



Office for Democratic Institutions and Human Rights

BOSNIA AND HERZEGOVINA
MUNICIPAL ELECTIONS
5 October 2008

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

7-11 July 2008



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OSCE/ODIHR Needs Assessment Mission Report

I. INTRODUCTION

Following an invitation from the authorities in Bosnia and Herzegovina to observe the municipal elections scheduled for 5 October 2008, the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) undertook a Needs Assessment Mission (NAM) to Bosnia and Herzegovina between 7-11 July 2008. The NAM was conducted by Mr. Vadim Zhdanovich, ODIHR Senior Election Advisor, and Mr. Jessie Pilgrim, ODIHR External Legal Expert.

The purpose of the OSCE/ODIHR 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 possible election observation activity.

The OSCE/ODIHR NAM held meetings in Sarajevo with representatives of the governmental authorities, election administration, political parties, media, civil society, and the international community (see annex for list of meetings).

The OSCE/ODIHR is grateful to the authorities of Bosnia and Herzegovina and the OSCE Mission to Bosnia and Herzegovina for their co-operation and assistance provided during the NAM.

II. EXECUTIVE SUMMARY

Interlocutors with whom the OSCE/ODIHR NAM met expressed general confidence that the forthcoming 5 October municipal elections in Bosnia and Herzegovina (BiH) will be conducted in a democratic manner. Although local issues should predominate in the elections, national issues will also be prevalent due to the major role that ethnicity plays in political life in BiH.

The 2008 municipal elections, like the 2004 elections, will be fully funded and organized by the BiH authorities. However, the international community has contributed funds for voter education targeted to reach voters who can take advantage of special registration rules that will apply to former residents of Srebrenica.

72 political parties, 39 coalitions, 273 independent candidates, and 20 lists of independent candidates have been certified to run in the elections. 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 expect low voter turnout due to the fact that voters could be somewhat apathetic after many elections in the past ten years.

The municipal elections will be held under a complex legal framework. Mayors will be directly elected in all municipalities except the City of Mostar and Brčko District. Members of municipal councils and assemblies will be elected under a proportional representation system with a three percent legal threshold. Additionally, as a result of a recent amendment to the election law, candidates in 34 municipalities will be able to compete for seats reserved for national minorities under a plurality vote system. On election day, voters will have one vote and, in these 34 municipalities, a voter may vote either for the proportional representation election or the plurality election for a national minority candidate.

An amendment to the law has created special voter registration rules for former residents of Srebrenica for these elections only. A person who was a 1991 resident of Srebrenica has the right to choose to vote for his or her current place of residence or for the Srebrenica municipal assembly and mayor, in person or in absentee, regardless of the person's current place of residence.

Another amendment to the law has introduced the possibility for out-of-country voters to vote in diplomatic missions and consular offices of BiH abroad. The deadline for applying for this voting option, as well as the Srebrenica voting option, was 22 July 2008.

The election administration has met its responsibilities for election preparations and has adhered to all legal deadlines. The Central Election Commission of BiH appears to enjoy confidence of political parties. The quality of the voter lists has improved with the passive voter registration system introduced in 2006. Under the passive voter registration system, the Central Election Commission receives technical support and data on citizens through the Citizens Identification Protection System (CIPS) database.

While the NAM's interlocutors uniformly expressed the view that international observation by the OSCE/ODIHR could provide a valuable contribution, they also demonstrated a broad confidence in the electoral process. Therefore, given budgetary constraints, the OSCE/ODIHR is not in the position to deploy a standard election observation mission. However, consideration could be given to the deployment of an OSCE/ODIHR Election Support Team, comprising of 2-3 experts for a few weeks, in order to assist the OSCE Mission in BiH in following the forthcoming municipal elections.

III. FINDINGS

A. POLITICAL CONTEXT

Interlocutors with whom the OSCE/ODIHR NAM met expressed general confidence that the forthcoming municipal elections will be conducted in a democratic manner in line with BiH legislation and international standards. The elections are in particular likely to generate broad interest in Srebrenica, the City of Mostar, and Brčko District.

Although local issues should predominate in the elections, national issues will also be prevalent due to the major role that ethnicity has in political life in BiH. Some interlocutors expressed the view that the election campaign has already been preceded by a thorough debate on issues such as constitutional changes, police reform, corruption, and the European Union-BiH Stabilization and Association Agreement earlier in the year. These interlocutors believed that the local election results would be determined by these earlier debates on national issues.

72 political parties, 39 coalitions, 273 independent candidates, 20 lists of independent candidates, and numerous candidates for the new seats guaranteed for national minority candidates have been 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 that voter apathy arising from general distrust in politicians, too-frequent elections and economic malaise may result in low levels of participation.

For these elections only, special voter registration rules for former residents of Srebrenica shall apply. As it is the case with Displaced Persons (DPs), persons who were residents of Srebrenica in 1991 have the right to choose to vote for their current place of residence or for the Srebrenica municipal assembly and mayor, in person or in absentee, regardless of their current place of residence. This amendment has resulted in much political discussion as it creates the opportunity for former residents to have a greater influence on the election results in Srebrenica.

B. LEGAL FRAMEWORK

The legal framework for the municipal elections is complex. The Election Law, which was adopted in 2001, has been amended several occasions (2002, 2004, 2005, 2006, and 2008). The law was amended twice in 2008, with the last amendments adopted on 7 May, which was one day before the elections were announced. Although the Election Law is the primary legislation regulating the municipal elections, the legislation of both entities regulates the electoral system for electing and recalling mayors.

Mayors are directly elected in both entities, with the exception of the City of Mostar and Brčko District whose mayors are indirectly elected. Directly elected mayors are elected on the basis of a plurality of votes, with the candidate who receives the most votes being elected. Members of municipal councils and assemblies are elected through a proportional representation system, using an open list and a three percent legal threshold. Mandates are distributed using the Sainte Lague system of divisors. The number of mayors to be elected is 140 and 3,145 members of councils and assemblies will be elected in 142 municipalities.

Since 2004, the City of Mostar has been a unified city administration with six electoral units. A system of ethnic 'weighting' ensures that no single constituent people can outvote the rest. The Mostar City Council has 35 councilors; 17 elected from a single City-wide electoral unit and 18 provided by all six electoral units (three from each electoral unit). Of the 35 councilors, no more than 15 can be members of one constituent people. Each constituent people shall have a minimum of four

councilors and ‘Others’ shall be represented by a minimum of one councilor in the City Council.

The Election Law of the Brčko District regulates elections in Brčko. The District Assembly of Brčko consists of 29 councilors and each constituent people shall have a minimum of three mandates. Two mandates are reserved to candidates elected from national minorities.

In April 2008, an amendment to the BiH Election Law was adopted to regulate the election of candidates to municipal councils and assemblies who are not members of BiH’s three constituent peoples but are from a national minority.¹ This amendment, like other provisions in the Election Law, is rather complex.

The amendment requires that a municipality, where the total number of persons from the 17 recognized national minorities represents at least three percent of the population of the municipality based on the 1991 census, is obliged to reserve at least one seat for a national minority representative. This seat is not reserved for a particular national minority, but only for a candidate who claims to be a member of one of the 17 national minorities. The candidate does not *per se* represent a specific national minority and the three percent threshold is the cumulative percentage of the municipality population of all 17 national minorities. However, a municipality is free to designate a reserved seat for a national minority representative even if there are no national minorities in the municipality or the percentage is less than three percent.

Based on the 1991 census, three municipalities were required to reserve at least one seat for national minorities. However, 34 municipalities have chosen to create at least one reserved seat for national minorities. Qualification for the reserved national minority seat is based on self-declaration. Some interlocutors expressed concern that persons who were not members of national minorities were contesting these seats because of the fact these seats are determined on the basis of a plurality of the vote. Under the amendment, a voter has one vote and chooses an election, either the proportional representation election for political subjects or the plurality election for national minorities, in which the voter will participate. Both elections will be on the ballot given to every voter, with the voter deciding in which election to vote by making the appropriate mark on the ballot. The candidate who receives the most votes in the national minority election, which theoretically could be a single vote, wins the mandate.

Following the recent amendments, a person who was a resident of Srebrenica in 1991 has the right to choose to vote for the person’s current place of residence or for the Srebrenica municipal assembly and mayor, in person or in absentee, regardless of the person’s current place of residence, issuance of CIPS ID card or DP status. A

¹ Article 3 of The Law on Rights of National Minorities states: “A national minority, in terms of this Law, shall be a part of the population-citizens of BiH that does not belong to any of three constituent peoples and it shall include people of the same or similar ethnic origin, same or similar tradition, customs, religion, language, culture, and spirituality and close or related history and other characteristics. BiH shall protect the status and equality of members of national minorities as follows: Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Poles, Romas, Romanians, Russians, Rusins, Slovaks, Slovenians, Turks, Ukrainians and other who meet requirements referred to in Paragraph 1 of this Article.”

Srebrenica pre-war resident was able to opt for one of the three voting possibilities available to them by 22 July 2008.

Amendments to the Election Law provide for out-of-country voting for the upcoming municipal elections to be conducted at the BiH embassies and consulates. It is expected that voting would be organized in 24 countries.

C. ELECTION ADMINISTRATION

The Central Election Commission (CEC) of BiH continues to enjoy a high level of confidence and trust among the political parties. These will be second municipal elections fully funded and administered by BiH authorities.

Although political parties expressed less confidence in the lower level election commissions than in the CEC, they believed that the lower election commissions would administer the elections in accordance with the legal framework. Municipal Election Commissions are appointed by municipal councils and assemblies. For this reason they are regarded as more likely to be politicized. An amendment to the Election Law in April, 2008 provided that the number of members for a Municipal Election Commission can be as many as seven. The increase from five to seven as the maximum number could result in more efficient administration of election processes. This amendment also requires that members be appointed after and based on public advertisement for positions. Interlocutors expressed that this public process would improve the professionalism of lower election commissions.

BiH introduced passive voter registration in 2006. Citizens are automatically registered to vote in the place of residence recorded on the Citizens Identification Protection System (CIPS) database. BiH law requires that all citizens older than 18 years hold a valid CIPS ID card. Previously held ID cards are no longer valid. As of May 2008, there were 3,062,016 names on the voters list.

There are three categories of voters in BiH: regular voters, Displaced Persons, and out-of-country voters. Regular voters are included in the voters list of their place of permanent residence as recorded in CIPS database. The rules for displaced voters and out-of-country voters are a bit more complex.

Displaced Persons (DPs) have special voting rights in 2008 municipal elections. DPs can choose to vote for their current place of residence or for their pre-war electoral constituency in person or by absentee. DPs have the right to choose their voting option by 22 July 2008. This can be done by completing a form available at the Voter Registration Centres co-located with CIPS in every municipality. If a DP does not select a voting option by 22 July, the default voting option will be the voting option the DP chose in the last elections. If a DP has never been registered to vote, he or she will be included in the voters list of his or her 1991 place of residence and will be able to vote for the 1991 electoral unit in person.

The BiH Ministry of Human Rights and Refugees is the institution responsible for granting DP status to citizens. If a citizen who loses his or her DP status, then the

citizen becomes a regular voter and is automatically included in the voters list of the person's declared place of residence as stated in his or her CIPS ID card.

Amendments to the Election Law enacted on 7 May 2008 grant pre-war residents of Srebrenica special voting rights for these elections only. As it is the case with DPs, 1991 residents of Srebrenica have the right to choose to vote for their current places of residence or for the Srebrenica municipal assembly and mayor, in person or in absentee, regardless of the current place of residence, issuance of CIPS ID card or DP status. Srebrenica pre-war residents can choose one of the voting possibilities available to them by 22 July 2008.

Out of country voters need to actively register for the election. BiH citizens who are temporarily living abroad and refugees can vote by mail or in person in embassies and consular offices. In order to exercise their voting right from abroad, citizens need to complete the appropriate form and return the completed form to the CEC by 22 July 2008. The forms are available in all embassies, consular offices, the CEC's website, and in diaspora clubs and associations of citizens. Completed forms can be returned to the CEC by post, by fax, or e-mail.

Refugees are the only category of citizens not required to hold a CIPS ID card. A refugee needs only to present proof of his or her BiH citizenship in order to be registered as a voter.

Technical preparations for the election appear to be proceeding satisfactorily and all legal deadlines have been met.

D. THE MEDIA

BiH has 185 licensed electronic media outlets, including 47 television stations. About two-thirds of the electronic media outlets are privately owned. There is also a diverse range of print media. The domestic press consists of six daily newspapers and 40 weeklies and monthlies. Media outlets in BiH provide voters with diverse information to enable them to make informed choices, provided that media outlets give sufficient attention to the elections. Some interlocutors, however, identified a growing uniformity of views in the broadcast media in the Republika Srpska. This trend was attributed to different reasons. The most often cited reason was political motivation, which has created an atmosphere of self-censorship.

The Election Law includes a new amendment regulating paid political advertising. Under the previous version of the law, paid political advertising was permitted in electronic media during the 60 days before election day. The amendment permits paid political advertising any time, except for the period of time between the day elections are announced and 30 days before election day. The practical affect of this amendment may be simply to reduce the time period for paid political advertising from 60 to 30 days before election day.

Public broadcasters are obliged to provide free airtime for direct addresses to the public by political subjects during the period 30 days prior to election day. Political subjects will have three minutes each for these direct addresses.

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.

E. INTERNATIONAL AND DOMESTIC OBSERVERS

The Election Law of BiH provides for access of both international and domestic observers. The NAM met with representatives from the Association of Election Officials in BiH (AEOBiH), which had previously observed elections in BiH. Previous elections have also been observed by the Centres for Civic Initiatives (CCI). None of these groups intend to observe the upcoming municipal elections on a large scale. Instead, they will be focusing on such issues as voter education and ‘get-out-the-vote’ initiatives, which will be focused primarily on first-time voters and youth voters.

No country-wide domestic observation initiative is anticipated. Political party representatives were confident, however, that they would be deploying their own observers to polling stations and municipal election commissions.

IV. CONCLUSIONS AND RECOMMENDATIONS

Virtually all of the NAM’s interlocutors emphasized that the 5 October elections are unusually important for elections in Srebrenica, City of Mostar, and Brčko District. Legally, these elections introduce special voter registration rules for Srebrenica, an election system for national minorities in some municipalities, and voting in diplomatic missions and consular offices. 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. While observation of election day procedures is not viewed as essential, such a presence could nevertheless add value with regard to implementation of new legal provisions.

Although the NAM’s interlocutors uniformly expressed the view that international observation by the OSCE/ODIHR could provide a valuable contribution, they also demonstrated a broad confidence in the electoral process. Therefore, given budgetary constraints, the OSCE/ODIHR is not in the position to deploy a standard election observation mission. However, consideration could be given to the deployment of an OSCE/ODIHR Election Support Team, comprising of 2-3 experts for a few weeks in order to assist the OSCE Mission in BiH in following the forthcoming municipal elections.

ANNEX: LIST OF MEETINGS

STATE AUTHORITIES:

Ministry of Foreign Affairs

Mr. Momir Brajić, Assistant Minister for Multilateral Affairs

Central Election Commission of BiH

Mr. Suad Arnautović, President

Mr. Branko Petric, member

Mr. Stjepan Mikic, member

Mr. Vedran Hodžić, member

Mr. Tihomir Vujević, member

Civil Registry - CIPS

Mr. Siniša Macan, Director

Appellate Division of the Court of BiH

Mr. Nedžad Popovac, Judge

Mr. Miloš Babić, Judge

POLITICAL PARTIES:

Social Democratic Party (SDP)

Mr. Damir Hadžić – Mayor of Novi grad Sarajevo

SDP Cantonal Board President,

Vice Presidents of SDP

Party for Democratic Action (SDA)

Mr. Šefik Džaferović, Delegate of the House of Representatives of the Parliamentary Assembly of BiH

President of the Constitutional and Legal Committee of the House of Representatives

Croatian Democratic Union (HDZ), Sarajevo Cantonal Board

Mr. Mladen Bavanda, President

Ms. Helena Čović, Secretary

Alliance of Independent Social Democrats (SNSD, Sarajevo Cantonal Board

Mirko Todorović, President

MEDIA

Regulatory Communication Agency

Mr. Emir Powlakić, Deputy Director for Broadcasting

Ms. Helena Mandić, Legal Advisor

BiH Radio Television

Mr. Milenko Vočkić, Managing Director

Federal Television of Bosnia and Herzegovina (FTV)

Duška Jurišić, Acting Executive Editor

Dnevni avaz, *daily*

Mr. Sejad Lučkin, Main Editor

CIVIL SOCIETY

Association of Election Officials

Ms. Zvezdana Dragović, Executive Director

Roma Centre

Ms. Sanela Besić, Co-ordinator

INTERNATIONAL COMMUNITY

OSCE Mission to Bosnia and Herzegovina

Ambassador Douglas Davidson, Head

Ms. Ans Zwerver, Director of Policy and Planning

Ms. Merce Castells, Election Adviser

Mr. Frank Lévassur, Chief of Fund Administration

Embassy of Greece, representing the OSCE Troika

Ms. Despina Fragouloupoulou, First Secretary

Embassy of the Russian Federation

Ambassador Konstantin Shuvalov

Council of Europe in Bosnia and Herzegovina

Ms. Caroline Ravaud, Special Representative of the Secretary General