

INTERNATIONAL ELECTION OBSERVATION MISSION Bosnia and Herzegovina General Elections, 12 October 2014

STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

Sarajevo, 13 October 2014 – This Statement of Preliminary Findings and Conclusions is the result of a common endeavour involving the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the OSCE Parliamentary Assembly (OSCE PA), and the Parliamentary Assembly of the Council of Europe (PACE).

Roberto Battelli (Slovenia) was appointed by the OSCE Chairperson-in-Office as Special Coordinator and the leader of the short-term OSCE observer mission. Marietta Tidei (Italy) headed the OSCE PA delegation, Tiny Kox (Netherlands) led the PACE delegation. Cornelia Jonker (Netherlands) is the Head of the OSCE/ODIHR Election Observation Mission (EOM), deployed from 3 September 2014.

The assessment was made to determine whether the elections complied with OSCE commitments and Council of Europe standards for democratic elections, as well as international obligations and domestic legislation. This Statement of Preliminary Findings and Conclusions is delivered prior to the completion of the election process. The final assessment of the elections will depend, in part, on the conduct of the remaining stages of the election process, including the count, the tabulation and announcement of results, and the handling of possible post-election day complaints or appeals. The OSCE/ODIHR will issue a comprehensive final report, including recommendations for potential improvements, some eight weeks after the completion of the election process. The OSCE PA will present its report on 3 December at its Bureau Meeting in Basel. The PACE delegation will present its report on 18 November at its Standing Committee meeting in Brussels.

PRELIMINARY CONCLUSIONS

The 12 October general elections in Bosnia and Herzegovina were held in a competitive environment. The interethnic divide was a key factor. The lack of a shared vision in the country's future and co-operation among three constituent peoples continues to hinder the reform necessary to fully ensure democratic elections. A growing mistrust by citizens in the functioning of the democratic institutions endangers stability. Candidates were able to campaign freely and fundamental freedoms of expression, association and assembly were respected. While the elections were efficiently administered, widespread credible allegations of electoral contestants manipulating the composition of polling station commissions reduced stakeholder confidence in the integrity of the process.

The legal framework is generally sufficient for the conduct of democratic elections. However, a lack of political will to move beyond the 1995 General Framework Agreement for Peace (Dayton Agreement) means that important and long-standing shortcomings remain. In particular, the ethnicity-based restrictions on the right to stand and to vote are contrary to paragraphs 7.3 and 24 of the 1990 OSCE Copenhagen Document and Council of Europe standards. It is regrettable that this is the second election held in violation of the *Sejdic-Finci* judgment of the European Court of Human Rights. In addition, the number of votes required for a candidate to be elected in each constituency varies significantly, violating the principle of equality of the vote. The legal requirement to regularly review constituency boundaries and the allocation of mandates has not been met.

The Central Election Commission (CEC) generally administered the elections efficiently and enjoyed confidence among most electoral stakeholders. CEC sessions were open to accredited observers and to

the media, while a majority of Municipal Election Commissions met informally. In addition, there were numerous cases that electoral contestants engaged in the trading of polling station commission positions to gain greater representation in areas of specific interest. This led to politically unbalanced commissions and reduced trust in their ability to conduct elections without abuse.

Overall, there was confidence in the quality of the Central Voter Register and its accuracy. The number of eligible voters for these elections was 3,278,908. For the first time, voters in the Brčko district had to choose citizenship of one of the two entities to be able to vote. Although a concerted effort was made to inform Brčko voters, some were reluctant to declare an entity citizenship.

In a generally inclusive process, the CEC certified 51 political parties, 14 coalitions and 15 independent candidates to compete in the state and entity elections. For the BiH Presidency election, 17 candidates were certified, of which only one is a woman. For the election of the RS President and Vice-Presidents, 19 candidates were certified, of which two are women. Provisions for the return of registration deposits are excessive and run contrary to good practice. The new 40 per cent gender representation requirement was respected both in the election administration bodies and on candidate lists.

All electoral contestants were able to campaign without obstruction and freedoms of association and assembly were respected. Political parties oriented their campaigns toward their own ethnic communities. While contestants conveyed campaign messages on the necessity for socio-economic reforms, job creation, fighting corruption, and European and Euro-Atlantic integration, their campaigns were largely negative, blaming opponents for the lack of progress.

The campaign finance regulatory system is not adequate to ensure transparency, integrity and accountability of the process, and a majority of previous OSCE/ODIHR and the Council of Europe's Group of States against Corruption (GRECO) recommendations remain unaddressed. In addition, the lengthy auditing process of finance reports negates the effectiveness of existing regulations and leaves violations unaddressed.

There are a large number of media outlets operating in the country, but the media environment is segmented along ethnic lines. Public broadcasters complied with the legal obligation to provide free airtime to electoral contestants on an equal basis and offered voters the opportunity to learn about contestants through debates and election programmes. However, OSCE/ODIHR EOM media monitoring results substantiated the widespread allegations of bias in broadcast media.

Legal redress is limited to those voters and electoral contestants whose rights are directly violated. In addition, in the review of electoral disputes, there is no guarantee to a public hearing, at odds with paragraph 12 of the 1990 OSCE Copenhagen Document. Over 100 complaints and appeals were submitted to the election administration prior to election day and a majority were rejected.

Election day generally proceeded in an orderly manner, but some technical irregularities were noted throughout the day, with a significant deterioration of the process during the counting. Observers noted a lack of uniformity in the knowledge and application of procedures, especially during the counting. The tabulation process, which is still ongoing, was generally assessed positively.

PRELIMINARY FINDINGS

Background

The state structure of Bosnia and Herzegovina (BiH) results from the constitutional arrangement, agreed in the 1995 General Framework Agreement for Peace (Dayton Agreement). The state consists of two entities: the Federation of BiH (FBiH) and the Republika Srpska (RS), and the Constitution recognizes Bosniaks, Serbs and Croats as the three ‘constituent peoples.’¹ The absence of a shared vision and the lack of cooperation between the ethnicities remains the key factor in BiH, often causing stalemates in the political decision-making process.² Efforts by the international community, through instruments set up by the Dayton Agreement, to bridge the gap between the entities and ethnicities by promoting civic values and individual, rather than group rights, have thus far yielded no tangible results. The three constituent peoples, depending on their ethnic or cultural affiliation, rely on the support of respective regional actors.

The division of political parties along ethnic lines remains a predominant feature. In FBiH, the Social Democratic Party (SDP), the Party for Democratic Action (SDA), the Alliance for Better Future (SBB), the Party for BiH (SBiH), as well as the newly formed Democratic Front (DF)³ feature on the Bosniak political scene, while the Croat Democratic Union of BiH (HDZ BiH), the Croat Democratic Union 1990 (HDZ 1990) and other Croat parties compete for the Croat vote. In the RS, both the ruling Alliance of Independent Social Democrats (SNSD) and the opposition consisting mainly of the Serb Democratic Party (SDS) and the Party for Democratic Progress (PDP) advocate a similar platform of promoting RS entity-level competencies.

The pre-election political environment was marked by the population’s increasing disillusionment in the government. In February 2014, BiH witnessed socio-economic protests, triggered by high unemployment and allegations of corruption. Extensive political negotiations over the appointments for key regulatory agencies remain as a well-established practice. Further, the reliance on party-controlled public employment for a large percentage of the population means that considerable segments of society are dependent on political parties. In May 2014, the socio-economic situation was further exacerbated by severe floods.

Legal Framework

Elections are primarily regulated by the Constitution and election law. These are supplemented by Annex III of the Dayton Agreement, the Law on Financing Political Parties, the Law on Citizenship as well as regulations issued by the Central Election Commission (CEC).⁴ The legal framework is

¹ Citizens may also declare themselves as ‘others’, either by identifying themselves as members of another ethnic group or by choosing not to affiliate with any ethnic group.

² The European Commission 2013 Progress Report on Bosnia and Herzegovina “[c]oncluded that Bosnia and Herzegovina has made very limited progress in addressing the political criteria. A shared vision by the political representatives on the overall direction and future of the country, or on how it should function, remains absent’. See European Commission Memo ‘Key Findings of the 2013 Progress Report on Bosnia and Herzegovina’, Brussels, 16 October 2013: http://europa.eu/rapid/press-release_MEMO-13-889_en.htm.

³ The Democratic Front was founded in 2013 by the Croat Member of BiH Presidency, Željko Komšić, who had left the SDP a year before.

⁴ In addition, there are number of entity laws, including the Constitutions of FBiH and RS, the RS Law on Political Party Financing from the Budgets of the Republic, Town and Municipality, the RS Law on Political Parties, the Brčko Law on Financing Political Parties and the Brčko Law on Political Organizations. The Law on Political Party Financing from the Budget of the Brčko District of BiH does not have a law on political parties, or a law on financing of political parties.

generally sufficient for the conduct of democratic elections. However, a lack of political will to move beyond the 1995 General Framework Agreement for Peace (Dayton Agreement) means that important and long-standing shortcomings remain including a limited right to file a complaint, insufficient safeguards to prevent the misuse of administrative resources, the lack of a law on political parties, as well as inadequate campaign finance regulations.

The legal framework continues to pose ethnicity-based restrictions on the right to vote and to stand as a candidate, contrary to paragraph 7.3 of the 1990 OSCE Copenhagen Document.⁵ The right to stand for the BiH Presidency and the RS President and Vice Presidents is granted only to citizens who declare themselves as Bosniaks, Croats or Serbs.⁶ In addition, the right to stand as a candidate is limited by residency: a Serb registered in the FBiH and a Bosniak or Croat in the RS cannot stand for the BiH Presidency.⁷ Besides, RS voters can only vote for a Serb candidate for the BiH presidency, while voters in the FBiH may only vote for either a Bosniak or Croat candidate. To date, there has been no progress on the constitutional amendment needed in order to implement the binding judgment of the European Court of Human Rights in the *Sejdić-Finci* case regarding discrimination against citizens on the grounds of ethnicity.⁸

Following recent amendments to the Law on Conflict of Interest, the mandate for deciding on conflicts of interests for elected officials on the state level was transferred from the CEC to a newly established parliamentary commission. However, there remains a lack of clarity about its authority and a number of OSCE/ODIHR EOM interlocutors voiced concerns about this commission's ability to fulfill its duties in a timely and impartial manner after the elections.

Electoral System

Under the complex institutional and electoral system, six separate contests took place in these elections. At the state level, citizens voted for the BiH Presidency and BiH House of Representatives (BiH HoR). In addition, citizens registered in FBiH voted for the FBiH House of Representatives (FBiH HoR) and the Cantonal Assemblies whereas those registered in the RS voted for the RS President and Vice Presidents and the RS National Assembly (RS NA).

The three members of the BiH Presidency are elected by simple majority on separate lists in the two entities. The RS President is also elected by simple majority. The candidate of any constituent people who received most votes is elected president, while the top two candidates from the other two constituent peoples are elected as vice-presidents.

Members of the BiH HoR and FBiH HoR as well as the RS NA are elected from open candidate lists, by preferential vote, in multi-member constituencies (MMCs), which enables voters to select their preferred candidates. For all three legislative bodies, compensatory mandates are also allocated from closed party lists, after the initial allocation of mandates, to compensate for inadequate proportional

⁵ Paragraph 7.3 of the 1990 OSCE Copenhagen Document provides that the participating States should “guarantee universal and equal suffrage to adult citizens.”

⁶ Only Bosniaks, Croats and Serbs may be indirectly elected to the FBiH President Houses of Peoples of BiH and as FBiH President and Vice Presidents.

⁷ See paragraph 15 of the 1996 United Nations Human Rights Committee (UNHCR) General Comment No. 25 to Article 25 of the International Covenant on Civil and Political Rights (ICCPR), which provides that “persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation.”

⁸ On 22 December 2009, the European Court of Human Rights (ECtHR) issued a decision stating that ethnicity-based ineligibility to stand as a candidate is “...incompatible with the general principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms,” See *Sejdić and Finci v. Bosnia and Herzegovina* (ECtHR 2009). See at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-96491>.

representation of the party, coalition or candidate list. For the FBiH HoR and the RS NA, the election law guarantees a minimum representation of four seats for each of the three constituent peoples.

The number of votes required for a candidate to be elected in each MMC varies significantly, violating the principle of equality of the vote, as provided for by paragraph 7.3 of the 1990 OSCE Copenhagen Document. This is applicable for the elections of HoRs, both in BiH and the FBiH, and the RS NA. The constituencies for the BiH and FBiH HoRs and the number of mandates allocated to each MMC have not been reviewed since 2001, despite a legal requirement for review every four years.⁹ The recent review of constituency boundaries and allocation of mandates for the RS NA did not remedy this inequality.¹⁰

Election Administration

The general elections were administered by the CEC and 142 Municipal Election Commissions (MECs) appointed for seven-year terms as well as 5,401 Polling Station Commissions (PSCs) established by MECs for these elections.¹¹ The CEC and MECs generally respect the required ethnic and gender composition.¹²

In general, the CEC enjoyed confidence among most electoral stakeholders. It issued regulations necessary for the conduct of elections and published them on its website in a timely manner. The CEC held regular sessions open to the media and made most decisions unanimously. At times, the frequency of these sessions was not sufficient for the hearing of complaints.¹³ In accordance with its own rules of procedure, the CEC held internal meetings, closed to observers and media, in which issues were often discussed in depth, unlike the public CEC sessions.

MECs were mostly experienced, well organized, and familiar with the election law. Many MECs did not announce their sessions in advance, and the majority of MECs met informally to decide on election matters. Seven MECs reported political pressure on them, and a number of OSCE/ODIHR EOM interlocutors further alleged that political influence was more widespread.

All electoral contestants had the opportunity to nominate an equal number of representatives to serve as PSC members, randomly assigned through a lottery organized by the CEC. Some 33 MECs stated with concern that some nominated PSC members lacked the knowledge and experience to conduct elections according to procedures, even though they were trained by the MECs.

While the appointment of PSCs was formally carried out according to the law, there were numerous credible cases that contestants engaged in trading of PSC positions to get representation in areas of their specific interest, which led to politically unbalanced PSCs.¹⁴ Some OSCE/ODIHR EOM interlocutors alleged that there were PSCs where essentially only one political party was

⁹ The delimitation of MMCs is still regulated by the transitional provisions of the election law.

¹⁰ Paragraph 2.2 of the Code of Good Practice in Electoral Matters of the Council of Europe's Commission for Democracy through Law (Venice Commission) provides that "the permissible departure from the norm should not be more than 10% and should certainly not exceed 15%, except in special circumstances".

¹¹ This included five PSCs established at diplomatic representations abroad.

¹² The composition of MECs should reflect the ethnic composition of the relevant municipality according to the last census information. For these elections, the last published census was from 1991. With a new legal provision, at least 40 per cent of each gender should be represented in all levels of the election administration.

¹³ Electoral contestants had no observers present at the CEC sessions.

¹⁴ A total of 60 MEC representatives said that some PSC nominations did not genuinely represent the political parties or candidates that nominated them. The OSCE/ODIHR EOM evidenced several cases of such practice, which was also openly declared by some contestants. At least two independent candidates were participating in elections for the single purpose to get positions in PSCs on behalf of other contestants.

represented.¹⁵ Political imbalance in PSCs is a serious concern, as it conflicts the spirit of the election law.¹⁶ The CEC did not address this concern. In addition, while the electoral contestants received complete lists of PSC members with information on who nominated them, this information was not publicly available, thus reducing the transparency of the process and the trust of stakeholders in the PSCs to conduct elections without abuse, especially the vote count.

The training for MECs and PSCs was extensive but not always practical. As a positive measure, the CEC produced a series of education videos covering the electoral process. The CEC also conducted voter education in the electronic media with spots on how to complete ballot papers and aired several get-out-the-vote spots.

Voter Registration

Voter registration is passive and based on the population register. It includes all residents who are over 18 years of age, excluding those serving a sentence or being indicted for a serious violation of humanitarian law.¹⁷

The CEC has responsibility for maintaining the Central Voter Register (CVR), which enjoys a high level of confidence. In an inclusive process, voters were able to check their registration and request corrections.¹⁸ The number of eligible voters for these elections was 3,278,908. In addition, voters who have a valid identification card (ID) proving their residence, and who were not on the voter list, and voters who registered to vote abroad but come to BiH on election day could vote by provisional ballots.

Voters temporarily residing abroad had the possibility to apply to vote abroad by post or in diplomatic representations, by a deadline of 29 July.¹⁹ The CEC identified a number of possible abuses of registration to vote by post and heard allegations of four different cases in which voters abroad received packages with ballot papers for more than one voter.²⁰ As these cases are pending with the prosecutor's office for investigation, a number of OSCE/ODIHR EOM interlocutors expressed concern that these allegations reduced trust in the integrity of the postal ballot.

Internally displaced persons (IDPs) had a legal right to register to vote either at their temporary residence or their residence before being displaced. The CEC received 100,090 entries of IDPs,²¹ however the CEC reported that only 84,207 entries were complete. The remaining had data missing,²² and could not be included on the list of IDPs in the CVR.²³ While the right of IDPs to vote according to their previous residence is legally guaranteed, the state, entity and local level authorities could have made more efforts to ensure IDP participation by maintaining more accurate data.

¹⁵ The OSCE/ODIHR EOM received credible but unverified information on this issue.

¹⁶ Article 2.19(13) of the election law stipulates that "only one representative of a political subject can be a member of any one polling station commission."

¹⁷ Additionally, those who are found to lack legal capacity by a final court decision are excluded from the CVR.

¹⁸ In case of mistakes, voters could request corrections through entity and local institutions maintaining citizen registers that would then be automatically reflected in the CVR.

¹⁹ Due to the small number of applications, only 214 citizens were registered to vote in person in diplomatic representations in Austria and Germany. A total of 42,044 voters were registered to vote by post.

²⁰ Including applications for 37 dead persons and 608 cases in which the CEC suspected impersonation or falsified applications.

²¹ The register of IDPs is maintained by the BiH Ministry for Human Rights and Refugees.

²² Such as unique citizen number or address.

²³ By the 29 July deadline, some 20,709 IDPs chose to vote according to their residence before being displaced.

For the first time, voters in Brčko district had to choose an entity citizenship to be able to vote. Even after an active information campaign, only 45,317 residents chose by the 28 August deadline, leaving 39,974 residents without having chosen an entity citizenship. The citizens who obtained entity citizenship after 28 August were able to vote with a provisional ballot.²⁴ Although the Brčko authorities made an effort to make this process user-friendly and as inclusive as possible, some Brčko residents were reluctant to declare an entity citizenship.

Candidate Registration

The CEC certified 51 political parties, 14 coalitions and 15 independent candidates to compete in the state and entity elections. Although not observed by the OSCE/ODIHR EOM, the certification process appeared to have been inclusive, considering the number of registered contestants, the opportunity provided to contestants to correct applications, and that the process was contested only through a limited number of complaints.²⁵ However, a number of interlocutors questioned the genuine participation of some contestants given their practice of trading PSC positions for political gain.

In order to be certified, the political parties and prospective independent candidates had to submit an application for certification supported by a registration deposit, which is only returned to the contestants who are elected and/or obtain seats.²⁶ Provisions for the return of the registration deposits are excessive and run contrary to good practice.²⁷ Electoral contestants who were not represented in the outgoing elected body (or higher level body), which they were registering for, had to collect signatures.²⁸ Four parties were denied certification due to lack of signature or certification deposit, and one withdrew. All independent candidates were certified.

The CEC has certified a total of 3,524 candidates on 517 separate candidate lists, contesting for state and entity elections.²⁹ In accordance with recent amendments to the election law, the candidate lists for state and entity parliaments included 40 per cent of the less represented gender. For the BiH Presidency elections, the CEC certified 17 candidates, of which only one was a woman. For the election of the RS President and Vice-Presidents, 19 candidates were certified, of which two were women.

The Campaign Environment

The campaign officially commenced on 12 September and ended at midnight on 10 October. While campaigning is well regulated by the election law, it does not include bans on the misuse of

²⁴ By 30 September 2014, some 1,424 citizens requested entity citizenship. Residents renewing their ID card have to choose entity citizenship according to 2012 amendments to the Law on Identity Cards of Citizens of BiH.

²⁵ The OSCE/ODIHR EOM is aware of 18 complaints filed with the CEC and the court on the certification of candidates' lists. Three of them were upheld whereas the remaining were rejected, four on the grounds that the certification deposit had not been paid.

²⁶ The registration deposits were BAM 20,000 for the BiH Presidency and BiH HoR and BAM 14,000 for entity-level elections for political parties (BAM 1.95583 equals EUR 1). The amount is halved for independent candidates. The deposit amounts were increased by up to 40 per cent for these general elections.

²⁷ Paragraph 1.1.3.vi of the Code of Good Electoral Practice of the Venice Commission states that the number of votes that a candidate or party needs to win for the deposit to be refunded, should not be excessive.

²⁸ Political parties needed to collect 3,000 signatures for the BiH Presidency and BiH HoR, and 2,000 for all entity elections. Independent candidates needed to collect half the number of signatures.

²⁹ The CEC, on 5 and 8 October, deregistered two candidates on the basis of Article 7.3.1.7 of election law for what they defined as hate speech and inciting violence. While one decision was upheld by the court, the second decision is still pending with the court.

administrative resources.³⁰ In addition, a new legal amendment enabled state, public and municipal authorities to provide contestants with free use of premises, often without ensuring equality in its implementation.

Overall, the campaign continued to be visible, although with less intensity in areas affected by the floods. The campaigning landscape was dominated by the major political parties, SDA, SBB, SDP, SNSD, SDS, HDZ and HDZ 1990. The campaign included a diversity of activities, such as displaying billboards and posters, organizing public rallies,³¹ indoor gatherings, and door-to-door campaigning, as well as distributing leaflets, and using social media. SDP stated that they would forego campaign billboards and posters in order to give financial assistance to flood victims.

Freedoms of association and assembly were respected and all electoral contestants were able to campaign without obstruction. The campaign atmosphere remained calm, with only isolated incidents reported by the media or observed by the OSCE/ODIHR EOM.³² In the pre-election period, 11 complaints concerning pre-term campaign,³³ and 8 complaints on campaign violations were filed with the election administration.³⁴ The attendance of rallies was rather low.

While electoral contestants conveyed campaign messages on the necessity for socio-economic reforms, job creation, fighting corruption, and European and Euro-Atlantic integration, their campaigns were largely negative, blaming opponents for the lack of progress. They highlighted personal accomplishments, at the expense of noting policy differences. Campaign messages from Bosniak contestants focused on the necessity for strengthening central state structures, while the main pre-election topics among Croat and Serb contestants related to preserving and promoting their national identities. In addition, Serb contestants campaigned for Serb interests, enhancing RS competencies as an entity. Parties of all three constituent peoples campaigned on their respective national interests. The use of some inflammatory language was noted in the last week of the campaign, as well as through social media and in ‘comments’ sections of articles posted on Internet sites.

Campaign Finance

Campaign finance is regulated by the Law on Financing Political Parties, as well as CEC regulations. The law does not foresee interim reporting, deadlines for publishing and auditing financial reports, or proportionate sanctions, despite OSCE/ODIHR and Council of Europe’s Group of States against Corruption (GRECO) recommendations.³⁵ Overall, the campaign finance regulatory system as

³⁰ The misuse of administrative resources is at odds with the Venice Commission Report on the Misuse of Administrative Resources during Electoral Processes. See: <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282013%29033-e>.

³¹ OSCE/ODIHR EOM observed 73 rallies held throughout the country.

³² In Banja Luka an SDS activist was beaten while campaigning, and in Mokronoge a participant of an SNSD indoor public rally was expelled from the room, when he challenged the speaker. One candidate was deregistered by the CEC following a violent incident where he attacked the campaign stand of another party.

³³ These complaints referred to paid advertising before the campaign officially started, such as distributing promotional materials among voters, setting up party stands, paid TV advertising and one YouTube video of a political party posted online before the start of the election campaign. The majority of these complaints were rejected except for two cases, where a fine was imposed on the parties involved.

³⁴ Campaign violation complaints included the defacement of party billboards and posters; billboards and posters displayed on public premises; the case of similar party names (*‘Srpska Napredna Stranka’*’s complaint against the *‘Stranka Napredna Srpska’*, which should bear the name of *‘Stranka Nova Srpska’* as determined by the CEC); a SDP complaint against the statement of a candidate from *Naša Stranka* on a radio show allegedly containing speech offensive towards women.

³⁵ See, GRECO Compliance Report on Bosnia and Herzegovina, 18 October 2013.

currently implemented is not adequate to ensure transparency, integrity and accountability of the process.

Electoral contestants can finance their campaigns by receiving campaign funding from entity budgets, membership fees and donations by individuals and legal entities.³⁶ Transactions may be conducted through bank accounts or in cash. Each electoral contestant may spend up to BAM 0.30 per registered voter for each electoral contest. All contestants met their legal requirement to submit financial reports on incomes and expenditures at the time of certification for the three months prior to certification. A second report is due within 30 days after the election results for the period following certification. The CEC Audit Department, which oversees campaign financing, stated that due to limited human resources the results of auditing will be published two years later. Some OSCE/ODIHR interlocutors claimed that contestants at times fail to declare assets and transactions.

The Media

There are a large number of media outlets operating in the country, but the media environment is segmented along ethnic lines. The results of the media monitoring conducted by the OSCE/ODIHR EOM³⁷ showed that public broadcasters³⁸ complied with their legal obligation to provide contestants with equal portions of free airtime.³⁹ Voters were able to gather information about candidates to make an informed choice; in particular through numerous debates and election programmes. However, genuine debate about substantive issues and concrete proposals on how to address the key problems in the country was lacking.

The monitored public broadcast media (and some private) featured campaigns in special election programmes usually aired in the early afternoon or late evening hours, outside of the peak viewing time. News programmes with larger audiences ran virtually no coverage of campaigns. Through the coverage of their official activities, state officials, also running as candidates, received more coverage in public media in comparison with other candidates. While the law allows the news coverage of state officials without mentioning their candidacy, it also states that these officials must not enjoy a privileged position with respect to other participants in the electoral process. Achieving the required balance proved to be challenging for several broadcasters that gave these political actors a platform for promotion without countering it with critical views.

The broadcast media are obliged by law to respect the principles of fairness, balance and impartiality in their election coverage. The public BHRT TV provided generally neutral news coverage of the political actors while focusing on state and entity governments and other officials. FTV (RTV FBiH) allocated the largest single share of 24 per cent of its news coverage to the FBiH government, showing an overall neutral approach that was a positive development given that many OSCE/ODIHR EOM interlocutors alleged that FTV is subject to political influence. On the other hand, TV RTRS demonstrated a clear bias in favour of the RS President and RS Government in terms of airtime

³⁶ Individuals may donate up to BAM 10,000 and legal entities up to BAM 50,000. Foreign contributions, as well as funding from administrative bodies, public institutions, and anonymous donations are prohibited. Besides, parliamentary groups in the BiH HoR receive annual funding from the BiH budget.

³⁷ Starting from 12 September, the OSCE/ODIHR EOM monitored the election and campaign coverage during primetime on three public TV channels: BHT (BHRT), FTV (RTV FBiH) and TV RTRS; and four private channels: OBN, TV *Hayat*, TV1 and BN TV. In addition, the news programmes of TV Pink BH and FACE TV as well as are the contents of newspapers *Dnevni Avaz*, *Dnevni List*, *Glas Srpske*, *Oslobodjenje* and Press RS.

³⁸ The Public Broadcasting System (PBS) consists of Radio and Television of Bosnia-Herzegovina (BHRT) that has state-wide coverage, as well as Radio and Television of FBiH (RTV FBiH) and Radio and Television of RS (RTRS), each operating on the respective entity level.

³⁹ Minimum three minutes per electoral contestant (political parties, coalitions, and independent candidates).

allocated by devoting over 57 per cent of its total coverage to political actors, as well as a very positive tone of coverage, especially in its news programmes.

The results of the OSCE/ODIHR EOM media monitoring to an extent substantiated allegations of media bias raised by numerous interlocutors in connection with reported links between political subjects and media, and vulnerability of the media to adjust their editorial policies in exchange for advertising revenue. There were concrete examples of extensive and favourable coverage of some officials running in the elections in the private broadcast media, Pink TV and TV1, which heavily promoted SDP officials.⁴⁰ Further, the RS government was heavily criticized by the BN TV, which provided extensive and at times positive coverage of the opposition party SDS, with 26 per cent. However, the newscasts of TV *Hayat* and FACE TV offered balanced and critical coverage of political actors.⁴¹ This approach was absent in OBN's news coverage.

The Communications Regulatory Agency (CRA) is tasked to adjudicate complaints related to the activities of broadcast media in general as well as during elections, however, there are no deadlines for the review of complaints. The CRA does not conduct its own systematic monitoring of the media but rather acts upon complaints received. The bias in media coverage noted during the campaign period was raised in a limited number of complaints, but these complaints are still pending with the CRA.⁴² This, combined with the lack of a proactive approach by the CRA to identify violations, left campaign regulations essentially unenforced.

Most newspapers claimed that they maintain neutral editorial policies, but monitoring of them demonstrated bias in favour of or against a particular political option. The daily newspaper *Dnevni Avaz* clearly supported SBB, to which it has ties, while heavily criticizing SDA and SDP. *Glas Srpske* as well as Press RS, both favoured SNSD and the RS President, whilst criticizing the opposition, SDS. *Dnevni List* showed preference to Croat party HDZ 1990. *Oslobodjenje*, of all monitored print media outlets, offered the most diverse picture of political actors.

Complaints and Appeals

Legal redress is limited to those voters and electoral contestants whose rights are directly violated. Election commissions may also review cases of possible irregularities on their own initiative. The CEC serves as a first instance for reviewing most election-related complaints and as a second instance for appeals on decisions of MECs. All CEC decisions can be subject to judicial review before the Appellate Division of the Court of BiH as the final instance. Cases that may constitute criminal offences are referred to the prosecutor, but the lengthy investigations do not ensure timely remedy; a number of cases from previous elections are still pending with the prosecutor.

The OSCE/ODIHR EOM has been made aware of over 100 complaints and appeals lodged with the CEC and the MECs prior to election day, the majority of which were rejected. Some 35 appeals of CEC decisions were lodged with the court and all but one were rejected. While it was a positive development to introduce a centralized database of complaints, the CEC did not make it publicly available. In addition, the CEC often failed to comply with the 48-hour legal deadline for adjudication.

⁴⁰ TV Pink news programme on 18 September featured a nine-minute interview with Bakir Izetbegovic in his official capacity, providing him with open space for promotion; TV1 news featured repeatedly in a positive manner different governmental representatives from SDP running in the elections, especially of their initiatives in road construction.

⁴¹ However, TV *Hayat* presented the FBiH government in slightly positive light.

⁴² To date, 11 complaints have been submitted to the CRA, but no decisions have been taken.

Neither the CEC nor the court reviewed electoral disputes in public hearings, at odds with paragraph 12 of the 1990 OSCE Copenhagen Document and good practice.⁴³ However, the parties to the complaint were invited to submit written statements in support of their cases.

Citizen and International Observers

In a welcome development seven civil society organizations formed a coalition, *Pod Lupom*, to observe the whole electoral process.⁴⁴ *Pod Lupom* recruited and trained a total of 3,000 observers, who were deployed in some 1,400 polling stations on election day. The 142 MECs accredited more than 60,000 political party observers. The total number of accredited international observers was 552, coming from various international organizations, foreign election commissions, and resident embassies and consulates.

Election Day

Election day generally proceeded in an orderly manner, but some technical irregularities were noted throughout the day, with a significant deterioration of the process during the counting.

Polls opened with delays in 51 out of 124 polling stations observed, largely due to the counting of ballots before the opening of the polls and the absence of PSC members. The procedural irregularities observed included not recording ballot box serial numbers in 24 cases and interference in PSC members' work by observers in 6 cases. Contestant and citizen group observers were present in 99 and 30 per cent of polling stations, respectively.

In a positive overall assessment of voting, the process was noted as good or very good in 94 per cent of observation. Observers noted a lack of uniformity in the application of the identification rule to vote and in at least 21 polling stations observed some voters were allowed to vote without valid IDs. In addition, the most frequent irregularity was group/family voting observed in some 16 per cent of the polling stations, and the secrecy of the vote was not ensured in 7 per cent of observed polling stations, the same person assisting more than one voter was observed in 3 per cent of polling stations. Proxy voting was observed in 2 per cent of polling stations.

On election day, complaints were received by election commissions on breaches of the campaign silence, campaign materials outside polling stations, alleged ballot box stuffing, voters with pre-marked ballots and proxy voting. Interference in the work of the PSC by citizen and political contestant observers continued with 18 cases during voting.

The overall assessment of counting was more negative, linked to PSC members lacking knowledge of procedures and disorder, with 25 per cent of observed polling stations assessed as bad or very bad. In 27 observations significant procedural errors were noted, in 43 per cent of observations transparent bags were not used accordingly, in 41 per cent of observations PSC accounting forms were not completed before the start of the count, in 14 per cent of observations protocols were pre-signed by PSC members and in 30 per cent of observations results did not reconcile. However, the transparency of the counting process was assessed positively in all but 11 polling stations although protocols were

⁴³ Paragraph 12 of the 1990 OSCE Copenhagen Document ensures that “proceedings may only be held in camera in the circumstances prescribed by law and consistent with obligations under international law and international commitments.” In addition, see paragraph II 3.3.100 of the Code of Good Practice in Electoral Matters of the Venice Commission.

⁴⁴ Centre For Civic Initiatives, Youth Information Agency, Infohouse, Centre for Citizen Cooperation, *Perpetuum* Mobile Banja Luka, DON *Prijedor* and Forum of Tuzla Citizens.

not provided to observers in 30 per cent of observed polling stations. Interference in the work of the PSCs by citizen and political observers continued in 13 cases during the count.

The tabulation of preliminary results started immediately after the counting of each race. At the time of writing tabulation was ongoing. However, based on initial observations, the process was orderly and assessed as good or very good in all but one of the 65 MECs observed. The CEC began publishing partial preliminary results for the BiH Presidency on election night. Observers were able to observe the entire process without restrictions.

*The English version of this statement is the only official document.
Unofficial translations are provided in Bosnian, Croatian and Serbian.*

MISSION INFORMATION & ACKNOWLEDGEMENTS

Sarajevo, 13 October 2014 – The OSCE/ODIHR EOM opened in Sarajevo on 3 September, with 11 experts in the capital and 20 long-term observers deployed throughout the country.

On election day, 294 observers from 38 countries were deployed, including 222 long-term and short-term observers deployed by the OSCE/ODIHR, as well as a 41-member delegation from the OSCE PA, and a 31-member delegation from the PACE. Voting was observed in 1,084 polling stations and counting was observed in 108 polling stations. The tabulation process was observed in some 100 municipalities.

The observers represented wish to thank the Central Election Commission for the invitation to observe, for its co-operation and for providing accreditation documents, and the Ministry of Foreign Affairs and other authorities for their assistance and co-operation. They also wish to express appreciation to the OSCE Mission to Bosnia and Herzegovina and other international institutions for their co-operation and support.

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