



Office for Democratic Institutions and Human Rights

BOSNIA AND HERZEGOVINA

MUNICIPAL ELECTIONS

2 October 2004

OSCE/ODIHR Election Observation Mission Report



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**OSCE/ODIHR Election Observation Mission
Final Report¹**

I. EXECUTIVE SUMMARY

In response to an invitation from the BiH Election Commission, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) observed the 2 October 2004 municipal elections in Bosnia and Herzegovina. The OSCE/ODIHR assessed the municipal elections in terms of their compliance with the 1990 OSCE Copenhagen Document and other election-related commitments.

The 2004 municipal elections in Bosnia and Herzegovina (BiH) were administered generally in line with OSCE commitments and other international standards for democratic elections, taking into account the country's unique, post-conflict political arrangements. The successful conduct of the elections marked a further step forward for BiH's democratic development.

The elections were especially significant as the first post-conflict elections that were fully funded by the BiH authorities, the first in which mayors were directly elected, the first under a new election regime that unifies the City of Mostar, and the first direct elections for the Brcko District Assembly.

BiH's election legislation provides the basis for democratic elections. However, the election system is unusually complex, and has changed frequently, including shortly before these elections. Further amendments to the legal framework are needed to simplify and harmonize BiH's election legislation and bring it fully into line with international standards.

Under BiH's unique constitutional and legal structures, ultimate authority rests with institutions of the international community. International representatives, in line with their mandate to promote peace, used their powers in ways that profoundly affected the framework for elections, and that were not always in line with standards for democracy or elections. In essence, therefore, these remained transitional elections.

The Election Commission of BiH (ECBiH) operated effectively and in a consensual manner; it maintained high levels of trust among political parties. Most lower level commissions also worked well, although their performance was uneven. A lottery system for selecting polling station officials increased transparency and confidence in the process. Securing full funding for the election, however, was a problem.

The political campaign was generally calm and peaceful, with little intimidation or hate speech. Human rights were generally respected. Ethnicity – rather than local issues – was the main underlying issue of the campaign.

¹ This report is also available in Bosnian, Croatian and Serbian, but the English version remains the only official version.

The electronic and print media provided extensive but usually uninspiring coverage of the candidates and the campaign, in the form of debates, paid advertising and news coverage.

The voting process and vote count on election day were conducted in a manner generally consistent with OSCE commitments, with few major irregularities reported. However, observers reported the presence of unauthorized persons inside polling stations (19% of counts observed) and failure of polling station commissions to publicly post the results of the count (40% of observations). In addition, the high proportion of invalid ballots testifies to the need to simplify the election system. The counting process at the Sarajevo Counting Centre was excessively long, delaying the announcement of results for weeks.

This report includes a number of recommendations intended to assist the authorities and civil society of BiH to continue to improve the electoral process.

II. INTRODUCTION AND ACKNOWLEDGEMENTS

The OSCE/ODIHR Election Observation Mission (EOM) was established in response to an invitation from the ECBiH. The EOM, headed by Peter Eicher (USA), began work on 30 August and remained in BiH through 15 October. Twenty-three experts and long-term observers from 12 OSCE participating States were deployed in Sarajevo and six other cities during the observation.

On election day, the EOM was joined by a delegation from the Council of Europe's Congress of Local and Regional Authorities of Europe, led by Mr. Stanislav Bernat (Slovakia). Some 200 short-term observers from 28 OSCE participating States visited over 1,100 polling stations, out of approximately 4,000 in the country.

The OSCE/ODIHR expresses its appreciation to the ECBiH, the Ministry of Foreign Affairs, other national and local authorities and civil society organizations for their assistance and co-operation during the observation. The OSCE/ODIHR also thanks the OSCE Mission to BiH, the Office of the High Representative, the Council of Europe Office, the EU Monitoring Mission, and other international organizations and embassies in BiH for their assistance.

III. BACKGROUND

The 2 October municipal elections were the eighth elections in BiH since 1996. Under Annex III of the General Framework Agreement for Peace in BiH (the Peace Agreement) the international community supervised the conduct of elections at all levels until 2000. Following the adoption of the Election Law in August 2001, the 2002 general elections were the first elections to be administered by national authorities. The 2004 elections were the first to be both organized and fully funded by BiH authorities.

The elections were held to elect members of all municipal councils in the Federation of Bosnia and Herzegovina (FBiH) and all municipal assemblies in the Republika Srpska (RS). For the first time, voters in the Brcko District directly elected members of the Brcko District Assembly, who had previously been appointed by the international Supervisor of Brcko. Under new legislation (see section IV), mayors were directly elected for the first time in 140 of BiH's 142 municipalities, all but Brcko and Mostar. All officials were elected for four-year mandates. A total of 26,618 candidates sought 3,145 municipal councilor positions and there were 809 candidates for mayor. The ECBiH certified 70 political parties, 18 coalitions, 180 independent candidates and 6 joint lists of independent candidates.

A. ELECTORAL SYSTEM

While the complicated electoral system should be viewed in the broader context of a post-conflict settlement, it may already be time to give consideration to simplifying the system in line with best practices. Six different electoral systems were employed for the municipal elections:

- A proportional system for the election of municipal councils in the FBiH and municipal assemblies in RS;
- A plurality system for the direct election of mayors in RS;
- A shortened preferential system for the election of mayors in the FBiH, under which only the two leading candidates in each contest proceeded to a second round of counting based on the second and subsequent preferences indicated by voters;
- In the Brcko District, a proportional system for electing members of the Assembly, with minimum representation for BiH's three "constituent peoples" (Bosniaks, Croats and Serbs), with a subsequent indirect election of mayor by the Assembly;
- In Mostar, a proportional system with both constituency and "at large" seats, minimum and maximum representation for BiH's three constituent peoples and others, with a subsequent indirect election of mayor;
- In Sarajevo, the indirect election of mayor by a city-wide municipal council, which was itself indirectly elected by four municipal councils directly elected by different areas within the city.

It is worth noting that in addition to the various systems listed above, additional systems are used to elect representatives to entity and State offices (most recently in 2002 and next scheduled for 2006). The result is an overall electoral system so complex that many party officials, and even more voters, may fail to understand its intricacies.

Further complicating the electoral system is an excessively complex voting system that includes:

- An open list system in the municipal council elections for both entities;
- Separate types of polling stations for different categories of voters;
- Tendered ballots for persons who registered to vote outside BiH but then returned to BiH prior to election day, after the close of the voter registration process;

- Absentee ballots for persons who choose to vote for the municipality where they resided at the time of the last census (1991) rather than their current residence;
- By-mail ballots for out-of-country voters; and
- Mobile ballot boxes.

Tendered and absentee ballots are counted at the Sarajevo Counting Centre, together with by-mail ballots and ballots collected by mobile teams. In addition, the preference votes beyond the first preference for mayors in FBiH are counted in Sarajevo. This results in a lengthy counting process in Sarajevo, which can last several weeks and which can and did change the preliminary outcomes from regular polling stations announced by Municipal Election Commissions (MECs). This procedure has the potential to reduce public confidence in the overall election process.

B. POLITICAL BACKGROUND

BiH remains a post-conflict society, with the political framework heavily influenced by the legacy of the war years. There has been considerable progress in recent years in overcoming some of the war's effects. Recent data from UNHCR shows that over 1 million people displaced from their pre-war homes have returned to them. In a particularly noteworthy development over the past two years, almost all people displaced by the war have been able to reclaim their properties, although in light of the other difficulties of return, many have chosen not to reoccupy their former homes.

Ethnic nationalism remains the principal underlying issue in politics in BiH. Most major political parties are ethnically based or publicly perceived as being associated with one ethnic group. Parties predominate in various regions based primarily on the ethnic makeup of the region. Parties routinely used ethnic nationalist symbols, slogans and rhetoric in their campaigns.

Since the last general elections in 2002, three separate coalitions have governed at the entity and State levels, made up primarily of the three leading nationalist parties. In RS, the leading Serb nationalist party – the Serb Democratic Party (SDS) – and the Party for Democratic Progress (PDP) have governed with the tacit support of the Bosniak nationalist Party for Democratic Action (SDA). In the FBiH, SDA has ruled with the mainly Bosniak Party for BiH (SBiH) and the leading Croat nationalist party, the Croatian Democratic Union (HDZ). In Bosniak-majority cantons within the FBiH, the SDA and SBiH have been dominant, while the HDZ retains its absolute control of Croat-majority cantons. None of these parties chose to run in the same coalitions for the municipal elections. Some, however, did support the same candidates in particular municipalities.

IV. LEGISLATIVE FRAMEWORK

The various State and entity laws relating to electoral matters, in particular the Election Law of Bosnia and Herzegovina (the Law), provide the basis for a democratic election process. The Law was adopted in 2001 and new amendments entered into force on 17 May 2004. Although many of these amendments improved the Law in relation to OSCE commitments, the Law and the electoral system it establishes remain very complicated

and in some instances difficult to implement. Effective implementation was further hindered by the late date at which amendments were adopted.

A. THE INTERNATIONAL COMMUNITY AND THE LEGISLATIVE FRAMEWORK

In light of the continuing international involvement and ultimate international control over aspects of the electoral process, the 2004 municipal elections must be regarded as transitional elections. Unlike other sovereign States, the core of the legislative framework in BiH is the Peace Agreement, of which the Constitution of BiH is an integral part. Moreover, the Peace Agreement is supplemented and strengthened by binding United Nations Security Council resolutions and Peace Implementation Council decisions. This supra-national legal structure grants extraordinary powers to the international community, including specifically authority over elections.

International community officials have dispensed these powers in a manner that has had a profound effect on the electoral framework and on potential candidates. In particular, in the years since the Peace Agreement, several hundred persons have been removed from office by international authorities, rendering them ineligible to be candidates in elections. A transitional provision of the Election Law (Article 20.9a) codifies these powers, which are held by the High Representative and the Commander of the Stabilization Force. The power to remove persons from office, and from candidacy, also formerly applied to the Commander of the International Police Task Force and the Provisional Election Commission; although these bodies no longer exist, their sanctions remain in force until the High Representative decides otherwise or until the High Representative's mandate comes to an end. The procedure under which persons are removed from office and barred from candidacy does not provide due process protections such as a public hearing or judicial review, as required under BiH's OSCE commitments.

On 30 June 2004, the High Representative removed 59 persons from office and/or political party positions, almost all of them from the SDS, for various reasons. Earlier, the SDS and the HDZ were sanctioned financially by the High Representative for various offenses, also without the benefit of due process. In a separate action, one amendment to the Election Law – concerning elections in Mostar – was imposed by a decision of the High Representative rather than adopted by the parliament. The international Supervisor of Brcko suspended one candidate from public office late in the campaign, although this action did not affect his status as a candidate. While such actions by the international community are in line with their mandates to promote peace and in compliance with UN Security Council resolutions, they are irregular, and even undemocratic, by international election standards, as well as contrary to BiH's OSCE commitments. It is regrettable that the situation in BiH remains at a point where such measures are still deemed necessary.

B. THE ELECTION LAW

The Election Law (Article 13.7) states that mayors may be elected either indirectly by municipal councils or municipal assemblies, or directly by popular vote. The FBiH and RS adopted separate laws in 2004 providing for the direct election of mayors, thus strengthening direct democracy at the local level. In a significant positive development,

both entity laws were adopted through regular parliamentary procedures, rather than imposed by international authorities.

A separate amendment to the Election Law (Chapter 19) sets out a complex system for municipal elections in a newly reunified Mostar. The system represents a compromise designed to ensure a political balance among the three constituent peoples. The Law establishes a 35-seat City Council, including three representatives from each of six electoral districts and 17 members elected “at large”. Each of BiH’s three constituent peoples must have a minimum of three seats on the council and “others” must have at least one seat. However, some elements of the complex electoral formula are problematic:

- Although the six districts vary greatly in population, with the largest district having about five times the population of the smallest, each district elects the same number of councilors, an arrangement designed to ensure ethnic balance despite the predominance in Mostar of one constituent people. The substantially differing weight, or value, of each citizen’s vote contravenes commitments regarding equality of the vote.
- Most residents of the city cast two votes for councilors, one for their constituency and one for “at large” members. However, residents of “Mostar Central Zone”, a section of the city that is not part of any of the six electoral districts, can vote only once, for “at large” members of the city council.
- There is a maximum limit of 15 seats for any one of the constituent peoples, regardless of its share of the population.

The Mayor of Mostar is elected indirectly by the city council. The new system was imposed by a decision of the High Representative after the main political parties failed to reach a final agreement in extended negotiations. The decision caused some controversy at first but now seems to be accepted by the principal political parties.

Article 2.21 of the Law gives the two entities the power to form their own Election Commissions. RS has already done so. However, it is not clear what, if any, role these entity election commissions have. They had no role in the municipal elections.

Another new amendment to the law (Article 13.14) concerns representation of minorities (i.e., “others”, not constituent peoples) in local government. The amendment sought to ensure that members of all national minorities have the right to elect their own representatives in municipal councils/assemblies, by guaranteeing seats to all national minorities which constitute 3% of the total population of a municipality. However, the amendment was promulgated on 17 May, two days too late to enter into force for the 2004 elections. The amendment may be well intentioned, but it is written in such general terms, and with such a lack of detail, that its implementation will be extremely problematic in the next municipal elections (scheduled for 2008) if retained in its current form.

C. OTHER LAWS RELATING TO ELECTIONS

The new Election Law of the Brcko District was adopted by the Brcko District Assembly. It provided for the first direct election of the Assembly, under a proportional

system, with minimum representation for BiH's three constituent peoples, and with a subsequent indirect election of mayor by the Assembly. Unlike other parts of the country, the electoral framework is also governed by the Final Award of the International Tribunal for Brcko, which gave an international Supervisor (who is also part of the Office of the High Representative) ultimate authority over the District, including over the electoral process, resulting in a somewhat diminished perception of local control over the elections.

Although the Brcko District Election Law excludes any threshold (Article 8.2), the ECBiH decided on 21 October that the entire Article 9.6 of the BiH Election Law should be applied in Brcko, thus instituting a 3% threshold. Following this decision, the ECBiH changed the seat distribution in Brcko that it had already published on its website. While the absence of a threshold in Brcko was not entirely logical, the sudden change of interpretation and seat distribution three weeks after the election was a highly questionable practice, changing the rules governing the election after it was over.

Laws on local self-government were under consideration, but had not yet been enacted in either RS or the FBiH, by election day. As a result, voters went to the polls without knowing the precise powers and responsibilities of the offices they were electing. This situation caused dissatisfaction among some political parties.

The ECBiH is also responsible for implementing the Law on Conflict of Interest in Governmental Institutions of BiH (the Law on Conflict of Interest). The law was adopted in 2002 to govern the "special obligations of government officials, in exercising their duties". Under this law, a conflict of interest is created if an official has a private interest that affects or may affect legality, transparency, objectivity or impartiality in the exercise of public duty. The Law on Conflict of Interest sets out a detailed regime to protect the public interest. Under the provisions of the law, a substantial number of persons were required to choose between candidacy and other positions they held. Under one provision, an individual who has violated the law becomes ineligible for an elected or appointed position for four years. Implementation of the Law on Conflict of Interest added a significant additional responsibility to the already heavy workload of the ECBiH.

The ECBiH was also responsible for implementation of the Law on Campaign Financing. It made efforts to make party spending more transparent through detailed financial reports from the parties and candidates. The law limits the amount that each party and candidate may spend. It regulates sources of funding, donation limits, prohibited donations and prohibited activities. However, the office that should oversee the law is not staffed yet, so it is doubtful that there was sufficient oversight. Political parties appeared to receive very substantial amounts of public funding from all levels of government.

Provisions of BiH's Constitution discriminate against the rights of "others" to run for certain offices, and place some limits on voters and candidates based on ethnicity and place of residence. While these provisions were not specifically relevant to the municipal elections, they may be perceived as shaping the overall framework for elections in BiH, and therefore may need to be reconsidered in order to be consistent with OSCE commitments and other international standards for democratic elections.

V. ELECTION ADMINISTRATION

The election administration for the 2004 local elections consisted of the ECBiH, 142 Municipal Election Commissions (MECs) and 4,064 Polling Station Committees (PSCs).

The ECBiH was responsible for the overall conduct of the elections. It is a permanent body consisting of a President and six members, all with 5-year mandates. For the 2004 elections, the ECBiH included four national members (one Bosniak, one Serb, one Croat and one “other”) and three internationals. The national members included two appointed by the High Representative in 2001 from a list prepared by the Judicial Appointment Commission of the Constitutional Court, after the Parliamentary Assembly of BiH was unable to meet a deadline for the appointment of the national members. Two other national members were appointed by the Parliamentary Assembly of BiH in 2004; these were the first two members of the ECBiH to be appointed through regular parliamentary procedures. In accordance with Article 20.1 of the Law, the three international members were appointed by the High Representative and included a Senior Deputy High Representative, and the Head and Deputy Head of the OSCE Mission to BiH.

The four national members took the lead role in ECBiH decisions and guided the work of the election administration. The declining role of the international members gives a positive indication for a sustainable, fully national, State institution. Many political parties, however, considered that while the international presence on the ECBiH might be phased down some also expressed the opinion that it may not yet be time to end the international presence completely.

The ECBiH met frequently and worked efficiently and professionally. Most of the ECBiH decisions were taken by consensus. ECBiH meetings were open and transparent, but, in the period observed, political parties did not exercise their right to send observers to these meetings. The work of the ECBiH was supported by a Secretariat, headed by a Secretary General, with several departments, and a group of four coordinators to liaise with MECs. The ECBiH Secretariat suffered from staffing shortages for much of the pre-election period; some of these were not resolved before the elections.

The ECBiH retained a high level of confidence amongst political parties. However, this was not always the case for lower level election bodies. In general, the ECBiH adopted in a timely manner, the extensive and detailed body of rules and regulations for the conduct of the elections, and published these on its website and in the “Official Gazette”. In some cases, however, the documents on the website were out-of-date.

The MECs oversaw election preparations, as well as the voting and counting processes, in the 142 municipalities. MECs are permanent bodies consisting of a President and 2 or 4 members, depending on the number of voters in the municipality. MEC members were appointed by the municipal council or municipal assembly, and were subject to approval by the ECBiH. The MECs also generally operated professionally, although the quality of their work was uneven and they enjoyed somewhat less confidence among the

major political parties than did the ECBiH. Two of the main MEC tasks were the appointment of PSCs and the timely aggregation of the election results.

A new lottery system for appointment of PSC members, from among all candidates and parties, was an issue of some controversy. The system was enacted to provide greater transparency, diversity and fairness in PSC appointments. While it succeeded in this general goal, the system failed to meet the very complex requirements established in the Election Law (Articles 2.14 and 2.19).

Specifically, the Instruction issued by the ECBiH setting up the lottery did not guarantee fulfillment of the requirements in the Law for multi-ethnicity, for representation of “opposition” political parties, and that there be no more than one member of a political party on a PSC. Moreover, the Instruction was not applied in a consistent manner by all MECs. In a number of municipalities, political parties filed complaints with the MEC and with the ECBiH. In response, several MECs exchanged the positions of some PSC presidents and members.

The ECBiH upheld a number of appeals that reached its level. In one case, Siroki Brijeg, the ECBiH held a new lottery when the MEC refused to do so. In two other municipalities, it decided two days before the election to change the composition of PSCs. Despite these problems, political parties in general seemed satisfied with the lottery system, although large parties felt that it gave an unfair advantage to small parties.

There was also concern that some PSC members did not have the experience necessary to administer the elections, and that some might not show up on election day since they were assigned to polling stations far from their homes. In fact, several hundred PSC members resigned in Tuzla and Mostar only days before the election. They were replaced, however, and with very few exceptions polling stations were fully staffed on election day.

The ECBiH took the view that it would review the composition of PSCs only if it received a formal, founded appeal. Such a passive position does not appear to be in full compliance with the Election Law (Article 2.14 and 2.19), which state that the ECBiH should annul certain appointments not in accordance with the law or appoint new members in certain conditions.

The aggregation process at MECs of the results from the regular polling stations went relatively well and ECBiH was able to announce 27 hours after the close of the polls the first incomplete, preliminary results for all races. These results were based on information received by fax. The original PSC and MEC protocols reached the Counting Centre in Sarajevo in less than 72 hours, well beyond the 24 hour legal deadline.

The PSCs administered the voting and counting processes at the polling stations. The PSCs consisted of a President, and between 2 to 4 members, depending on the number of voters (less than 250 or between 250 and 1000, respectively). PSC members also had deputies. In most municipalities, MECs arranged for thorough and timely training of

PSC members. The PSCs generally performed very well during the voting on election day, but less so during the vote count (see Section XII – Election Day and Vote Count).

Funding of the elections was a matter of substantial concern, especially since these were the first post-conflict elections to be fully funded by the BiH authorities. Contributions by the municipalities for the expenses of the ECBiH (e.g., printing ballots, the Counting Centre in Sarajevo, and other central costs) had by 28 September reached 86.6% of the required figure. However, there were substantial disparities in funds available to MECs, and several MECs reported they did not have adequate funds to cover their own direct costs, the most important of which were salaries for PSC members. The ECBiH made extensive efforts to encourage the relevant authorities to fill the funding gap; just three days before the election it was able to secure commitments from the entity and cantonal governments that the remaining gaps in direct and indirect costs would be covered.

Voter registration closed on 17 June. The overall number of registered voters fell marginally from 2002, to just over 2.3 million. The number of by-mail voters (out-of-country voters) dropped more precipitously, as it has in each recent election – from 232,739 in 2000 to 58,369 in 2002 and to 27,462 in 2004. The ECBiH and local officials made considerable efforts to update the voter lists. Still, most large political parties and many MECs asserted the lists were inaccurate and that in some instances they had worsened since the last election. There were significant mistakes in several municipalities, notably Kakanj, where over 1,000 citizens who registered to vote did not appear on the voter lists. While the ECBiH made arrangements to enable them to vote, some individuals were prevented from running for office or serving on PSCs. Observations on election day confirmed the existence of problems with the voter lists.

The candidate registration process was completed before the start of the EOM, and did not cause significant controversies. Of 280 political subjects that applied to the ECBiH for registration, 274 were registered, among them: political parties 70 out of 71, coalitions 18 out of 19 and independent candidates 180 out of 184.

The registered political subjects submitted a total of 28,943 candidatures for municipal councils/assemblies and 859 for mayors. From them, the ECBiH registered 26,618 candidates for councilors and 809 for mayors. Thus, 2,375 nominees, or 8%, were not registered as candidates. The reason in almost 80% of the cases was that the person was either not a registered voter or was registered in a municipality other than the one for which the nomination was put forward. In some 15% of cases, the nominee withdrew. In 75 cases, the nominee was barred from candidacy under the legal sanctions of Article 20.9 of the Election Law, relating to persons disqualified by international authorities.

Only two registered candidates were later deregistered. An independent candidate in Brcko was decertified two days before the election and a mayoral candidate in Banja Luka was decertified immediately after the polls closed on 2 October, in both cases for inciting hatred. Both names remained on the respective ballots, pending possible appeals.

VI. THE ELECTION CAMPAIGN

The election campaign took place in a generally open, peaceful and free environment. Political parties and candidates reported no serious impediments to their campaigns. There were few cases of political intimidation or obstructionism. Authorities at all levels generally respected civil and political rights, including freedom of expression, freedom of assembly and freedom of movement. The resolution over the past two years of most property return issues represented a major step forward, and removed a previously contentious issue from the election. Displaced persons were free to return to their pre-war municipalities both to register and to vote. Candidates and political parties could campaign freely throughout the country.

There were very few instances of election-related violence and those that did occur caused no injuries. The most significant incidents were two bombings that caused some property damage: a bomb thrown at the business premises of a leading candidate for mayor of Zvornik and a bomb thrown at the business compound of a supporter of the Democratic National Community (DNZ) party in Cazin, whose daughter was a candidate on the party's municipal council list. Other incidents may or may not have been election-related, but had the effect of influencing the campaign environment. In Banja Luka, a journalist working for a popular radio station owned by a mayoral candidate was assaulted. In Foca, the police had to separate two groups of opposing demonstrators when Bosniak women tried to place a plaque at the site of a former place of torture. The Bosniak President of the Bratunac (RS) Municipal Assembly was threatened with assault until assisted by a Serb member of the outgoing Assembly. Also in Bratunac, the opening ceremonies of an Orthodox church built on disputed land were disrupted. Hostile anti-Bosniak graffiti was painted on buildings in Livno. Croat flags were burned in Stolac, a municipality with large Bosniak return and a history of inter-ethnic tensions.

There were few explicit instances of hate speech. Three noteworthy exceptions led to sanctions against the offenders by the Election Complaints and Appeals Council (see Section VIII - Complaints and Appeals):

- An inflammatory speech in Bijeljina by Tomislav Nikolic, a defeated candidate from the recent Serbian Presidential elections, at a meeting of the Serb Radical Union Republika Srpska – Vojislav Seselj party, in which he disparaged Bosnian statehood and advocated a greater Serbia including parts of RS. The party was fined 10,000 KM (Euros 5,000).
- An interview given by Ljubisa Kragulj, owner of *Big Radio* in Banja Luka and a candidate for Mayor of Banja Luka supported by eight parties, including SDS and PDP. Kragulj spoke harshly against the international community and against certain journalists in RS media, in a manner that was interpreted as an incitement to violence. Kragulj was removed as a candidate.
- Anonymous leaflets distributed in Brcko District that were eventually attributed to independent candidate Sevalija Tanjic. The leaflets declared that communists were worse than fascists; that votes for the “latter day communists” – the Social Democratic Party (SDP) and the Socialist Party of Republika Srpska (SPRS) – were in fact votes for Slobodan Milosevic; and these two parties are

“psychologically killing the people for...bad things they have produced.” Tanjic was also removed as a candidate.

Overall, however, the campaign was calm and relatively quiet. There were few large rallies, with political parties instead tending to hold meetings in local community offices. Election posters were common but not as prevalent as in previous elections. There was a lack of meaningful debate on substantive issues. Public interest in the campaign appeared limited. Young people, in particular, appeared to show little interest in the elections.

Although these were municipal elections, parties campaigned at least as much on national issues as on local issues. Poor economic conditions and high unemployment were among the concerns most often mentioned. A few parties and independent candidates did make genuine attempts to focus on local issues.

Ethnic nationalism was clearly the principal issue underlying the campaign, although its role may have been somewhat less overt than in previous elections. Many parties tended to emphasize ethnic nationalist symbols, slogans and rhetoric. Some television advertisements openly sought the votes of a single ethnic group. Numerous religious figures were involved in the campaign. The Helsinki Committee for Human Rights in BiH issued a report lamenting the outspoken role of religious leaders in advocating parties they believed would defend their faith and their national group.

Leaders of the major parties at national and entity levels traded attacks on sensitive issues in ways that contributed to a generalized atmosphere of ethnic identification. At the same time, one positive trend continued from the 2002 elections: numerous parties based in one entity fielded candidates in municipalities in the other entity. In 2004, however, there was a further improvement in the sense that a few more parties campaigned overtly for the votes of other ethnic groups, rather than merely targeting members of minority return communities.

Parties consistently expressed concerns to the EOM of likely election day fraud, although when pressed on the issue, most parties did not expect it to be pervasive. These concerns reflect a continuing lack of full trust in the election system.

International authorities were far less involved in the campaign than in previous elections. Following the decision to remove 59 senior Serb officials in June, the High Representative kept a relatively low profile and did not involve himself in the campaign. Although many political analysts believed that the removals would result in a backlash that would bolster the position of SDS, this did not necessarily prove to be the case.

VII. THE MEDIA

BiH enjoys a free press and electronic media. A diverse range and variety of media operate in BiH, especially at local level. Overall, these outlets provided sufficient, varied election information to enable voters who sought it out to make an informed choice.

The most influential broadcasters in BiH are the two entity public television stations, Federation TV (FTV) and Radio-Television Republika Srpska (RT RS). A new nationwide television service, BHT, began broadcasting on 13 August 2004 using its own frequencies and repeaters and covering some 90% of BiH territory.

The multiplicity of the BiH print media is offset by its weak financial situation due to limited circulation and small advertising market. The media group linked to the daily *Dnevni Avaz*, which is now diversifying into electronic media, sells some 60% of print media circulation.

A. LEGAL FRAMEWORK FOR THE MEDIA

A major change to the media framework for the 2004 elections was an amendment to the Election Law (Article 16.4) allowing paid political advertisements in the electronic media beginning 60 days before election day (3 August).

Another major change was a new regulation (Article 1 of the Rulebook on Media Presentation of Political Parties in Election Period (the Rulebook)) requiring all electronic media to cover the election campaign, even stations that had previously been exempt because they do not normally cover news or public affairs. This new rule strained the resources of some stations. By and large, such stations were not able to sell enough political advertising time to compensate adequately for the costs of obligatory political programming. In general, broadcasters fulfilled their new obligation by broadcasting a dull survey of political party press releases.

Public broadcasters were obliged to provide free airtime for direct addresses to the public by political subjects during the period 30 days prior to election day (Article 16.2 of the Law and Article 4 of the Rulebook). Direct address had to be in the form of debates. BHT was exempt because it did not start to broadcast until ten days after the official beginning of the campaign. BHT did transmit voter education clips produced by the ECBiH.

The Communication Regulatory Agency (CRA) is responsible for overseeing the implementation of laws and regulations concerning the electronic media and with jurisdiction over all election-related electronic media violations (Article 16.7 of the Law). In the period from the start of the election campaign up to election day, the CRA heard 18 complaints, ten of which concerned unequal treatment of political subjects. Of the 18, six cases were dismissed on the basis of insufficient evidence. At the time this report was written, the remaining 12 cases were still under investigation (including the three relating to alleged breaches of the silence period). This level of complaints was similar to that in previous elections.

The print media in BiH is not subject to any legally binding regulatory body. However, the major organizations of journalists of BiH have adopted European standards of journalistic practice – including editorial responsibility, accuracy and fair reporting – and included them in a voluntary Press Code. The Press Council, a body without binding powers, issued a note of guidance for editors in the pre-election period, stressing that publications are free to express their own views as long as they maintain a

clear distinction between comments and facts. The daily *Glas Srpski* and the magazine *Reporter*, both RS-based, did not sign the Press Code or support the Press Council.

B. MEDIA MONITORING

From 1 September to 2 October the EOM monitored the two entity public broadcasters, FTV and RT RS, from 15:00 to 23:00 on a daily basis, as well as BHT from 18:00 to 24:00. In addition, from 10 September the EOM monitored the Mostar public television channel HTV from 19:00 to 24:00 and the private RTV Mostar news broadcast at 19:00.

FTV and RT RS complied with the legal requirement to provide all candidates with the opportunity for free airtime, as did HTV. However, according to the Rulebook, debates should have been broadcast at a time most likely to reach the widest range of viewers. RT RS fulfilled the requirement by broadcasting debates between 18:00 and 19:30, while FTV transmitted debates between 15:00 and 16:30, a much less propitious time. In the first weeks of September many candidates, mainly independents, did not take advantage of free airtime, but as the election day neared, more political subjects made use of it. Providing free airtime for thousands of candidates was a strain for public broadcasters.

With regard to paid political advertisements, the electronic media generally complied with the law, clearly separating political advertising from other programming, and respecting the regulation not to broadcast paid political clips within 15 minutes of news broadcasts. The requirement to indicate which political subject was responsible for each paid advertisement was generally fulfilled, except for a SBiH clip, which until 9 September was broadcast without a clear indication. Many parties could not afford to or chose not to purchase political advertising. For example, until the final week of the campaign, only three parties, SBiH, the Social Democratic Party (SDP) and HDZ paid for advertising on FTV. On RT RS, several parties purchased airtime, in particular the Party of Independent Social Democrats (SNSD), SDS, SBiH and SDP. On HTV Mostar, HDZ and a coalition to which it belonged bought some 70% of political advertisements.

Outside electoral programs, the principle of equal presentation in the electronic media was generally respected, although on FTV candidates from the major parties received occasional opportunities in programs unrelated to the elections. For example, Zeljko Komsic (SDP) mayoral candidate for Novo Sarajevo, received 49 seconds of direct speech during a karaoke programme, and mayoral candidate for Prozor-Rama, Jozo Vukoja (HDZ), received almost four minutes during a documentary programme. On RT RS, some negative coverage was given to a mayoral candidate for Banja Luka, Ljubisa Kragulj, who was cause of the major incident regarding the media during the campaign. Kragulj was removed as a candidate for remarks he made on the air; the CRA opened an investigation to assess if TV Simic, the broadcaster of the programme, could also be held responsible.

In general, the electronic media presented the campaign in an uninteresting and uninspiring manner, with broadcasters apparently more keen to conform to rules and avoid possible sanctions than to produce engaging programmes. In particular, the lottery system established by the Rulebook to determine the schedule for debates on public broadcasters resulted in “debates” among candidates running from different

municipalities and for different posts. This limited the relevance of the programmes and viewers' interest.

In regard to the print media, EOM monitoring focused on the political and electoral coverage in nine daily newspapers and the main periodicals. The broad variety of print outlets and the lack of legal restrictions on print media resulted in lively and partisan coverage: *Dnevni Avaz* showed clear bias against SDP, while generally backing the Social Democratic Union (SDU), SBiH and – as election day approached – SDA; *Oslobodjenje* devoted favourable attention to SDP; *Nezavisne Novine* displayed a social-democrat orientation; *Glas Srpski* mainly backed SDS activities; *Dnevni List* paid particular attention to SDP activities.

C. VIOLATION OF THE MORATORIUM PERIODS

Article 16.6 of the Election Law prohibits the publication of results of public opinion polls within 72 hours of the opening of the polls until the close of polling. Article 16.5 of the Law prohibits media coverage of any political campaign activity in the 24 hours before the opening of the polls or on election day. There are, however, no regulatory bodies with enforcement powers for the print media.

Dnevni List on 30 September and *Oslobodjenje* on 1 October violated the prohibition on publishing opinion poll results. On 1 October, two articles appeared on *Dnevni List* and one in *Jutarnje Novine* that appeared to violate the legal provision against coverage of political campaign activity. On election day, two articles in *Dnevni List*, one in *San* and one in *Slobodna Dalmacija* appeared to violate the silence period. The ECBiH announced that *Dnevni Avaz* violated the silence period on election day by publishing a front page photo of a street with SDA posters, but did not mention *Vecernji List*, which also published a photo with election posters on its front page.

With regard to the electronic media, CRA opened investigations in regard to three TV stations that allegedly violated the silence period.

VIII. COMPLAINTS AND APPEALS

The Law allows interested parties to appeal to the appropriate level of the election administration (MEC or ECBiH) in regard to problems with voter registration, decisions or activities of lower level commissions, composition of lower level commissions, or violations at polling stations. On the other hand, complaints about violations of the rules of conduct (as set out in Chapter 7 of the Law) or about campaign financing, should be addressed to the Election Complaints and Appeals Council (ECAC). Decisions of the ECBiH or ECAC can be appealed to the Appellate Division of the State Court (State Court).

The ECBiH and the ECAC have the authority to impose fines, remove candidates, or decertify parties, party lists or coalitions. The ECBiH must approve sanctions imposed by the ECAC, although the ECBiH has no power to alter the sanctions imposed.

The rules for appeals are complex and the procedures are not well understood by electoral subjects. For example, it is not clear whether violations at polling stations of rules of conduct should be appealed first to a MEC, or should go directly to the ECAC. In many cases, complainants simultaneously filed complaints to several instances, including MECs and the ECBiH. For example, the ECBiH received 91 complaints on activities at polling stations, which it redirected to the MECs. The ECBiH considered two such appeals itself (Zvornik, Tesanj) and several more were pending at the time this report was written. By the same token, the ECBiH received 42 complaints concerning the formation of PSCs; 31 were redirected to MECs. There are no aggregate data on the complaints solely filed to MECs.

The ECAC had 34 complaints based on Chapter 7 of the Law. These included hate speech, destruction of campaign material and tearing down or covering up of campaign posters. According to the information received by the EOM, the ECAC found for the complainant twice and issued fines against the offenders. Nine of the complaints were determined to be “unfounded” and the rest were pending at the time the EOM left BiH.

The EOM was initially barred from meetings of the ECAC on the basis that its meetings were not open to the public; this represented a step backwards from previous elections. Subsequently, however, the EOM was allowed to observe some of the ECAC’s deliberations.

An additional concern about the complaints regime is that the complainant has no right to a hearing. A hearing is held only if the adjudicating body decides one is necessary; otherwise a decision is made on the basis of written submissions. Likewise, the target of the complaint has no right to a hearing, although he or she does have a right to appeal.

The State Court had received seven appeals at the time the EOM closed its offices, most of these were from persons who were denied certification to be a candidate. The Court only determines whether the ECBiH made a correct decision according to the law and it upheld ECBiH decisions up to that time. In some cases, due to the times allowed for filing complaints, decisions cannot be made by election day. The Court appears to be operating effectively.

IX. MINORITIES

In the BiH context, “minorities” refers to 16 recognized national minority groups, as distinct from BiH’s three constituent peoples. Each citizen may identify himself or herself as a member of a minority, a constituent people or an “other”. Minorities include communities as diverse as Albanians, Hungarians, Macedonians, Montenegrins, and Russians. There is no accurate data on their numbers. The Helsinki Committee, for example, estimates that only about 500 Jewish families are left in BiH. Even the 8% of people who declared themselves as “others” or “Yugoslav” in the 1991 census included many born from mixed marriages, who were thus not national minorities in the sense of being other than Serb, Croat or Bosniak. In general, national minorities played no role in the elections.

The largest national minority in BiH are the Roma. They numbered 8,900 in the 1991 census, but the Council of Roma² estimates their number could be as high as 80,000-100,000, since many Roma are either not registered or declared themselves to be Serb, Bosniak or Croat. For the 2004 elections, the Roma Council estimated that 8,000-10,000 Roma were registered to vote. The Roma Council asserts a number of Roma families in Banovici have tried to register for the past three elections but have been unable to do so. Approximately 2,000 Roma were centred in the Tuzla municipality, which appeared to be the only area where political parties actively tried to court the Roma vote.

According to the Council of Roma, no more than four Roma were among the more than 26,000 candidates for office in the municipal elections. Some Roma were reportedly nominated for PSC membership in areas with large Roma populations.

On election day, Roma observers noted a relatively positive turnout of Roma voters, for example 50% of the Roma voters had voted in Tuzla by 16:00, a proportion higher than the overall turnout figures for Tuzla at that time.

X. GENDER ISSUES

The Constitutions of BiH and the two entities, as well as the laws of BiH, recognize and provide extensive protection for the rights of women.

The Election Law requires that every candidate list include at least one-third women and one-third men, and stipulates a detailed order to ensure balance throughout the lists. The party lists for the 2004 local elections were in line with this provision: 9,554 women, or 36%, were registered as candidates for municipal councils and assemblies. Although no official statistics were available, open list voting appeared to reduce the percentage of women elected.

A new Gender Equality Law was adopted by the BiH Parliament in May 2003. Among its provisions (Article 15) is: “the percentage of the sexes in government bodies at all levels, including the judiciary, legislature and executive, as well as other public services, committees, boards and bodies representing the state at international level, shall as a rule reflect the equal gender representation”. The entity laws providing for direct election of mayors appear to be in conflict with this provision of the Gender Equality Law. Just 32 women were among the 809 candidates for mayor. Some EOM interlocutors asserted that Article 15 applies only to appointed positions, not to elected ones, although the language of Article 15 appears inclusive.

Although it is not clear exactly how the entity laws on direct election of mayors could have been harmonized with the Gender Equality Law, no detailed legal analysis of this issue was undertaken by the relevant authorities prior to enactment of the laws on direct election of mayors.

² The Council of Roma is the first Roma representative body established in 2001. It consists of nine members elected by all Roma NGOs in BiH. It aims to ensure Roma participation in governmental policy bodies.

While the legislative framework of BiH includes specific provisions to increase the participation of women in public life, statistics present a different picture. It is estimated that 60% of the total population of the country are women, but their presence and influence in public and political spheres of power remains low. Of particular note, very few women appeared to hold positions of importance in political party hierarchies. Issues of special concern to women were seldom dealt with during the campaign and women voters were rarely targeted in party platforms or campaign messages.

Women were represented in greater numbers in the election administration. One national member of the ECBiH was a woman; she also served as Chairperson of the ECAC. However, the lottery system for the appointment of PSCs did not promote gender representation, since it relied upon nominations by political parties, which did not always include women among their nominees.

EOM observers reported on election day that the majority of PSC Chairpersons were men and that about 30% of PSC members were women. Also on election day, EOM observers reported family voting in 22% of polling stations, which directly contradicts the principle of a secret ballot.

XI. DOMESTIC OBSERVERS

The absence of significant, large scale civil society involvement in the election process was notable. As the authorities in BiH take greater responsibility for the elections, the diminished role of civil society in all aspects of the process, largely due to a lack of domestic sources of funding, is a concern.

The Election Law provides domestic observers with full access to all aspects of the electoral process. New amendments to the Law (Articles 5.22, 5.25, 5.27) further enhanced observer rights by requiring that they be given, on request, copies of official voting results protocols.

In marked contrast to other recent elections in BiH, domestic non-partisan observer groups had a very limited presence on election day. The ECBiH registered 25 non-partisan observer groups, with a total of 433 registered observers. EOM observers noted non-partisan observers in only 6% of polling stations on election day, a dramatic decrease from 2002. In contrast, EOM observers noted political party observers at 98% of polling stations visited.

The largest non-partisan group in previous elections – the Center for Civic Initiatives – this year observed with only members of its own staff, citing a lack of funding. Another NGO, the BiH Helsinki Committee, continued a policy of focusing on a qualitative assessment of the elections. It produced a report just prior to election day, with conclusions generally consistent with those of the EOM. Neither group produced a report concentrating on election day.

XII. ELECTION DAY AND VOTE COUNT

Election day was peaceful and orderly. Of the 1,100 polling stations visited by EOM observers, the conduct of the polling process was assessed as “excellent” or “good” in 93%. With rare exceptions, polling stations opened on time. There were very few allegations of significant irregularities. According to the ECBiH, police were called to deal with minor incidents at 14 at polling stations. Voter turnout was reported as 46%.

The most prevalent problem was voters unable to find their names on the voter lists, which occurred in 57% of observed polling stations. In many instances it appears this was because voters went to the wrong polling station or had failed to register. Nevertheless, the extent of the problem, together with comments from frustrated poll workers, suggests there is room for substantial improvements in the voter registers.

Another problem was group voting in 22% of observations. Many of these cases appear to have been family members, and especially elderly married couples, voting together. Unauthorized persons were reported in 9% of polling stations.

Observers noted that in 18% of cases, a section of the polling station Accounting Form, a key step in the official record of PSC activities, was not completed in the correct sequence during opening procedures. However, this appears to have been poor practice rather than attempts to manipulate proceedings.

The voting process was orderly in an overwhelming proportion of polling stations visited. Unusual tension in polling stations was noted in only 3% of the visits, and campaign activity was noted in only 3 polling stations. Campaign material was seen within 50 meters of polling stations in 6% of the visits. Very few cases were reported of undue influence on voters or polling station committee members.

Observers evaluated the vote count less positively than the voting process; 20% of the counts observed were rated as ‘weak’ or ‘very weak’. However, the deficiencies appeared to result from poor administration rather than attempts at manipulation. Other problems observed during the counting process included unauthorized persons present (19% of counts observed) and failure to publicly post the results of the count (40% of observations).

EOM observers personally witnessed two cases of fraudulent activity. At a polling station in Zvornik (083B009A), observers saw a political party representative adding marks next to the names of the first three candidates on the open-list ballots she was counting; when challenged she claimed that it did not alter the seat distribution and was “party business”. The PSC Chairperson was later observed to be adding votes during the open-list count for unmarked candidates of a different party. In Srpski Gorazde (168B002), observers saw an individual voting whom they had also seen voting in a different polling station.

Although aggregated official statistics are not available on invalid ballots, a check on results from several municipalities suggests that the number was disturbingly high, in some cases over 10%. This testifies to a lack of voter understanding and the complexity of the election system.

XIII. POST-ELECTION DAY OBSERVATIONS

The principal post-election day activities involved the counting of out-of-country, absentee, mobile and tendered ballots, as well as the audit of PSC protocols and the second round of counting of the preferential vote, all at the Counting Centre in Sarajevo. As a part of the audit process, the Counting Centre staff also checked some of the ballot papers and the signatures on the Central Voter Register excerpts for some polling stations.

The counting was a complex process involving 366 employees – recruited to reflect ethnic and gender balance – who sometimes worked in shifts around the clock. Nevertheless, it took 11 days to complete the process of verifying and counting just 24,203 absentee, 21,281 out-of-country and 579 tendered ballots. The verification and counting processes were conducted in an orderly manner and largely in accordance with the Law and ECBiH instructions.

However, thirteen days after the election, when the EOM closed its offices:

- The audit of the PSC protocols was not yet finished;
- Audited preliminary results for the municipal council/assembly races and for the races for mayors in RS were not yet announced;
- The second round of counting of the preferential vote for mayors in FBiH had not yet begun.

This extremely slow process can diminish confidence in the final results. It highlights the need for reforms that will speed the counting process.

In addition, the Counting Centre failed to display results by contests and type of ballots, as required by Article 2 of the “Rulebook on verification procedures and on the method of vote counting in the central Counting Centre in Sarajevo”.

Of the 70 political parties registered to contest the elections, only 10 applied for accreditation to observe at the Counting Centre; only 6 registered enough observers to be present on a permanent basis: HDZ, SBiH, SDA, SDP, SDS and SNSD. However, since parties were permitted to have only two observers at the Counting Centre at a time, it was not possible for them to observe all the activities occurring simultaneously. A sole independent candidate registered one observer and no NGO representatives were present. Party observers generally had high regard for the work of the Centre and expressed no doubts at the results read out after each counting table completed a count. However, they stressed the need to receive signed printouts or another official document with results.

A. TURNOUT AND BALLOT PROCESSING

The turnout among registered by-mail (out-of-country) voters was almost 80%. These voters were required to post by 2 October a bar-coded instruction letter, a copy of an identity document, and evidence of their voter registration with their ballot papers in a

secrecy envelope. These requirements of the Law were strictly enforced at the verification stage in Sarajevo and contributed to the rejection of 11% of postal votes before the counting stage. The deadline for receiving by-mail ballots at the Counting Center was 9 October.

The turnout at absentee ballot polling stations was strikingly low: 24,203 voters or just 16.8% of the 143,777 registered absentee voters. Since the verification process was done at the polling stations, there were no rejected absentee envelopes. The average invalid ballot rate for mayor and council, approximately 9.7%, was extremely high, and raised questions about both the election system and voter education programmes.

All tendered ballots were processed at the Counting Centre. The Law limited tendered ballots to voters who were registered to vote by mail but returned to BiH after the end of the voter registration period. However, the ECBiH extended this right also to some voters omitted by mistake from the Central Voter Register. The eligibility of individuals casting tendered ballots was verified prior to counting, which led to a rejection rate of almost 25%. The invalid rate was 9.3%. The dramatic reduction in tendered ballots from about 90,000 in the 2000 elections, to 4,112 in the 2002 elections, to only 579 this year confirms the diminishing need for this type of ballot.

B. AUDIT AND REPEAT ELECTIONS

One of the main tasks of the Counting Centre was the creation of a database with the contents of the PSC protocols. In order to ensure consistency of the data, an audit procedure was undertaken in case of any discrepancies in the protocols. The final results of the election are calculated on the basis of the audited polling station results.

The audit function was granted authority by the ECBiH to allow for or to correct errors in the protocols. There was no clear rule of what percentage variation was acceptable for the audit team to adjust; the audit team used a variation of 0.5% as a guideline. Where serious discrepancies occurred, the audit team had the authority to recommend a recount of a particular polling station to the ECBiH.

Multiple signatures placed by the same hand were discovered as a result of the auditing of some Central Voter Register excerpts. As a result of this and other problems, the ECBiH decided to hold repeat elections in all 59 regular polling stations in Zvornik. The ECBiH also decided on repeated elections in two absentee polling stations in Tesanj. The repeat elections were scheduled for 7 November.

C. COMPLAINTS AND APPEALS

Post-election day complaints were generally related to valid ballots invalidated during the count; ballots wrongly counted as invalid; dramatic increases in the turnout at the end of the election day in certain polling stations; refusals to allow observers to write remarks into the poll book; falsified signatures; denial of the right to vote because somebody else had already signed the voter list; and other irregularities observed on election day. The appeals were still under consideration when the EOM closed its offices. Subsequently, the ECBiH decided to order recounts in several municipalities.

XIV. RESULTS

The following table shows the number of mayoral positions secured by each party in the elections, compared to the election results in 2000 and compared to outgoing mayors (reflecting resignations, removals, party transfers, etc., between 2002 and 2004).

Official Mayoral Election Results

Party	2004 Mayors directly elected	2000 Mayors indirectly elected	Outgoing Mayors
SDA	34	21	23
SDP	12	20	17
SBiH	4	5	8
DNZ	1	1	1
HDZ	21	25	24
NHI/HDU	2	0	0
HSP – Djapic – Dr. Jurisic	1	0	0
SDU	1	0	0
SDS	35	43	45
SNSD	17	12	13
SPRS	5	3	0
PDP	2	0	0
DNS	1	1	1
NDS	1	0	0
Independents	3	0	3
Total	140		

The results show that the three major ethnic nationalist parties, SDS, SDA and HDZ, won control of more mayoral offices than did other parties, as in previous elections. SDA, in Bosniak areas, and SNSD, in Serb areas, improved their results relative to 2000. Slightly more mayors were elected in 2004 from parties based in the other entity (6, from 4), including three Bosniaks in Srebrenica, Kalesija/Osmaci and Odzak/Vukosavlje, and three Serbs in Drvar, Glamoc and Bosanski Petrovac. It appears that mayors are likely to have the support of municipal Councils/assemblies, in 122 of 140 cases.

There was only one municipality in the FBiH – Sarajevo Stari Grad – where the preferential system voting system for mayor produced an outcome different from the result that would have emerged from a majority system.

XV. RECOMMENDATIONS

A. THE LEGAL FRAMEWORK

1. A procedure should be put into place to provide due process and a judicial appeal to individuals barred from office or candidacy by order of international institutions, and to political parties subject to international community sanctions.
2. All election legislation should be adopted through regular parliamentary procedures by the appropriate legislative body.
3. The multiplicity of electoral systems used in municipal elections should be reviewed, with the intention for simplification and harmonization. While some variations may still be necessary, it is not at all clear that a country the size of BiH needs six separate systems to elect municipal authorities. The high number of invalid ballots indicates that the current systems may be too complex for many voters.
4. The number of types of ballot should be reduced, and the Sarajevo Counting Centre should be eliminated in its current form, in order to simplify the electoral system and speed processing of the results. The dramatic reduction in the number of tendered and absentee ballots suggest that these types of ballots may have outlived their usefulness. If there is still a need for voters to vote in municipalities where they are not currently resident, they could be permitted to use by-mail ballots. All ballots, including by-mail ballots, could then be counted in the municipalities, leading to a far more rapid announcement of results. The Sarajevo Counting Centre could retain its audit function.
5. Chapter 19 of the Election Law, relating to municipal elections in Mostar, should be amended to remove inequities, in particular, that most residents of Mostar are entitled to two votes, while some may only vote once.
6. The stipulations in the Law on the formation of PSCs (Articles 2.14, 2.19) – requiring that all PSCs include at least one opposition member, that no PSC may include more than one member of a single political party, and that PSCs should reflect ethnic balance taking into account the last census – are complex and may need to be reviewed.
7. The entity laws on direct election of mayors may be incompatible with the BiH Law on Gender Equality. The Gender Centre of FBiH and the Gender Centre of RS should review the entity laws, in accordance with their mandates, and if necessary recommend amendments, which should then be considered by the appropriate legislative bodies.
8. The authorities should review Article 2.21 of the Election Law, concerning the formation and powers of entity election commissions, and should consider whether these bodies are necessary, since they have not been accorded any powers or responsibilities.
9. The new amendment to the Election Law concerning participation of members of national minorities in municipal level elections (Article 13.14) – although enacted two days too late for the 2004 elections – fails to provide the necessary details on how the

article is to be implemented. Authorities should review this section of the law to ensure that it can be implemented consistently and in the manner intended by the drafters, well before the next municipal elections in 2008.

B. ELECTION ADMINISTRATION

10. The process of transferring the election administration to full national control should be completed by replacing international members of the ECBiH with national members, as soon as the parliament of BiH can complete the necessary appointment process for new national members.

11. All instructions issued by the ECBiH should comply fully with the Election Law, and should be sufficiently clear and detailed to ensure they are carried out consistently. In this election, the instructions on the lottery system for PSC formation did not guarantee that all provisions of the Law would be met, and the lack of specificity in the instruction resulted in different MECs using different systems to appoint PSC members.

12. The ECBiH should refrain from *ex post facto* decisions and interpretations, such as occurred with regard to the application of a threshold in the Brcko District, resulting in a significant, belated change in the election results.

13. Further efforts should be made to improve the quality and accuracy of the voter registers.

14. The ECBiH should enforce those provisions in the law that require the public posting of polling station result protocols immediately after they are finalized in the polling stations. Furthermore, it should publish on its internet website a database with the preliminary, unaudited, results for each polling station immediately as they are received, and no later than the announcement of the final uncertified results. This would be consistent with the Election Law (Article 5.29) and would increase the transparency of the results. It would enable candidates to compare their copies of polling station protocols with the official results before deciding whether to file a complaint with the court. The data base should contain not only the valid votes of the candidates, but also other important information, such as the numbers of invalid ballots, spoiled ballots, signatures and ballots received.

15. The ECBiH should consider changing the deadlines for accepting by-mail ballots, so that only ballots that arrive by election day – rather than those mailed by election day – are considered.

16. In light of the problems which arose in polling stations with counting and with packing election materials properly after the count, the ECBiH should review the procedures to determine if they can be simplified, and if improved training is necessary.

C. MEDIA

17. Since there is no legally binding regulatory body for print media in BiH, there is no enforcement mechanism for print media of Articles 16.5 and 16.6 of the Election Law, which prohibit media coverage of campaign activity for 24 hours before the opening of

the polls and the publication of the results of public opinion research for 72 hours before the opening of the polls. If these articles are to be retained in the Law for print media, the ECBiH should be given jurisdiction and means for enforcement.

18. Article 4 of the Rulebook on media presentation of political parties, which establishes a lottery system to determine the schedule of participation in political debates on public broadcasters, should be revised to ensure that the debates are held among candidates running for the same public office in the same municipalities.

19. Article 1 of the Rulebook, which requires all private broadcasters to cover the campaign activities of candidates, should be amended to allow an exemption for private broadcasters which do not normally broadcast political programmes.

D. COMPLAINTS AND APPEALS

20. The current process of election appeals – first to the MEC, then to the ECAC, followed by confirmation by the ECBiH, then to the Appellate Branch of the State Court – is lengthy and may not always be able to provide a timely remedy for urgent electoral complaints. Some emergency procedure should be available to provide complainants the opportunity for prompt judicial review of electoral complaints, with more finality, at least in cases where these might affect their electoral rights or the outcome of an electoral race.

21. The appeals process should include a provision for a public hearing, at the request of any party to the dispute.

22. A regulation should be issued to ensure meetings of the ECAC are open to observers on the same basis as meetings of the ECBiH.

E. OTHER ISSUES

In light of the difficulties in securing full funding for the 2004 elections, the authorities of BiH, the entities and the municipalities should establish clear, binding procedures to ensure that full funding is available for elections.

ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (ODIHR) is the OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Document).

The ODIHR, based in Warsaw, Poland, was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 100 staff.

The ODIHR is the lead agency in Europe in the field of **election observation**. It coordinates and organizes the deployment of thousands of observers every year to assess whether elections in the OSCE area are in line with national legislation and international standards. Its unique methodology provides an in-depth insight into all elements of an electoral process. Through assistance projects, the ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include the following thematic areas: rule of law, civil society, freedom of movement, gender equality, and trafficking in human beings. The ODIHR implements a number of targeted assistance programmes annually, seeking both to facilitate and enhance State compliance with OSCE commitments and to develop democratic structures.

The ODIHR monitors participating States' compliance with OSCE human dimension commitments, and assists with improving the protection of **human rights**. It also organizes several meetings every year to review the implementation of OSCE human dimension commitments by participating States.

The ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies. The Office also acts as a clearing-house for the exchange of information on Roma and Sinti issues among national and international actors.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website (www.osce.org/odihhr).