



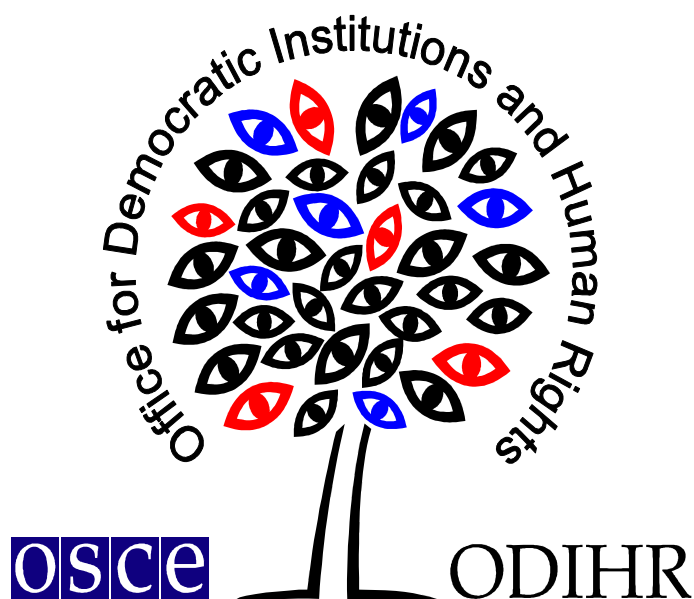
OSCE Office for Democratic Institutions and Human Rights

REPUBLIC OF CROATIA

PARLIAMENTARY ELECTIONS

25 November 2007

OSCE/ODIHR Limited Election Observation Mission Report



Warsaw
30 April 2008

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I. EXECUTIVE SUMMARY

In response to an invitation from the Ministry of Foreign Affairs and European Integration to observe the 25 November parliamentary elections in the Republic of Croatia, the OSCE/ODIHR deployed a Limited Election Observation Mission (LEOM) on 30 October. The OSCE/ODIHR LEOM assessed the electoral process in terms of its compliance with OSCE commitments for democratic elections, other international standards, and national legislation.

The 25 November 2007 parliamentary elections in the Republic of Croatia were administered transparently and professionally, and represented further progress in fully meeting OSCE commitments for democratic elections. The campaign took place in a competitive and pluralistic environment, and the media generally provided voters with sufficient information about the contestants and their campaign activity. Nevertheless, some issues remain to be addressed, including aspects of the legislative framework and its implementation, and the short timeframe available for election preparations.

The elections were carried out in a pluralistic environment; the election campaign itself was dominated by the governing Croatian Democratic Union (HDZ) party and the main opposition Social Democratic Party (SDP). In its closing stages, the campaign became polarized and tended to focus on the personalities of party leaders, rather than on specific policy platforms. In total, 251 candidate lists (including 3,586 candidates) were registered, representing a wide spectrum of political parties, coalitions and groups of independent candidates.

The legal framework provides an adequate basis overall for the conduct of a democratic election process. Previously incomplete aspects of the legislation, which created challenges for election administration, were addressed by the enactment of new laws on the State Election Commission (SEC), Voters' Lists, and Financing of Political Parties. The SEC, however, is not yet operating on a permanent basis. The effects of the Law on Financing of Political Parties will only be evident during 2008 when annual reports are due. That Law would benefit from provisions requiring full transparency of campaign spending, and for effective monitoring and enforcement.

The SEC and other election management bodies appear to enjoy broad public confidence and performed their tasks in an efficient and professional manner. However, the system of extending membership of the lower level commissions to include political party appointments, enhancing transparency, would benefit from more prescriptive procedures.

The Ethics Commission, constituted at election time under the auspices of the Constitutional Court, oversees compliance with an Election Code of Ethics. However, the enforceability of the Commission's decisions should be clarified, and more detailed rules of procedure are required in order for the Commission to become fully effective.

Voter lists were improved by the introduction of a unified computerized system by the Central State Administration Office (CSAO). New rules limiting the issuance of Voting Certificates to instances where it was confirmed that an eligible voter had been omitted from the voter list for his or her regular polling station in error, were widely adhered to.

While no systematic or comprehensive observation of polling station procedures was conducted on election day, representatives of the OSCE/ODIHR LEOM did visit some polling stations throughout the country. Voting appeared to be conducted in a generally calm atmosphere, and overall polling stations visited were generally well managed and efficient.

Almost 7,000 polling stations served the four and a half million voters registered for the elections. The turnout was 60.6 per cent. In addition, 265 polling stations were established in 53 foreign countries to permit some 400,000 citizens registered outside Croatia, commonly referred to as the *diaspora*, the possibility to vote. Significant increases in the number of polling stations established for the registered voters in Bosnia and Herzegovina (124, up from 30 in 2003) had an impact on voter turnout there, which increased to 28.9 per cent compared to the 19.8 per cent who participated in the 2003 parliamentary election. The turnout in the *diaspora* as a whole was 22.3 per cent.

The media met their legal obligations, providing opportunities for all contestants to communicate their messages to voters. However, provisions for media coverage of the election campaign were overly restrictive, and the regulatory framework could be further enhanced by adopting clear provisions for sanctions and effective enforcement through an independent monitoring body.

The OSCE/ODIHR remains ready to further support the efforts of the authorities in addressing issues outlined in this report.

II. INTRODUCTION AND ACKNOWLEDGEMENTS

The OSCE/ODIHR Limited Election Observation Mission (LEOM) was invited by the Croatian Ministry of Foreign Affairs and European Integration to observe the 25 November elections to the Croatian Parliament, the fifth since gaining independence in 1991. The OSCE/ODIHR LEOM was headed by Mr. Vadim Zhdanovich. It consisted of 11 election experts based in Zagreb, as well as 10 long-term observers deployed in 5 regional centres: Rijeka, Split, Zadar, Sisak and Osijek.

The OSCE/ODIHR LEOM assessed the electoral process in terms of its compliance with OSCE commitments for democratic elections, other international standards, and national legislation. Following a Needs Assessment Mission, and taking into consideration the findings of previous Election Observation Missions in Croatia,¹ the OSCE/ODIHR determined not to deploy short-term observers to carry out a systematic or comprehensive observation on election day. The focus of the OSCE/ODIHR LEOM was on the administrative and legal framework for the conduct of the election, observation of the campaign including access to media, and the conduct of the election administration. However, core team experts and long-term observers did visit a number of polling stations on election day throughout the country.

¹ The OSCE/ODIHR Needs Assessment Mission report, as well as all previous OSCE/ODIHR election reports are available at www.osce.org/odihr-elections/

The OSCE/ODIHR would like to thank the Ministry for Foreign Affairs and European Integration, the Central State Administration Office, the State Election Commission, lower level electoral commissions, political parties, GONG and other civil society and media outlets, as well as the OSCE Office in Zagreb for their cooperation during the course of the LEOM.

III. LEGISLATIVE FRAMEWORK

The primary law regarding elections to the Croatian Parliament is the 1999 Law on the Election of Representatives to the Croatian Parliament (LERCP, amended in 2007). Under the LERCP, new members of Parliament are elected in three ways:

- 140 mandates are awarded through closed-list proportional representation (PR) elections in 10 geographical constituencies, according to a five per cent threshold based on valid votes cast in each constituency, and with each constituency electing 14 representatives;
- eight mandates are reserved for representatives of Croatia's 22 constitutionally recognized minorities (elected through majoritarian individual candidate elections), and;
- an additional number of mandates are awarded through closed-list PR elections in a special constituency comprised of Croatian citizens who permanently reside abroad (*diaspora* voters). The number of mandates awarded, up to 12,² is based on the turnout of *diaspora* voters.

In 2006 and 2007, three new election-related laws were enacted.³

- The Law on the State Electoral Commission of the Republic of Croatia (2006) formally reconstituted the State Election Commission (SEC) as a permanent body exercising advisory and administrative functions (but not regulatory powers), in addition to its role during elections. Since agreement was not achieved concerning the appointment of members to the SEC, however, the new law was modified in 2007 and the SEC's composition was reoriented toward the previous model including judges. The President of the Supreme Court is, *ex officio*, the President of the SEC.

Certain provisions of the new law were not fully implemented by the time of these elections. The SEC was not yet operating on a permanent basis, and thus continued to operate using staff and premises loaned to it by the Parliament.

- The Law on Voters' Lists (2007) introduced new safeguards to address concerns in previous elections that insufficient safeguards were in place to control the addition of voters to voter lists at the polling stations on election day, raising the potential for multiple voting. Specific procedures involving "pre-registration" for *diaspora* voters

² "The Croatian Parliament shall have no less than 100 and no more than 160 members," Constitution of the Republic of Croatia, Article 71.

³ The OSCE/ODIHR and the Council of Europe's Venice Commission provided joint opinions on the draft law on the State Election Commission (opinion no. 360/2006) and on the draft law on Voters Lists (opinion 419/2007).

and “temporary registration” for in-country voters were put into place to control the transfer of a person from one polling station voter list to another, to narrow the opportunities for double voting. Under the new law, a 14 day deadline was established for such transfers prior to election day.

- The Law on the Financing of Political Parties (2006) provides an expanded basis for monitoring the financing of political parties. It includes restrictions on the amount and source of contributions. Parties are required to submit annual financial reports, but the new law does not place any ceilings on total revenues or expenditures for election campaigns.

Although it is not a campaign finance statute *per se*, this new law also applies to all candidate list submitters and candidates in elections.⁴ For the purpose of monitoring campaign spending, however, only the LERCP requires specific financial disclosures, and even this only mandates participants in parliamentary elections to announce prior to the campaign how much they *anticipate* spending.⁵ As the financial reports mandated under the Law on the Financing of Political Parties are due only on an annual basis, the practical effect of the Law will be witnessed only in the course of 2008, when annual reports for 2007, covering the recent electoral period, are submitted. The various restrictions and prohibitions set forth in the Law, are, however, not susceptible to enforcement through administrative or criminal proceedings.

In addition to these laws, there are elements of the laws on Political Parties (1993, as amended) and Constituencies (1999) that are directly relevant to the conduct of elections.

- Under the Law on Political Parties (1993, as amended), a political party may be founded by 100 citizens.⁶ There are currently over 100 registered political parties in Croatia. Registration of parties is conducted by the Central State Administration Office, which may seek dissolution of a party if it has not held a general meeting for twice the period of time specified in its charter.

Under the LERCP, any party entered into the Registry of Political Parties in Croatia on the date of the publishing of the Presidential call for the election in the Official Gazette is eligible to submit candidate lists, without any additional demonstration of support for their nominations.⁷ During these elections, 54 parties submitted candidate lists, but only ten parties won mandates.⁸

- The 1999 Law on Constituencies specifies the electoral constituency boundaries. This is consistent with the LERCP, which provides for constituencies to be delineated through a separate law. The LERCP, however, states that the number of registered voters in the different geographical constituencies shall not differ by more than 5 per cent.⁹ By the time of the last parliamentary elections, in 2003, the range of variation was 19.8 per cent. The final voters’ list published for the 2007 elections shows a

⁴ Law on the Financing of Political Parties, Article 26.

⁵ LERCP, Article 31.

⁶ Law on Political Parties, Article 6.

⁷ LERCP, Article 19.

⁸ There were numerous cases of parties that received less than 200 votes in constituencies with 350,000-400,000 registered voters.

⁹ LERCP, Article 36.

range in variation of some 25.3 per cent. The statutory standard in the LERCP is not legally superior to the boundary delineations in the Constituencies Law, since both, as electoral laws, have equal status as “organic laws” that must be adopted with the support of an absolute majority in Parliament.¹⁰ But international standards call for equality of voting, and best practice is for departures from the norm not to exceed 10 per cent, except in special circumstances.¹¹

Some other legislative considerations created challenges for electoral administration.

Late Enactment: At the start of the campaign, a case was brought before the Constitutional Court concerning the validity of the recent electoral legislation in view of a constitutional law requiring laws regulating elections be adopted at least a year prior to parliamentary elections.¹² The case was rejected, but a council of the Court indicated that it would be considered if brought not as an electoral dispute, but as an action to declare the legislation in question as unconstitutional.¹³

Good electoral practice discourages late changes in election laws, particularly during the year preceding elections.¹⁴ The three laws and sets of amendments that were enacted during this period were in development for a much longer period, and the new legislation is broadly viewed as positive. Although the new or amended provisions did not directly affect the main elements of the electoral system, and could only indirectly affect the rights of participants in these elections, their late enactment was nonetheless unfortunate.

Annulment of Results: The LERCP provides that if the number of ballots in a ballot box exceeds the number of voters recorded as having received them, then the count at a polling station must stop and the Municipal or City Election Commission (MEC/CiEC) must annul the voting and repeat the election there.¹⁵ During these elections, ballot-boxes at five polling stations (two regular boxes and three boxes for national minority voters) were found to contain additional ballots. The elections were therefore re-run at these locations on 9 December, and the announcement of the final national results was delayed for approximately two weeks. In three of the five cases, turnout was minimal, as it was known that the repeat polling would have no impact on the preliminary results previously reported.

Polling Stations: There are no statutory procedures or explicit standards for establishing polling stations, which makes it difficult for parties to object to their location, distribution or other factors. In one case, the main opposition parties objected to the polling stations in one area, but their complaint to the SEC and appeal to the Constitutional Court was rejected on the grounds that there was sufficient documentation to support the proposed locations, which had been used previously.¹⁶ Previous overcrowding at out-of-country polling stations in BiH (and, to a limited extent, in Serbia and Montenegro) provided a rationale for expanding polling capacity there. Yet the absence of clear procedures and standards made it difficult to

¹⁰ Constitution of the Republic of Croatia, Article 82.2; Rules of Procedure of the Croatian Parliament, Article 162.1

¹¹ See European Commission for Democracy Through Law (Venice Commission), Council of Europe, *Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report*, Op. No. 190/2002 (Strasbourg, 23 May 2003), Guidelines, Par. 2.2.iv.

¹² Constitutional Law on Implementing the Constitution, 2001, Article 4.

¹³ Constitutional Court, Dec. Nr. U-VIIA-4063/2007 (9 November 2007).

¹⁴ See Venice Commission, *Code of Good Practice...*, Explanatory Report, Par. 65.

¹⁵ LERCP, Article 73.2-3.

¹⁶ Constitutional Court decision in Case No. U-VIIA/4188/2007 (16 November 2007). The parties had challenged the list of polling stations previously.

determine why the number of stations in neighboring countries was increased to such a degree. (e.g. from 30 in BiH in 2003 to 124 in 2007).

“Reminders”: During the two previous parliamentary elections, the OSCE/ODIHR noted that important guidance to Voting Committees was issued by the SEC in the form of “reminders,” which were not adopted as “mandatory instructions,”¹⁷ and therefore had no clear legal basis. Once again for these elections, the “reminders” (manuals) distributed to Voting Committees contained important material not contained in mandatory instructions and possibly even at variance with the law. For example, similar to the 2003 elections, the 2007 SEC “reminder” on voting procedures indicated that citizens voting in the Serb national minority elections should be instructed to vote for 1-3 candidates.¹⁸ The LERCP, however, states that “a voting slip in which the voter has cast his/her vote for two or more lists or candidates” is invalid.¹⁹ This procedure appears to be inconsistent with the LERCP. The 2007 “reminder” also specifies that minority voters may choose to cast a regular constituency ballot; but (unlike 2003) voters not on a minority list could not obtain a minority ballot. This important rule was also not adopted in mandatory form.

Deputy Commission Members: Under the LERCP, every full member of every election commission is appointed together with a “deputy”.²⁰ There is no general provision in the LERCP regarding the role of deputies – such as whether they operate only when the corresponding principal member is absent; nor is there any differentiation (except in a small number of cases) as to what roles may or must be assumed by a member or deputy. In SEC mandatory instructions, for example, the tasks of the voting commissions are usually addressed only collectively (e.g., “The Commission shall ...”).

IV. ELECTION ADMINISTRATION

All elections at national, county and local levels, including state and local referenda, are administered by a hierarchy of election commissions headed by the SEC, all of whom appear to enjoy wide public confidence. It was observed that the SEC fulfilled its responsibilities in a fully professional and transparent manner.

Constituency Election Commissions (CEC), established in each of the ten geographical electoral constituencies, oversee the work of Municipal and City Election Commissions (MEC/CiEC). In addition, a special Constituency Commission based in the City of Zagreb is established to oversee Constituency XII (for national minority voters). The SEC directly oversees Constituency XI, designated for *diaspora* voting. The SEC coordinates efforts with the Ministry of Foreign Affairs and European Integration to guide the work of Croatian Embassies and Consulates abroad that conduct technical arrangements and administrative preparations for polling in their respective jurisdictions.

All election commissions other than the SEC, including Voting Committees established to operate the polling stations, are established for the period of a specific election. Significant emphasis is placed on ensuring that presidents of the various commissions come from the legal profession. For these elections, more than 74,500 people were appointed to work on Election Commissions and Voting Committees throughout Croatia and abroad.

¹⁷ LERCP, Article 48.3.

¹⁸ Part IV, “Actions of the Committee during the Voting”, Par. 2.3.

¹⁹ LERCP, Article 63.3.

²⁰ LERCP, Articles 50, 55.

In spite of the high level of competence shown by the electoral commissions, two issues in particular are of concern. The first concerns the short timeframe for the preparation of the elections, and the second relates to the participation of extended members in the work of the election commissions.

A. THE SHORT TIME FRAME FOR ELECTION PREPARATIONS

The SEC and the lower-level election commissions operated in a short electoral timeframe. President Mesić called elections on 15 October 2007, thus allowing only 41 days between the announcement and the elections. Given the constraints imposed by this timetable, the SEC nonetheless performed its duties in a practical and efficient manner, although many of the logistical aspects of the technical preparations were affected by short deadlines.

Voters, for example, were required to apply for a change in polling station through pre-registration or temporary registration (should they so require it) by 10 November. This deadline pre-dated the deadline for the establishment of polling stations, and meant that voters could not be told where they would be voting on election day.

The printing of ballots also had to be accomplished before the official number of registered voters was finalized. As a consequence, the ballots had to be ordered by CECs on the basis of estimates rather than the number actually required. Voter List Commissions appointed to review and verify the voter lists for their municipalities and cities had to complete their work in a very short time period, which was inadequate for an in-depth review.

B. PARTICIPATION BY EXTENDED MEMBERS

The legal framework provides an important level of transparency regarding the work of the election commissions. Meetings are generally open to accredited observers. The LERCP also affords opportunities for the majority parliamentary parties, and by agreement among them, opposition parliamentary parties, to have their representatives in the extended membership of all Constituency, Municipality and City Election Commissions, as well as in the Voting Committees who serve at polling stations.²¹

The enhanced transparency afforded by these provisions, however, is sometimes diluted by two factors: the short electoral timeframe and a lack of clarity in the legal provisions on how exactly the extended members are to be appointed.

As was the case in prior elections observed by OSCE/ODIHR, the short election timeframe frequently impairs the ability of extended members to make effective contributions to the work of the various Commissions and Voting Committees. For operational and logistical reasons, the core (“permanent”) members of CECs, MECs and CiECs conduct many of their preparation tasks before the extended members have been formally appointed. It was observed that this can have the effect of reducing the role of the extended members, in effect, to that of observers. For the Voting Committees, the legal deadline for the submission of lists of proposed party representatives is 8 days prior to the election, and the actual appointment of these members must be accomplished no later than 5 days prior to the election. Rarely were they afforded the opportunity to attend training sessions, thus impacting on their understanding of the polling and counting procedures.

²¹ LERCP, Articles 52 and 55.

In addition, the appointment process for the extended members of the Commissions also delays their ability to make meaningful contributions. The law provides that if agreement cannot be achieved, extended members are to be chosen by lot.²² Late agreements often meant that extended members joined the work of the Commissions only shortly before the elections and after much of the preparatory work of the Commissions was concluded. In other cases, it was observed that certain parties did not take advantage of opportunities to submit nominees to serve on Election Commissions or Voting Committees.

Likewise, the manner in which individuals were selected from the proposed lists of extended members for Voting Committees was not formalized. MECs and CiECs often devised practical methods for achieving a balance when too few or too many names were provided, or when names were only submitted by one or two parties. These practical solutions included deciding on representation based on the parties' proportional strength in the Parliament.

V. PARTY AND CANDIDATE REGISTRATION

Registration of candidate lists starts on the day the Presidential call for the election is announced and ends fourteen days prior to election day.²³ Parties and coalitions of parties must submit separate lists for each constituency in which they want to run and must include a full slate of 14 candidates on each list.²⁴ A candidate may appear on only one list.²⁵ There is no requirement that a candidate has residency in, or is registered to vote for, the constituency in which his or her name is included in a candidate list.

“Groups of voters” may also submit a candidate list for a constituency if the signatures of at least 500 voters accompany their submissions.²⁶ As such the Croatian system does not have independent candidates *per se*, but groups of independent candidates, as each candidate list must include at least 14 candidates.

National minority candidates appearing on the relevant Constituency XII ballot may also be submitted by political parties, registered national minority NGOs, or groups of voters. In the case of a national minority candidate proposed by a group of voters, the candidature needs to be accompanied by the signatures of only 100 voters.²⁷ The SEC's approval of submissions by groups of voters and minority NGOs is based on a *prima facie* review. Verification of signatures is undertaken only in the event that there is a formal complaint or legal challenge.

Fifty-four separate political parties participated in these elections, some of which ran in coalitions in certain constituencies while running separately in others. Forty-eight separate coalitions were formed.²⁸ In all, 251 separate candidate lists were registered for Constituencies I-XI, including 15 independent candidates' lists. Only two lists were rejected:

²² LERCP, Article 52.

²³ LERCP, Article 21.

²⁴ LERCP, Article 21.

²⁵ LERCP, Article 21.

²⁶ LERCP, Article 20. The approved voters register for the elections only appears weeks after the deadline for the submission of candidate lists however.

²⁷ LERCP, Article 17. Note that the voters supporting the candidature do not have to be national minority voters themselves.

²⁸ Where the same two parties were in a coalition in more than one constituency, for example in two constituencies, this is counted twice.

one could not be found in the Registry of Political Parties, and one had not submitted a full list of 14 candidates. Altogether 3,586 candidates contested the elections.

The ballots for Constituencies I-XI contain the names of the party, coalition or groups of voters submitting the lists, in alphabetical order.²⁹ Since national minority candidates are elected by a first-past-the-post system, however, candidates are listed individually. A separate ballot listing individual candidates was created for each of the six designated minority groupings. Twenty candidates appeared on the Serb national minority ballot; 5 on the Hungarian ballot; 3 on the Italian ballot; 9 on the Czech and Slovak ballot; 22 on the Austrian, Bulgarian, German, Polish, Roma, Romanian, Ruthenian, Russian, Turkish, Ukrainian, Vallachian and Jewish ballot; and 13 on the Albanian, Bosnian, Montenegrin, Macedonian and Slovenian ballot.

VI. VOTER REGISTRATION

Voter registration is conducted in line with the 2007 Law on Voters Lists. Croatia maintains a passive system of voter registration, which is carried out as a continuous process. While the SEC has overall responsibility for the conduct of elections, it is not responsible for the compilation of voter lists. Lists of the voters who permanently reside in Croatia are compiled and printed by polling station by the Central State Administration Office (CSAO), based on voters' registered permanent residences. These data are maintained by the Ministry of Interior and the 474 municipal and city administrations. The CSAO branch in the City of Zagreb has responsibility for the compilation and maintenance of the voter lists for all voters residing abroad, based on their foreign addresses, as evidenced by emigration and travel documentation obtained from the records of the Ministry of Foreign Affairs and European Integration (MFAEI).

The right to elect representatives to the Croatian Parliament is guaranteed to all Croatian citizens that have attained the age of 18.³⁰ The ballot that voters receive is determined by the location of their permanent residence or their status as a national minority voter.³¹ Voters with a permanent residence in Croatia receive the ballot for the constituency in which their permanent residence is located.³² Voters with a permanent residence outside Croatia receive the ballot for the *diaspora* constituency, Constituency XI. National minority voters can choose to receive either their relevant national minority ballot, or the "regular" ballot of their geographical constituency (determined by their permanent residence).

On election day, voters are entitled to receive the ballot for which they are eligible, regardless of whether they are temporarily away from their residences at that time, are imprisoned, or are serving in the military or maritime services. In spite of these complexities, preparations to ensure voters receive their proper ballot were well planned and efficiently implemented.

According to figures released by the SEC on 23 November, 4,478,386 citizens were registered to vote for the 2007 elections:

²⁹ LERCP, Article 22.

³⁰ LERCP, Article 4.

³¹ The Law on Voters Lists states that voters can enter an "ethnic affiliation" by making a "statement before the competent body."

³² Law on Voters Lists, Article 4.

- 3,702,460 voters were registered to vote for Constituencies I-X;
- 405,092 voters were registered to vote for the *diaspora* constituency, and;
- 370,834 voters were registered to vote for Constituency XII (designated for national minorities).

The figures released by the SEC on 23 November 2007 for both Constituencies I-X and for Constituency XII vary significantly from the number of registered voters reported in the final and certified results released by the SEC on 22 December 2007 (3,824,731 for Constituencies I-X and 248,899 for Constituency XII). The likely explanation for these discrepancies is that the national minority voters that chose to vote a general ballot rather than their national minority ballot were added to the number of registered voters for Constituencies I-X in the final results figures released by the SEC. This would suggest that some 121,935 national minority voters, or 73.1 per cent of those that voted, chose the general constituency ballot over the national minority ballot.

In spite of the fact that customised software and a unified computerised system was installed nationwide for the first time, in practice, voter registration remained decentralised, with data maintained by the CSAO branches at the municipal or city level.

In previous elections, concerns were expressed that there were insufficient safeguards to control the addition of voters to voter lists at the polling stations on election day, thus facilitating the possibility of multiple voting. The 2007 Law on Voters Lists introduced new safeguards to address these issues. Specific procedures involving “pre-registration” for *diaspora* voters and “temporary registration” for in-country voters were put into place to control the transfer of a person from one polling station voter list to another, to reduce the potential for double voting. Under the new law, a 14 day deadline was established for such transfers prior to election day.

Under the new rules, a *diaspora* voter who had moved from his/her previous permanent residence, or would be travelling away from there on election day, had to “pre-register” to have his or her name transferred to the voter list for a polling station in the city or country in which (s)he would be located on election day in order to vote at the new location. Pre-registration requests were facilitated by Embassies and Consulates who forwarded the information to the CSAO in Zagreb where the changes were made to the relevant voter lists internally as a single-step process.

Likewise, voters with permanent residence in Croatia had to apply for “temporary registration” through the relevant municipal and city branches of the CSAO. Because the voter register is decentralised and maintained by branches at the municipal or city level, a voter’s transfer to a different polling station in-country is a two-step process. Voters are required to firstly visit or contact CSAO offices in the place where they permanently reside to temporarily “de-register,” and then secondly “temporarily register” in the place where they would be on election day. It was sometimes difficult for voters to satisfy both steps in the process by the statutory deadline.

Certificates to add voters to a voters list on election day, a controversial feature of previous elections, were only issued where it was confirmed that an eligible voter has been omitted from the voter list for his or her regular polling station in error.

Voter List Commissions appointed by the Assembly of City of Zagreb and municipal councils had the authority to review all requests for amendments presented by voters which were

denied by the relevant CSAO, and verify the regularity of the voters lists before they were closed. Verification of voter lists was completed without being contested in any city or municipality.

Voters had extensive opportunity to access their data in the voter list prior to the election by internet or phone. In addition, personalised notifications were generally sent to voters' addresses. Political parties and groups of voters whose lists of candidates were certified could obtain copies of the voter lists of a city or municipality.

Separate voter lists were delivered to polling stations for voters voting the constituency ballot and voters voting for each of the six national minority ballots. Polling stations were also provided with lists of temporarily "de-registered" voters (who would vote away from the polling station on election day.) In addition, a separate voter list was provided for each of the other geographical constituencies within Croatia, containing the names of visiting voters expected to vote at the polling station.

The fact that polling stations were provided with a full set of voter lists significantly helped the voting committee to reconcile the numbers of voters who voted for the specific ballot types. On the other hand, separate voter lists for national minority voters often had only a few voters listed on them. The low number of voters appearing in these lists combined with the tendency of many national minority voters to vote a general ballot, often resulted in a situation where only one or two ballots were cast. This raises potential concerns with regards to secrecy of votes cast during the counting of votes cast in the national minority races.

In spite of the complexities involved, logistics and administrative arrangements to accommodate all voters, regardless of their circumstances, were well planned and generally well implemented in compliance with the law.

As in 2003, the OSCE/ODIHR LEOM noted the seeming disproportion between the number of registered voters and the population figures from the 2001 census data. The OSCE/ODIHR LEOM acknowledges the separate methodologies employed in compiling census data and voter registration data. Nonetheless, CSAO and the Bureau of Statistics could have made greater efforts to elaborate on the apparent disproportion to alleviate public concern.

VII. OUT OF COUNTRY VOTING

According to the Constitution of the Republic of Croatia, Croatian citizens who permanently reside abroad have the right to vote in Parliamentary elections. Constituency XI is established for *diaspora* citizens abroad who have no permanent residence in Croatia.

Of the 405,092 registered voters in this constituency (approximately 10 per cent of the total electorate), 284,068 were registered in Bosnia and Herzegovina (BiH). The list also included 38,234 voters in Germany and 23,717 in Serbia, with much lower figures registered in the 50 other countries where voting took place. Whereas in most countries polling stations were established only in the premises of diplomatic missions and consular offices, in 10 countries polling stations were also established in other locations within the country.

The *diaspora* voter lists are compiled *ex officio* by the CSAO branch in the City of Zagreb from the data acquired at the time of the person's last contact with Croatian officials. However, the CSAO is not in a position to effectively track the movements of this category of

voters, as their movements are not always reported to Croatian authorities abroad. Information on citizens that die abroad can also be difficult to obtain, particularly for those Croatian citizens that also have citizenship of the state in which they die.

Maintenance of accurate voter lists for *diaspora* voters, subsequently, poses significant challenges for the administrators. *Diaspora* voters that moved or had temporarily taken up residence in another city or country were required to pre-register in order to be placed on the voter list at their new location. Without “pre-registration” they continue to be listed at the place of their last registered residence. Likewise, Croatian citizens with a permanent residence in Croatia but living abroad, including refugees, who failed to pre-register to ensure their names were listed in the voter lists for their new countries of residence, remained on the voters lists for their permanent residence in Croatia.

The Ministry of Foreign Affairs conducted an information campaign to advise citizens abroad on the importance of pre-registration. For instance, in BiH a large number of advertisements were placed in the national daily newspapers. Nonetheless, the number of pre-registration applications remained low (less than 34,000).

The OSCE/ODIHR LEOM observed the work of the CSAO Branch in the City of Zagreb that is responsible for issuing voting certificates, and established that the number of issued certificates was very low in comparison with the total turnout at the polling stations abroad. The communication between the CSAO and the diplomatic missions involved a significant delay, causing some voters to wait for hours at the polling station before the certificate was received.

Given the size of the electorate, the voting in BiH drew significant attention in Croatia. The increase in the number of polling stations established for registered voters in BiH from 30 in 2003 to 124 for these elections had an impact on voter turnout there, which increased to almost 29 per cent compared with the 19.8 per cent of voters who participated in the 2003 parliamentary elections. While this step was taken to alleviate long queues and further facilitate access for Bosnian Croats eligible to vote, this issue was politicized in the context of the election campaign. Overall, however, the turnout in the *diaspora* increased only marginally, from 17.8 per cent in 2003 to 22.3 per cent in 2007.

VIII. THE ELECTION CAMPAIGN

The campaign began on 3 November and was largely characterized by the contest between the two main national parties, the ruling Croatian Democratic Union (HDZ) and the opposition Social Democratic Party (SDP), led respectively by the outgoing Prime Minister Dr. Ivo Sanader, and Zoran Milanović, a former diplomat. Neither HDZ nor SDP had entered into a formal coalition agreement with any other party.

Some individual and party allegiances shifted during the term of the previous parliament, so that at the dissolution of the parliament, HDZ was supported by the Croatian Social Liberal Party (HSLs), the Croatian Pensioners’ Party (HSU) and most of the eight national minority representatives.

The outgoing opposition, meanwhile, consisted primarily of SDP, the Croatian Peasants’ Party (HSS), the Croatian People’s Party (HNS), the Croatian Party of Rights (HSP) and the Istrian Democratic Assembly (IDS).

As the campaign unfolded it became increasingly competitive and polarized between the two main parties. HDZ emphasized the Prime Minister's record and standing as an experienced leader, internationally respected, and employed a strategy also used in their 2003 campaign, which was to advertise messages of support for HDZ (and for Dr. Sanader in particular) from other European centre right leaders and by other colleagues in the European Peoples' Party. HDZ also warned voters that SDP allegedly planned to increase taxes, legalise soft drugs, and abolish religious instruction in schools.

SDP countered with allegations of corruption against Prime Minister Sanader, although these were put on hold when the Prime Minister withdrew from the campaign for five days following the death of his father. Having decided not to contest the *diaspora* constituency, the SDP proclaimed that the election should be decided in Croatia, and that voters who were both Croatian citizens and members of a constituent nation in BiH, in particular, should not have a decisive influence on the composition of the government of Croatia. HDZ countered that those who had fought for Croatian independence from 1991-95 could not be denied the right to vote now, just because they happened to live abroad.

Foreign policy played little part in the campaign. Both HDZ and SDP, and other mainstream parties, agreed on the priority to be attached to Croatia's early entry into the EU, and on the steps necessary to achieve that objective, such as effectively combating corruption, and improving the performance of the judiciary and public administration. They also agreed that Croatia should support the EU majority positions on regional issues. The SDP and HSS argued in favour of a referendum on NATO accession.

The HSS campaigned strongly in favour of substantially increased resources to farming communities, and also insisted that they would only join a coalition that agreed to prevent Italian and Slovenian fleets fishing within its "ecological fishing zone (ZERP)."³³

The campaign environment was regarded by the main parties as fair, with the notable exception of the HSP. The Ethics Commission (see Media section), in a decision upheld by the constitutional court, agreed with the refusal of some TV channels not to broadcast an HSP ad claiming that the Prime Minister had "sold" indicted war criminal general Ante Gotovina to the International Criminal Tribunal for the former Yugoslavia (ICTY) to secure Croatia's acceptance as an EU candidate, notwithstanding his public expression of solidarity with Croatia's "heroic" generals while opposition leader in 2001.

Serb minority leader Milorad Pupovac assured supporters that the Independent Serb Democratic Party (SDSS) would press for at least one ministerial post in the new Government, suggesting that SDSS would support whichever of the two main parties succeeded in forming a government. SDSS did not meet their campaign objective of winning a seat in one of the 10 geographical constituencies, but increased numbers of Serbs – and members of other minorities – did heed their leaders' call to vote on the regular lists.

At the start of the campaign, President Mesić hinted at a possible preference for a grand (HDZ/SDP) coalition to avoid the government depending for its majority on the *diaspora* vote. HNS leader Vesna Pusić argued that attempts to form a government dependent on *diaspora* votes could precipitate a constitutional crisis.

³³ Although there is cross party support for ZERP in Croatia, the European Commission has drawn attention to a Croatian commitment not to exclude the fishing fleets of EU member states from its territorial waters.

There was considerable public interest in expenditure on the campaign. All parties formally fulfilled their obligation to disclose expected campaign expenditure in accordance with the LERCP. The SDP, however, accused HDZ of numerous violations of the legislation, including: understating substantially its actual expenditure, misuse of state funds and facilities, and receiving donations from state owned companies – business contributions are prohibited by law if the state's holding exceeds 50 per cent.

Calculations based on the cost of TV advertising suggest that the larger parties (not just HDZ) understated their actual expenditure. In HDZ's case it is not clear if the figures disclosed include expenditure in BiH, which, based on the extensive campaigning there, was substantial.

Overall, the cost of commercial TV advertising increased sharply during the campaign, much to the chagrin of smaller parties modestly endowed with financial resources. Review of the annual reports of election participants under the Law on the Financing of Political Parties will only be carried out in the first half of 2008, and is unlikely to include detailed auditing or investigation. Even if violations were revealed, no sanctions or penalties could be applied, except in cases of incorrect reporting.

Opinion polls appeared regularly throughout the campaign, with some media publications using preferences expressed by voters in polls to construct theoretical distributions of seats in the new Parliament using the D'Hondt method. Commercial agencies such as PULS also conducted exit polling. PULS' close of poll predictions of an SDP victory, released at exactly 19:00 on election day and promptly picked up by the international media, attracted sharp criticism from HDZ.

IX. NATIONAL MINORITIES

The Croatian Constitutional Law on the Rights of National Minorities (CLNM) officially recognises 22 national minorities in Croatia. The CLNM provides a comprehensive framework for further legislation and regulatory steps needed in the field of minority protection and integration, including areas related to public participation of national minorities through election provisions.

In accordance with the CLNM, the LERCP (Article 16) stipulates that the eight seats in the Croatian Parliament reserved for representatives of national minorities should go to the Serb national minority (three seats); the Hungarian national minority (one seat); the Italian national minority (one seat); the Czech and Slovak national minorities (one seat); the Austrian, Bulgarian, German, Jewish, Polish, Roma, Romanian, Russian, Ruthenian, Turkish, Ukrainian and Vlach national minorities (one seat); and the Albanian, Bosniak, Macedonian, Montenegrin, and Slovenian national minorities (one seat). The national minorities are elected in a single constituency but are elected in 6 separate elections. This year's election provided minority voters a wide array of choices, with 72 candidates contesting the 6 separate elections.

Minority voters are permitted to choose a general or special ballot, which permits them to vote for the relevant minority representative or to vote instead in his/her regular constituency.

Some national minority interlocutors suggested reviewing the issue of providing “dual” voting rights to national minority voters.³⁴

These elections served to underscore, as in previous elections, that one of the consequences of reserving eight seats in the Parliament for national minorities is the resultant small number of votes needed to elect a national minority representative. The elected representative for the Austrian, Bulgarian, German, Jewish, Polish, Roma, Romanian, Russian, Ruthenian, Turkish, Ukrainian and Vlach national minorities, for example, was elected with 351 votes, in a race in which two candidates received 4 votes each.³⁵ In contrast, HNS received 12,533 votes in Constituency X but won no mandates under the D’Hondt system.

Although a Roma candidate was elected to the Croatian Parliament for the first time, concern was once again raised by the Roma community about the numbers of undocumented Roma living in Croatia, and the impact that this has on their participation in the elections due to the inability to register to vote without proper documentation.

All national minority candidates were provided with equal media access on national television and radio according to the media regulations. Given the small numbers of registered voters in some of the national minority races (e.g. 6,266 voters in the Czech and Slovak representative race), and thus the wide geographical spread of small numbers of national minority voters, national media-based campaigning is more attractive than person-to-person campaigning for many national minority candidates. And as with many of the candidates’ lists submitted by the smaller non-parliamentary parties, financial constraints prevented many national minority candidates from broader campaigning. One of the consequences of this is that specific national minority-related issues were discussed minimally in the campaign.

X. WOMEN’S PARTICIPATION IN THE ELECTIONS

Of the 3,586 candidates registered for the elections, 1,071 were women. Although this represents a 15 per cent decrease from the 1,262 women that contested the 2003 elections, the total number of candidates (men and women) contesting the elections decreased from 5,026 in 2003. The number of women candidates as a proportion of the total number of candidates, therefore, increased from 25.1 per cent in 2003 to 29.9 per cent in 2007.

Although these statistics at first glance suggest that women are playing a more influential role in Croatian elections, they do not give any clue as to the electability of the women candidates as determined both by the popularity of their parties or their position on their respective party lists. A more accurate figure as to the influence of women in Croatian politics is gleaned from the number of women elected to the Parliament in 2007, which has decreased slightly from 33 in the 2003-2007 Parliament of 152 MPs (21.7 per cent of the total) to 32 in the 153-member Parliament elected in 2007 (20.9 per cent of the total).

The outgoing Deputy Prime Minister and Foreign Minister are women, and the leaders of two of the main parties (Vesna Pusić of HNS and Djurdja Adlesić of HSLS) are women, the latter

³⁴ An agreement signed between the HDZ and five of the elected national minority representatives (including SDSS) on 3 January 2008, guarantees a review of the method of electing national minority representatives in a HDZ-led Government in 2008-2009.

³⁵ The Czech and Slovak representative was elected with 684 votes, a 3 vote margin over her nearest challenger, while the representative of the Albanian, Bosniak, Montenegrin, Macedonian and Slovenian national minorities was elected with 1,348 votes.

beginning the campaign as one of Croatia's most popular politicians (according to opinion polls). SDP operates a quota system, to improve participation not only by women but also by young people. Forty-three per cent of their MPs were women in the last parliament.

XI. MEDIA

A. LEGAL FRAMEWORK

The legal framework for media coverage of the election campaign includes the relevant provisions of the LERCP (Articles 26-28), as well as the "Rules of procedure for electronic media with national concession in the Republic of Croatia during the election campaign" (the Rules) adopted by the Parliament on 12 October 2007.

The SEC is legally entitled to supervise the "regularity of the election advertising."³⁶ Throughout the election period the SEC received and acted upon a number of media-related complaints, providing interpretations on reported violations. However, no provisions for sanctions or enforcement empowered the SEC to take further actions on media complaints, reducing its ability to significantly react in an effective manner.

The rules provided all electoral contestants with an equal right to 10 minutes free-of-charge presentations on public Croatian Radio and Television (HRT) and five minutes on the national private broadcasters (RTL and TV Nova).³⁷ Under the regulations, HRT was also required to equally cover a pre-established number of campaign activities for each registered list in a special programme outside the regular news programmes.³⁸ The national private broadcasters were relieved of this obligation if they did not include in their programme schedule reporting from electoral gatherings (which both broadcasters availed of). All national broadcasters (HRT, RTL and TV Nova) were required to air debates with candidate lists representatives at the constituency level.³⁹

Paid advertisements in the electronic media with national concession was limited to 10 minutes for each party, coalition, groups of independent candidates or national minority candidate throughout the election period.⁴⁰ Broadcasters were required to provide equal conditions for paid campaign messages, and political marketing slots were to be clearly separated from the rest of the programming.

The rules, an amended version of the regulations adopted for the previous parliamentary elections in 2003, proved to be as problematic as during the 2003 campaign. Four years ago TV Nova, at that time the only privately owned nation-wide broadcaster, refused to fulfil the

³⁶ LERCP, Article 48.8.

³⁷ HRT showed the 10-minute presentations in the afternoon schedule of HRT's second TV channel, HTV2. RTL and TV Nova showed the 5 minutes free-of-charge presentations in their morning schedule.

³⁸ These programs were aired on HTV1 immediately before and after the main evening news *Dnevnik*. In accordance with the strict equality requirement set out by the rules, the special campaign programs on HTV1 offered all contestants the same broadcast lengths.

³⁹ RTL and TV Nova were relieved of this obligation if they claimed not to have the technical facilities to implement them. HTV2 broadcasted the constituency debates in the afternoon schedule.

⁴⁰ Rules for Electronic Media, Art. 3, Part IV: "Electronic media broadcasters will provide a possibility for each political party nominating its own slate, for party coalitions, independent candidates and candidates for representatives who are members of national minorities to broadcast sponsored broadcasts in the duration of up to 10 minutes and with a financial compensation paid in advance according to the marketing services price list and general conditions of the electronic media broadcaster."

regulations and filed a complaint with the Constitutional Court claiming that the rules on media coverage were in violation of freedom of expression and in contradiction with the free market principle as stated in the Constitution. In July 2007, the Constitutional Court rejected the case,⁴¹ but emphasised, in a separate conclusion, that the rules for electronic media were far more detailed than needed. For these elections, the Croatian Parliament decided on proposed amendments aimed at softening some of the rigid restrictions for the national broadcasters contained in the 2003 regulations.

Most media interlocutors, while welcoming the amendments introduced in the Parliament, still considered the regulations overly complex and prescriptive. A number of areas in the current regulations were mentioned, such as the absolute equality required for the allocation of free airtime to all elections contestants, which resulted in lengthy, and according to some, mundane broadcasts. The private electronic media with national concession objected to the obligation for commercial broadcasters to allot free-of-charge slots.

Objections were also voiced to the changes in the provisions requiring the national broadcaster (HRT) to report on campaign activities outside the regular news programme, the implementation of which reduced the capacity of the news to effectively inform during the election period. Also observed as a problem was the fact that with the news programmes *de facto* empty of campaign related coverage, the activities of HDZ party officials, by virtue of their Government position, enjoyed the privilege to be almost exclusively represented outside the presentations envisaged by the rules.

Many interlocutors suggested replacing the equality requirement with a proportional formula that would permit the allocation of airtime according to the degree of popular support parties enjoy. Nevertheless the public and private national televisions complied with the legal provisions for the allocation of free airtime.

In line with its internal Programme Rules for Covering the Elections of Representatives to the Croatian Parliament, the public broadcaster (HRT) management appointed a three-member Electoral Coverage Commission, with one of the members being the president of the HRT Programme Council. The Commission was tasked to supervise the implementation of the rules in the HRT programs, considering cases submitted to its attention by the marketing department and acting upon complaints received.

B. MEDIA MONITORING

The OSCE/ODIHR LEOM conducted analysis of selected media outlets from the official start of the campaign on 3 November, to assess the coverage of the campaign and relevant political subjects. The monitoring activities focused on the four national TV stations as well as on five daily newspapers.⁴²

Monitoring results indicate that overall the campaign in the media was pluralistic and provided opportunities for all registered lists to convey their messages to the voters. In its evening newscasts HTV1 devoted 27 per cent of its political coverage to HDZ, including attention dedicated to members of the government in their capacity of ministers. The SDP received 13 per cent of the total time dedicated to political subjects, while HNS followed with 4 per cent and HSP with 3 per cent.

⁴¹ Constitutional Court decision N. U-II / 3432 / 2003.

⁴² The public broadcaster HRT's two channels (HTV1 and HTV2), and the private TV Nova and RTL, as well as the daily newspapers *Jutarnji List*, *Vecernji List*, *24 Sata*, *Slobodna Dalmacija* and *Vjesnik*.

The privately-owned Nova TV evening newscasts provided HDZ/government representatives with 29 per cent of its political news coverage, while SDP got 17 per cent and 8 per cent was devoted to HNS. The RTL evening news focused mainly on HDZ/government (29 per cent), SDP (24 per cent) and HNS (11 per cent). President Mesić received 26 per cent on Nova TV and 8 per cent on RTL. It should be noted that, with the regular news programs deprived of campaign activities coverage, the newscasts focused regularly on the administrative aspects of the elections and the involvement of the Church and of the President in the campaign.

No televised debate involving the two main party leaders, Ivo Sanader and Zoran Milanović, took place, as Dr. Sanader insisted on facing both SDP party leader Milanović and SDP's candidate for Prime Minister, Ljubo Jurčić. Milanović refused, claiming that the Prime Minister was trying to avoid a direct confrontation.

The print media covered all major campaign events, although tended to focus the bulk of their attention to the main contestants, mainly SDP and HDZ, followed by HNS, HSP and the HSS-HSLS coalition. Articles included parallel interviews with leaders, candidates' profiles, and experts' comments. Editorials containing a range of political opinions were published.

Parties also placed extensive political spots in the print and electronic media. Based on the number of spots recorded by the OSCE/ODIHR LEOM in the monitored timeframe, there is substance to the claims that the 10 minute limits allocated to each party were exceeded by some parties. Paid political advertising in the monitored televisions and newspapers was used predominately by HDZ. Prominent HDZ ads featured popular sportspersons, including the *diaspora*-based captain of the national football team. These advertisements, the latter in particular, attracted a lot of media discussion and provoked an SDP counter-ad. Criticism of campaign adverts was generally widespread during this campaign. A number of spots were contested by political opponents for alleged violations of the Code of Ethics.

Voters' education TV spots prepared by the main domestic observer group GONG were aired mainly by HTV. GONG education material was also included in the main newspapers.

Information on campaign activities was widely available in the main internet news portals and in the e-versions of newspapers. Electoral contestants used the web as a campaign tool, including postings on blogs. *YouTube* hosted a number of campaign videos, some of them not available in the mainstream media.

XII. COMPLAINTS AND APPEALS

A. ADMINISTRATIVE DECISION AND JUDICIAL APPEAL

In general, the channels for electoral complaints and appeals are reasonably clear. Complaints regarding election administration may be submitted only to the SEC.⁴³ SEC decisions on complaints can be appealed only to the Constitutional Court.⁴⁴ Under its statute, the Constitutional Court acts on cases concerning the constitutionality and legality of elections, referred to as "supervision", and also those involving electoral "disputes".⁴⁵

⁴³ LERCP, Article 85.

⁴⁴ LERCP, Article 87; Constitutional Law on the Constitutional Court, Part IX (Articles 87-96).

⁴⁵ Constitutional Court Law, Article 92.

Prior to the elections, the Court decided on six appeals (five “disputes” and one case for “supervision”), rejecting all of them. The “disputes” were:

- two appeals regarding the non-registration of candidate lists by the SEC;
- an appeal requesting a ruling on the constitutionality of recently-enacted electoral legislation (see above);
- an appeal concerning the amount of reimbursement for campaign expenses for a member of Parliament who left his party to run on an independent list; and
- an appeal submitted by opposition parties against the location of polling stations in one area (see above).
- The sixth case, brought for “supervision”, concerned the Ethics Commission’s refusal to find that a political party should have had the opportunity to have one of its advertisements broadcast.

During the elections, a distinction emerged among campaign issues which affected legal relations, electoral rights, or merely political interests. In terms of legal relations, the SEC decided in two cases that TV stations which failed to honor their contractual obligations to broadcast paid commercials by political parties within the agreed time periods committed violations.⁴⁶ In numerous other cases not involving legal relations or the rights of electoral participants, the Ethics Commission (see below) published advisory decisions. But a jurisdictional issue arose (see below) when a case was brought based on a decision of the Ethics Commission that affected legal rights, or at least the ability to exercise them.

The division of the Court’s jurisdiction of cases related to an election – into “supervision”, “disputes” and other matters (including the constitutionality of legislation) reflects a legal formalism which makes the outcome of appeals unpredictable, and therefore an unreliable means of resolution. Several significant cases were decided on purely jurisdictional grounds, once apparently with a divided court. Aside from instances of attorney error, appeals involving the rights of electoral participants should not be dismissed on the basis of so-called technicalities.

This division is not required by the Constitution,⁴⁷ but was established through the Constitutional Law and is reflected in the Court’s Rules of Procedure. It would be preferable if these technicalities could be eliminated; or if not, the Court could consider ways, such as consultations with the Bar (attorney association), to help practitioners file their clients’ cases properly.

B. ETHICS COMMISSION

An Ethics Commission is established under LERCP (Articles 90-93) during the electoral period as a “supra-partisan” body to address the “election advertising” and related behaviour of election participants under an Election Code of Ethics. The Commission follows very simple procedures, which do not include announcing the cases it is considering or notifying those who might be affected.

In 2003 the OSCE/ODIHR mission noted the marginal role played by the Ethics Commission, with only a few cases brought to its attention. During these elections, the Commission

⁴⁶ SEC Letter concerning Action of Social Democrats complaint against NOVA TV, 21 November 2007;
SEC Letter concerning Croatian Youth Party complaint against various TV stations, 22 November 2007

⁴⁷ Constitution, Article 128

received a significant number of complaints and was far more visible. Most submissions were responded to through advisory decisions released in a brief announcement, following its seven sessions.

There was considerable media interest and public discussion on the case of the HSP TV spot known as “Riva,” which was declared unacceptable for public broadcasting by the Commission. The Commission also condemned the broadcast of derogatory claims by HSP about HDZ and SDP.

Decisions of the Commission are not legally – but only morally – enforceable; but they nevertheless affect the rights and interests of election participants and others. A jurisdictional issue arose in a case where a party, whose proposed advertisement was not accepted for broadcast by the State broadcaster, and a private TV channel, brought the matter to the Ethics Commission, which refused to find the media action unethical.⁴⁸

Upon appeal to the Constitutional Court,⁴⁹ the judges were reportedly split on the question of whether the Court should merely review the action of the Ethics Commission, or exercise full jurisdiction.⁵⁰ By limiting its consideration to a review of the action of the Ethics Commission, the Court’s appears to assume that the Commission has more than advisory power.

XIII. DOMESTIC AND INTERNATIONAL OBSERVERS

The SEC’s accreditation of over 5,000 foreign and domestic observers for the 2007 Parliamentary elections is reflective of the extensive level of transparency that surrounds the work of electoral bodies and the conduct of elections in Croatia. The OSCE/ODIHR deployed 21 electoral experts, including 10 long term observers, throughout the country, representing 13 OSCE participating States. The mission did not carry out a comprehensive observation on election day, but the observers visited a number of polling stations to follow procedures.

A group of twelve observers from the National Democratic Institute for International Affairs (USA) observed the elections, as well as other visiting groups welcomed as guests by the SEC, including members of the Central Election Commission of the former Yugoslav Republic of Macedonia.

A number of domestic non-governmental organizations (NGOs) also applied for accreditation. GONG, the main Croatian NGO focusing on election issues, received accreditation from the SEC for 2,523 observers. However, under its strict internal guidelines, that include participation in formal training as a pre-condition, GONG ultimately deployed some 1,781 observers, including 117 stationary observers and 17 two-member mobile teams in Bosnia and Herzegovina. In advance of the election, GONG also undertook a widespread civic education campaign, and provided input into the development of the instructional manuals for Voting Committees published by the SEC in cooperation with the United Nations Development Program. As a long-time advocate for positive electoral development and observation, GONG’s presence has become institutionalized in the pre-election and election

⁴⁸ Ethics Commission Announcement concerning HSP complaint, 10 November 2007.

⁴⁹ Decision Nr. U-VII/4189/2007 (20 November 2007).

⁵⁰ *Vecernji List*, 22 November 2007.

day environments, and is widely accepted among election bodies, political parties and the voting public, as enhancing public confidence in the election process.

However, despite the fact that the 1990 OSCE Copenhagen Document states that “the presence of observers, both foreign and domestic, can enhance the electoral process...”, under the law, entitlement to observe elections is granted only to non-governmental organizations.

Elekta, a newly registered NGO, received accreditation for 2009 observers of which 279 were slated for deployment in Bosnia and Herzegovina. The accreditation of Elekta’s observers came under criticism in a complaint filed with the State Election Commission by HDZ. In its complaint, the HDZ questioned Elekta’s intentions since it had been publicly acknowledged as an extension of the youth wing of the SDP. Elekta’s registration as an NGO was viewed as a practical strategy to side-step the legal obstacle which only entitles domestic non-partisan organizations to observe elections. Ultimately, the SEC rejected the HDZ complaint on the basis that Elekta’s registration and composition had satisfied the legal requirements.

In addition to these large observer organizations, a number of other NGOs were also accredited. Among them were the Hungarian Democratic Union, the Association of Bosnian War Veterans, the Croatian Democratic Sabor of Slavonia and Baranja-Slavonski Brod, the Croatian Democratic Sabor of Slavonia and Baranja-Osijek, and the Roma Union of Croatia.

XIV. ELECTION DAY

Given the overall confidence displayed by the public, political parties and other electoral stakeholders in the election day proceedings, the LEOM did not envisage comprehensive and systematic observation of election day procedures. In addition to a core team of experts based in Zagreb, the mission deployed 10 long-term observers in five regional centers – Rijeka, Zadar, Split, Osijek and Sisak. On election day, the OSCE/ODIHR LEOM members visited 61 polling stations in nine out of ten election constituencies throughout the country. In some cases, the intake of voting materials and the tabulation of results at the local election administration and tax offices were also followed.

Voting took place in a calm atmosphere and no major problems were reported to the OSCE/ODIHR LEOM. Based on the Mission’s limited observations, there was general consensus that Voting Committees performed well and that voting procedures were generally adhered to. Efficient layout of the polling stations to accommodate the orderly flow of voters was often hindered by the size and shape of the rooms selected for voting in many of the polling stations visited. Secrecy of the voting was negatively impacted by these conditions; neither voters nor Voting Committee members seemed attentive to this important aspect of the voting process. Furthermore, LEOM observers also reported that in some polling stations visited there was an inadequate size and shape of voting booths that did not guarantee the full secrecy of vote. Instances of group and family voting were seen by observers in several polling stations visited, and in these instances, although voting committees appeared to be otherwise knowledgeable about the polling procedures, they mostly did not react pro-actively to stop this malpractice.

Observers noted a large number of national minority voters opting to cast a general constituency ballot rather than the national minority one in those polling stations visited. Procedures were adhered to in those instances, such as that the voter’s name being stricken off the minority voters list and added to the general voters list.

A. POLLING, COUNTING AND CONSOLIDATION OF RESULTS

A total of 6,972 polling stations were established for these elections, including 265 polling stations abroad, 56 special polling stations for voters who temporarily registered to vote away from their permanent residences within Croatia, 94 mixed polling stations serving regular voters and voters visiting temporarily from other locations within Croatia, and 7 polling stations designated specifically for voters visiting from abroad on election day.

The OSCE/ODIRH LEOM followed the counting procedures in a limited number of polling stations. The Mission also followed:

- the intake procedures undertaken at some MEC's and CiECs as polling stations delivered their materials after the close of the polls, and;
- the processes for data entry of results for compilation of the local, constituency and national results.

Arrangements for the consolidation of results were organized through the Tax Offices of 124 cities and municipalities. The software designed for the consolidation of results provided a seemingly sound basis for ensuring the accountability and reliability of reported results. A separate protocol was completed for every voter list and ballot type used by each polling station. A system of triple data entry was employed for the entry of the results reported on each protocol. While the entry of votes went smoothly, it was observed that Voting Committees frequently had difficulty completing the administrative portions of the protocol, which delayed the processing of returns. Data entry staff were not prepared adequately to deal with incomplete protocols; at several locations visited, procedures for resolving difficulties with the administrative portions of the protocols were unclear and inconsistent. The process worked more efficiently where MECs and CiECs accomplished the intake and review of materials process as a separate step from the actually data entry process. Based on the observations of the LEOM, completion of the protocols warrants more attention during the training of Voting Committees.

XV. ANNOUNCEMENT OF RESULTS

Final results were published by the State Election Commission on 22 December 2007. In keeping with the constituency system, final results published on the SEC website are provided only at the constituency level and not aggregated at the national level.

On the basis of the official results, the turnout of voters within Croatia was 60.6 per cent (including the national minority voters), while the turnout abroad was 22.3 per cent, giving an overall turnout figure for these elections of 57.2 per cent.

Party	Seats from Constituencies I-X	Seats from the <i>diaspora</i> constituency (XI)	Seats from the national minorities constituency (XII)	Total seats
HDZ	61	5		66
SDP	56			56
HSS/HSLs	8			

HNS	7			
HDSSB	3			
SDSS			3	
IDS	3			
HSP	1			
HSU	1			
Deneš Šoja ⁵¹			1	
Zdenka Čuhnil ⁵²			1	
Nazif Memedi ⁵³			1	
Furio Radin ⁵⁴			1	
Šemso Tanković ⁵⁵			1	
Total	140	5	8	153

XVI. RECOMMENDATIONS

The following recommendations are offered for consideration to the authorities, political parties and civil society of the Republic of Croatia, in further support of their efforts to conduct elections in line with OSCE commitments and other international standards for democratic elections. The OSCE/ODIHR remains ready to further support the authorities in addressing issues outlined in this report.

A. LEGAL FRAMEWORK

- In order to strengthen the legislative framework, the election rules and procedures – which are currently contained in the SEC mandatory instructions and SEC “reminders” (manuals) – should, to the extent possible, be incorporated into the law itself. SEC directives which substantially modify the application of election law should only be issued as “mandatory instructions” issued under the authority of law, and not as informal guidance – such as the “reminders” (manuals) which have been issued until now. It should be understood that manuals are primarily to be used for training and reference; and such materials should not supplement or deviate from legal norms.
- A consolidated version of the LERCP should also be published in advance of major elections.
- The intent of the new Law on the SEC as originally enacted (2006) – to put election administration at the highest level onto a permanent basis with a professional composition – should be carried out, including through establishment of a permanent office and secretariat for the SEC, as well as making senior membership of the SEC a full-time, professional responsibility.

⁵¹ Hungarian minority.

⁵² Czech and Slovak minority.

⁵³ Austrian, Bulgarian, German, Jewish, Polish, Roma, Romanian, Russian, Ruthenian, Turkish, Ukrainian and Vlach national minorities.

⁵⁴ Italian minority.

⁵⁵ Albanian, Bosniak, Macedonian, Montenegrin, and Slovenian national minorities.

- The relevant laws (the LERCP and the Constituencies Law) should be amended to bring the number of registered voters *per* constituency into a more uniform range.
- Consideration should be given to enacting in legislation explicit standards and procedures for the establishment, location and distribution of polling stations.
- Consideration should be given to establishing through legislation appropriate bodies to monitor various aspects of the campaign (media and campaign finance) and to make enforceable decisions. Such bodies should be non-partisan, established on a suitable professional basis, apply definite codes or regulations, and operate under rules of procedure that ensure adequate notification and participation by all persons directly affected.
- The LERCP (Article 73) should be amended so that the presence in the ballot box of a number of ballots greater than the number of voters recorded to have voted does not lead automatically to annulment of the results at the polling station and the conduct of repeat elections, thus potentially delaying the certification of results. Instead, the Law should provide that such a discrepancy should instigate a court enquiry, and the court should decide on any possible follow-up measures.
- Election law, mandatory instructions and other materials (including manuals) should address specifically what role and activities may be carried out by deputy members of commissions, and under what circumstances a deputy may discharge the responsibilities of a full member or exercise functions on behalf of the commission.
- In line with the OSCE's 1990 Copenhagen Document, which states that "the presence of observers, both foreign and domestic, can enhance the electoral process...", the law should be adjusted to permit not only non-governmental organizations to observe elections, but also party representatives.

B. ELECTION ADMINISTRATION

- Unification of a centralized nationwide voter registration database under the control of the CSAO could allow for simplification of the processes related to "temporary registration," by allowing the transactions to occur simultaneously between offices. Such unification would improve the efficiency of the system, permit voters to complete "a temporary registration" transaction in a single step, and further enhance opportunities to ensure against duplicate entries.
- Completion of the protocols warrants more attention during the training of Voting Committees. In particular, additional training should be undertaken regarding preliminary steps that are to be completed prior to the counting of votes, including counting the number of ballot papers found in the ballot box, and the importance of these steps in the completion of the accountability portion of the protocols.
- The process of auditing of the protocols as they are returned to the MEC/CiEC should be accomplished as a separate step prior to the submission of the protocols for results data entry. More definitive procedures to resolve errors or omissions should be developed to ease the burden on data entry clerks who are not suitably positioned to perform such functions.

- The manner in which individuals are selected from the proposed lists of extended members for Voting Committees should be formalized in order to establish clearer practices in this area.
- As final results are published on the State Election Commission website only at the constituency level, and are not aggregated at the national level, this makes the exercise of calculating any national data on election results a more cumbersome activity. For information purposes, this could be greatly simplified if aggregated results were provided directly by the SEC at national level.

C. MEDIA

- The regulatory framework for the media could be further enhanced by establishing effective mechanisms to ensure compliance with and enforcement of the media regulations.
- The conduct of the media should be overseen by a regulatory body. The monitoring authority should have the know-how and the mandate to monitor activities in accordance with the rules, to investigate alleged violations and to impose effective remedies during the campaign.
- Consideration could be given to further discussing the appropriate formula for the allocation of airtime, and whether it remains a strictly equal one, or whether a proportional formula could be envisaged.
- The norms regulating media during the election campaign should not be overly complex and restrictive. Regulations should not unnecessarily impede media in their news reporting.

D. CAMPAIGN FINANCING

- Consideration should be given to enacting additional monitoring and enforcement measures as part of the Law on Financing of Political Parties. This should include separate campaign finance guidelines in order to permit additional regulation (including monitoring and pre-/post-election reporting) of campaign finances.

E. DISPUTE RESOLUTION

- The legal status of decisions by the Ethics Commission should be clarified, so that its precise role can be identified and any actions affecting legal rights made properly subject to appeal. The Commission's rules of procedure should also be developed further, especially with respect to providing public announcements of its agenda, including all cases being considered, as well as formal notification of all persons who have an interest in such matters.
- To clarify jurisdictional issues on appeal, the distinction between electoral supervision and electoral dispute cases before the Constitutional Court should be further clarified. While this would best be done as an amendment to the Constitutional Law on the Constitutional Court, the Court itself could also address this matter in its Rules of Procedure.

ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (OSCE/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 Summit Document). This is referred to as the OSCE human dimension.

The OSCE/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 130 staff.

The OSCE/ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it co-ordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE Commitments, other international standards for democratic elections and national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the OSCE/ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. The OSCE/ODIHR implements a number of targeted assistance programs annually, seeking to develop democratic structures.

The OSCE/ODIHR also assists participating States' in fulfilling their obligations to promote and protect human rights and fundamental freedoms consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked persons, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance** and **non-discrimination**, the OSCE/ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The OSCE/ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

The OSCE/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.

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/odihr).