



Office for Democratic Institutions and Human Rights

# BOSNIA AND HERZEGOVINA

## GENERAL ELECTIONS

7 October 2018

### ODIHR NEEDS ASSESSMENT MISSION REPORT

25-27 June 2018



Warsaw  
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**BOSNIA AND HERZEGOVINA**  
**GENERAL ELECTIONS**  
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**ODIHR Needs Assessment Mission Report**

**I. INTRODUCTION**

Following an invitation from the authorities of Bosnia and Herzegovina to observe the 7 October 2018 general elections, and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) undertook a Needs Assessment Mission (NAM) to Bosnia and Herzegovina from 25 to 27 June 2018. The NAM included Ana Rusu, ODIHR Senior Election Adviser, and Alexey Gromov, ODIHR Election Adviser. The NAM was joined by Corinna Lensch, Research Assistant of the OSCE Parliamentary Assembly.

The purpose of the NAM was to assess the pre-election environment and preparations for the upcoming general elections. Based on this assessment, the NAM should recommend whether to deploy an ODIHR election-related activity for the forthcoming elections, and if so, what type of activity best meets the identified needs. Meetings were held with officials from state institutions as well as with representatives of political parties, media, civil society, and international community. A list of meetings is annexed to this report.

ODIHR would like to thank the Ministry of Foreign Affairs, including its Delegation to the OSCE, and the OSCE Mission to Bosnia and Herzegovina for their assistance and co-operation in organizing the visit. ODIHR would also like to thank all of its interlocutors for taking the time to meet with the NAM and for sharing their views.

**II. EXECUTIVE SUMMARY**

In the 7 October general elections, citizens will vote for the presidency and the House of Representatives of Bosnia and Herzegovina, for the House of Representatives and ten Cantonal Assemblies of the Federation of Bosnia and Herzegovina, as well as for the president, vice-presidents and for the National Assembly of Republika Srpska.

The elections will take place against a backdrop of renewed expectations for accession to the European Union and an overall fatigue of people related to internal political processes. Failure to implement a decision of the Constitutional Court on the formation of the upper house of the federal parliament puts at risk future formation of federal authorities and the upper house of the state parliament.

General elections are primarily regulated by the Constitution and Election Law. The 2016 legal amendments introduced, among other changes, sanctions against election commissioners for not serving on election day, changed the rules for nomination and withdrawal of candidates, and extended the range of penalties for campaign finance violations. However, a continuous political deadlock has left a number of long-standing electoral shortcomings unaddressed, including discriminatory residency and ethnicity-based restrictions on the right to vote and to stand as a candidate, deficiencies in complaint and appeals mechanism, and insufficient safeguards against misuse of state resources.

Significant deviations in the size of constituencies continue to impact state and entity-level elections, undermining the equality of vote. Despite a legal obligation, the state and federal authorities have not reviewed constituency boundaries for several electoral cycles.

The upcoming elections are organized by the Central Election Commission (CEC), 142 Municipal Election Commissions, and some 5,400 Polling Station Commissions. Many ODIHR NAM interlocutors expressed lack of confidence in the impartiality of election administration largely due to the commissioners' political and ethnic bias, also noting possible manipulations on election day.

The Central Voter Register, which is maintained by the CEC, lists some 3.4 million voters. Voters' rights for presidential elections are limited by their place of residence. In addition, the law further disenfranchises citizens deprived of legal capacity. The CEC, jointly with other institutions, undertook a series of measures with the aim to eliminate numerous records of deceased people.

Candidates can be nominated by parties and their coalitions or stand as independent candidates. The legal framework enshrines ethnicity-based restrictions on the right to stand for office, with citizens that do not identify themselves as Bosniak, Croat or Serb barred from standing for the presidency at state and federal levels. ODIHR and the European Court of Human Rights have previously recommended that the law be amended to remove ethnicity and residency based limitations. The law provides for 40 per cent mandatory quota for the less represented gender in candidate lists for all proportional races.

The campaign officially starts on 7 September. No ODIHR NAM interlocutors raised concerns about the ability to campaign freely. Some concerns were expressed about biased media coverage of the campaign, potential misuse of state resources, growing negative role of disinformation and a potential for inflammatory, intolerant and nationalist rhetoric. Political parties do not plan to introduce additional policies to promote participation of women or persons with disabilities in the elections.

Campaign finance regulation was recently amended largely in line with previous ODIHR and GRECO recommendations. Clear rules for contributions and expenditures as well as a range of sanctions for campaign finance violations were positively assessed by many ODIHR NAM interlocutors. At the same time, some party representatives noted that in practice a large part of campaign finance remains unreported and therefore is outside of the CEC audits.

The law requires broadcasters to cover elections in a fair, balanced, and impartial manner. Public and private media are widely perceived to be under pressure from political or business elites. In addition, the lack of transparency of media ownership was mentioned as the cause of negative trends in online media. Concerns were also raised about physical attacks and other forms of pressure on journalists.

The law provides for short deadlines for resolving the electoral disputes, with the exception of media-related complaints. The CEC serves as a first instance for reviewing most election-related complaints, while its decisions can be appealed to the Court of Bosnia and Herzegovina. The law does not prescribe public hearings on electoral complaints and appeals. There is an overall lack of confidence in the impartiality of the election administration and courts during electoral disputes resolution.

All ODIHR NAM interlocutors noted that there is a need of an ODIHR election observation activity. Many requested ODIHR to deploy a large number of observers to cover all stages of the electoral process, including the conduct of the campaign, media coverage, campaign finance, electoral dispute resolution and election day procedures with a particular emphasis on counting the votes.

Based on the findings of this report, the ODIHR NAM recommends the deployment of an election observation mission for the upcoming general elections. In addition to a core team of experts, ODIHR NAM suggests requesting secondment by OSCE participating States of 20 long-term observers to follow the electoral process countrywide, as well as 300 short-term observers to follow election day procedures. Concurrent cantonal assembly elections will be observed only to the extent to which they have an impact on the conduct of the general elections.

### III. FINDINGS

#### A. POLITICAL BACKGROUND

Bosnia and Herzegovina is a federal parliamentary republic composed of two entities: the Federation of Bosnia and Herzegovina and Republika Srpska.<sup>1</sup> In addition, Brčko District holds a special status as a unit of local self-government within Bosnia and Herzegovina. State Constitution recognizes a multi-ethnic system of government with Bosniaks, Croats and Serbs as the three constituent peoples. Citizens may also declare themselves as ‘Others’, either by identifying themselves as members of another group or by choosing not to affiliate with any ethnic group.

In the Federation of Bosnia and Herzegovina, the Alliance for Better Future, the Party for Bosnia and Herzegovina, the Party for Democratic Action, the Social Democratic Party, as well as the Democratic Front feature on the Bosniak political scene, while the Croat Democratic Union of Bosnia and Herzegovina, the Croat Democratic Union 1990 and others appeal to Croats. In Republika Srpska, among others the Alliance of Independent Social Democrats, the Serb Democratic Party, the Party for Democratic Progress, Socialist party, People’s Democratic Movement and Democratic People’s Alliance compete for the Serb votes.

In December 2016, the Constitutional Court upheld the appeal of Bozo Ljubić and recognized unconstitutional the mechanism of establishing the House of Peoples in the Federation of Bosnia and Herzegovina (FBiH HoP). Failure of the state parliament to amend the electoral law led in July 2017 to another decision of the Court annulling the unconstitutional provisions of the Electoral Code.<sup>2</sup> Despite serious risks of failure to appoint the new FBiH HoP and delegate the federal members to the House of Peoples of Bosnia and Herzegovina (BiH HoP) after the general elections in October 2018, the parliament has still not amended the law in line with the Constitutional Court ruling. Considerable international mediation during spring 2018 also has not brought progress in solving the political constitutional deadlock.

On 8 May 2018, the Central Election Commission (CEC) announced that general elections would be held on 7 October for state, entity and canton level of governance. The preparation to the elections takes place against the background of renewed expectations for accession to the European Union (EU). While Bosnia and Herzegovina signed a Stabilization and Association Agreement with the EU in June 2008, it entered into force only on 1 June 2015. On 15 February 2016, the country submitted its application to join the EU. The EU strategy for enlargement published in February 2018 notes that full analysis of Bosnia and Herzegovina’s situation in relation to the EU accession criteria is yet to be carried out.<sup>3</sup> Several ODIHR NAM interlocutors also noted overall civic disengagement and fatigue related to internal political processes.

ODIHR has observed elections in Bosnia and Herzegovina since 1996.<sup>4</sup> For the 2014 general elections, ODIHR deployed an election observation mission, which found that elections “were held in a competitive environment where 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

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<sup>1</sup> Each entity has its own distinctive ethnic composition and an important degree of autonomy including its own constitution, political structure, governing institutions, administrative and judicial bodies.

<sup>2</sup> The parliament has been left without majority since 2016.

<sup>3</sup> On 17 April, the European Union released its [2018 Communication on Enlargement Policy](#), which states that “Bosnia and Herzegovina continued to implement the Stabilization and Association Agreement” but also notes that “the electoral framework remains to be urgently amended with a view to ensuring the proper organisation of the October 2018 elections and the smooth implementation of the results”.

<sup>4</sup> See previous [ODIHR reports on Bosnia and Herzegovina](#).

commissions reduced stakeholder confidence in the integrity of the process. In addition, the lack of a shared vision in the country's future and co-operation among the three constituent peoples continues to hinder the reforms necessary to fully ensure democratic elections. A growing mistrust by citizens in the functioning of the democratic institutions endangers stability”.

## **B. LEGAL FRAMEWORK**

The legal framework is complex, reflecting the 1995 General Framework Agreement for Peace (Dayton Agreement). The constitution of Bosnia and Herzegovina is comprised in the Annex IV of the Dayton Agreement and grants limited powers to state-level institutions while vesting most of them to the entity level. The Office of the High Representative, an international body mandated to oversee the implementation of the Dayton Agreement, retains extensive powers including the power to impose legislation and remove any officials obstructing the peace process from their office.

General elections are primarily regulated by the 1995 Constitution and the 2011 Election Law. These are supplemented by Annex III (elections) of the Dayton Agreement, the 2012 Law on Financing Political Parties, the 1997 Law on Citizenship, as well as by regulations issued by the CEC.<sup>5</sup> Bosnia and Herzegovina is party to the major international and regional instruments on democratic elections.<sup>6</sup>

The Election Law was last amended in 2016. The legal amendments introduced, among others, sanctions for unjustified failure of an election commissioner to appear at a polling station on election day, tightened requirements for gender-balanced composition of election management bodies and changed the rules for nomination and withdrawal of candidates. Additionally, amendments provided new requirement for political contestants to open a designated bank account for campaign financing and extended the range of penalties for campaign finance violations, partially addressing previous ODIHR recommendations.

However, a number of long-standing and important electoral shortcomings remain unaddressed in the law. In addition to discriminatory residency and ethnicity-based restrictions on the right to vote and to stand as a candidate, these include deficiencies in complaint and appeals mechanism and insufficient safeguards to prevent the abuse of state resources. Many ODIHR NAM interlocutors considered that the absence of progress in the implementation of electoral reforms is due to a lack of political will to move beyond the Dayton Agreement and continuous political deadlock.

The law provides for citizen and international election observation of all stages of the electoral process. Registered candidates and political parties may also appoint authorized representatives to observe the elections. The CEC regulates the accreditation process and is in charge of accreditation of international and citizen observers, as well as contestants' representatives to the CEC. Municipal Election Commissions (MEC) accredit the observers appointed by contestants for activities within the relevant constituency. All party representatives met with by the ODIHR NAM expressed their intention to deploy their observers on election day despite, at times, pointing out a lack of resources to consistently cover polling stations. Some representatives mentioned that the party observation is necessary “to encourage their supporters to come to the polling stations and vote”.

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<sup>5</sup> In addition, there are a number of entity laws, including the constitutions of entities, regulating their electoral systems, activities and financing of political parties, exercise of freedom of association.

<sup>6</sup> This includes the 1948 Universal Declaration of Human Rights, 1965 International Convention on the Elimination of All Forms of Racial Discrimination, 1966 International Covenant on Civil and Political Rights, 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 2003 Convention against Corruption, 2006 UN Convention on the Rights of Persons with Disabilities (CRPD), 1950 European Convention on Human Rights, and 1994 Council of Europe Framework Convention on the Protection of National Minorities. The country is a member of the Council of Europe's Commission for Democracy through Law (Venice Commission) and Group of States against Corruption (GRECO).

### C. ELECTORAL SYSTEM

Under the complex institutional and electoral system, six distinct contests will take place in these elections, with all mandates allocated for four year terms. At the state level, citizens will vote for the presidency and House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina (BiH HoR). The presidency of Bosnia and Herzegovina is a three-member institution elected by simple majority on separate lists in the two entities, with voters from the Federation of Bosnia and Herzegovina choosing either a Bosniak or Croat candidate and from Republika Srpska a Serb candidate. Voters in Brčko District vote either for elections in Federation of Bosnia and Herzegovina or in Republika Srpska, depending on their entity citizenship. The presidency is rotating every eight months among its members from each of the ‘constituent peoples’.

The BiH HoR is comprised of 42 members of parliament (MPs): 28 are elected in the Federation of Bosnia and Herzegovina and 14 in Republika Srpska. Twenty-one deputies are elected from five multi-member constituencies (MMCs) in the Federation of Bosnia and Herzegovina, including in Brčko District, and nine deputies are elected from three MMCs in Republika Srpska, all from open party lists. The remaining seven and five compensatory mandates are distributed from closed party lists accordingly from the Federation of Bosnia and Herzegovina and Republika Srpska.

At the entity level, citizens will directly elect the House of Representatives of the parliament of the Federation of Bosnia and Herzegovina (FBiH HoR), president and vice-presidents of Republika Srpska, and National Assembly of Republika Srpska (RS NA). Concurrently, elections will be held for 10 Cantonal Assemblies in the Federation of Bosnia and Herzegovina.

The FBiH HoR is composed of 98 deputies: 73 elected in 12 MMCs, including Brčko District, from open party lists and 25 compensatory mandates from closed party lists. In Republika Srpska, voters will elect 83 members of the RS NA: 63 in 9 MMCs from open party lists and 20 compensatory mandates from closed party lists. In addition, voters in Republika Srpska will elect their entity-level president and two vice-presidents using a simple plurality system; the candidate with the most votes is elected president, while the top finishing candidates from the other two constituent peoples are elected as the vice-presidents.

The law guarantees minimum representation for the three constituent peoples in both the FBiH HoR and the RS NA. If one of the constituent peoples does not win a minimum of four seats when MMC mandates are allocated, the minimum is guaranteed through compensatory mandates.<sup>7</sup>

A three per cent threshold is applied for allocation of all proportional seats. For all these contests, the open candidate lists are used, where voters may indicate a preference for any number of candidates on the list, or just for the list without stating preference for any candidates. Many ODIHR NAM interlocutors noted, that due to recent increase of preference threshold, nominally open lists will turn in *de facto* closed lists, challenging possibility of voters to influence the order of the candidates receiving mandates.<sup>8</sup>

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<sup>7</sup> This is done by awarding mandates first from the compensatory list, by taking into consideration the declared ethnicity of the candidate. If the political subject that won the compensatory seat does not have enough candidates on its list of the ethnicity for which the minimum of four members was not reached, the seat is awarded to the next highest-ranked candidate list with such candidates, and so on, until the minimum is reached.

<sup>8</sup> The MMC seats are allocated in descending order of preference votes to candidates who got at least 20 per cent of preferences out of the total valid votes. Remaining seats are allocated according to the order set in the list. Previously, all candidates who received at least 5 per cent of preferences participated in primary awarding of the seats.

Authorities have a legal obligation to review electoral boundaries every four years to ensure a balanced distribution of seats among constituencies and equal voting power. However, apart from some adjustments in Republika Srpska, this has not taken place for several electoral cycles. Many ODIHR NAM interlocutors expressed concerns that significant deviations in the size of constituencies remain, both at the state and entities levels, and undermine the equality of vote.<sup>9</sup>

#### D. ELECTION ADMINISTRATION

The general elections are administered by a three-level election administration, headed by the CEC. Lower-level commissions comprise 142 MECs, including 6 City Election Commissions and the Election Commission of Brčko District, as well as some 5,400 Polling Station Commissions (PSCs).

The CEC is a permanent body with overall responsibility to administer elections and establish election results. The CEC has seven members and is legally required to be ethnically balanced: two Bosniaks, two Croats, two Serbs and one from among the 'Others.' The CEC members are nominated by a special Commission for Selection and Nomination for a seven-year term and appointed by the BiH HoR.<sup>10</sup> The chairperson is appointed by the CEC members from among themselves on a rotating basis, provided that one Bosniak, one Croat, one Serb and 'the Other' member serve a 21-month term each.

According to the 2016 legal amendments, all election commissions should include at least 40 per cent of the less represented gender, with the exception of three-member commissions, in which both genders should be represented. One CEC member and reportedly 47.5 per cent of all MEC members are women.

The CEC updated the necessary regulations well in advance of the elections, including on verification of nomination documents for political parties and candidates, nomination and appointment of PSC members, accreditation of election observers, election day procedures, including tabulation procedures, addressing a number of previous ODIHR recommendations. On 8 May, the CEC adopted and published the calendar of activities for the upcoming elections. CEC normative decisions are published in the official gazette and other decisions are made public on CEC website. In line with previous ODIHR recommendations, election results will be published on the CEC website broken down by municipality and polling station.

The CEC informed the ODIHR NAM that it prepared a nationwide training programme for MECs and PSCs, including a video tutorial. Additionally, the CEC is developing a voter education campaign on how to mark the different types of ballots with the aim to address the problem of an extraordinary high number of invalid ballots observed during previous elections. The CEC acknowledged the need for more awareness raising programmes to facilitate the electoral participation of persons with disabilities, but highlighted that it is impossible to run them due to the lack of funds.<sup>11</sup>

MECs are responsible for overseeing voting and counting in polling stations and the data entry of the preliminary election results. MECs are permanent bodies consisting of three, five or seven members depending on the size of the municipality. MECs are appointed by municipal councils and approved by the CEC for seven-year terms. According to the Election Law, the composition of MECs should reflect the ethnic composition of the relevant municipality according to the last census information.

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<sup>9</sup> In June 2017, the CEC sent letters to the BiH HoR, FBiH HoR and NA RS reiterating the need to review constituency boundaries, which were ignored.

<sup>10</sup> This commission consists of two members from the High Judicial and Prosecution Council, three from the administrative commission of the BiH HoR and two from the current CEC.

<sup>11</sup> See CRPD Committee [Concluding observations on the initial report of Bosnia and Herzegovina](#) (2 May 2017), CRPD/C/BIH/CO/1, paragraphs 52 and 53.



The PSCs administer the voting and counting at polling stations. The PSCs consist of three or five members depending on the size of the polling station. The PSC members are appointed by respective MECs no later than 30 days prior to every election. All parties and independent candidates competing in a particular constituency have the right to nominate PSC members, randomly assigned through a lottery organized by the CEC and implemented by the MECs.

Many ODIHR NAM interlocutors expressed concerns that many PSC members work along political lines. Contestants are often trading the PSC positions to get representation in areas of their specific interest, leading to politically unbalanced PSCs. In line with ODIHR recommendations, the 2016 legal amendments introduced sanctions for unjustified absence of an election commissioner at a polling station on election day. In addition, in an effort to reduce the trading of PSC positions, the CEC decided for these elections to publicise the official affiliation of all PSC members.

Many ODIHR NAM interlocutors expressed lack of confidence in the impartiality at all levels of the election administration, largely due to the commissioners' political and ethnic bias and noting possible manipulations on election day, especially during the vote count. Many interlocutors considered potential introduction of vote scanning machines and biometric voter identification as an effective tool against electoral corruption at polling stations. In April 2018, a legislative initiative to introduce these technologies was supported in the BiH HoR but later was not endorsed in the upper house of parliament. All ODIHR NAM interlocutors were of the opinion that considerable international election observation is particularly necessary during and after the election day.

## **E. VOTER REGISTRATION**

Citizens over the age of 18 on election day are eligible to vote, except those deprived of legal capacity or disenfranchised as part of a serious criminal conviction, including for war crimes. Voting rights for the presidency of Bosnia and Herzegovina are limited by residence, and voters in Republika Srpska can only vote for a Serb candidate, while voters in the Federation of Bosnia and Herzegovina may only vote for either a Bosniak or Croat candidate for state presidency.

Voters in Brčko District vote either for elections in Federation of Bosnia and Herzegovina or in Republika Srpska, depending on their entity citizenship. Internally displaced persons (IDPs) living in Bosnia and Herzegovina have the right to register to vote either according to their temporary residence or to their residence before being displaced. Voters abroad should register for every elections and can choose to cast a ballot by mail or to vote in-person at one of the country's diplomatic and consular representations. In line with ODIHR recommendations and in an effort to address previous concerns over integrity of postal voting from abroad, the CEC has decided that postal ballots shall be sent by the voters only by registered mail. For the planning purposes, IDPs, citizens living abroad and residents in Brčko District should inform the CEC on their voting options and/or any changes in their records until 24 July. Otherwise, IDPs and residents of Brčko District will vote according to the arrangements registered by the CEC for the previous elections.

Voter registration is passive and the CEC is responsible for maintaining the Central Voter Register (CVR), which is based on the population register of the Ministry of Civil Affairs. As of 7 May, the CEC announced the preliminary number of voters as 3,381,963. Representatives of each political subject who registered their candidate lists may obtain copies of the voter lists in corresponding constituency free of charge.

Each voter has access to their records throughout the year and is entitled to request a correction of personal data until 23 August through municipal institutions responsible for updating population registers. After this, the CVR is closed and the final number of registered voters is confirmed by the

CEC, which forwards the final voter lists to respective MECs no later than 17 September.<sup>12</sup> Nevertheless, in case of omissions, a voter can be additionally registered at the polling station if he or she proves valid residency within the relevant election precinct.

Several ODIHR NAM interlocutors expressed concerns over accuracy of the CVR, in particular due to previously reported high number of records of deceased voters, which were allegedly misused for impersonation. In the run-up to these elections, the CEC, jointly with state and entity institutions in charge of population registration, undertook a series of measures with the aim to reduce the number of incorrect records in the CVR, including records of deceased people. Some political parties informed the ODIHR NAM that audit of the voter lists lacked transparency and was not open to the public and political parties.

## F. CANDIDATE REGISTRATION

Candidates for all levels of elections can be nominated by political parties and their coalitions or stand independently. The legal framework enshrines ethnicity-based restrictions. The right to stand for the presidency of Bosnia and Herzegovina and for president and vice-presidents of Republika Srpska is granted only to citizens who declare themselves as Bosniaks, Croats or Serbs and is limited by residency requirements.<sup>13</sup> For instance, a Serb registered in the Federation of Bosnia and Herzegovina or a Bosniak or Croat registered in Republika Srpska cannot stand for presidency of the state.

The European Court on Human Rights (ECtHR) has previously recommended the law be amended to remove ethnicity and residency based limitations.<sup>14</sup> To date, despite previous ODIHR recommendations, there has been no progress in implementing the binding judgments of the ECtHR regarding the removal of ethnicity and residency-based limitations on the right to stand.

The 2016 legal amendments modified the process of nomination of candidates by increasing the number of voters' supporting signatures<sup>15</sup> and amount of electoral deposit<sup>16</sup> required for registration of contestants at different levels, decreasing the level of voters' support required for refunding the electoral deposits,<sup>17</sup> and clarifying the rules for nomination and withdrawal of candidates. In order to participate in the elections, prospective contestants have to certify their eligibility with the CEC. With the exception of elections for presidency of Bosnia and Herzegovina and for president and vice-presidents of Republika Srpska, political parties are exempt from signature collection if a member of this party is represented in the legislative body the party wishes to contest or in a corresponding higher-level legislature. In line with a previous ODIHR recommendation, the CEC further regulated the process of verification of support signatures for these elections with the aim to increase accountability.

According to the CEC, of the 72 submitted applications, the CEC registered 67 political parties, 36 coalitions of parties as well as 34 independent candidates to participate in the upcoming elections. The

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<sup>12</sup> The Agency for Identification Documents, Registers and Data Exchange provides technical support to the CEC and MECs on issues related to maintaining and update of the CVR and exchange of the data.

<sup>13</sup> Additionally, only Bosniaks, Croats and Serbs may be indirectly elected to the BiH HoP and as president and vice-presidents of the Federation of Bosnia and Herzegovina.

<sup>14</sup> See, respectively, *Sejdić and Finci v. Bosnia and Herzegovina* (ECtHR 2009) and *Pilav v. Bosnia and Herzegovina* (ECtHR 2016).

<sup>15</sup> Political parties and independent candidate must now submit 5,000 voter signatures to run for the presidency of Bosnia and Herzegovina and BiH HoR elections, and 3,000 signatures for the presidency of Republika Srpska as well as for the FBiH HoR and RS NA elections.

<sup>16</sup> The CEC defined the electoral deposits at BAM 20,000 (Bosnian Convertible *Mark*) for the presidency of Bosnia and Herzegovina and BiH HoR, and BAM 14,000 for entity-level elections (EUR 1 equals some BAM 1.96).

<sup>17</sup> According to new legal provisions and in line with previous ODIHR recommendation, the electoral deposits are now returned to the contestants who received at least 3 per cent of votes in proportional races or to those who won the elections of a president and vice-president or received at least one-third of votes collected by this winner.

ODIHR NAM was informed about 14 appeals adjudicated by the Appellate Chamber of the Court of Bosnia and Herzegovina with regard to CEC denials of party registrations. In four cases, the appeals were upheld by the Court and the CEC registered the parties in question; the remaining appeals were dismissed. Another complaint was filed to the Constitutional Court by a prospective presidential candidate who was denied registration by the CEC due to a lack of proper ethnicity. Candidate lists were put forward from 27 June to 9 July comprising altogether 7,637 candidates. The CEC should verify and register all candidate lists by 3 August.

According to the 2014 and 2016 legal amendments, candidate lists, both for primary and compensatory seats, are required to have at least 40 per cent of candidates of each gender, with sound placement requirements.<sup>18</sup> Nevertheless, women continue to be under-represented in political office retaining 12 out of 57 MPs of both chambers of the parliamentary assembly of Bosnia and Herzegovina, 20 out of 83 deputies in NA RS, 2 out of 10 state-level ministers, 4 out of 17 ministers both in the governments of the Federation of Bosnia and Herzegovina and of Republika Srpska.<sup>19</sup>

Several political parties' representatives informed the ODIHR NAM that they have their internal rules and practices facilitating women to become candidates, including by means of internal quotas and special training for women candidates. Some ODIHR NAM interlocutors also noted that recent introduction of 20 per cent threshold of preference votes needed for prioritized allocation of mandates to candidates from the lists also contributes to better representation of women in legislative bodies.

Generally, all political parties met with by the ODIHR NAM expressed full confidence in the candidate registration process and did not raise any concerns on technicalities of the registration process.

## **G. ELECTION CAMPAIGN**

The official campaign period will start on 7 September and end 24 hours before election day. Authorities are obliged to ensure the equitable treatment of contestants in their requests to use public facilities for campaign purposes, including holding meetings and displaying posters and billboards. Although no significant issues were raised about the ability of political parties and candidates to campaign freely, some ODIHR NAM interlocutors expressed concerns about biased media coverage of the campaign and the potential misuse of state resources by the governing parties. Concerns were also raised by a few ODIHR NAM interlocutors regarding extensive campaigning prior to the official campaign period.

All ODIHR NAM interlocutors expected the campaign to be conducted through public meetings, posters, billboards, social media and advertisements in the media. Several interlocutors did not exclude that the campaign could be marked by inflammatory statements, intolerant and nationalist rhetoric. The role of online and social media in the campaign was often regarded as potentially contentious, as lack of regulations of this important campaign tool for contestants could potentially compromise fairness of the campaign. Many ODIHR NAM interlocutors mentioned the phenomenon of disinformation as a worrying trend challenging the ability of voters to make an informed electoral choice.

Only few ODIHR NAM interlocutors from political parties mentioned specific topics for the upcoming campaign, including corruption, low living standards, healthcare and immigration. Majority of interlocutors expect the campaign to focus on personalities and ethnic interests. Many ODIHR NAM

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<sup>18</sup> According to the Election Law, in case a list contains only three candidates, it should contain at least one candidate of each gender. If a list of candidates does not comply with the gender requirements, the CEC is authorised to require the contestant to correct the list or register the part of the list which corresponds to the quota and the sequential order of candidates, or deny registration.

<sup>19</sup> See CEDAW [Concluding observations on the combined 4th and 5th periodic reports of Bosnia and Herzegovina](#) (30 July 2013), CEDAW/C/BIH/CO/4-5, paragraphs 19, 27-28.

interlocutors expect that even greater polarization of political parties along ethnic lines, with most parties orienting themselves towards their own communities, will characterize this election campaign. Political parties do not plan to introduce additional policies to promote participation of women or persons with disabilities in elections.

Besides the three constituent peoples, there are several national minority groups in Bosnia and Herzegovina. According to the 2013 census, most of these minorities are very small in numbers, with Roma, Albanians, Ukrainians, and Montenegrins exceeding 0.1 per cent of population.<sup>20</sup> The Roma remain the country's most vulnerable and disadvantaged minority. Positively, several parties informed the ODIHR NAM that they will use anti-discrimination rhetoric in their campaigns, and call for integration of different ethnic groups.

## H. CAMPAIGN FINANCE

Campaign finance is regulated by the Election Law, the Law on Financing Political Parties, laws on political parties of Republika Srpska and Brčko District, and by CEC instructions. Direct public financing is not provided for election campaigns, but parliamentary groups represented in the parliament are entitled to receive funding from the budget of Bosnia and Herzegovina. Political parties represented at entity levels are also entitled to public funding from the relevant entity budget.

Parties and independent candidates can finance their campaigns from membership fees and budget allocations (only for parties) as well as donations from individuals and legal entities. Individuals may donate up to BAM 10,000 and legal entities up to BAM 50,000. Foreign and anonymous contributions, use of loans, funding from administrative bodies, public institutions and enterprises, donations from publicly funded NGOs and associations, from humanitarian and religious organizations, as well as from persons, which have concluded contracts related to public procurement and exceeding BAM 10,000 in the current year, are prohibited.

Each electoral contestant may spend up to BAM 0.30 per registered voter in a corresponding constituency. The 2016 legal amendments require political contestants to open a designated bank account for campaign financing partially addressing previous ODIHR recommendations. All campaign-related transactions may be conducted through these bank accounts or in cash.

There is no obligation for interim reporting during elections but all electoral contestants are required to submit two financial reports on incomes and expenditures, first at the time of registration, covering the last three months prior to registration, and second within 30 days after the announcement of the final election results. Failure to submit the first report results in denial of registration of the electoral contestant, whereas failure to submit the final report leads to revocation of a mandate of the independent candidate or candidates nominated by the party in question. The 2016 legal amendments additionally introduced monetary sanctions to political parties and candidates for failure to submit the campaign finance reports. These reports should be made public; however, neither the law nor the CEC specify deadlines for auditing or publishing these reports.

The supervision of campaign financing is carried out by the CEC, through its Audit Department. In January 2018, the CEC issued updated regulations for political parties and independent candidates defining the templates for the reports, including in electronic format, and clarifying the rules on reporting. On the basis of a complaint or on its own initiative, the CEC may issue sanctions both for violations of campaign financing and financing of regular activities of political parties. The final decision on applying the sanctions lays with the Appeal Council, parliamentary body, which is also considering the appeals against the CEC decisions related to financing of the political parties. The CEC

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<sup>20</sup> The October 2013 final [census data](#) was published in June 2016.

informed the ODIHR NAM that consistency in applying the sanctions, both from the side of the CEC and the Appeal Council in recent years has led to improving the reporting by political parties.

GRECO, in its 2017 compliance report, acknowledged the progress made by Bosnia and Herzegovina by partial implementation of previous recommendations. Nevertheless, GRECO expressed concerns that “the reform only presents partial solutions to the shortcomings identified ... Much more needs to be done, *inter alia*, to harmonise the complex legal framework, promote the use of the banking system for contributions to political parties and increase the financial and personnel resources allocated to the Central Electoral Commission for the supervision of political financing”.<sup>21</sup> The CEC informed ODIHR NAM, that despite several requests for assistance sent to the authorities and international community, the Audit Department is not yet fully supplied with necessary office equipment for the staff to make comprehensive audits.

Political parties that the ODIHR NAM met with did not express any concerns related to the professionalism and impartiality of the audits made by the CEC and found latest reform contributing to transparency of the campaign finance. At the same time, some party representatives noted that a large part of campaign finance in practice remains unreported and therefore outside of the CEC audits.

## I. MEDIA

While noting media diversity, many ODIHR NAM interlocutors claimed ethnic and political segmentation of the media market. At the same time, despite highlighting lack of equal access to private television, several parties acknowledged the possibility for most political contestants to get coverage on public broadcasters, with a notable exception of Radio and Television of Republika Srpska (RTRS).<sup>22</sup>

The public broadcasting service is provided by the Radio and Television of Bosnia-Herzegovina operating on the state level, and two entity-based public broadcasters, Radio and Television of Federation of Bosnia and Herzegovina and RTRS. In addition, there are over 40 television channels and over hundred radio stations operating on the cantonal and municipal levels. Television is the main source of political information, while online portals and social media are rapidly replacing print media.

Numerous ODIHR NAM interlocutors expressed concerns about partisan editorial policies in public media and alleged that both public and private media are vulnerable to pressure from political or business elites. Moreover, the lack of funding for both state and entity public broadcasters was regarded as a serious concern, potentially infringing media pluralism. In addition, the lack of transparency of media ownership was mentioned as the cause of negative trends in online media.

A large number of defamation lawsuits filed by politicians against media, increasing number of cases awarded by the courts based on stated need for higher protection of public officials, as well as inadequate application of the law on protection of personal data leads to self-censorship among journalists and suppress investigative journalism. Concerns were also raised about physical attacks and other forms of pressure on journalists. The OSCE Representative on Freedom of the Media (RFoM) has drawn attention to these phenomena, strongly condemning all threats against journalists, especially those aimed at silencing them, and noting that “Any attack on a journalist is an attack on societies’ right to be informed”.<sup>23</sup>

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<sup>21</sup> See [GRECO Fourth Interim Compliance Report on Bosnia and Herzegovina](#), 23 June 2017.

<sup>22</sup> Several ODIHR NAM interlocutors noted that the RTRS does not provide balanced coverage of political actors but clearly favours the president and the ruling parties in Republika Srpska.

<sup>23</sup> See press releases of the OSCE RFoM [on 20 April 2018](#) and [on 5 December 2017](#).

The Election Law and CEC regulations provide a comprehensive framework for media coverage of the election campaign. Public broadcast media must grant three minutes of free airtime to each contestant for advertisement during the official campaign period. The electoral contestants can also purchase advertising time, up to a maximum of 30 minutes on each public broadcaster, and 60 minutes on each private broadcaster, per week.

Broadcast media are required to respect the principles of balance, fairness, and impartiality, especially in their information programmes.<sup>24</sup> Some ODIHR NAM interlocutors noted a superficial approach of the CEC in implementing these provisions. According to the interlocutors, the CEC's requirement to the media to equally cover all contestants during the campaign reportedly undermines freedom of media to provide newsworthy information to voters.

Compliance with media regulations by broadcasters is overseen by the Communications Regulatory Agency (CRA), which has the mandate to resolve media-related complaints and apply sanctions for violations.<sup>25</sup> At the same time, some ODIHR NAM interlocutors questioned the efficiency of available sanctions, saying that they are not deterrent enough compared to the violations. The decisions of the CRA can be appealed to the Council of the CRA, then to the Administrative Court and further to the Court of Bosnia and Herzegovina. Despite previous ODIHR recommendations, the legislation does not provide short deadlines for media-related complaints within the electoral period, challenging the effectiveness of remedy. The CRA noted that it would speed up the complaint proceedings if possible, but will have to apply all formalities in line with the Law on Administrative procedures. Complaints related to print an online media coverage fall under the mandate of the Press Council of Bosnia and Herzegovina, a self-regulatory body that issues non-binding decisions.

## J. COMPLAINTS AND APPEALS

Electoral complaints can be filed with the election commissions at any stage of the process by a voter or an electoral contestant whose rights are affected by an infringement. During the elections, the complaints and appeals should be filed within 24 hours after a potential violation occurred (or a decision in question was adopted) and be addressed by election commissions and courts within three days.

The CEC serves as a first instance for reviewing most election-related complaints and considers appeals against decisions of MECs, who are in charge of disputes related to the conduct of campaign and voter registration.<sup>26</sup> All CEC decisions are subject to judicial review before the Appellate Chamber of the Court of Bosnia and Herzegovina, which is the final instance, except in cases where constitutional rights are violated. The Constitutional Court accepts applications from any individual whose fundamental rights have been violated and when all other remedies have been exhausted.

In polling stations, PSC members, observers and voters may register alleged irregularities they observe. On the basis of these "substantiated objections", a contestant may file a formal complaint on election day irregularities or the CEC may consider the matter *ex officio*. Within three days after establishing the preliminary results, the contestants, observers, groups of at least 50 voters of the polling station in question, and the MECs have the possibility to challenge the results and request the CEC to recount the ballots of an individual polling station.

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<sup>24</sup> The news coverage of officials who are also contestants is allowed provided their candidacy is not mentioned. These officials must not enjoy a privileged position in media with respect to other electoral contestants.

<sup>25</sup> The CRA informed the ODIHR NAM that it would conduct monitoring of seven nationwide channels, including three public broadcasters, during the official campaign period. The CRA noted that there is no need to monitor a wider sample of media, as the most problems, if any, would be reported to the CRA through the complaints.

<sup>26</sup> The CEC is in charge of considering the complaints related to media-related campaign violations by electoral contestants, including during campaign silence period.

The legislation does not prescribe public hearings on electoral complaints and appeals. While the CEC informed the ODIHR NAM that it conducts complaints hearings during its sessions, which are always public, the Court of Bosnia-Herzegovina confirmed that all election-related cases are heard based on written statements only, without public hearings.

Overall, the ODIHR NAM interlocutors expressed lack of confidence in the impartiality of the election administration and courts in the context of electoral dispute resolution. Some noted the lack of effective investigations of offences, including cases of vote-buying and bribing of election commissioners, by the prosecutors and law-enforcement bodies, contributing to a perception of impunity.

#### **IV. CONCLUSIONS AND RECOMMENDATION**

All ODIHR NAM interlocutors noted that there is a need of an ODIHR election observation activity. Many requested ODIHR to deploy a large number of observers to cover all stages of the electoral process, including the conduct of the campaign, media coverage, campaign finance, electoral dispute resolution and election day procedures with a particular emphasis on counting the votes.

Based on the findings of this report, the ODIHR NAM recommends the deployment of an election observation mission for the upcoming general elections. In addition to a core team of experts, ODIHR NAM suggests requesting secondment by OSCE participating States of 20 long-term observers to follow the electoral process countrywide, as well as 300 short-term observers to follow election day procedures. Concurrent cantonal assembly elections will be observed only to the extent to which they have an impact on the conduct of the general elections.

## **ANNEX: LIST OF MEETINGS**

### **Ministry of Foreign Affairs**

Mirza Pašić, Desk officer for the OSCE

### **Central Election Commission**

Irena Hadžiabdić, President

Suad Arnautović, Member

Stjepan Mikić, Member

Vlado Rogić, Member

Ahmet Šantić, Member

Jasmina Hadžiabdić, Acting Secretary General

### **Constitutional Court**

Zvonko Miljan, Registrar

### **Court of Bosnia and Herzegovina, Appellate Chamber**

Sreto Crnjak, Judge

Vesna Trifunović, Judge

### **Regulatory Communication Agency**

Helena Mandić, Director of Broadcasting

Amela Odobašić, Head of Public Affairs

### **Agency for Identification Documents, Registers and Data Exchange**

Srdan Nogo, Head, Department for Project Development and Cooperation with International Institutions

### **Political Parties**

Lazar Prodanović, MP, Alliance of Independent Social Democrats

Damir Bećirović, MP, Democratic Front

Barisa Čolak, MP, the Croat Democratic Union of Bosnia and Herzegovina

Nikola Lovrinović, Head of Club, the Croat Democratic Union of Bosnia and Herzegovina

Niko Duvnjak, Adviser, the Croat Democratic Union of Bosnia and Herzegovina

Borjana Krišto, MP, the Croat Democratic Union of Bosnia and Herzegovina

Dijana Zelenika, MP, the Croat Democratic Union 1990

Amer Obradović, Secretary General, Independent Bloc

Nermin Deino, Party for Better Future

Hatidza Šisić, Party for Better Future

Adisa Omerbegović, Vice-President, Party for Better Future

Asim Sarajlić, MP, Party for Democratic Action

Aleksandra Pandurević, MP, Social Democratic Party

### **Media**

Ljiljana Zurovac, Programme Director, Press Council

Maida Bahto Kestendžić, Project Coordinator, Press Council

### **Civil Society**

Jelena Tanasković Mićanović, Policy Coordinator, Coalition Under the Magnifying Glass

Vehid Šehić, Forum of Tuzla Citizens, Coalition Under the Magnifying Glass

### **International Community:**

Joeri Maas, Chief of Policy and Planning, OSCE Mission to Bosnia and Herzegovina

Maja Milavić, National Political Officer, OSCE Mission to Bosnia and Herzegovina

Jelena Despot, Political Advisor, Office of the High Representative

Maja Ribar, Consultant, European Union Delegation