



Office for Democratic Institutions and Human Rights

## CROATIA

# LAW ON ELECTIONS OF REPRESENTATIVES TO THE CROATIAN PARLIAMENT

## OSCE/ODIHR REVIEW



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# **CROATIA**

## **LAW ON ELECTIONS OF REPRESENTATIVES TO THE CROATIAN PARLIAMENT**

### **OSCE ODIHR REVIEW**

#### **I. INTRODUCTION**

These comments on the legal framework of elections in Croatia are primarily based on the Law on Elections of Representatives to the Croatian Parliament (the 2003 Election Law), adopted in April 2003, by amendments to the former parliamentary election law from 1999. The amendments were necessitated in large part by the constitutional changes in Croatia in 2001, which included the dissolution of the upper chamber (the House of Counties) of the former State Parliament, as well as the enactment of the Constitutional Law on National Minorities. However, the amendments also addressed other issues, including those, which arose during the previous elections to the former House of Representatives (now Parliament), which were held under the 1999 Election Law. These issues included some raised by the OSCE/ODIHR as a result of its observations of the 2000 election.

Some additional comments are provided on the instructions issued by the State Electoral Commission (SEC). Additional important legislation related to parliamentary elections in Croatia includes the Law on Voter lists, the Constitutional Law of the Right of National Minorities, the Law on the Constitutional Court and the Law on Political Parties.

Some of the recommendations suggest the incorporation into law of new provisions, and the rephrasing of existing provisions. A specific phrasing of new regulations, however, is avoided, merely suggesting the concept or the direction.

#### **II. SUMMARY OF CONCLUSIONS**

The 2003 Election Law further improved the 1999 Election Law and thereby the legislative framework for parliamentary elections in Croatia. The 2003 Election Law provides an adequate basis for the conduct of parliamentary elections, generally in line with international commitments for democratic elections. However, even though the 2003 Election Law has the advantage of being fairly clear, as reflected in the 2003 OSCE/ODIHR Election Observation Mission (EOM) report, it still contains a few apparent inconsistencies. Furthermore, the 2003 Election Law comprises a number of vague provisions and fails to describe important details of the electoral process. Therefore there is still room for improvements in the legislative framework that should be addressed before future elections.

Issues that need to be addressed are:

- Reduction of the complexity of the electoral legislation
- The possibility of a permanent functioning of an election commission on the national level, along with sufficiently clear provisions regarding the appointment, term, tenure and dismissal of election commission members

- Extension of the timeframe available for the election administration between the calling of an election and election day
- Creation of equal access to voter registration for out-of-country voters
- The possibility of revision of voting rights for national minority groups to avoid unbalanced representation of these groups
- Revision of provisions that can be abused to create inequalities between candidates
- Campaign related issues:
  - Media; the establishment of clear rules outlining which authorities are competent to deal with complaints concerning violations of the media regulation.
  - Campaign financing; establishment of rules forcing parties and individual candidates to publish their campaign expenditures
- Elimination of provisions hindering a timely publication of the results
- Citizenship related issues

### III. BACKGROUND

#### A. THE ELECTORAL SYSTEM

Under the 2001 Constitution, the Croatian Parliament is a unicameral body, which consists of 100-160 members, directly elected on the basis of universal and equal suffrage through secret ballot.<sup>1</sup> Parliamentary elections, including the date for elections, are called by the President of the Republic, and the announcement must be made at least 30 days prior to election day.<sup>2</sup>

Members of parliament to be elected are:

- 140 members elected in proportional representation competition (PR) in 10 geographical constituencies;<sup>3</sup>
- eight representatives of recognised national minorities<sup>4</sup> elected by members of those communities in special elections in a single constituency, run on the basis of first-past-the-post (FPTP);<sup>5</sup>
- 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.<sup>6</sup> The actual number of parliamentarians elected in this constituency depends on the number of voters who cast ballots in the constituency, such that the number of votes needed to obtain a mandate equals the average number of votes received by all recipients of mandates in the regular geographical constituencies.<sup>7</sup>

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<sup>1</sup> Constitution, Art. 71. The main references contained in the footnotes are described more fully in the References section, Part XVI. of this report.

<sup>2</sup> 2003 Election Law, Art. 5. All citations to the 2003 Election Law are to the consolidated wording published by a unit of the Croatian Parliament.

<sup>3</sup> 2003 Election Law, Art. 35.

<sup>4</sup> The term “national minorities” is used in the 2003 Election Law and the Constitutional Law on the Rights of National Minorities; the recognition of minorities is under the provisions of the latter law.

<sup>5</sup> 2003 Election Law., Art. 43.

<sup>6</sup> Law on Constituencies, Art. 12.

<sup>7</sup> 2003 Election Law, Art. 41.

## B. STRUCTURE OF THE ELECTION ADMINISTRATION

The elections are administered by a four-tier system of independent bodies. These includes:

- The State Election Commission (SEC)  
The standing membership of the SEC consists of a president and four members, all of whom also have deputies.<sup>8</sup> 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.<sup>9</sup> During an election period, after the publication of the constituency lists,<sup>10</sup> the membership of the SEC is “augmented” through the designation of three representatives apiece of the majority (ruling) and opposition groups in the Parliament. If consensus cannot be achieved within the latter group the designations are made by lots conducted before the Constitutional Court.<sup>11</sup> Once they commence their service with the SEC, the party representatives have the same rights and duties as the standing members.<sup>12</sup>
- The Constituency Electoral Commissions (CEC)  
There is a CEC for each of the ten geographic constituencies in which parliamentary elections are conducted. It is not clear from the law, however, whether there are CECs for the nation wide constituencies in which the votes of non-resident citizens and national minority voters choosing to vote in special minority elections are collected. During the 2003 election, the SEC established a CEC for the national minority constituency, but carried out the functions of a CEC for the diaspora constituency itself. Like the SEC, the CEC have a standing membership, which is appointed by the SEC from the ranks of judges and distinguished lawyers.<sup>13</sup> During elections, the standing membership is augmented by four party representatives – two from the parliamentary majority and two from the opposition – according to the same procedures as for the SEC.<sup>14</sup>
- The Municipality Electoral Commissions and City Electoral Commissions (MECs and CIECs)  
MECs, and CIECs for those jurisdictions which are administered as cities, are subject to the same appointment rules as for the CECs, except that they are appointed by the CECs, and not by the SEC.<sup>15</sup> The role of the MECS and CIECs is mainly logistical although they propose appointments to and dissolution of voting committees.<sup>16</sup>

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<sup>8</sup> The presidents and the members of all the election commissions and committees established through the 2003 Election Law also have deputies. However, the roles of the deputies are seldom described.

<sup>9</sup> 2003 Election Law, Art. 45

<sup>10</sup> 2003 Election Law, Art. 46 (1).

<sup>11</sup> 2003 Election Law, Art. 47.

<sup>12</sup> 2003 Election Law, Art. 46 (2).

<sup>13</sup> 2003 Election Law, Art. 50.

<sup>14</sup> 2003 Election Law, Art. 52.

<sup>15</sup> 2003 Election Law, Art. 55.

<sup>16</sup> 2003 Election Law, Art. 56.

- The Voting Committees (VCs)

The actual voting is conducted by VCs. The VCs are comprised of a president and four members; the latter are representatives of political parties. The VC president (and deputy) must not be members of any political party and should preferably be in the legal profession.<sup>17</sup> VCs have no standing membership and must be formed by five days before the elections. The majority and opposition political parties must propose two members each, eight days prior to the elections; if not the appointments are made by the relevant CEC.

#### IV. THE LEGAL FRAMEWORK

The complexity of the legal framework for elections plays a vital role in the context of elections. Therefore it is of importance that a clear and sufficiently detailed framework for conducting elections is established through statutory law, either in a comprehensive code or through a set of laws that operate together consistently and without ambiguity and omissions.<sup>18</sup>

The amendments to the 1999 Election Law, which resulted in the 2003 Election Law, were adopted in April 2003, and in May 2003, a text containing the consolidated wording of the 2003 Election Law was published by the Official Gazette. However, there are a few inconsistencies in the 2003 Election Law, and it contains a number of vague provisions that calls for clarification, partly due to a large degree of complexity of the rules. In other respects, as for example the rules on the publication of candidates' campaign expenditure (see below), there seems to be a lack of sufficient details, and thus the 2003 Election Law fails to describe important details of the electoral process.

Therefore, it is recommended to further revise the electoral framework to remedy its remaining deficiencies and if possible lay the basis for a more comprehensive election code. This would enhance the clarity of the electoral legislation, and thereby the accessibility for the public and for election officials.

#### V. THE ELECTION ADMINISTRATION

##### A. THE ESTABLISHMENT OF A PERMANENT ELECTION ADMINISTRATION

It is desirable for the election administration, especially the central election authority, to be established on a permanent basis so that essential election-related functions and programmes can be carried out on a continuous basis.<sup>19</sup>

In the 2003 Election Law, as in the 1999 Election Law, the regulation concerning the election administration does provide for the existence of a permanent election administration. However, in fact, the election administration does not function officially outside election

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<sup>17</sup> 2003 Election Law, Art. 57.

<sup>18</sup> OSCE/ODIHR "Existing commitments for Democratic Elections in OSCE Participating States", Part One, Par. 2.5.

<sup>19</sup> OSCE/ODIHR "Existing commitments...", Part One, Par. 4.4.

periods. Given the short timeframe for the preparation of elections in Croatia, the establishment of a permanent national election administration body would be a significant improvement of the electoral process.

## **B. THE APPOINTMENT OF THE ELECTION ADMINISTRATION**

To ensure that the election administration acts in an independent and impartial manner, it is necessary to establish clear rules in the legislation as to the appointment, term, tenure and dismissal of the members of the election administration.<sup>20</sup>

The lack of provisions concerning the appointment, term, tenure and dismissal of members of the election commissions in the electoral legislation prior to the 2000 elections was mentioned in the 2000 OSCE/ODIHR EOM report. Such an absence opens up for the possibility that a membership of an election commission can be turned over shortly before an election or that a member of a commission is arbitrarily removed, and thus compromise the political balance of the commission. This could severely affect the impartiality of the commissions and the manner in which the public perceives the election administration.

The 2003 Election Law is still extremely vague concerning the appointment, term tenure and dismissal of the SEC and other election commissions. Therefore, it is recommended that provisions are adopted to ensure the continuity of the memberships of the commissions and to prevent dismissal of commission members, except in cases provided for by law. This would also clarify the election commissions' responsibilities in the complaint procedures. The appointment, the term, the tenure and the dismissal of members of the commissions should be described in the law with sufficient precision to prevent insecurity and preserve public confidence in the election administration.

## **C. THE TIMEFRAME FOR THE ELECTIONS ADMINISTRATION**

According to OSCE commitments the State shall provide the election administration with sufficient support in the electoral process to be able to operate effectively.<sup>21</sup> In this connection time is but one, however crucial, aspect.

According to the 2003 Election Law, as was the case in the 1999 Election Law, elections to the parliament are to be called at least 30 days prior to election day.<sup>22</sup> Candidate nominations must be submitted no later than 14 days after the announcement.<sup>23</sup> This results in the possibility that parties, candidates and their representatives merely have 16 days to officially campaign and to participate in the election administration's work. This hampers the possibilities of meaningful participation of the political stakeholders in the decision-making process that takes place in the election administration. Furthermore, there is a risk that the election administration will have to work under severe time pressure when carrying out its functions, such as ballot printing, arranging civic education and voter information, reviewing complaints related to the candidate registration process and carrying out election worker training programmes. In the 2003 elections, important information in the form of instructions on the election process and information on procedures did not reach lower levels of the

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<sup>20</sup> OSCE/ODIHR "Existing commitments...", Part One, Par. 4.1 and Par. 4.2.

<sup>21</sup> OSCE/ODIHR "Existing commitments...", Part One, Par. 4.3.

<sup>22</sup> 2003 Election Law, Art. 5 (4).

<sup>23</sup> 2003 Election Law, Art. 21.

election administration until very late in the process, which could have been avoided, had the timeframe been longer. Furthermore, as already mentioned, the permanent functioning of an election administration body on national level would be helpful in evading such problems.

Therefore it is recommended, that the Croatian Parliament take steps to establish a timeframe that to a larger extent accommodates the need of the election administration in their work, but also to ensure effective participation of parties and candidates in the administration

## VI. VOTER REGISTRATION

The 2000 OSCE/ODIHR EOM report found that there were some deficiencies in the voter registers. It also concluded more generally that in certain circumstances the registers were not sufficiently open to inspection by voters and other interested parties. The 2003 OSCE/ODIHR EOM report found less evidence of deficiencies in the registers and took note of improvements in voter inspection and correction procedures. These improvements resulted from the efforts of civil society, represented through the organisation GONG, to see to it that voters could make many registration related queries and submissions by telephone or fax.

The accessibility of voter registers is often an issue, for reasons of principle as well as implementation. This is because the need for voters and others to inspect the registers must be balanced against the voters' interests in the privacy of their personal information. The privacy of such information is guaranteed by the Croatian Constitution.<sup>24</sup>

First and foremost, however, is the ability of an individual to check the accuracy of his/her registration and request corrections.<sup>25</sup> Citizens should also have a right of appeal, to court if necessary.<sup>26</sup> Under the Law of Voter Lists, citizens may appeal the denial of their request for correction to the municipal courts. Ways should be found to provide appropriate access to the register by parties and others with a legitimate interest in reviewing it, in ways that are consistent with international and national protection for the privacy of personal data.<sup>27</sup>

## VII. OUT-OF-COUNTRY VOTING

The 2003 Election Law provides for out-of-country voting in Croatian diplomatic and consular facilities abroad, and certain other locations. Due to the large Croatian diaspora as well as the number of refugees still living outside the country, the out-of-country voting rules have attracted special attention.

The OSCE/ODIHR supports that registration of voters must be accomplished in an accurate, timely and transparent manner, and that individuals shall be given effective opportunity to understand their rights, check the accuracy of their registration and ensure that errors are

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<sup>24</sup> Constitution, art. 37.

<sup>25</sup> OSCE/ODIHR "Existing commitments...", Part One, Par. 5.6.

<sup>26</sup> OSCE/ODIHR "Existing commitments...", Part Two, Par. 5.6.

<sup>27</sup> OSCE/ODIHR "Existing commitments...", Part Two, Par. 5.6.



corrected.<sup>28</sup> In addition, there should be secure mechanisms to permit absentee voting by persons who are temporarily away from their area of residence.<sup>29</sup>

The 2003 Election Law extends the right to vote to persons who are not permanently residing in Croatia, but nevertheless possess a Croatian citizenship.<sup>30</sup> Previous obstacles to effectively exercise their right to vote for Croatians residing abroad have been removed from the legislation in line with previous OSCE/ODIHR recommendations.

However, there is still room for some improvement in relation to the regulation of out-of-country voting. It should be kept in mind that a large number of Croatian citizens still have refugee status and that especially these eligible voters face difficulties in relation to their registration as voters. As a consequence of their status as refugees, a number of these voters do not possess identification documents and/or their access to renewal of the identification documents is severely hampered. This situation appears particularly detrimental for refugees, but applies equally to other Croatian citizens residing abroad.

To ensure equal voter rights, it is of essence that equal access to voter registration for eligible voters is guaranteed. Therefore, it is recommended that steps should be taken to facilitate the process for out-of-country voters to obtain proof of their citizenship in order to register as voters.

## VIII. DISPLACED PERSONS

Croatian law distinguishes “displaced persons” from “expellees”. The former word is used to refer to ethnic Serbs who left their original areas of residence in Croatia as result of the conflict between Croatia and the former Yugoslavia. The latter is used to refer to ethnic Croats who left their original areas of residence in Croatia, often under pressure to do so by Yugoslav authorities. In the 2000 OSCE/ODIHR EOM report, the OSCE/ODIHR criticised the differentiation in Croatian law between displaced persons and expellees. The distinction remains in place, however, and not only the connotations of the two words, but also their legal usage continues to discriminate against the so-called displaced persons.

With respect to the election process, the Law on Lists of Voters provides for temporary registration of expellees at their current residences, and for social welfare centres to inform them about changes in voter registration and eligibility.<sup>31</sup> The SEC has implemented this provision through an instruction, No. 10, directing CECs to determine polling stations for expellees. There are no provisions regarding displaced persons in the Law of Lists of Voters or instructions of the SEC, however. Instead such persons – as temporary residents outside their habitual area of residence – must request transfer of their registration and potentially obtain a voting certificate from their original locality.<sup>32</sup>

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<sup>28</sup> OSCE/ODIHR “Existing commitments...”, Part One, Par. 5.6.

<sup>29</sup> OSCE/ODIHR “Existing commitments...”, Part One, Par. 5.7.

<sup>30</sup> 2003 Election Law, Art. 4 and Art. 8.

<sup>31</sup> Law of Lists of Voters, Art. 32.

<sup>32</sup> Law of Lists of Voters, Art. 20 (4).

## **IX. NATIONAL MINORITY REPRESENTATION AND VOTING**

The guarantee of universal and equal suffrage requires that individuals be permitted to vote on a non-discriminatory basis. Exceptional circumstances, such as the need to provide more effective representation for national minorities can justify measures to provide them enhanced voting rights.<sup>33</sup>

The 2003 Election Law retains a system of special representation for national minority voters. Review of the system established under the 1999 Election Law was recommended by OSCE/ODIHR, based on a number of considerations. Some of the issues raised by OSCE/ODIHR have been addressed, while other issues concerning the minority voting system remains, along with new issues raised by the 2003 Election Law.

The 2003 Election Law creates eight special mandates, distributed to the following groups or combination of groups: Serbs (3); Hungarians (1); Italians (1); Czechs and Slovaks (1); Austrians, Bulgarians, Germans, Poles, Roma, Romanians, Ruthenians, Russians, Turks, Ukrainians, Vlachs and Jews (1); Albanians, Bosniacs, Montenegrins, Macedonians and Slovenians (1).<sup>34</sup> For the first three groups, a deputy representative is elected together with the representative; for the latter three groupings, the candidate with the second largest number of votes becomes the deputy.<sup>35</sup>

### **A. NUMBER AND DISTRIBUTION OF MANDATES**

In relation to the number and the distribution of minority mandates, the number of mandates allocated to the different ethnic groups or combination of ethnic groups is not representative compared to the size of certain of the groups. It seems likely that the number of mandates established for Serb representatives is less than would be indicated by the number of Serb voters, if most of them voted and chose representatives of their minority. Furthermore, since Serbs are by far the largest ethnic minority among eligible voters in Croatian elections, they would appear to be under-represented with respect to the number of special minority mandates available. In addition, the allocation of shared representatives seems arbitrary and could lead to tensions among the affected ethnic groups.

### **B. CHOICE OF BALLOT**

Concerning the choice of ballot, the 2003 Election Law deleted the option, protected by the 1999 Election Law, that a voter from a national minority had the choice between whether to vote in the relevant special election or to vote instead in the regular elections. Despite the legal silence on the issue, the SEC nevertheless decided to permit minority voters to choose a general or a special ballot in the 2003 parliamentary elections.

At the polling stations, extracts from the voter register were divided into a regular extract, as well as 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.

<sup>33</sup> OSCE/ODIHR "Existing commitments...", Part One, Par. 5.2.

<sup>34</sup> 2003 Election Law, Art. 16.

<sup>35</sup> 2003 Election Law, Art. 16.

The option of choosing between the special or the general ballot resulted in a large number of minority voters casting their vote in the general election. As a consequence, the numbers of votes required for obtaining a special minority mandate can be very small, which could undermine the perceived importance and legitimacy of these mandates.

### **C. MULTIPLE CANDIDATE VOTING**

During the elections, the SEC decided to permit multiple-candidate (up to three choices) voting by Serb voters. There appears to be an inconsistency however, between the decision and article 66 (3) of the 2003 Election Law, under which a ballot is considered invalid if more than one candidate list or candidate is voted for.

As mentioned, some issues still need to be addressed in relation to the minority voting system. A revision could aim at increasing the perception of the importance of the elections for special representatives, but also enabling minority voters, who intend to vote solely in the general elections, to avoid manifesting their ethnicity at the polling station.

## **X. CANDIDATES**

The 2003 Election Law promotes in many respects the equality of the candidates running for parliamentary office. At the same time, the 2003 Election Law prevents some categories of employees to run for election.<sup>36</sup> It is necessary that these disqualifications are justified by the nature of the position or the potential conflict of interest.<sup>37</sup> On the other hand, the law must also prevent candidates personally from profiting from an official position that he or she exercises and thereby unduly influence the voters in their choice of a candidate in the election.

The 2003 Election Law contains provisions allowing parliamentarians to suspend their mandates for a certain time, during which their mandate is transferred to a deputy.<sup>38</sup> The provisions are intended to permit parliamentarians to exercise incompatible offices and positions, reserving the right to return to their seats in parliament. A parliamentarian may exercise these privileges only once, for a period not less than six months.<sup>39</sup> While the provisions do not appear problematic in themselves, they seem to be open to abuse, and a revision of the provisions may be considered.

## **XI. CAMPAIGN RELATED ISSUES**

### **A. MEDIA**

According to the OSCE/ODIHR commitments,<sup>40</sup> the OSCE participating State must ensure that equal access and fair treatment of political opponents is provided by all state-owned media. Thus the State shall establish means through which the fairness of media coverage of

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<sup>36</sup> 2003 Election Law, Art. 9.

<sup>37</sup> OSCE/ODIHR, "Existing commitments...", Part One, Par. 6.3.

<sup>38</sup> 2003 Election Law, Art. 13.

<sup>39</sup> 2003 Election Law, Art. 14.

<sup>40</sup> OSCE/ODIHR, Existing commitments...", Part One, Par. 7.12 and 7.14.

the election can be maintained. In particular the State should establish procedures to receive and act on complaints by election contestants concerning unfair or illegal media activities during the election campaign.

The 2003 parliamentary elections showed that the regulations adopted concerning the media during elections resulted in substantial opportunities for parties and candidates to communicate their positions, and relatively full and fair coverage of the campaign. It appears, however, that the regulations concerning coverage of the campaign and presentation of party and candidate positions could not always be enforced. The result of the lack of enforcement mechanism for the media regulation was that, even though numerous complaints concerning violations of the campaign silence period were reported no sanctions were enforced. The SEC indicated that it lacked authority to take any action, and therefore, due to lack of clarity regarding jurisdiction, no remedies were provided.

To ensure that all parties and candidates are treated in an equal and fair manner, it is recommended that clear rules on authority to deal with complaints and mechanisms to enforce the regulations are established.

## **B. CAMPAIGN FINANCING**

In line with OSCE/ODIHR commitments and international standards, the OSCE participating States shall require political parties and independent candidates in elections to disclose and report periodically on their campaign expenditures.<sup>41</sup>

The OSCE/ODIHR 2000 EOM report commented on the limited provisions on campaign funding and expenditures in the 1999 Election Law. While amendments have been made in relation to the campaign financing, some improvements can still be made. The 2003 Election Law requires parties to report only on the approximate amount of funds that they intend to spend on campaigning.<sup>42</sup> While the Law on Political Parties imposes additional requirements on political parties, including submission of audited annual financial reports, such requirements do not seem to apply to independent lists or individual candidates. Furthermore, the voters do not have access, during the campaign, to evaluate the level of spending by parties and candidates during the election period, which to an extent hinders the effective application of the regulations. Therefore, there still seems to be a need to introduce more detailed rules concerning the publication of the parties' and candidates' campaign expenditure, accommodating the need for transparency and equality in the election campaign.

## **XII. VOTING**

The 2000 OSCE/ODIHR EOM report found that the overwhelming majority of voters had received information of which polling station they were assigned, in time for them to be able to identify the location of the polling station prior to election day. In 2003, however, there were reports that many voters had difficulties in locating their assigned polling station, due to modification of the voting district boundaries and polling station locations.

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<sup>41</sup> OSCE/ODIHR. "Existing comments...", Part One, Par. 7.8.

<sup>42</sup> 2003 Election Law, Art. 31.

The 2003 Election Law provides for the secrecy of the vote,<sup>43</sup> as well as did the 1999 Election Law. Nevertheless, the 2000 OSCE/ODIHR EOM found that arrangements for voter secrecy were often deficient – in part because the voting took place in inadequate or inappropriate facilities. In 2003, the facility situation was improved, but numerous reports indicated that the number and size of voting screens were too small, and the screens were often situated in a way that failed to provide adequate protection for the secrecy of the vote.

The 2003 Election Law requires ballot-papers to be serially numbered.<sup>44</sup> Numbering of ballots can be problematic regardless of where on the ballot-paper the number appears, since it would be possible for persons at the polling stations to observe which number ballot is issued to a particular voter.

According to the 2003 Election Law, the VC is supposed to check the registration of each person requesting a ballot, but there is no specification in the 2003 Election Law exactly which identification documents need to be presented.<sup>45</sup> Identification issues is addressed in mandatory instructions and special directions issued by the SEC for the VCs, but these instruments do not provide sufficient detail on this point. Furthermore, the 2003 Election Law does not require voters to sign the register when they receive ballots, unauthorised persons are not prevented from being present in polling stations and there are no details in the law concerning secure storage and handling of election materials.

Overall, the provisions of the 2003 Election Law on security related issues are limited and appear to assume a high degree of trust and confidence in election officials and others participating parties in the electoral process. Nevertheless, it could be considered to adopt more detailed rule concerning the procedures to be followed at the polling stations, since these are only vaguely described in the 2003 Election Law.

### **XIII. COUNTING, TABULATION AND PUBLICATION OF RESULTS**

The 2003 Election Law addresses the counting only in a general way.<sup>46</sup> Despite the rigid provision with respect to the annulment of the process when excess ballots are discovered during the count,<sup>47</sup> there is no requirement in the Law, that the ballots be counted up prior to the votes being tallied. SEC “reminders” on polling station procedures have, however, provided for reconciliation of the number of ballots issued and cast prior to counting of the votes.

Under the 2003 Election Law, the SEC is supposed to announce the results of voting for parliamentary elections without delay,<sup>48</sup> and may - after the close of the polls - issue provisional and unofficial results as it sees fit.<sup>49</sup> Official results may not be announced until

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<sup>43</sup> 2003 Election Law, Art. 3.

<sup>44</sup> 2003 Election Law, Art. 63 and 65.

<sup>45</sup> 2003 Election Law, Art. 70.

<sup>46</sup> 2003 Election Law, Art. 72.

<sup>47</sup> 2003 Election Law, Art. 73.

<sup>48</sup> 2003 Election Law, Art. 79.

<sup>49</sup> 2003 Election Law art. 81.

after all legal means for protection of the right to vote have been exhausted, or after the period for them has gone by.<sup>50</sup>

According to the 2003 Election Law, the SEC is not obligated to publish the results containing a complete break down of the vote by polling station. However, such a practice is generally recommended by the OSCE/ODIHR to enhance transparency and thereby confidence in the election process.<sup>51</sup>

As mentioned, the 2003 Election Law contains a provision that leads to the mandatory annulment of the result and the conduct of repeat election in polling stations, where it is found that the number of ballots in the ballot box exceeds in any way the number of ballots that should have been cast according to the records of the polling.<sup>52</sup> While the number of polling stations affected is usually small, the annulment of results at even a single polling station leads to delay in the announcement of the final results. During the 2003 parliamentary elections, the results at one polling station were annulled based on a single extra ballot counted, and the award of mandates were therefore delayed.

#### XIV. COMPLAINTS AND APPEALS

Under the 2003 Election Law, the SEC has the power to supervise the work of CECs, as well as to supervise the regularity of electoral campaigning,<sup>53</sup> but the power to receive complaints and appeals against actions by the CEC or other subordinate electoral bodies is not clearly stated.

The Constitutional Court has broad power under the 2003 Election Law to supervise parliamentary elections.<sup>54</sup> The Constitutional Court has interpreted the provisions and applied its authority not only to rule on complaints and appeals, but also to issue “decisions” (i.e. advisory opinions) on matters of election policy and procedure. This means that the Constitutional Court carry out two functions in the election process that may lead to a certain conflict of interests. It could be that the Constitutional Court’s supervisory role to some extent makes it a stakeholder in the electoral process, such that its receptiveness to appeals against the election administration could be lessened. Therefore, there may be some incentive to address the issue in future considerations.

Even though the 2003 Election Law makes it clear that appeals to the Constitutional Court must be from a decision of an election commission, it is not clearly stated that only decisions from the SEC can be appealed to the Constitutional Court. However, case law from the Constitutional Court refers to the SEC as the only competent commission for purposes of appeal, and thus only complaints reviewed by the SEC can be appealed to the Constitutional Court. Furthermore, the 2003 Election Law does not make it clear who are can bring complaints before the Constitutional Court. Thus, a clarification of the proper appeal procedures in the electoral legislation may be considered.

<sup>50</sup> 2003 Election Law Art. 81.

<sup>51</sup> OSCE/ODIHR “Existing commitments...”, Part One, Par. 9.5.

<sup>52</sup> 2003 Election Law, Art. 73.

<sup>53</sup> 2003 Election Act art. 48 (6) and (8).

<sup>54</sup> 2003 Election Law, Art. 83. See also Law of the Constitutional Court, chapter IX.

## XV. CITIZENSHIP RELATED ISSUES

Even though the granting of citizenship is not directly linked to the electoral activities, the issue nevertheless has a very important impact on the group of eligible voters.

In the parliamentary elections in 2000, the OSCE/ODIHR EOM observed the paradox of ethnic Croats abroad, who were not residents of Croatia, being permitted to vote in Croatian elections while at the same time persons eligible for Croatian citizenship, with permanent residence in Croatia, were not able to vote, since they could not verify their citizenship. Concerns rise when a substantial part of the resident population is non-citizens and their access to citizenship is not facilitated. Especially, when a large number of non-residents is allowed to vote. These concerns apply equally when a substantial number of persons eligible for citizenship, do not have *de facto* access to exercise their right due to factors beyond their control (as refugees).<sup>55</sup> The ease and speed with which citizenship can be obtained by such persons is also a relevant factor in these concerns.

As the current situation potentially can create tensions between the different groups in question, the OSCE/ODIHR suggested in the 2000 EOM report that the Croatian authorities address this situation through a review of the legislation on citizenship. OSCE/ODIHR upholds this recommendation and advises the Croatian authorities to by legislation ensure the experienced legitimacy of the elected representatives.

## XVI. CONCLUSIONS AND RECOMMENDATIONS

The electoral legislation in Croatia provides the basis for elections generally in line with OSCE commitments and international standards. Nevertheless, some issues still calls for improvement of the 2003 Election Law, along with the improvement of other regulations having an impact on electoral issues.

After an analysis of the legal framework for elections in Croatia, carried out prior to the 2003 parliamentary elections, the OSCE/ODIHR puts forward the following recommendations:

- As the 2003 Election Law contains a number of vague provisions and does not describe important details of the electoral process, it is recommended to further revise the electoral framework to remedy its remaining deficiencies and if possible, to lay the basis of a more comprehensive election code.
- The establishment of a permanent functioning of the election administration is recommended to accommodate the need for ongoing development and improvement of election policies and procedures.
- The 2003 Election Law should be revised in order to establish clear rules as to the appointment, term, tenure and dismissal of election administration members.

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<sup>55</sup> OSCE/ODIHR, Guidelines to Assist National Minority Participation in the Electoral Process, Section 7.1.

- It is recommended to prolong the timeframe for the election administration between the calling of an election and election day. The short timeframe not only puts pressure on election administration officials, but also has a negative impact on the participation of political party representatives in the election administration.
- A revision of procedures for renewing or obtaining proof of citizenship for Croatians permanently residing abroad should be considered. Especially, in the light of a large number of Croatian citizens not being able to obtain this proof, and thereby exercise their right to vote, due to factors beyond their control as refugees.
- The legal distinction between “displaced persons” and “expellees” should be removed to ensure equal treatment of all displaced persons.
- Should the current system of special representation of national minorities be retained, the legislation should be revised in order to address the unbalanced distribution of the mandates in the light of the number of persons belonging to the different groups. Furthermore, a revision of the system of shared mandates should be considered.
- In relation to national minority voters, methods to increase the number of minority voters casting a ballot in the special constituency and thereby elevating the perceived importance of the special representatives should be considered.
- The SEC practice of allowing Serb minority voters multiple candidate voting should be brought into consistency with the 2003 Election Law.
- Provisions hindering candidates from profiting unduly from public positions should be introduced, to ensure equal opportunities for candidates.
- Clear rules on the authority of the election administration and the courts to deal with complaints related to the media regulations and proper enforcement mechanisms should be adopted.
- More detailed rules on the publication of the parties’ and the candidates’ campaign expenses, ensuring a larger degree of transparency for the electorate, should be adopted.
- Several issues relating to practical aspects of the voting procedures should be looked into, for example the voters’ location of their assigned polling station, the protection of the secret of the vote, the rules on identification documents and the permitted presence of unauthorised personnel in polling stations.
- The rules on the proper procedures of the counting should be laid down with greater precision in the election law.
- It is recommended to introduce rules demanding the SEC to publish a complete break down of results at polling station level.
- The possibility of the creation of rules that do not lead to the mandatory annulment of the results in polling stations where the number of ballots cast exceeds the number of



registered votes, should be explored. The objective in this relation should be to avoid a delay of the award of mandates, due to a disproportionate number of votes.

- It is recommended to clarify the proper appeal procedures to the Constitutional Court, especially, who has the power to file the complaints.

## XVII. REFERENCES

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