



Office for Democratic Institutions and Human Rights

BOSNIA AND HERZEGOVINA

MUNICIPAL ELECTIONS

2 OCTOBER 2004

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

28 June – 2 July 2004



Warsaw
20 July 2004

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OSCE/ODIHR Needs Assessment Mission Report

I. INTRODUCTION

In anticipation of an invitation from the authorities to observe the municipal elections scheduled for 2 October 2004, the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) undertook a Needs Assessment Mission (NAM) to Bosnia and Herzegovina from 28 June – 2 July 2004. The NAM was led by Peter Eicher, the prospective Head of the Election Observation Mission, and also included Ian Mitchell, the prospective Deputy Head of the Election Observation Mission, and Vadim Zhdanovich, ODIHR Election Adviser.

The purpose of the NAM was to make a preliminary assessment of the conditions and level of preparation for the elections, in line with OSCE commitments, and to advise on the establishment of an Election Observation Mission (EOM).

The NAM held meetings in Sarajevo with representatives of the national authorities, the election administration, political parties, civil society, and the international community (see annex for list of meetings). A NAM member traveled to Banja Luka for additional meetings with political parties.

The ODIHR is grateful to the OSCE Mission and to the authorities for the assistance they provided during the NAM.

II. EXECUTIVE SUMMARY

The 2 October municipal elections in Bosnia and Herzegovina (BiH) are widely regarded as exceptionally important local elections. They will be the first elections fully funded and organized by the BiH authorities, the first in which mayors are directly elected, the first under the new electoral regime in Mostar, the first direct local elections in Brcko since the war, and the first to implement several new amendments to the Election Law.

Reflecting the level of interest in the elections, 70 political parties, 18 coalitions, and 180 independent candidates and six lists of independent candidates were certified to run. Political parties regard the elections as a key test of whether the current governing parties at national and entity level continue to enjoy the support of the voters. Many interlocutors believe, however, that voter apathy arising from general

distrust in politicians, too-frequent elections and economic malaise may result in low levels of participation.

Although the elections will be administered by BiH authorities, they will be held within a transitional political and legal framework in which ultimate power is still wielded by members of the international community. In an example of this, on 30 June, the High Representative removed 59 persons from public and political party positions –including much of the senior leadership of the Serb Democratic Party (SDS) – for failure to meet their obligation to cooperate with the International Criminal Tribunal for the former Yugoslavia (ICTY). It is too soon to say how this may affect the elections. Three international officials continue to serve on the seven-member Election Commission of Bosnia and Herzegovina (EC).

The municipal elections will be held under a complex legal framework, with four distinct electoral systems operating. Mayors will be directly elected for the first time in all municipalities except Mostar and Brcko, a step widely regarded as an important enhancement of local democracy. Amendments to election legislation introducing this and other changes were adopted through regular parliamentary procedures, also a positive change in comparison with some previous amendments to election legislation.

The election administration has met its responsibilities for election preparations and has adhered to all legal deadlines. The EC appears to enjoy confidence of political parties, but in many instances lower level election commissions do not. Most municipalities have not yet fully met their legal requirement to provide funding for the elections. While this is worrisome, it has not yet affected election preparations. The EC is seriously short of professional staff but is confident this will be remedied in good time. The quality of the voter lists is an issue of some concern.

The NAM's interlocutors uniformly expressed the view that international observation by the ODIHR would provide a valuable – and even a necessary – contribution to enhancing confidence in the electoral process. The NAM recommends that the ODIHR establish a full EOM approximately five weeks before election day and that it request 20 long-term observers and 220 short-term observers from participating States.

III. FINDINGS

A. POLITICAL CONTEXT

The 2 October elections in BiH are seen as unusually important, considering they are municipal rather than national elections. A total of 70 parties and 18 coalitions, as well as 180 independent candidates and six lists of independent candidates have registered. In a positive sign, a significant number of parties are fielding candidates in both of the BiH's political entities.

At the same time, however, many of the NAM's interlocutors fear that the voter turnout will be unusually low. Voters are reported to be apathetic and election-weary after some seven elections in the past nine years. A low turnout could work to the advantage of the current ruling parties, which tend to be better organized and better able to motivate their core supporters than can the opposition parties.

In a significant political development, voters in almost all municipalities will directly elect their mayors for the first time, as a result of recent changes in the laws of the two entities. Mayors were previously elected indirectly by municipal councils (known as municipal assemblies in Republika Srpska). The change appears to have the support of all political parties and represents a positive step towards more direct democracy. Voters will continue to elect municipal councils through a proportional representation system.

Under BiH's unique, transitional political system, ultimate power remains in the hands of the international community and, in particular, of the High Representative. The system is based on binding resolutions of the United Nations Security Council and the Peace Implementation Council. It does, however, have a significant impact on aspects of the electoral process and leads sometimes to situations in which legitimate international actions to promote peace and stability can be at odds with international standards on democratic elections.

On 30 June, the High Representative undertook a wide-ranging package of measures against individuals accused of obstructing BiH's obligation to comply with the ICTY. The measures included removal from public office and political party positions of 59 persons. Among these were much of the top leadership of the Serb Democratic Party (SDS), which is the ruling party in the Republika Srpska (RS). Among those sanctioned were the party's president and Speaker of the RS National Assembly, four vice presidents, 14 members of its main board, nine mayors and many other party, elected and appointed officials at municipal, entity and also State level. The SDS was also penalized financially. Officials from two other parties, the Party of Democratic Progress (PDP) and the Serb Radical Party of Republika Srpska (SRS RS), were included in the list of those removed from office by the High Representative. At the time of the NAM, it was too early to tell how these developments would impact on the elections.

The municipal elections will also provide evidence of the state of displaced persons' freedom of movement and of their ability to return to and vote in their pre-war places of residence. Since the resolution of property claims has been largely completed, the prospect of voting by illegal occupants subject to a restitution order should not be an issue, as it was in the last election. The resolution of most property claims since 2002 is a very welcome development, both in its own right and for its effect on the elections.

It is not yet clear whether domestic non-governmental organizations will field monitoring missions to observe the municipal elections.

B. LEGAL FRAMEWORK

The legal framework for the municipal elections is complex. In the RS, mayors will be elected on a straight majority/plurality basis. In the Federation of Bosnia and Herzegovina (FBiH) mayors will be elected through a shortened preferential system under which voters can rank their choices among candidates; if no candidate wins over 50% of the overall vote, then choices other than the voters' first choices are factored into the equation for selecting the winner.

The new laws on direct election of mayors were adopted through regular parliamentary procedures in each entity, a welcome development since in the past some amendments to the election system had to be imposed by the international community.

In both entities, municipal councils are elected through a proportional system, using an open list and a 3% threshold. Mandates are distributed using the Sainte Lague system, which tends to favor small parties.

Citizens of BiH living outside of their municipality of permanent residence may vote by absentee ballot (for those displaced within BiH), or by mail (for refugees living overseas). Registered voters who return to their municipality of permanent residence after the closure of the voter registration period may vote by tendered ballot (only the ones who are living abroad from BiH). This ballot, inside a special secrecy envelope, is then sent to the Counting Centre in Sarajevo where their registration is checked and the vote is counted while maintaining voter secrecy.

A separate law adopted by the Assembly of the Brcko District regulates elections there and provides for the first time for the direct election of the district assembly, which up until now has been an appointed body. There will not be an election for mayor. The Brcko law specifies that each of BiH's three constituent peoples must hold at least three seats in the district assembly.

Mostar will also hold its elections under a special electoral regime, imposed by the High Representative as part of the reunification of the city. The High Representative's amendments to the Election Law (chapter 19) ensure that there is a minimum of 4 councilors from each constituent people and a minimum of 1 councilor from the group of 'Others'. Furthermore, it guarantees that no one constituent people will have a majority in the new council. The mayor will be indirectly elected in accordance with the Constitution of the Federation of BiH.

On 17 May, an amendment to the BiH Election Law entered into force aimed at facilitating election to municipal councils of national minorities who are not one of BiH's three constituent peoples. However, since 15 May was the deadline for parties and candidates to submit their nominations to the EC, the amendments on minorities will not apply to the upcoming elections. In any event, the amended legal provisions are not sufficiently clear to be easily implemented and may require further amendment.

A number of other amendments to the Election Law will be implemented during these elections, including changes in the composition of polling station commissions (see section III. C., below), changes to media rules for the election (see section III. D., below), changes to the complaints and appeals section of the Law, and a number of other amendments, many of which are positive. Notably, new provisions enhance transparency by increasing the rights of observers.

C. ELECTION ADMINISTRATION

The EC of the BiH continues to enjoy a high level of confidence and trust among the political parties. For much of the past several months, the EC operated with just five of its seven members. Extended vacancies in two of the four national positions on the EC were recently filled by appointments made by the BiH Parliamentary Assembly.

The EC Secretariat is seriously understaffed, with about 40% of its authorized positions vacant. The BiH Civil Service Agency is in the process of recruiting professional staff and EC members appeared confident their needs will be met.

Political parties expressed substantially less confidence in the lower level election commissions than in the EC. Municipal Election Commissions are appointed by municipal councils and therefore are regarded as far more likely to be politicized. Under a recent amendment to the Election Law, polling station commissions will include representatives of political parties. If the new system functions well, it should increase the transparency of, and confidence in, polling station operations. However, the implementation of this provision will merit careful assessment, since the Law is insufficiently clear and appears to be internally inconsistent.

Funding for the elections remains a deep concern. These are to be the first elections funded entirely by BiH authorities. Since they are municipal elections, most of the costs are supposed to be covered by the municipalities.

Conducting the elections will cost some €5 million (total cost including the estimated direct costs of municipalities). Each municipality is required to transfer a set amount of funding to the EC, based on its number of registered voters, to cover its share of costs for such expenses as ballots, equipment and counting center staff. At the time of the NAM, less than half the 142 municipalities had fully met their obligations and many had made little or no contribution; only about 60% of the required funds had been received.

In addition to EC expenses, each municipality is expected to cover its own direct costs for funding local election operations and salaries of poll workers. There is some concern that insufficient amounts have been budgeted and even less has been collected. Several government offices are considering how to deal with the election funding shortfall. If not resolved, it could disrupt the effective administration of the elections.

BiH uses an affirmative system of voter registration, under which each voter must individually register himself or herself. The quality of the voter lists remains a concern. The NAM was not in a position to explore this in any depth during its short

visit. However, many interlocutors expressed their view that the lists are not sufficiently accurate. There was particular concern that returnees may have not registered to vote in their new municipality of residence, although whether this was due to obstruction or to the returnees' failure to complete the necessary administrative steps was not clear. In all, 2,317,014 citizens were registered to vote, which is about 30,000 less than for the 2002 general elections.

The Ministry for Foreign Affairs has undertaken efforts to encourage registration by citizens abroad, who may number as many as one million. However, only 27,468 citizens registered to vote by mail from abroad, slightly less than half the 2002 figure.

As in the general elections of 2002, counting of absentee, by-mail and tendered ballots will take place in the Sarajevo Counting Center. Furthermore, the preferential votes cast for mayors within the Federation of BiH will also be counted at the Counting Centre. However, there is a ballot count of first preferences at polling stations. The decision on counting "other" and "all" following preferences will be done in the Counting Centre once all first preferences are added together. Premises for the Center have not yet been identified. It is expected that the counting in Sarajevo could take about week or more. Such a lengthy counting process could diminish public confidence in the results.

Despite the funding, staffing and other difficulties, overall technical preparations for the election appear to be proceeding satisfactorily and all legal deadlines have been met.

D. THE MEDIA

The Election Law includes new amendments that could significantly alter the media landscape for the elections. Unlike previous elections, paid political advertising will be permitted in the electronic media beginning 60 days before election day. Contestants will be able to purchase up to three minutes a week in the public electronic media and five minutes per week in the private electronic media, at rates not higher than existing commercial prices. This may make it easier for candidates to convey their messages to the electorate but it could also provide an advantage to candidates with greater financial resources.

BiH has some 183 licensed electronic media outlets, including about 50 television stations. About two-thirds of the electronic media outlets are privately owned. There is also a diverse range of print media. The number, variety and range of media outlets in BiH are ample to provide voters with plentiful and diverse information to enable them to make informed choices, provided that media outlets give sufficient attention to the elections.

The Communications Regulatory Agency (CRA) has the authority to adjudicate media-related complaints in regard to the election, and to levy sanctions or order remedial actions when necessary. The CRA appears to operate effectively and professionally. It does not have sufficient staff or equipment to monitor broadcasts, but considers complaints submitted by candidates or others.

IV. CONCLUSIONS AND RECOMMENDATIONS

Virtually all of the NAM's many interlocutors emphasized that the 2 October elections are unusually important for local elections. Organizationally, they will be the first elections fully funded by the BiH authorities. Legally, they introduce the direct election of mayors and other significant reforms of the election system. Politically, they provide a key test for the current governing parties on the national and entity levels at the midpoint of their four-year term.

All of the NAM's interlocutors welcomed the prospect of observation by the ODIHR. Many, including in particular representatives of political parties, stressed that international observation remains necessary to increase transparency and to promote public confidence in the elections.

The NAM recommends that the ODIHR deploy a full election observation mission. It recommends that the Core Team arrive in the BiH no later than the end of August. Since observing local elections can be even more complex than observing national elections, the ODIHR should deploy a relatively large number of observers. The NAM recommends, therefore, that the ODIHR request participating states to second 20 long-term observers and 220 short-term observers.

APPENDIX

LIST OF THE MEETINGS

Government

Mr. Safet Halilović, Minister of Civil Affairs, President of Party for Bosnia and Herzegovina

Mr. Jusuf Kumalić, Deputy Minister of Finance

Mr. Ibrahim Đikić, Assistant Minister of Foreign Affairs

Election Administration

Mr. Vehid Šehić, Chairman of the BiH Election Commission

Ms. Lidija Korać, Member of the BiH Election Commission

Political Parties

Mr. Vlatko Međugorać, Secretary General of the Croatian Democratic Union of Bosnia and Herzegovina (HDZ)

Mr. Šefik Džaferović, Secretary General of the Party for Democratic Action (SDA)

Mr. Svetozar Pudarić, Secretary General of the Social Democratic Party (SDP)

Ms. Sonja Papo, Vice President of the New Croat Initiative (NHI)

Mr. Ivo Živković, Vice President of NHI

Mr. Dobrica Junjić, President of the Executive Board of NHI

Ms. Nevenka Trifković, Secretary General of the Party of Democratic Progress (PDP)

Mr. Igor Radojčić, Secretary General of the Alliance of Independent Social Democrats (SNSD)

Non Governmental Organizations

Ms. Irena Hadžiabdić, Executive Director of the Association of Election Officials

Mr. Adis Arapović, Centre for Civic Initiatives

Ms. Samila Fuka, Centre for Civic Initiatives

Media

Mr. Kemal Huseinović, General Director of Communication Regulatory Agency

International Diplomatic Community

Ambassador Victor Tkachenko, Deputy Head of OSCE Mission to Bosnia and Herzegovina

Ambassador Verner Wnendt, Senior Deputy High Representative

Ambassador Ljubtcho Troharov, Embassy of the Republic of Bulgaria

Mr. Jan A. De Boer, Second Secretary, Embassy of the Netherlands

Mr. Sergey Bazdnikin, Counsellor, Embassy of the Russian Federation

Mr. Lawrence Henderson, Political Officer, US Embassy

International non-governmental organizations

Ms. Niamh O'Connor, Director of National Democratic Institute for International Affairs

Mr. Steve Gibbs, Resident Program Officer, International Republican Institute