



Office for Democratic Institutions and Human Rights

REPUBLIC OF CROATIA

PRESIDENTIAL ELECTION

27 December 2009

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

2-4 November 2009



Warsaw
19 November 2009

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OSCE/ODIHR Needs Assessment Mission Report

I. INTRODUCTION

In anticipation of an invitation to observe the upcoming presidential election, scheduled for 27 December 2009, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) undertook a Needs Assessment Mission (NAM) to the Republic of Croatia from 2 to 4 November 2009. The OSCE/ODIHR NAM was composed of Jonathan Stonestreet, OSCE/ODIHR Senior Election Adviser, and Nicola Schmidt, OSCE/ODIHR Election Adviser.

The purpose of the OSCE/ODIHR NAM was to assess the pre-electoral environment and the preparations for the presidential election, and to advise on a possible election observation activity. The OSCE/ODIHR NAM met with representatives of the Ministry of Foreign Affairs and European Integration, the Ministry of the Interior, the Ministry for Public Administration, the State Election Commission, the Constitutional Court, representatives of political parties, the media, civil society and the international community (see annex for a list of meetings). On 16 November 2009, the OSCE/ODIHR received an invitation to observe the election from the Permanent Mission of the Republic of Croatia to the OSCE.

The OSCE/ODIHR is grateful to the Ministry of Foreign Affairs and European Integration for its assistance during the NAM, and expresses its appreciation to all of its interlocutors for taking the time to meet with the mission. The OSCE/ODIHR would also like to thank the OSCE Office in Zagreb for its assistance.

II. EXECUTIVE SUMMARY

On 4 November, the Croatian government officially announced the date of the presidential election scheduled for 27 December 2009, with a potential second round to be held on 10 January 2010. The incumbent President Stjepan Mesić is not eligible to stand for election as the Constitution sets a maximum of two terms.

The OSCE/ODIHR has observed several elections in the Republic of Croatia since 1997, most recently the November 2007 parliamentary elections. Those elections were administered transparently and professionally and represented further progress in fully meeting OSCE commitments for democratic elections.

Several potential candidates have expressed their interest to stand for election, including political party nominees as well as independent candidates. Potential candidates have to collect 10,000 support signatures and register their candidacy with the State Election Commission (SEC) by 16 November. It is expected that the election will be contested by about 15 to 20 candidates.

The SEC will administer the presidential election, together with City and Municipal Election Commissions and Voting Committees. The SEC was established in 2007 as an independent, professional and permanent state body, thereby implementing a long-standing OSCE/ODIHR recommendation. Preparations for the election seem to be on track. Some interlocutors stated that the performance of lower level commissions may be affected by their establishment relatively close to election day.

The Constitution guarantees the right to vote to all Croatian citizens who have attained the age of 18, regardless of their place of permanent residence. Voter registration is based on the 2007 Law on Voter Lists which introduced safeguards to reduce the potential for multiple voting. However, voter registration remained a controversial issue in previous elections and OSCE/ODIHR NAM interlocutors again expressed concern with regards to the quality of voter lists and the possibility for multiple voting.

For the 2007 parliamentary elections, 4,478,386 million citizens were registered to vote, of which about 400,000 were registered to vote abroad (out-of-country or diaspora voting). Potential issues for diaspora voting include the quality of the voter lists, the number and location of polling stations, and ensuring the integrity of election day procedures. In particular, diaspora voting in Bosnia and Herzegovina (BiH) has drawn significant attention in previous elections due to persistent allegations of electoral fraud. Some political parties and other interlocutors claimed that there have been insufficient efforts to address problems with the conduct of the vote in BiH in advance of the upcoming presidential election.

The official election campaign will start on 19 November, the day after the announcement of registered candidates. Political discussions and media coverage have already started and focus on the election and the activities of prospective candidates. Some interlocutors expressed concern about the potential misuse of administrative resources, including resources of public corporations.

The financing of presidential election campaigns is loosely regulated. The law does not set a contribution limit or an expenditure limit. Political parties can contribute unlimited funds to their candidate's campaign. While candidates are required to report their campaign spending, there is no mechanism foreseen for checking the accuracy of the reports, nor are there enforcement mechanisms in case of non-compliance with the few existing legal regulations.

There is a diverse range of media in Croatia, and no concerns were raised with regards to freedom of the media. A number of interlocutors identified as potentially problematic the legal obligation, especially of the public broadcaster, requiring absolute equality in coverage of all presidential candidates as well as requiring coverage of the campaign only in specifically designated programmes. This obligation could limit the possibility for candidates to convey their message to voters and could interfere with the editorial independence of media outlets.

The Presidential Election Law only provides for observation by political parties nominating candidates. The OSCE/ODIHR NAM was informed that regulations will be in place for the presidential election to enable observation by domestic and international organizations. The domestic observer organization "GONG" is planning to observe the election and will focus on diaspora voting.

While interlocutors expressed general confidence in the process, they also stated that an OSCE/ODIHR election observation activity for this election in some form would be useful to provide additional transparency and recommendations for improvement of the process. However, most did not see a particular need for election day observation on the territory of Croatia due to confidence in the election administration and in the observation efforts of “GONG”.

Following the invitation received from the Croatian authorities to observe the election, and based on the findings of this report, the OSCE/ODIHR NAM recommends the deployment of a Limited Election Observation Mission (LEOM). In addition to the deployment of a core team of experts, the OSCE/ODIHR will request OSCE participating States to second 12 long-term observers (LTOs) to be deployed throughout Croatia. While the OSCE/ODIHR LEOM will follow the entire election process, it will pay particular attention to the process of voter registration, the administration of the election, the legal framework and its implementation, including campaign finance regulations, as well as the conduct of the campaign, including in the media. The OSCE/ODIHR LEOM will visit a limited number of polling stations but will not undertake a systematic and comprehensive observation effort on election day.

III. FINDINGS

A. BACKGROUND AND POLITICAL CONTEXT

Croatia is a parliamentary-presidential republic with the president as the head of state. The president is directly elected by popular vote for a term of five years and is limited to serving no more than two terms. The president is the commander-in-chief and appoints the prime minister and cabinet members with the consent of parliament. Presidential powers were curtailed after the death of former President Franjo Tudjman and greater power was vested in parliament.

Presidential elections must be called by the government and must take place within a minimum of 30 days and a maximum of 60 days before the expiry of the incumbent’s term of office. The Croatian Government on 4 November officially announced the date of the presidential election for 27 December 2009, with a potential second round to be held on 10 January 2010. The incumbent President Stjepan Mesić will complete his second term in February 2010 and is not eligible to run again.

The OSCE/ODIHR has observed several elections in the Republic of Croatia since 1997; most recently a Limited Election Observation Mission (LEOM) was deployed for the parliamentary elections of 25 November 2007. Those elections were assessed as having been “administered transparently and professionally, and represented further progress in fully meeting OSCE commitments for democratic elections.”¹ The OSCE/ODIHR LEOM further stated that “the campaign took place in a competitive and pluralistic environment, and the media generally provided voters with sufficient

¹ See the OSCE/ODIHR Final Report on the 25 November 2007 parliamentary elections. All OSCE/ODIHR reports on elections in Croatia are available at www.osce.org/odihr-elections/14356.html.

information about the contestants and their campaign activity. Nevertheless, some issues remain to be addressed, including aspects of the legislative framework and its implementation, and the short timeframe available for election preparations.” The OSCE/ODIHR did not observe the last presidential election of January 2005.

The OSCE/ODIHR offered a number of recommendations in its final report on the 2007 parliamentary elections. Some of the recommendations which are also applicable to presidential elections remain to be implemented, for example with regards to voter registration, enhancing the regulatory framework for the media and enacting additional monitoring and enforcement measures for the financing of political parties and election campaigns.

Since the resignation of Prime Minister Ivo Sanader in July 2009, the government, led by the Croatian Democratic Union (HDZ), is headed by Ms. Jadranka Kosor. The issue of corruption has featured prominently in the media and is one of the main issues that the European Commission is considering when assessing Croatia’s compliance with criteria necessary to complete accession negotiations.

Several candidates have been nominated to stand for election by political parties, including Mr. Andrija Hebrang, nominated by the HDZ; Mr. Ivo Josipović, nominated by the Social Democratic Party (SDP); and Ms. Vesna Pusić, nominated by the Croatian People’s Party (HNS). In addition, a number of prospective independent candidates have declared their intention to run. These include the Mayor of Zagreb, Mr. Milan Bandić, who was expelled from the SDP upon his declaration of candidacy, and the Chairman of the Croatian Chamber of Commerce, Mr. Nadan Vidošević, who was expelled from the HDZ after he announced his nomination. Several other political figures have also indicated their interest to run as independent candidates.

B. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

Presidential elections are principally governed by the Law on Election of the President of the Republic of Croatia (1992, hereafter Presidential Election Law). The Law was amended slightly in 1997, but essential provisions of the law have not been changed since its adoption. The law establishes a two-round electoral system for presidential elections; if none of the candidates obtains a majority of votes from all voters who participated, a second round takes place 14 days later between the two candidates who received the largest number of votes.

Presidential elections are also regulated by a number of other laws as well as decisions, instructions and regulations of the SEC. The Law on the SEC, which established the SEC as a permanent body, was adopted by parliament in March 2006.

The Law on Voter Lists was adopted in February 2007. It introduced new safeguards to control the inclusion of voters on additional voter lists on election day, clarified procedures for compiling the lists, provided for electronic processing of information, limited the use of voting certificates by voters who are temporarily outside their place of residence on election day, and introduced prior registration for citizens who reside abroad permanently or for extended periods of time or who are travelling outside of Croatia on election day. Despite these improvements, concerns remain with regard to

the accuracy of the voter lists, especially for citizens residing outside the Republic of Croatia.

The Laws on Campaign Financing for Presidential Elections and on Financing of Political Parties were adopted in 2004 and 2006, respectively. Both laws prohibit anonymous donations and require candidates and parties to file reports on the funds received and expended. The Law on Financing of Political Parties also provides for limits for donations by natural and legal persons as well as penalties for non-compliance with certain provisions of the law. Both laws were considered as positive steps in an area which had not previously been regulated. A number of OSCE/ODIHR NAM interlocutors, however, expressed concern about the lack of enforcement mechanisms in the Law on Campaign Financing for Presidential Elections, as well as dissatisfaction with the lack of transparency of financial reporting and with the effectiveness of control over campaign financing.

C. ELECTION ADMINISTRATION

The SEC has the overall responsibility for administering the election. It will be supported by Municipal and City Electoral Commissions and by Voting Committees established to conduct voting. The SEC was generally considered independent and professional by OSCE/ODIHR NAM interlocutors, although there was concern expressed about the independence of some lower-level commissions.

The SEC is a permanent, independent and professional body, whose members are elected by parliament. The SEC is composed of nine members: the President of the SEC (who is also the President of the Supreme Court), two vice-presidents who are also judges of the Supreme Court, two vice-presidents who are elected by parliament upon proposal by the majority and the opposition parties respectively, and four members also elected by parliament, of whom two are proposed by the majority and two by the opposition. The vice-presidents and members have eight-year terms. The commissioners who are not judges must be lawyers with 10 years professional experience, including in election-related matters; they must not be members of a political party. The SEC in its current composition was established in February 2007.

By law, the SEC must have a secretariat and expert support staff. The SEC, however, still does not have its own premises but operates from offices provided by the parliament which are rather limited in space. The SEC secretariat is not yet fully staffed. These logistical issues place additional burdens on the SEC, especially during an election period.

Lower-level election commissions are established by the next higher election commission for the time period of a specific election. Members of these commissions are also judges or lawyers. Presidential candidates cannot appoint members to Voting Committees, in contrast to parliamentary elections where political parties can nominate members. Voting Committees are established five days before election day, which limits the possibility to provide training for their members.

The SEC plans, as in previous elections, to publish so-called 'reminders' and manuals for Voting Committees. According to the SEC, these serve a clarifying purpose and as support to lower-level commissions. The OSCE/ODIHR has previously recommended

that ‘reminders’, containing important information not regulated by law or regulation, be adopted as mandatory instructions.

The SEC published a mandatory instruction with electoral deadlines on 4 November. As in previous elections, the SEC and lower-level election commissions operate in a short electoral timeframe. Calculation of all deadlines started as of 5 November. Prospective candidates were required to collect 10,000 support signatures for their nomination and submit all necessary documents to the SEC by 16 November. The SEC then had two days to register the candidates. The official list of candidates was to be announced on 18 November.

The SEC also fulfils important functions in overseeing campaign finance regulations and deciding on complaints. Complaints about alleged violations of electoral regulations can be lodged with the SEC, which must decide on the complaint within 48 hours of its receipt. Decisions of the SEC can be appealed to the Constitutional Court.

D. VOTER REGISTRATION

Croatia has a passive continuous system of voter registration with a centralized computerized database maintained by the Ministry for Public Administration. Voter registration is based on citizenship data, records on travel documents issued by the Ministry for Foreign Affairs, and records on permanent residence kept by the Ministry of Interior. Citizens are registered according to their permanent residence in Croatia. The voter registration records for those citizens without permanent residence in Croatia are kept by the City of Zagreb Administration Office.

Updating of the voter register as well as data exchange between different state bodies, especially between the Ministries of Interior and Public Administration, takes place on a regular basis. The OSCE/ODIHR NAM was informed by the Ministry of Public Administration that the electronic database fully enables control of, and eliminates duplicate entries from, the voter register.

The Ministry of Public Administration informs citizens of the possibility to request corrections to the voter register as well as about temporary registration outside the place of permanent residence and prior registration for voters who do not have permanent residence in Croatia. Temporary and prior registration must be completed 14 days before election day. In addition, voters can request a voting certificate if they are away from their place of permanent residence on election day. This voting certificate enables them to vote at any polling station; the polling station at which the voter has come to vote retains the certificate.

The voter register is finalized 14 days before election day and forwarded to cities and municipalities that have to confirm its accuracy or provide information as the basis for potential corrections to entries in the register. Once the accuracy of the voter register has been confirmed, voter lists are forwarded to the respective election commissions 24 hours before voting commences.

The quality of the voter register has been one of the most contentious issues in previous elections in Croatia and was again of concern for most OSCE/ODIHR NAM interlocutors. Specific concern was expressed regarding the number of deceased persons

included in the voter register, as well as about the high number of voters registered at specific addresses, allegedly addresses that would not provide accommodation for such numbers of persons. The authorities acknowledged some of the problems, and noted that it can be difficult to obtain information on deaths of citizens who reside abroad. However, the Ministry of Foreign Affairs noted that efforts over the past six months have led to the deletion of about 20,000 entries of deceased citizens who had been residing in BiH.

E. DIASPORA/ OUT-OF-COUNTRY VOTING²

The Constitution and the Presidential Election Law grant the right to vote to all citizens of Croatia from the age of 18 years. Therefore, efforts are made to enable citizens residing abroad to vote in embassies and consular offices of the Republic of Croatia or in polling stations established especially for this purpose. The rules for diaspora voting are, however, a recurring political issue. OSCE/ODIHR NAM interlocutors noted that this aspect of the election presents challenges and that measures need to be in place to ensure that the out-of-country voting process is conducted in accordance with the law. Potential issues include the number and location of polling stations, the composition of election commissions and the quality of the voter lists for out-of-country voting. Voting abroad takes place on one day for presidential elections, unlike in parliamentary elections when voting abroad takes place over a two-day period.

It is expected that about 400,000 citizens will be registered to vote abroad, out of which more than half will be registered to vote in Bosnia and Herzegovina (BiH). This number also includes about 24,000 Croatian citizens in Serbia, mostly refugees. The SEC officially decides on the number of polling stations abroad based on proposals made by the diplomatic missions of Croatia. OSCE/ODIHR NAM interlocutors expected that the number of polling stations will be similar to those from the 2007 parliamentary elections, when 242 polling stations were established in 75 countries, about half of these in BiH. This number had been increased for the 2007 elections resulting in higher turnout among the diaspora voters.

The SEC has the responsibility to ensure the proper conduct of the vote in polling stations established out-of-country. It acknowledged that this is more difficult than at polling stations in Croatia but plans to take specific measures to ensure that voting is conducted properly and that Voting Committee members are trained. During the 2005 presidential election, the domestic observer group “GONG” reported serious procedural violations, including multiple voting, to the authorities. “GONG” plans to focus its observation of the upcoming election on the conduct of voting in BiH.

F. ELECTION CAMPAIGN AND CAMPAIGN FINANCE

The official election campaign will start on 19 November, the day after the completion of the official registration of candidates. It will last until the day before election day when the campaign silence period starts. Most prospective candidates have already been actively informing the electorate about their candidacy and views, and are speaking out on various political issues. The campaign will likely focus, *inter alia*, on the issues of corruption, economic crisis, EU accession and the arbitration agreement with Slovenia

² The terms ‘out-of-country’ and ‘diaspora’ are used interchangeably throughout. Both terms are used in Croatia.

on the Croatian-Slovenian border dispute. Several OSCE/ODIHR NAM interlocutors expected this to be an active campaign, noting the considerable number of independent as well as party-nominated candidates.

Presidential candidates are required to file a report with the SEC on the amount and sources of funds collected seven days prior to the election. Fifteen days after the election, candidates shall submit to the SEC a report on their campaign expenditure. The SEC is obliged to publish these reports but the law does not foresee any examination or investigation of the information contained therein.

The State Audit Office controls election campaign finance under the Law on Financing of Political Parties, which establishes contribution limits and reporting obligations. However, control over the financial income and expenditure of political parties is only conducted once a year, retroactively for the previous year, thereby not providing an effective control mechanism for an ongoing presidential election campaign.

Candidates that receive 10 per cent of the vote are entitled to a refund from the state budget; the amount of this refund is decided 30 days prior to election day.

G. MEDIA

The Presidential Election Law stipulates strict equality for media coverage of presidential candidates' electoral programmes and campaign. In particular, the public broadcaster Croatian Radio and Television (HRT) is obliged to give each candidate equal time on their radio and television channels. The Presidential Election Law also provides that all "media of public communication" shall enable presidential candidates to present their programmes and conduct their campaign under the same conditions. In addition, the Law on Electronic Media stipulates that, during pre-electoral campaigns, broadcasters shall enable equal conditions for political parties.

HRT will cover the campaign only in specific programmes designated for this purpose and clearly distinguishable from other programmes, such as its main news programmes. HRT plans specific timeslots for addresses by the presidential candidates as well as for the coverage of their campaign. Candidates will be able to choose which of their activities should be covered by HRT. The OSCE/ODIHR NAM was informed by HRT representatives that the obligation to cover a large number of candidates equally and without the possibility of covering the electoral campaign in the main news programmes challenges editorial independence and limits the depth of information available to voters. Although considered the most informative coverage of a presidential election campaign, HRT had not yet decided whether debates between candidates will be organized in the run-up to the first round, as this poses particular difficulties for adhering to the equality principle.

The SEC functions as a regulatory body for election coverage in the media, but has no mechanism to impose sanctions in case HRT does not abide by the regulations. The SEC mostly interprets legal rules and can issue a warning to HRT in case of non-compliance with its legal obligations. The Council for Electronic Media, whose members are appointed by parliament, exercises a supervisory function over the implementation of legal provisions on general principles of pluralism and diversity as well as specific legal obligations established by respective laws.

H. ELECTION OBSERVATION

The Presidential Election Law provides for observation by political parties nominating candidates. However, it does not foresee international observation of the election nor monitoring by representatives of independent candidates or domestic non-partisan organizations. The law is therefore not fully compliant with the 1990 OSCE Copenhagen Document. The SEC will issue a mandatory instruction in this regard, thereby enabling observation by international organizations, domestic NGOs, political parties registered in Croatia, and representatives of independent candidates.

The domestic NGO "GONG" intends to observe the election with a specific focus on voting in BiH as well as the monitoring of campaign expenditure in co-operation with Transparency International Croatia. There are no plans by domestic organizations to monitor the media's adherence to legal regulations.

Most interlocutors welcomed the presence of an OSCE/ODIHR observation activity for this election, with a variety of views. Some interlocutors expressed strong interest in such an observation activity, especially with a view to receiving recommendations and enhancing transparency of the election process. Others stated a need for observation of specific aspects of the process such as diaspora voting, the election administration and campaign finance. Most did not see a particular need for comprehensive election day observation on the territory of Croatia, due to overall confidence in the election administration and in the observation efforts of "GONG."

IV. CONCLUSIONS AND RECOMMENDATIONS

While OSCE/ODIHR NAM interlocutors expressed general confidence in the process, almost all raised concerns regarding the quality of the voter lists. Some cited the possibility for multiple voting, especially in the out-of-country polling stations, while others noted potential misuse of public resources by candidates in support of their campaigns. Almost all interlocutors welcomed the possibility of an OSCE/ODIHR election observation activity in some form, especially with regards to enhancing transparency, did not see a particular need for comprehensive election day observation on the territory of Croatia.

Following the invitation received from the Croatian authorities to observe the election, and based on the findings of this report, the OSCE/ODIHR NAM recommends the deployment of a Limited Election Observation Mission (LEOM). In addition to the deployment of a core team of experts, the OSCE/ODIHR will request OSCE participating States to second 12 long-term observers (LTOs) to be deployed throughout Croatia. While the OSCE/ODIHR LEOM will follow the entire election process, it will pay particular attention to the process of voter registration, the administration of the election, the legal framework and its implementation, including campaign finance regulations, as well as the conduct of the campaign, including in the media. The OSCE/ODIHR LEOM will visit a limited number of polling stations but will not undertake a systematic and comprehensive observation effort on election day.

ANNEX: LIST OF MEETINGS

State and Election Authorities

Ministry of Foreign Affairs

Mr. Mirko Knežević, Coordinator for Elections, Consular Affairs

Ministry of Interior

Mr. Žarko Katić, Director for Administration and Inspection Business

Ministry of Public Administration

Mr. Pavao Matičić, State Secretary

Ms. Ruža Šimunec, Head of Sector for Civil Status

Ms. Jadranka Jurinjak, Head of Sector for Public Administration and EU

State Election Commission

Ms. Zdravka Čufar-Šarić, Vice-President

Ms. Aleksandra Jozić Ileković, Vice-President

Mr. Davor Orlović, Member

Mr. Zorislav Ham, Member

Mr. Josip Vresk, Member

Ms. Vlatka Kovačević, Member

Ms. Irena Kravos, Secretary

Mr. Slaven Hojski, Deputy Secretary

Ms. Andrea Sever-Koren, Advisor

Constitutional Court

Ms Snježana Bagić, Judge

Ms Sanja Trgovać, Senior Advisor

Ms Snježana Konopljak, Head of Judges Cabinet

Parliament

Croatian Parliament Committee on Human and National Minority Rights

Mr. Furio Radin, Chairman

Ms. Ružica Đikić, Secretary

Political Parties and Candidates

Croatian Democratic Union - HDZ

Mr. Damir Sesvečan, Member of Parliament, President of Commission for Credentials and Privileges

Croatia People's Party - HNS

Mr. Goran Beus Richemberghh, Member of Parliament

Istrian Democratic Party - IDS

Mr. Damir Kajin, Member of Parliament, Deputy Club Chairman

Social Democratic Party - SDP

Mr. Igor Dragovan, General Secretary, Member of Parliament

Mr. Orsat Miljenić, Legal Adviser

Independent candidate

Mr. Nadan Vidošević, independent candidate

Media

HRT / Public broadcaster

Ms. Hloverka Novak Srzić, TV news program editor in chief

Mr. Renato Kunić, editor in news program

Mr. Branimir Bilić, editor

Mr. Mislav Tonogal, radio news program deputy editor in chief

Civil Society

NGO GONG

Mr. Dragan Zelić, deputy executive director

Transparency International Croatia

Mr. Zorislav Antun Petrović, President

Embassies

Mr. George Kyriakopoulos, Deputy Head of Mission, Embassy of Greece

Ms. Rebecca Söderberg, First Secretary, Embassy of Sweden