its jurisdiction over election disputes, the Constitutional Court has a general responsibility to control the constitutionality and legality of elections. The judges of the Court have indicated that they believe that this provision gives the Court more general jurisdiction over election matters. As a result, the Court has – usually upon petition – issued advisory opinions on election issues.

The Constitutional Court also has specific statutory power to take other actions to ensure compliance with election laws. The Court may respond to potential violations by informing the public through the media, warning competent government bodies, or in case of serious violation annulling related electoral activities.

During the recent electoral period, the Constitutional Court issued a public statement regarding the failure of the relevant political parties to put forward nominees for membership on the Ethics Commission (see below). After the announcement, the parties quickly made their nominations, and the Commission was formed shortly before the statutory deadline.

During the electoral period, the Election Law (Arts. 90-93) provides for the establishment of a “supra-partisan” body called the Ethics Commission to help promote and realise ethical and democratic principles. The Chairman of the Croatian Academy of Arts and Sciences, serves *ex officio*, as the Chairman of the Commission and the other members are nominated by the ruling and opposition parties in Parliament but expected to serve in a non-partisan manner. After its observation of the 2000 elections, OSCE/ODIHR concluded that the activities of the Commission had not significantly improved the campaign environment.

During these elections, the Commission again played a very minor role. After its appointment, the Commission readopted the Code of Conduct used during the previous election. The Commission also adopted rules under which its proceedings would be closed, but soliciting submissions from candidate list submitters and NGOs concerning violations of the Code. Few if any significant issues have been brought to the attention of the Commission,

however, indicating that the parties do not view it as a useful forum to resolve campaign disputes.

The Ministry of Defence (MORH) published the names of 10 active military personnel who appeared on the candidates' lists, whose presence on the lists was confirmed by the SEC. The Ministry of Defence argued that the presence of the military personnel was in violation of the Law on the Duties of the Armed Forces, which forbids engagement in political life by members of the Forces. Disciplinary procedures were instigated by the Ministry against the personnel. The State Election Commission, however, announced that the Law on Election to the Representatives to the Croatian Parliament does not forbid military personnel to be candidates on the lists, but only forbids, at the same time, combining military and Sabor representative duties. In the event of election, a candidate from the military would have to decide which function to give up.

The SEC issued a decision on 20<sup>th</sup> November to forbid polling stations in churches and other religious premises, following a complaint submitted to the SEC by the Liberal Party (LS).

## X. FINAL RESULTS

Final results were published by the State Election Commission on 3 December.<sup>13</sup> In keeping with the constituency system, final results published on the SEC website are provided only at the constituency level and not aggregated at the national level. This makes the exercise of calculating any national data on election results a cumbersome activity, which could be greatly simplified if it were provided directly by the SEC.<sup>14</sup>

Final voter turnout was approximately 66.8 per cent in the 10 in-country constituencies, a fall of 8 per cent on the same measure from the 2000 parliamentary elections. However, actual participation of all registered voters was 59.6 per cent. This lower number reflects, in particular, the low turnout of registered voters in the categories of diaspora and national minority voters.

Party	Seats from Constituency 1 - 10	Seats from the Diaspora (Constituency 11)	Total Seats
HDZ	62	4	66
SDP/IDS/Libra/LS	43		43
HNS/PGS/SBHS	11		11
HSS	9		9
HSP	8		8
HSU	3		3
HSLs/DC	3		3
HDSS	1		1
National minorities	8		8
Total	148		152

<sup>13</sup> See details at the website of the State Election Commission [[www.izbori.hr](http://www.izbori.hr)].

<sup>14</sup> The national turnout figures are calculated from official results, but are by definition, unofficial.

## **XI. RECOMMENDATIONS**

### **A. LEGAL FRAMEWORK**

- The Election Law should be amended to address issues raised by OSCE/ODIHR and national non-governmental groups with respect to its implementation during the recent parliamentary elections.
- Rules and regulations, which currently expire at the end of an electoral process, should be established on a permanent basis or incorporated in the Election Law.
- The legal framework for out-of-country voting should be clarified, inconsistencies between related voter registration and voting rules should be eliminated, and detailed provisions on this subject should if possible be incorporated into the Election Law.
- The Election Law should clearly specify what kind of identity documentation is valid for the purpose of elections.
- The role of the Ethics Commission should be reviewed, and improved mechanisms should be created to address campaign and related violations (including issues about media coverage and access).
- The legal framework for elections should provide the possibility of sanctions or enforcement for violations of the campaign silence period.

### **B. ELECTION ADMINISTRATION**

- In view of the short timeframe of election periods, permanent election administration functions should be established in a way that would enable important election-related regulatory and other programs to be operated on an ongoing basis, and the electoral implications of other State actions to be factored into overall government decision-making.
- Future election commission should have a secretariat in charge of administrative support and including experts in training, voter education, media and other relevant election specialities.
- The location and number of polling stations provided for out-of-country voters, in particular refugees residing in Serbia and Montenegro and Bosnia and Herzegovina, should be reassessed with the aim of ensuring the closest possible match with the location of this particularly disadvantaged group of voters.
- A means should be devised to permit national minority voting without creating separate registers of minority voters.

- Steps should be undertaken to remove inconsistencies regarding multiple-candidate voting by Serb minority voters.
- Polling station procedures should be issued as mandatory instructions, rather than as 'Reminders', which have an unclear legal status.
- Polling station locations should be more carefully selected in order to avoid churches and war veterans' premises, and communicated to voters early in the process.
- Voting material should be upgraded to ensure consistent, nationwide design of ballot boxes. Voting screen design and polling station layout should be reviewed to ensure greater secrecy of the ballot.
- Voting procedures should be revised in order to require that each voter sign the voter list when they receive a ballot.
- Provisions for mobile voting should be more detailed and include deadlines for interested voters to request this option.
- Final results aggregated at a national level should be provided directly by the SEC.

#### **C. MEDIA**

- The regulatory framework should provide for the obligation to cover electoral campaigns in a fair, balanced and impartial manner, in both public as well as private broadcast media, however with due respect for the editorial independence.
- In future elections the conduct of the media shall be monitored by the regulatory body. Sufficient and detailed provisions regarding the penalties for broadcasters in the case of misconduct should be defined.

#### **D. CAMPAIGN FINANCING**

- The regular financial reports by political parties under the Law on Political Parties should be presented in a manner that which makes clear the nature and amount of their spending on election campaigns, and also includes information on the market value of in-kind contributions.

## ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (ODIHR) is the OSCE's main institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Document).

The ODIHR, based in Warsaw, Poland, was created in 1990 as the Office for Free Elections under the Charter of Paris. In 1992, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 100 staff.

The ODIHR is the lead agency in Europe in the field of **election observation**. It co-ordinates and organizes the deployment of thousands of observers every year to assess whether elections in the OSCE area are in line with national legislation and international standards. Its unique methodology provides an in-depth insight into all elements of an electoral process. Through assistance projects, the ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include the following thematic areas: rule of law, civil society, freedom of movement, gender equality, trafficking in human beings. The ODIHR implements more than 100 targeted assistance programs every year, seeking both to facilitate and enhance state compliance with OSCE commitments and to develop democratic structures.

The ODIHR promotes the protection of **human rights** through technical-assistance projects and training on human dimension issues. It conducts research and prepares reports on different human rights topics. In addition, the Office organizes several meetings every year to review the implementation of OSCE human dimension commitments by participating States. In its anti-terrorism activities, the ODIHR works to build awareness of human dimension issues and carries out projects that fundamentally address factors engendering terrorism.

The ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies. The Office also acts as a clearing-house for the exchange of information on Roma and Sinti issues among national and international actors.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR [website](http://www.osce.org/odihr) (www.osce.org/odihr).