



LIMITED ELECTION OBSERVATION MISSION Croatia — Presidential Election, Second Round, 10 January 2010

STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

Zagreb, 11 January 2010 – Following an invitation from the Croatian government, and in line with the recommendations of the Needs Assessment Mission conducted by the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) in Zagreb, the OSCE/ODIHR officially opened a Limited Election Observation Mission (LEOM) on 8 December for the 27 December 2009 presidential election. The OSCE/ODIHR LEOM remained in Croatia to observe the second round of the election.

The second round of the presidential election is assessed for its compliance with OSCE commitments and international standards for democratic elections, as well as with Croatian legislation. This statement should be considered in conjunction with the Statement of Preliminary Findings and Conclusions issued on 28 December, after the first round of voting.¹ The overall assessment of the election will depend, in part, on the conduct of the remaining stages of the election process. The OSCE/ODIHR will issue a comprehensive final report, including recommendations for improvements, some eight weeks after the completion of the process.

In line with standard OSCE/ODIHR methodology for LEOMs, the mission included long-term observers but not short-term election observers. The OSCE/ODIHR LEOM did not conduct a comprehensive and systematic observation of election-day proceedings, but visited a limited number of polling stations.

PRELIMINARY CONCLUSIONS

The second round of the presidential election in Croatia generally complied with OSCE commitments and other international standards for democratic elections. The positive developments noted during the first round were confirmed by further steps to improve the process. Overall, confidence in the election administration and in the integrity of the process remained high. However, the need for consolidation and harmonization of the legal framework, for advancement of institutional reform of the election administration as well as for enhanced voter education are issues that continue to deserve attention.

The State Election Commission (SEC) continued to seek ways to improve the electoral process and compensate for the deficiency of the legal framework. Upon a SEC recommendation, Municipal Election Commissions and City Election Commissions (MECs/CiECs) conducted further training for members of Voting Committees (VCs) to improve their performance. No additional voter education efforts were undertaken.

There was a proposal to allow voters for the second round to temporarily register anew to vote outside their permanent place of residence in view of the fact that the deadline for such registration had expired 28 days before the second round. Although the SEC and both presidential candidates supported this initiative, the Ministry of Public Administration (MPA), responsible for implementing

¹ See Statement of Preliminary Findings and Conclusions for the 27 December presidential election in Croatia, available at: www.osce.org/odihr/item_12_41938.html.

the Law on Voter Lists, maintained that the law did not provide for this possibility and that re-opening registration would not considerably increase voter participation.

The results of the first round were accepted by all twelve candidates. The election campaign for the second round offered voters sufficient opportunities to compare the two candidates remaining in the race and their platforms: Mr. Ivo Josipović, nominated by the Social Democratic Party, and Mr. Milan Bandić, the Mayor of Zagreb, who ran independently. Some exchanges between the candidates included harsh rhetoric as did the exchange of arguments between the incumbent President Stjepan Mesić and Mr. Bandić, after the former indirectly expressed support for Mr. Josipović. Both candidates campaigned actively, relying mostly on media and campaign meetings. The campaign tone became more acrimonious in the last week before election day also due to a controversial campaign spot by Mr. Bandić, the broadcasting of which was banned by the SEC following a complaint by Mr. Josipović. Mr. Bandić accused the SEC of censorship and bias and asked for the resignation of the SEC President. A revised campaign spot was aired shortly thereafter.

The SEC is required to receive campaign finance reports from the candidates seven days before the election and, after the election, to publish them. The candidates generally abided by the legal provisions and by SEC decisions when filing their campaign finance reports. On its own initiative, the SEC published these reports before the election, thereby enhancing transparency. Due to the lack of audit powers and enforcement mechanisms, however, campaign finance reports are not independently verified and their accuracy depends on the information provided by the candidates.

The media continued to offer ample and diverse information, enabling voters to make an informed choice. The candidates had unimpeded access to the media to present their views, especially through debates, news, special election programs and paid political advertisement. The legal requirements for equal coverage of all candidates were easier to fulfil with two rather than with twelve candidates. On the whole, both candidates received balanced coverage on the public and private media.

The legal framework for complaints and appeals applicable to the presidential election is not fully in compliance with OSCE commitments. The Constitutional Court acts as an appellate body for SEC decisions on complaints as well as the first and the final instance on requests to “control the legality and constitutionality” of elections. The fact that the Constitutional Court, in this latter supervisory capacity, had not acted upon such a request of a first round presidential candidate, underscored the lack of a comprehensive election-related complaints and appeals process that would offer effective remedies to complainants. In its supervisory role, the Court is not bound by the strict timelines that apply when it acts as the appellate court for SEC decisions. At the time of the second round, the Court has not rendered a decision, thus denying the applicant timely remedy.

In response to a complaint by Mr. Josipović, the SEC took a controversial decision to ban a campaign ad prepared by Mr. Bandić’s campaign. The SEC found that the ad violated the “permitted and correct manner” of running an election campaign. The SEC, however, has not defined formal rules for the conduct of an election campaign nor are these provided by the presidential election law.

The atmosphere on election day was calm. Voting took place in an orderly manner and was professionally and efficiently administered. OSCE/ODIHR LEOM observers noted very efficient processing of the out-of-country vote by the SEC and the City of Zagreb MPA Office as well as generally improved thoroughness in the counting practices. The tabulation process appeared to be professionally conducted.

PRELIMINARY FINDINGS

Background

On 28 December, the State Election Commission (SEC) announced the final results of the first round of the presidential election. No candidate had received the required majority to be elected. Mr. Ivo Josipović, nominated by the Social Democratic Party (SDP), who received 32.42 per cent and Mr. Milan Bandić, independent candidate and Mayor of Zagreb, who received 14.83 per cent of the valid votes contested the second round.² Voter turnout in the first round was officially reported at 43.96 per cent. The reasons for this record low turnout were widely discussed: the holiday season, the limited presidential powers as well as the number of voters on the voter lists, which is widely believed to be inflated.

Election Administration

The counting and processing of the election results during the first round were efficient, which allowed the SEC to announce preliminary election results at 24.00 hours on election night, the end of the official election silence period. The final results, including those from all 250 out-of-country polling stations, were announced the next day. A full report of the results per polling station was subsequently published on the SEC website, in line with good practices to enhance transparency.

During the second round, public confidence in the election administration remained high. The SEC actively sought ways to further improve the electoral process, to compensate for the fact that the presidential election law is general, lacks detail, and is at times inconsistent with laws that govern other elections. Several Municipal and City Election Commissions (MECs/CiECs) reviewed the performance and availability of members of Voting Committees (VCs) and, on few occasions, replaced some. In appointing VC members, the MECs/CiECs gave priority to young, educated unemployed people and young mothers.

Upon a recommendation by the SEC, many MECs/CiECs provided training or additional instructions to members of some of the 6,863 VCs to strengthen their performance, in particular in relation to the completion of results protocols. Although the manual on election day procedures describes the first part of the counting process in detail, it does not include guidance on the actual count of ballots for each candidate. OSCE/ODIHR LEOM observers noted that the counting process was insufficiently thorough in some of the polling stations visited on 27 December.

Between rounds, the SEC continued to work transparently and tried to improve the organization of its work. For instance, the SEC could not always apply the formal procedure to call official sessions because the SEC President and two Vice-Presidents were not always available due to their other responsibilities in the Supreme Court.³ Thus, SEC sessions were organized in an *ad hoc* manner, limiting possibilities for the public to learn about them and attend. The OSCE/ODIHR LEOM and the domestic election observation group, GONG, were informed about three out of several SEC sessions held between the two rounds and were invited to attend.

No additional voter information was disseminated prior to the second round. OSCE/ODIHR LEOM interlocutors had reported that in a few instances, on the first round election day, voters turned up at

² The first round results were the following: Ivo Josipović 32.42 per cent, Milan Bandić 14.83 per cent, Andrija Hebrang 12.04 per cent, Nadan Vidošević 11.33 per cent, Vesna Pusić 7.25 per cent, Dragan Primorac 5.93 per cent, Miroslav Tuđman 4.09 per cent, Damir Kajin 3.87 per cent, Josip Jurčević 2.74 per cent, Boris Mikšić 2.10 per cent, Vesna Škare-Ožbolt 1.89 per cent and Slavko Vukšić 0.42 per cent.

³ Article 8 of the Standing Orders of the SEC stipulates that “sessions of the SEC are called at least three days before holding the session”.

wrong polling stations unaware of changes in the polling station address. Interlocutors also reported that voters were unaware of the need to temporarily register to vote outside their place of permanent residence. Similarly, residents in some retirement homes were still registered at their previous residence and therefore not on the voter list of the retirement home. To address this issue, those who had previously lived in the vicinity were able to make use of mobile voting.

Voter registration

The Law on Voter Lists introduced specific procedures for temporary registration for voting outside a voter's permanent residence in Croatia and pre-registration for voting abroad. This has considerably reduced the potential for double voting. The MPA decided that voters could temporarily register to vote only in one location either for one or both rounds but voters could not choose to vote in two different temporary places. In accordance with the law, the temporary and pre-registration deadline for this election, for both rounds, was on 12 December, 14 days before the first round and 28 days before the second round.

Referring to the early deadline to register to vote outside one's permanent residence for the second round, the domestic election observer group GONG and Mr. Josipović suggested giving voters another opportunity to temporarily register for the second round. The SEC supported this proposal, as did generally Mr. Bandić's campaign. The MPA, responsible for implementing the Law on Voter Lists, however, maintained that the law does not offer this possibility since "the confirmed voter lists shall be used for the elections which have been called, as well as for repeated elections".⁴ The MPA also argued that re-opening registration would not considerably increase voter participation. The OSCE/ODIHR LEOM noted a need for better co-operation between the MPA and the SEC, which is responsible for the conduct of the election.

As a result, the voter lists used for the second round reflected the status of voter registration as of 18 December.⁵ The OSCE/ODIHR LEOM was informed that voters who reached 18 years of age between the two rounds could exercise their right to vote by requesting a "voting certificate" at their local authorities; however no special outreach was conducted in this regard.

Out-of-country Voting

GONG observed the out-of-country voting in Bosnia-Herzegovina (BiH) on 27 December and informed the OSCE/ODIHR LEOM that their assessment had been positive. They noted that VCs, which included many new but knowledgeable members, performed their duties efficiently, especially during the count. To further strengthen the integrity of the out-of-country vote, the SEC decided to send a reminder to all out-of-country VCs, stressing the importance of adequate identification of voters to prevent impersonation of voters and potential multiple voting.

Election Campaign

All twelve candidates who contested the first round accepted the election results. Immediately after the publication of the first round results, Mr. Bandić and Mr. Josipović exchanged views and accusations on how they would comply with the requirement of political neutrality if elected. Mr. Bandić levelled increasingly strong personal accusations against his rival during TV debates, whereas Mr. Josipović attempted to maintain a calmer stance. The incumbent President and Mr.

⁴ The Law on Voter Lists, Article 29.

⁵ Voters could temporarily register to vote and pre-register for out-of-country voting and to request any changes in their entries on voter lists by 12 December. The deadline for the MPA to close the voter lists, after it had processed all requests, was 18 December.

Bandić also exchanged arguments after the President indirectly supported Mr. Josipović. These arguments focused mainly on alleged present and past irregularities related to their campaign finances.

Both candidates campaigned actively, relying on media appearances and campaign meetings. Campaign posters and billboards remained visible throughout the country. The candidates discussed substantive issues such as the economy, European integration, social justice, anti-corruption, and the arbitration agreement with Slovenia; on some of these they had similar views. The distinguishing factors between the two were rather related to personality, personal history and public image. In this context, Mr. Bandić presented himself as independent, not backed by any political party, and thus better placed to initiate independent policies. He also stressed that he is a religious person, saying that he is supported by the Catholic Church. Mr. Josipović, on the other hand, underlined his background as a professor of law, approaching issues such as social justice, anti-corruption and international relations from this perspective. He also stressed that, while he is not a believer himself, he is respectful of religious beliefs.

The campaign tone became more acrimonious in the last week before election day due to a controversial campaign spot by Mr. Bandić, the broadcasting of which was banned by the SEC following a complaint by Mr. Josipović (see below section on complaints and appeals). Mr. Bandić called the SEC decision an act of censorship, accused the SEC of bias and asked for the resignation of the SEC President.⁶

Campaign financing

The Law on Campaign Financing for Presidential Elections mandates the SEC to receive campaign finance reports before the election and to publish them after the election. On its own initiative, the SEC published the preliminary reports as received from the candidates before the election, thereby enhancing transparency. The candidates generally abided by the law and by SEC decisions when filing their campaign finance reports.

The reports submitted by the presidential candidates on the sources of their campaign funds seven days before the first round continued to form part of the campaign discourse. Although not provided for in the Law on Campaign Financing for Presidential Elections, the SEC requested that candidates file another preliminary report prior to the second round. Mr. Bandić, who was not nominated by a political party, reported that he collected 6,989,061 HRK (approx. 955,000 EUR) by 31 December 2009 and had returned a contribution to a donor who had recently been detained on suspicion of receiving an illegal loan from a state company. Mr. Josipović reported 4,753,082 HRK (approx. 650,000 EUR) collected by 3 January 2010. The majority of his funds came from his nominating party, the SDP. Sources of funds received from political parties do not have to be disclosed.

In accordance with the presidential election law, the four candidates who received 10 per cent or more of the vote in the first round qualified for a state subsidy, fixed by the government at 250,000.00 HRK (approx. 34,300 EUR). This amount is not connected to the actual spending or any other precondition. This provision also applies for the second round.

Due to the lack of audit and investigative powers as well as enforcement mechanisms, however, campaign finance reports are not independently verified and their accuracy depends on the information provided by candidates. This lack was highlighted by an issue that arose with respect to so-called gifts to potential voters. In response to a newspaper inquiry claiming that a presidential

⁶ According to an announcement by Mr. Bandić's campaign on his campaign website, www.milanbandic.com, and a press conference held by Mr. Bandić's campaign team on 8 January 2010.

candidate had distributed money to some families during a visit to Banja Luka, BiH, the SEC decided that such gifts were inappropriate but no further investigation into this issue was undertaken.

The Media

Between the two rounds, the media continued to offer voters plenty of information, enabling voters to make an informed choice. The candidates had ample opportunities to present their views and programs in the media. There were six debate programs on public and private broadcasters which provided valuable opportunities for voters to compare the contestants. Paid political advertisements were used extensively, with Mr. Bandić purchasing more paid advertising time on television than Mr. Josipović within the period monitored by the OSCE/ODIHR LEOM.⁷

The Croatian public service broadcaster (HRT), in line with its legal obligations, continued to offer free airtime to both candidates in the form of five special reports of up to two minutes on both public TV (HTV1) and radio (HR). HTV1 organized two debates among the candidates, on 30 December and 8 January.

The coverage of both candidates was generally balanced on public and private broadcasters. Between the two rounds, HTV1 devoted 54 per cent of its campaign-related prime time news to the activities of Mr. Bandić and 46 per cent to Mr. Josipović. Coverage for both candidates was mostly neutral and positive. By contrast, on the second public TV channel (HTV2), Mr. Bandić received 62 per cent of mainly neutral and some negative coverage, some of which was devoted to his activities as Mayor of Zagreb, mainly in the framework of HTV2's regular programs on Zagreb. By comparison, Mr. Josipović received 38 per cent of mainly neutral or positive coverage.

TV Nova adopted a similar approach as HTV1 and devoted almost equal amounts of its campaign-related coverage to both candidates; Mr. Bandić received 51 per cent and Mr. Josipović 49 per cent. The other private broadcaster RTL allocated more coverage to Mr. Bandić who received 55 per cent of mostly neutral and positive coverage, with Mr. Josipović receiving 45 per cent of also mainly neutral and positive coverage.

All newspapers monitored by the OSCE/ODIHR LEOM provided similar amounts of their coverage to both candidates. While *Vjesnik* gave more positive coverage to Mr. Bandić than to Mr. Josipović, *Jutarnji List*, *Slobodna Dalmacija*, *Večernji List* as well as *24 Sata* published more positive articles about Mr. Josipović. At the same time Mr. Bandić received more criticism in these four newspapers than his opponent.

Complaints and Appeals

The legal framework for complaints and appeals applicable to the presidential election is not fully in compliance with OSCE commitments.⁸ The SEC received few complaints in the run-up to the second round. In response to a letter received from Mr. Josipović's campaign about a campaign leaflet that juxtaposed the candidates in terms of their religious beliefs and patriotism, the SEC called on the two candidates to conduct "a fair and correct election campaign" and to respect human rights and tolerance. Mr. Bandić's campaign denied involvement in the distribution of the leaflet, contending that its appearance had harmed both candidates.

⁷ The OSCE/ODIHR LEOM media monitoring included the publicly funded television channels HTV1 and HTV2, the privately owned *TV Nova* and RTL as well as the daily newspapers *Jutarnji List*, *Večernji List*, *24 Sata*, *Slobodna Dalmacija* and *Vjesnik*. The monitoring of television focused on all political and election-related programs and broadcasts in primetime (from 18.00 to 24.00 hours).

⁸ OSCE 1990 Copenhagen Document, paragraph 5.10, and OSCE 1991 Moscow Document, paragraphs 18 and 18.4. See also Venice Commission Code of Good Practice in Electoral Matters: CDL-AD(2002), page 11.

In a second complaint to the SEC, Mr. Josipović alleged that a campaign ad prepared by Mr. Bandić “abused his voice and words”. The ad used parts of a speech made by Mr. Josipović at a meeting of SDP regional branches after the first round of the election. He had commented on this occasion on a map of Croatia indicating in colour his election results in the first round. A recording of Mr. Josipović’s statement was used in Mr. Bandić’s campaign spot, saying that Croatia’s “map would turn completely red”, alluding to the political meaning of the colour red.

In its response to this complaint,⁹ the SEC ordered all broadcasters to cease airing the campaign spot. Drawing on previous electoral practice, the SEC found that the video was designed “in an impermissible way” and was a “violation of the permitted and correct manner [...] to run an election campaign”.¹⁰ However, the SEC has not outlined the “correct manner” for the conduct of a presidential election campaign in a mandatory instruction or decision nor does the presidential election law provide a definition. Mr. Bandić argued that there was no legal basis for the SEC decision. Upon his own initiative, Mr. Bandić revised his campaign spot. Following a request from HRT and *TV Nova*, the SEC decided on 7 January that this revised ad, which used the same language as the original spot but not the voice or picture of Mr. Josipović, could be aired.

The Constitutional Court acts as an appellate body for SEC decisions on complaints about candidate nomination and election day procedures. It also is the first and the final instance on requests to “supervise the constitutionality and legality” of elections.¹¹ Prior to the first round of the election, a presidential candidate filed a request with the Constitutional Court to “control the constitutionality and legality” of the election alleging that the media had failed to provide equal conditions for all candidates. In its supervisory role the court is not bound by the strict timelines that apply when it acts as an appellate court for SEC decisions. At the time of the second round, the court had not yet rendered a decision and thus denied the candidate an effective remedy.

Complaints about election day procedures could be lodged with the SEC. The presidential election law provides a remedy (annulment of a polling station results) only in cases of severe irregularities. The SEC, however, informed the OSCE/ODIHR LEOM that, while the law does not provide for a possibility to amend the election results, the SEC would do so in practice pursuant to a recount and review of ballots. The presidential candidates reportedly were aware of this possibility, as it has been previously applied.

Election Day

The OSCE/ODIHR LEOM did not conduct a comprehensive and systematic observation on election day, but OSCE/ODIHR LEOM observers visited a limited number of polling stations and MECs/CiECs across the country.

The atmosphere on election day was calm. The SEC reported that voter turnout was 50.28 per cent, a significant increase over the first round (43.96 per cent).

Voting took place in an orderly manner. VC members at the polling stations visited were aware of procedures and managed the process professionally and efficiently. The authorities and the election administration monitored the situation in the few flood-affected areas and tried to ensure uninterrupted voting. The layout and technical arrangements in several polling stations visited did

⁹ According to Article 22 (6) of the presidential election law, the SEC is mandated to “supervise the correctness of the electoral campaign”.

¹⁰ SEC ‘Statement and Warning’ No. 507/10/02 of 6 January 2010.

¹¹ Presidential election law Article 43; Constitutional Act on the Constitutional Court, Article 87.

not ensure full respect of the secrecy of the vote.

OSCE/ODIHR LEOM observers noted a few instances of voters being turned away from polling stations. On occasion, these were voters who had reached the age of 18 between the two rounds. In these instances, the VCs informed voters about the steps to take to be able to vote. Information to VC members that any official photo ID should be accepted also appeared to have been better disseminated than in the first round.

OSCE/ODIHR LEOM observers noted a very efficient processing of the out-of-country vote by the SEC and the City of Zagreb MPA Office. They also noted that, in the few visited polling stations, counting practices generally were more thorough, partly due to the lower number of candidates. The level of detail in the manual describing counting procedures, however, remained insufficient. OSCE/ODIHR LEOM observers were granted full access to all stages of the tabulation process in the few visited MECs/CiECs and data entry centers. The tabulation process appeared to be professionally conducted. The SEC held back the announcement of preliminary election results until 24.00 hours due to the necessity to respect the campaign silence period.

*This statement is also available in the Croatian language.
However, the English version remains the only official document.*

MISSION INFORMATION & ACKNOWLEDGEMENTS

Following an invitation from the Croatian government, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) officially opened a Limited Election Observation Mission (LEOM) in Zagreb on 8 December 2009. Ambassador Daan Everts is the Head of the OSCE/ODIHR LEOM. The OSCE/ODIHR LEOM consists of 10 core team experts based in Zagreb and 12 long-term observers deployed throughout the country. Mission members are drawn from 17 OSCE participating States.

The OSCE/ODIHR LEOM wishes to thank the Ministry of Foreign Affairs, the State Election Commission, the Ministry of Public Administration and the Ministry of the Interior. The OSCE/ODIHR LEOM also wishes to express its appreciation to the representatives of other state institutions, regional and local election authorities, political parties, presidential candidates and civil society organizations for their co-operation.

All reports by the OSCE/ODIHR LEOM are available at www.osce.org/odihr.

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