



Office for Democratic Institutions and Human Rights

REPUBLIC OF CROATIA

PRESIDENTIAL ELECTION

27 December 2009 and 10 January 2010

OSCE/ODIHR Limited Election Observation Mission Final Report



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I. EXECUTIVE SUMMARY

Following an official invitation to observe the presidential election, and in line with the recommendations of the Needs Assessment Mission, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed a Limited Election Observation Mission (LEOM) for the 27 December 2009 presidential election in the Republic of Croatia. The OSCE/ODIHR LEOM assessed the compliance of the election process with OSCE commitments and other standards for democratic elections, and with domestic legislation.

The presidential election complied overall with OSCE commitments and other international standards for democratic elections as well as with national legislation. The election underscored recent efforts by the election administration and other state institutions involved to improve the electoral process. Election stakeholders expressed a considerable degree of confidence in the integrity of the process. Continued efforts, however, are necessary to address remaining issues. These include consolidating and harmonizing the legal framework, advancing institutional reform of the election administration, pursuing the update of the voter register, and promoting better awareness among voters and candidates of the key elements of the electoral process.

The Law on the Election of the President of the Republic of Croatia (presidential election law) adopted in 1992 after significant constitutional change from a semi-presidential to a parliamentary republic, has since remained essentially unchanged. It is general, lacks detail, and is not always consistent with laws that govern other elections. The State Election Commission (SEC) attempted to compensate for this by broadly interpreting its right to issue mandatory instructions, thereby filling gaps in the legal framework. There is consensus among all election stakeholders in Croatia, including the SEC, that the legal framework for elections should be overhauled and codified as a matter of priority before the next elections.

The presidential election was administered by a three-tiered election administration: the SEC, Municipal and City Election Commissions (MECs/CiECs) and Voting Committees (VCs). The election administration operated transparently and efficiently, despite a shortage of permanent staff in the SEC secretariat and the dual role of those SEC and lower-level election commission members who also serve as judges during the election. All OSCE/ODIHR LEOM interlocutors indicated the need for all SEC members to be appointed as full-time professional members.

Croatia has a passive, continuous system of voter registration. Since 2007, this has been compiled in a computerized database enabling cross-checking of information. Special voter lists are prepared for those who vote outside their places of residence. This has greatly diminished the possibility of double voting. However, public awareness of these improved procedures appeared to be low. Efforts are necessary to further inform voters about the voter registration process, deadlines for checking their entries and how to register to vote outside their permanent residence. Furthermore, the voter register is still widely believed to include more entries than actual voters, mainly because of voters who resided and died abroad. Its continued updating is crucial.

The Constitution and the presidential election law entitle all citizens of Croatia residing out-of-country to vote. A total of 406,208 voters were registered in the out-of-country voter list for the presidential election. Of these, 266,679 were registered in Bosnia and Herzegovina (BiH). There were efforts to enhance the integrity of the out-of-country vote, including by removing deceased people from the out-of-country voter lists and sending a reminder to VC members before the second round stressing the importance of proper voter identification.

Voters had a distinct choice between 12 presidential candidates who freely and actively campaigned throughout the country. Issues of corruption, the economic crisis, the arbitration agreement with Slovenia, and accession to the European Union (EU) dominated the campaign. No candidate received the required majority to be elected in the first round, necessitating a second round to be held on 10 January 2010. With two candidates remaining in the race, the tone of the campaign sharpened.

The legal framework, including SEC decisions, ensured some degree of transparency in candidates' campaign finances. Candidates generally complied with the requirements to report on campaign income prior to both rounds, but the level of detail in their disclosure differed substantially. Campaign finance reports are not independently verified. As well, there are currently no sanction or enforcement mechanisms in place in case of insufficient disclosure or non-compliance.

The media provided voters with ample opportunity to learn about candidates and their campaign programs. However, before the first round the restrictive interpretation by the regulatory bodies of legal provisions stipulating equal coverage of election contestants to some extent limited editorial independence and the quality of information available to voters. Between the rounds, the legal requirements for equal coverage were easier to implement with only two candidates. As such, the two contestants had sufficient opportunity to present their views and programs in the media, enabling voters to make an informed choice.

There is no comprehensive election-related complaints and appeals process. The legal framework applicable to the presidential election is not fully in compliance with OSCE commitments and other international standards. The possibility for election stakeholders to formally complain about all elements of the electoral process is limited and SEC decisions related to the campaign are not subject to judicial review. There is no legal enforcement mechanism for SEC decisions on campaign-related complaints nor can these be appealed.

Election day observation was mainly domestic. Political parties and presidential candidates deployed numerous observers. The domestic non-governmental organization, GONG, deployed observers to some 15 per cent of polling stations and had mobile teams of observers in BiH. The presence of observers increased transparency and provided checks on election-day proceedings.

The OSCE/ODIHR LEOM visited a limited number of polling stations on both election days, but did not conduct a comprehensive and systematic observation of election-day proceedings. Both election days were calm. The voter turnout was 43.96 per cent in the first round. It increased significantly during the second round to 50.13 per cent. The election appeared to be efficiently and professionally administered. Efforts of the SEC and MECs/CiECs to conduct training or issue additional instructions to VCs seemed to have further improved their performance during the second round. The counting and tabulation process appeared to be efficiently conducted and provided for a timely announcement of election results.

II. INTRODUCTION AND ACKNOWLEDGEMENTS

Following an invitation from the Croatian government to observe the presidential election and based on the findings and conclusions of the OSCE/ODIHR Needs Assessment Mission,¹ the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) officially opened a Limited Election Observation Mission (LEOM) on 8 December 2009. The OSCE/ODIHR LEOM, led by Ambassador Daan Everts, consisted of a 10-member core team based in Zagreb and 12 long-term observers (LTOs) who were deployed throughout the country on 10 December. The mission members were drawn from 17 OSCE participating States.

The OSCE/ODIHR LEOM issued a Statement of Preliminary Findings and Conclusions on 28 December 2009 after the first round of voting and on 11 January 2010 after the second round,² assessing the election for its compliance with OSCE commitments and other international standards for democratic elections as well as with domestic legislation.

The OSCE/ODIHR wishes to thank the State Election Commission, the Ministry of Foreign Affairs and European Integration, the Ministry of Public Administration and other state and local authorities, as well as political parties and civil society for their assistance and co-operation during the course of the mission.

III. BACKGROUND

The 27 December 2009 election was the fifth presidential election following Croatia's independence in 1991. On 30 October, the government called the election, providing a total of 58 days for election preparations. By law, the presidential election is conducted between 30 and 60 days before the end of the incumbent's mandate (18 February 2010). The outgoing President, Stjepan Mesić, had served two five-year terms and was constitutionally precluded from standing for re-election.

Croatia has been a candidate country of the EU since 2004; EU accession negotiations opened in October 2005³. The latest EU progress report noted that the professionalization of the civil service and embedding of anti-corruption principles in the public administration are issues that remain to be addressed by the government.⁴

Prime Minister Ms. Jadranka Kosor of the Croatian Democratic Union (HDZ) took office on 6 July 2009. She succeeded Mr. Ivo Sanader, also HDZ, who resigned on 1 July 2009 for private reasons.

¹ The Needs Assessment Mission was conducted from 2 to 4 November. Its report is available at http://www.osce.org/documents/odihr/2009/11/41411_en.pdf.

² All OSCE/ODIHR reports on the 27 December 2009 presidential election are available here: <http://www.osce.org/odihr-elections/41414.html>.

³ Croatia's EU negotiations had come to a halt in December 2008 over a border dispute with Slovenia, which was addressed by a bilateral agreement the Croatian parliament ratified on 20 November 2009.

⁴ Croatia 2009 Progress Report, 14 October 2009, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2009/hr_rapport_2009_en.pdf.

IV. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

The legal framework for the 2009 presidential election was based on democratic principles articulated in the Constitution. The Constitution was substantially amended in 2000, transforming the country from a semi-presidential to a parliamentary republic. It established that a president is elected every five years by a majority of voters in a single nationwide constituency. If no candidate receives a majority of votes, a second round is held fourteen days later between the first and second placed candidates. Citizens who are at least 18 years of age can vote, including those abroad and those incarcerated.

Under the amended Constitution, the president is the commander-in-chief of the armed forces and appoints and dismisses military commanders. The president, in co-operation with the government, formulates foreign policy, and appoints and recalls diplomatic representatives. The president calls parliamentary elections and referenda and invites a member of parliament, who enjoys the confidence of the majority of its members, to form a government.

The primary legislation for this election was the Law on the Election of the President of the Republic of Croatia (hereinafter presidential election law), which has remained essentially unchanged since its adoption in 1992.⁵ It is general, lacks detail, and contains provisions that are inconsistent with those for other elections. There is an overall consensus among election stakeholders in Croatia that the legal framework is fragmented and needs consolidation and harmonization. It should clearly establish the rights and obligations of election stakeholders as well as the rules governing presidential elections.

The SEC attempted to address legal insufficiencies by broadly interpreting the legal provision allowing it to “issue binding instructions to lower-level election commissions”.⁶ Thus, the SEC *de facto* had to fill gaps in the legal framework. For instance, the law does not provide for the presence of observers of independent presidential candidates in polling stations on election day, limiting election day observation to political parties. The SEC issued a mandatory instruction permitting political parties, independent candidates, NGOs, and foreign organizations to observe elections.⁷ Nevertheless, some candidates remained unaware that they had the right to deploy observers. On another occasion, the SEC issued a mandatory instruction to compensate for gaps in the legal framework regarding mobile voting. The SEC also took decisions that compensated for insufficient regulation of campaign finance disclosure and elaborated on the complaints and appeals process.

Good electoral practice requires that electoral legislation should clearly define the scope and extent of the authority that a central or state election commission has to issue such instructions.⁸ Mandatory instructions should not be used on an *ad hoc* basis to fill gaps in legislation. Instead, they should provide further clarification and detail to existing legal provisions. Election

⁵ Other relevant laws are: the Law on the State Election Commission, amended in 2007; Law on Voter Lists, passed in 2007; Law on Campaign Financing for Presidential Elections, passed in 2004; Law on Croatian Radio and TV, passed in 2000; Law on Electronic Media, passed in 2003; Law on Political Parties, amended in 2001.

⁶ Presidential election law, Article 22.

⁷ Under the presidential election law, only political parties that nominate candidates can observe, whereas under the parliamentary election law, only NGOs have the right to observe.

⁸ See OSCE/ODIHR ‘Guidelines for Reviewing a Legal Framework for Elections’, Warsaw 2001, page 6 and 7, available at: http://www.osce.org/publications/odihr/2001/01/13588_128_en.pdf.

legislation should also state that additional instructions should not be contrary or inconsistent with the election legislation.

Under the presidential election law, the SEC has the responsibility to “supervise the correctness of the campaign”. The law, however, does not provide a definition of what is considered a “correct” campaign. In accordance with guidelines for good electoral practices, “the law should provide in clear language what conduct is and is not permitted on the part of political parties and candidates during electoral campaigns”.⁹ In addition, the provisions should not be unduly restrictive, but should provide opportunity for active and open campaigning free from undue interference.

On campaign silence, the presidential election law is also incomplete as well as inconsistent with provisions of the parliamentary election law.¹⁰ The parliamentary election law provides that the campaign silence period ends when the polls close, whereas the presidential election law stipulates that it should end only after midnight. This provision appears to be a holdover from an earlier time. In addition, the presidential election law does not outline what campaign activities are affected by the campaign silence provision. There are, for example, no provisions regarding whether get-out-the-vote efforts on election day or the publication of election results before midnight are considered a breach of silence.

Apart from leading to possible confusion, these and other inconsistencies in the legal framework were an additional burden on the election administration, particularly in relation to electoral complaints, voting procedures and election observation.

V. ELECTION ADMINISTRATION

A. OVERVIEW

The presidential election was administered by a three-tiered election administration that included the State Election Commission (SEC), 556 Municipal and City Election Commissions (MEC/CiEC) and 6,865 Voting Committees (VC).¹¹

The Law on the State Election Commission of the Republic of Croatia (2006) constitutes the SEC as a permanent professional body composed of five members. It stipulates that all members must be lawyers with at least 10 years of professional experience and not be members of any political party. The law was amended in 2007 to include experienced judges in high management positions of the commission. The SEC membership thus increased to nine members. Accordingly, the president of the Supreme Court is, *ex officio*, the president of the SEC. Two of the SEC’s vice-presidents are judges of the same court. Two other vice-presidents and four members are elected by parliament upon proposals from government and opposition parties; they are appointed for eight years. Most OSCE/ODIHR LEOM interlocutors, including SEC members, concurred that all SEC members should be full-time professionals, as originally contemplated under the 2006 law.

⁹ *Ibid*, page 18.

¹⁰ The Act on Election of Representatives to the Croatian Parliament (2003), hereafter parliamentary election law.

¹¹ There were 6,865 VCs for the first round and 6,863 for the second, including polling stations in and out-of country and special polling stations in prisons, military contingents, and vessels.

Apart from its general responsibility for conducting elections and referenda at all levels, the SEC is mandated by law to train members of lower-level commissions, to inform citizens about the conduct of elections and the ways to exercise their right to vote, and to provide opinions and recommendations on improvements in election-related legislation.¹²

This election was the fifth that the SEC conducted since it was established as a permanent body in February 2007. By law, the SEC is entitled to have a secretariat and expert support staff. The SEC, however, is not yet fully staffed nor does it have its own premises; for this election, there were five permanent staff, some 15 employees short according to the SEC's estimation. The SEC compensated for this shortfall through the use of temporary staff from parliament and the courts. Premises were loaned by the parliament. Despite a lack of personnel and inadequate facilities, the SEC fulfilled its responsibilities in a professional, transparent and timely manner and enjoyed wide public confidence. Adequate human and material resources, however, are required to enhance the SEC's efficiency and authority as an institution supervising and administering the conduct of elections and responsible for guaranteeing voters' rights.

The 2006 law stipulates that SEC operations and decision-making must be regulated by its 'standing orders' and that its sessions must be public.¹³ The standing orders state that the public aspect of the SEC's work is achieved through the presence of media representatives, holding press conferences, delivery of official statements to the media, and posting all important information on the SEC website.¹⁴ According to the standing orders, regular SEC sessions should be called three days in advance by written notice to its members, including the proposed agenda.¹⁵

In practice, most SEC sessions were organized in an *ad hoc* manner, thus limiting the possibility for the public and observers to know of their schedule in time to attend. Following the OSCE/ODIHR's Statement of Preliminary Findings and Conclusions from the first round, the SEC partly compensated for this shortcoming by informing the OSCE/ODIHR LEOM and domestic non-governmental organizations about some of its sessions between the two rounds. Although the OSCE/ODIHR LEOM was not able to attend all formal SEC sessions, its representatives were always received openly and given sufficient time to clarify issues.

The MECs/CiECs are temporary bodies, appointed by the SEC for each specific election. These commissions are composed of a president, two members and three deputies. By law, all are chosen from among judges and lawyers and not permitted to have political party affiliation.¹⁶ Their main responsibilities include designation of polling stations, appointment and supervision of VCs, making all material and logistical arrangements for the conduct of the election and checking results protocols before tabulation. Although the presence of judges in the MECs/CiECs was considered by some OSCE/ODIHR LEOM interlocutors to enhance the respectability of the MECs/CiECs, their electoral tasks were administrative in nature and generally did not require the qualifications of a judge. On several occasions, the OSCE/ODIHR LEOM was told that some judges working in MECs/CiECs considered this burdensome and hard to combine with their regular duties.

¹² Law on State Election Commission, article 11.

¹³ *Ibid*, articles 18 and 22.

¹⁴ Standing Orders of the State Election Commission, adopted May 2007, chapter V, article 6.

¹⁵ *Ibid*, chapter III, article 8.

¹⁶ In most of the county capital cities, the CiECs were exclusively composed of judges.

Before both rounds, the SEC held training sessions for the chairpersons and deputies of the CiECs in the capitals of the 21 counties. Both sessions were observed by the OSCE/ODIHR LEOM and assessed as clear and informative. The trained CiEC members conducted further training for other CiECs and MECs in their respective county. These, in turn, passed information down to the VCs under their authority.

VCs were appointed by the MECs/CiECs on time and in accordance with the law, no later than five days before election day.¹⁷ Each VC was composed of six members: a chairperson, two members and their deputies. VC members are not permitted to be members of political parties. Certain OSCE/ODIHR LEOM interlocutors suggested that political party representatives should be included in VCs, as in parliamentary elections, to provide additional checks. In presidential elections, however, both party nominees and independent candidates can run and any mechanism for composition of VCs would have to ensure the representation of both categories of candidates.

Constructively, the SEC prepared a reminder manual for the work of VCs with step-by-step explanations of election-day procedures. This manual was used to train VC chairpersons and their deputies. Upon SEC recommendation, most MECs/CiECs gave new training or additional instructions to VC chairpersons and deputies before the second round, in particular on voter identification¹⁸ and completion of results protocols. However, OSCE/ODIHR LEOM observers noted that some VC members did not receive any training nor were they given a copy of the reminder manual.

No comprehensive public information campaign was conducted before election day, although free airtime for public advertisements was apparently provided to public institutions. The SEC pointed out that media outlets were not generally interested in allocating their prime time to information related to election procedures. The SEC mainly used its website and the teletext option on some television stations to communicate information to voters. The SEC president appeared on TV talk shows twice. In addition, on the eve of the election, the SEC posted an invitation to voters to exercise their electoral right on its website.

B. CANDIDATE REGISTRATION

Any citizen of Croatia who has reached the age of 18 and has not been declared incapacitated by a final court decision can stand for the presidency. Presidential candidates may be proposed by registered political parties, individual voters or groups of voters. Each candidacy must be supported by at least 10,000 voters' signatures. The SEC had to verify signatures and publicize the final candidate list within 48 hours of the nomination deadline.

The deadline for submission of nomination documents to the SEC was 16 November. The SEC received 22 nominations. Of these, seven were rejected for lacking the required number of signatures and one for late filing. Two withdrew their nominations before the SEC rendered its decision.¹⁹ Of the 12 registered candidates, 5 were nominated by political parties.²⁰ Seven

¹⁷ Deadline for appointment for this election was 21 December 2009.

¹⁸ Clarifying that driver licence and any document containing photo, name and address of the voter should be accepted.

¹⁹ SEC decisions, 17 and 20 November 2009.

²⁰ Mr. Andrija Hebrang (Croatian Democratic Union – HDZ), Mr. Ivo Josipović (Social Democratic Party of Croatia – SDP), Mr. Damir Kajin (Istrian Democratic Assembly), Ms. Vesna Pusić (Croatian People's Party), and Mr. Slavko Vukšić (Democratic Party of the Slavonian Plains).

candidates stood as independents.²¹ Mr. Bandić, the Zagreb Mayor, was excluded from the Social Democratic Party (SDP) after he decided to run. The Croatian Democratic Union (HDZ) membership records of Mr. Primorac and Mr. Vidošević were deleted after they announced their intention to run.

Several OSCE/ODIHR LEOM interlocutors stated that the threshold of 10,000 signatures was too low, in particular compared to the fact that 5,000 signatures are required to run for the mayor of Zagreb and 2,500 to run for county prefect. They argued that a higher number of signatures would eliminate spurious candidates, thereby decreasing the burden on the election administration to process these applications. Many interlocutors, including high state officials, stated that the number of signatures should be increased to 50,000.²² The current stipulation that voters may only sign in support of one candidate could also prove problematic, since candidates who collect signatures in good faith could be disqualified if voters sign for more than one candidate.

C. VOTER REGISTRATION

Croatia employs a passive, continuous system of voter registration. Since 2007, this is compiled in a computerized database, maintained by the Ministry of Public Administration (MPA) via its 21 county-level local offices. Voter lists (VLs) are maintained by continuously updating information from residence records kept by local police departments, from citizenship and civil status records administered by the local state administration offices, as well as in accordance with court decisions.

Voter registration is regulated by the Law on Voter Lists (2007), which is implemented by the MPA. The law stipulates that, unlike in past elections, voters have the right to determine whether they want their ethnicity included in the VL. It also gives presidential candidates the right to receive VL copies at local MPA offices. This procedure allows electoral contestants to scrutinize the process of voter registration, thus providing an important check. Although some candidates used this opportunity, several were apparently unaware of their rights in this regard.

Generally, voters do not have to take any action to register to vote. They can check their entries in the VL and ask for amendments anytime up to 14 days before election day. In total, some 50,000 voters checked their entries before the 12 December 2009 deadline. Only some 280 corrections were made. This low number appeared to indicate that individual VL entries were accurate.

Voters registered in Croatia who expected to be temporarily absent from their place of residence on election day could, until 12 December, request temporary registration on the VL in the place where they intended to vote.²³ Citizens who live abroad but who maintain a residence in Croatia are registered there, regardless of the length of time living abroad. Voters who wanted to vote in

²¹ Mr. Milan Bandić, Mr. Josip Jurčević, Mr. Boris Mikšić, Mr. Dragan Primorac, Ms. Vesna Škare-Ožbolt, Mr. Miroslav Tuđman, and Mr. Nadan Vidošević.

²² Electoral good practice suggests that the number of support signatures should not exceed 1 per cent of the number of registered voters within the respective electoral unit for which elections are held. See Code of Good Practice on Electoral Matters, European Commission for Democracy Through Law (Venice Commission), point 1.3.

²³ The voters would then be temporarily deregistered from the VL of their place of residence. 2,959 temporary certificates were issued for the first round and 2,250 for the second round.

the country where they actually lived had to pre-register at their embassy or consulate by 12 December. More than 19,000 voters living abroad pre-registered to vote there in both the first and second rounds.²⁴

According to the law, the chosen voting location for temporary registration or pre-registration applies to both rounds, unless voters specify that they are absent only for the first round. The possibility for temporary or pre-registration for only the second round is not foreseen by the law. However, the MPA informed its local offices that temporarily registration for the second round would be offered to voters due to the elections taking place during the holiday season.²⁵ Nevertheless, the deadline for request was the same as for the first round, i.e. 12 December.

Considering that this deadline was 28 days prior to the second round and in conjunction with the MPA's decision not to allow two different temporary registrations for both rounds, the domestic election observer group, GONG, and Mr. Josipović suggested re-opening the possibility to temporarily register between the two rounds. The SEC supported this suggestion as did Mr. Bandić's campaign.

The MPA responded that the law could not be interpreted in this manner, since it states that "temporary registration shall also pertain to possible repeated elections".²⁶ Commenting on the MPA decision, the SEC declared that it had taken all possible steps to enhance the inclusiveness of the process, but recognized that it was "obliged to accept the interpretation of the Ministry of Public Administration as the only body competent for monitoring the implementation of the Law on Voter Lists".²⁷

Notwithstanding the holiday season, the number of voters who temporarily registered to vote outside their permanent residence was low, about 3,000. Most OSCE/ODIHR LEOM interlocutors considered that not enough efforts had been made, at least at the national level, to ensure that voters knew procedures and deadlines for requesting changes in their voter registration. Many described reminder cards distributed to voters before elections, applied as a transitional measure in 2007, as a desirable and effective means of voter information. The MPA, however, regarded this as costly and unnecessary.

The accuracy of VLs remained a matter of concern during this election especially since it was still widely believed that the number of people who had died abroad, but who remained on the VL, was high. The authorities acknowledged the difficulty of obtaining information about the death of their citizens living abroad. This was especially difficult in cases where citizens had dual citizenship, as foreign states are not obliged to inform the Croatian authorities of such deaths. The OSCE/ODIHR LEOM was informed that some steps had been taken to remove such persons from the VL. Since this process could potentially result in disenfranchisement, a lengthy and thorough procedure was followed, including court proceedings.

The computerized voter register includes mechanisms to prevent double entries. In combination with the mandatory identification of voters at polling stations, this greatly reduced the possibility for double voting. It appeared, however, that neither election participants nor voters were fully

²⁴ 19,148 for the first round and 19,294 for the second round.

²⁵ Out of the total number of 3,002 temporary certificates issued, 2,207 were for both rounds, 752 for the first round only and 43 for the second round only.

²⁶ Law on Voter Lists, article 24.

²⁷ Press release dated 29 December, issued by the SEC and posted on its website.

aware of these improvements or their positive impact on the integrity of the electoral process. This lack of information contributed to speculations about potential election-day fraud that were occasionally brought to the attention of the OSCE/ODIHR LEOM.

D. OUT-OF-COUNTRY VOTING

By law, all citizens of Croatia residing abroad have the right to vote. The SEC, in co-ordination with the Ministry of Foreign Affairs (MFA), is responsible for establishing polling stations abroad. For this election, 250 polling stations were established in 55 countries; 124 of these were located in Bosnia and Herzegovina (BiH).²⁸

Citizens who do not have residence in Croatia are automatically registered in out-of-country VLS. These are maintained by the City of Zagreb Public Administration Office, in co-operation with the Ministry of Interior. They do not have to take any action to register unless they change their place of residence or are temporarily absent from there on election day. A total of 406,208 voters were registered in the out-of-country VLS for the presidential election; out of these 266,679 were registered in BiH.

The authorities took efforts to enhance the integrity of the out-of-country vote. Some 25,000 deceased voters were removed from the lists. The SEC also removed several out-of-country VC members who were found to be political party members. Before the first round, the SEC, together with the MFA, conducted training of diplomatic personnel who then trained their out-of-country VC members. Furthermore, the SEC sent a reminder to all out-of-country VCs before the second round, stressing the importance of adequate voter identification to prevent impersonation and potential multiple voting.

The OSCE/ODIHR LEOM was informed by the domestic election observation group GONG that the assessment of their observers deployed in BiH for both rounds had been positive. They noted that VCs, which included many new and knowledgeable young members, performed their duties efficiently, especially during the count.

VI. ELECTION CAMPAIGN

The presidential election law contains no provisions to regulate general campaign conduct. It refers only to specific aspects of the campaign, such as equal media coverage of all candidates and provisions on campaign silence. The law gives the SEC authority “to supervise the correctness of the electoral campaign”.²⁹ The SEC generally exercised its supervision by issuing press releases about its decisions, aiming to attain compliance through raising awareness of the public, the media and presidential candidates.

In one press release, for example, the SEC reminded all media outlets about their responsibility to provide equal coverage for candidates during the election. In addition, the SEC issued a press release on 30 November 2009 directing candidates not to raise funds via telephone or through SMS text messages as such donations were considered to be contrary to the law that prohibits anonymous donations.³⁰ The SEC warned candidates before both rounds not to breach the

²⁸ In 11 countries, some polling stations were located outside of diplomatic premises.

²⁹ Presidential election law, article 22.6.

³⁰ SEC decision 013-04/09-11/1, dated 30 November 2009.

election silence period by sending text, e-mail or voice messages, or to make telephone calls to voters.

A. ELECTION CAMPAIGN OF THE FIRST ROUND

The official campaign started on 19 November 2009 and lasted until 26 December. Candidates used mostly print and electronic media and the Internet to communicate with voters. Their campaign messages focused mainly on their personalities and political goals. All candidates used paid advertisements on public and private TV channels. The length of paid campaign spots differed among candidates, with some using this medium extensively.

The campaign was visible throughout the country, especially in the capital and in regional centres. Most presidential candidates campaigned actively by holding meetings, rallies and entertainment events across the country. The OSCE/ODIHR LEOM observed some 25 of the many campaign events. A number of candidates also visited BiH to garner the out-of-country vote. Among campaign topics, the issue of corruption dominated together with the economic crisis, the arbitration agreement with Slovenia, EU accession, and regional co-operation, especially the relationship with BiH.

While the campaign tone was generally moderate at the national level, OSCE/ODIHR LEOM observers noted use of divisive language in some regional meetings of two presidential candidates, especially in areas affected by the war. Criticism of the authorities featured strongly in some candidates' campaigns, including strong statements about the possibility of election-day fraud and the ineffectiveness of the authorities to prevent it.

All twelve first round candidates accepted the election results. However, most candidates who received little voter support complained about unequal and biased treatment of candidates by some private electronic media.

B. ELECTION CAMPAIGN OF THE SECOND ROUND

Two candidates, Mr. Ivo Josipović from SDP and Mr. Milan Bandić, an independent candidate and the Mayor of Zagreb, contested the second round. Immediately after publication of the first round results, Mr. Bandić and Mr. Josipović exchanged views and accusations on how they would comply with the legal requirement of political neutrality of the president, if elected. Mr. Bandić levelled increasingly strong personal accusations against his rival during TV debates, whereas Mr. Josipović maintained a calmer stance. The incumbent President, Mr. Stjepan Mesić, and Mr. Bandić also exchanged accusations after the President indirectly supported Mr. Josipović. These arguments focused mainly on alleged present and past irregularities related to campaign finances. Reasons for the low turnout in the first round of voting were also widely discussed; these included the holiday season and the limited presidential powers as well as the number of voters on the voter lists, widely believed to be inflated.

Both candidates campaigned actively, relying on media appearances and campaign meetings. Campaign posters and billboards were visible throughout the country. The candidates discussed the same substantive issues as in the first round and expressed similar views. The distinguishing factors between the two candidates were mostly related to personality, personal history and public image. In this context, Mr. Bandić presented himself as independent and thus better placed to be politically neutral. He also portrayed himself as a religious person, saying that he

was supported by the Catholic Church. Mr. Josipović, on the other hand, underlined his background as a law professor, raising issues such as social justice, anti-corruption and international relations from this perspective. He also stressed that, while not a believer himself, he was respectful of religious beliefs.

The campaign tone became more acrimonious in the last week before election day, partly due to a controversial campaign spot by Mr. Bandić, the broadcasting of which was banned by the SEC following a complaint by Mr. Josipović (see below section VIII on complaints and appeals). Mr. Bandić called the SEC decision an act of censorship, accused the SEC of bias and asked for the resignation of the SEC president.³¹ Mr. Bandić, acting on his own initiative, subsequently revised the campaign spot. Upon request of the public broadcaster *Hrvatska radiotelevizija* (HRT) and the private channel *TV Nova*, the SEC gave its consent to air the revised campaign spot.

C. CAMPAIGN FINANCE

Campaign finance issues were discussed by candidates and other election stakeholders throughout the campaign period, including in connection with the campaign income reports submitted by candidates before both rounds. Non-governmental organizations and the media observed and reported on candidate's campaign activities, including in the media, deduced information about the actual level of spending and compared this to the reported incomes. Particular attention was given to the possible receipt and non-declaration of in-kind donations by some candidates' campaigns.

Financing of presidential election campaigns is regulated by the Law on Campaign Financing for Presidential Elections. This law is brief and fails to regulate important aspects, such as verification and auditing of disclosure reports. A campaign may be financed by an unlimited amount of a candidate's own resources as well as donations from citizens and legal entities. The law does not prescribe donation limits. It specifies that no donations may be received from foreign and public sources. Preliminary reporting on sources and amounts of money collected is required seven days before election day. A final report on campaign expenditures and income has to be submitted fifteen days after the election. The law does not request itemization of expenditures in these reports.

Before the first round the SEC issued a sample disclosure form for candidates, which required reporting cash contributions as well as services and goods in-kind. The SEC thereby addressed a shortcoming in the campaign financing system, which does not specify or define these particular sources of campaign finance. Candidates were required to file preliminary reports on amounts and sources of funds collected by 20 December.³² The SEC published these preliminary reports, although the law only requires publication of the final reports after the election.

The level of detail in candidates' preliminary reports differed substantially. Mr. Hebrang, the HDZ candidate, reported that all his money had come from his party and did not report any goods or services received. Mr. Mikšić reported that all his finances came from his own resources. Mr. Vidošević reported names of individuals and companies who gave cash contributions. He also indicated an overall amount of goods and services received, itemized what his campaign had used but did not provide names of the contributors. Ms. Pusić provided names

³¹ According to an announcement by Mr. Bandić's campaign on his campaign website, www.milanbandic.com, and a press conference by Mr. Bandić's campaign team on 8 January 2010.

³² According to article 6 of the Law on Campaign Financing for Presidential Elections.

of all who contributed to her campaign, including individuals, companies as well as those who gave goods and services in-kind.

Although the above law does not specify whether candidates are required to file another preliminary report prior to the second round, the SEC requested such filing and published these reports in line with the approach taken during the first round.³³ Mr. Bandić reported 6,989,061 HRK (approximately 958,100 EUR) received by 31 December 2009 and informed that he had returned a contribution to a donor who had recently been detained on a suspicion of receiving an illegal loan from a state company. Mr. Josipović reported 4,753,082 HRK (approximately 650,600 EUR) collected by 3 January 2010. The majority of his funds had come from the SDP, his nominating party. As the law does not require provision of details on funds received from the nominating party, Mr. Josipović did not include any details on those funds.

The OSCE/ODIHR LEOM was advised by the SEC that the Law on Financing of Political Parties, Independent Lists and Candidates does not apply to presidential elections as the Law on Campaign Financing for Presidential Elections is more specific and takes precedence. Nonetheless, both candidates in the second round respected the provisions of the Law on Financing of Political Parties, which caps individual donations at 90,000 HRK (approximately 12,300 EUR) and legal entities at one million HRK (approximately 136,900 EUR) per calendar year. Their campaign staff informed the OSCE/ODIHR LEOM that they assumed that these caps also applied to the financing of presidential campaigns.³⁴

The SEC received, summarized and, after the election, published campaign finance reports. While candidates generally abided by the law and SEC decisions regarding filing campaign finance reports, the law does not provide for audit or investigative measures to ascertain that the information contained in the candidate reports is correct. Nor does it provide for sanctions or enforcement mechanisms. The reports are, therefore, not independently verified and their accuracy depends on the information provided by the candidates. However, the SEC did request that reports be supplemented and corrected.

The lack of investigative powers was highlighted by a campaign finance issue that arose regarding 'gifts' to potential voters. In response to an inquiry of a newspaper claiming that a presidential candidate had distributed money to some families during a visit to Banja Luka in BiH, the SEC decided that such gifts were inappropriate.

Based on the Law on Campaign Financing for Presidential Elections the government decided that the candidates who received at least 10 per cent of the vote qualified for a state subsidy of 250,000 HRK (approximately 34,300 EUR).³⁵ This is an amount fixed by the government and not connected to actual campaign expenses. Four candidates from the first round and both second round candidates qualified. The law stipulates that these funds should be reimbursed to the candidate rather than to the party.

³³ In the 2005 presidential election, the SEC had sought reports from candidates in the second round, but these reports were not published until after the election, in conformity with Article 6 of the Law on the Campaign Financing for Presidential Elections.

³⁴ These limits are stipulated by article 4 of the Law on Financing Political Parties, Independent Lists and Candidates (2006).

³⁵ According to article 2 of the Law on Campaign Financing for Presidential Elections and the Decision of the Government of Croatia, at the session on 5 November 2009.

Previous OSCE/ODIHR reports have noted the inadequacy of the legal framework to regulate campaign financing.³⁶ These concerns have been underlined by domestic NGOs, the SEC, and academic experts. Most recently, the Group of States against Corruption of the Council of Europe (GRECO) emphasized the need to harmonize the applicable legislation, in particular with respect to reporting. It concluded that election campaign reports should be subject to an independent audit and suggested that an independent body should be empowered to proactively supervise and investigate alleged infringements and impose appropriate administrative sanctions.³⁷

VII. MEDIA

A. BACKGROUND

Croatia has a diverse and pluralistic media environment, generally enabling freedom of expression and offering voters a wide range of views.³⁸ However, international and domestic media organizations raised concerns about the media environment following the murders of two journalists in October 2008. The OSCE Representative on Freedom of the Media (RFOM) called on the authorities to ensure that journalists can work safely.³⁹

Television is, by far, the most important source of political information. The Croatian public service broadcaster *Hrvatska radiotelevizija* (HRT) consists of two terrestrial TV stations (HTV1 and HTV2) and five radio channels.⁴⁰ In the run-up to the election, HRT journalists protested against alleged censorship, reacting to the suspension from work of a colleague whose TV guest had talked about corrupt officials.⁴¹ Following criticism from politicians and journalists for alleged bias in HRT's election coverage, the HRT director, along with two other top managers, resigned some three weeks before the first round of the election. In addition, the Croatian Association of Journalists protested against what they considered to be the deteriorating position of journalists and increased censorship.⁴²

B. LEGAL FRAMEWORK FOR THE MEDIA

The Constitution guarantees freedom of thought and expression, including freedom of press and other communication media, freedom of speech, and free establishment of all institutions of

³⁶ See for instance OSCE/ODIHR Final Report on the 24 January and 7 February 2000 presidential election, in particular recommendation no. 11, page 21, available at <http://www.osce.org/odihr-elections/14447.html>.

³⁷ Evaluation Report on Croatia on Transparency of Party Funding, adopted by GRECO at its 45th plenary meeting in Strasbourg 30 November to 4 December 2009, pages 19 to 23. Available at: [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)1_Croatia_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)1_Croatia_Two_EN.pdf).

³⁸ There are approximately 134 radio stations and some 15 television channels operating in Croatia.

³⁹ See the OSCE Representative on Freedom of the Media's, Regular Report to the OSCE Permanent Council, 27 November 2008, at http://www.osce.org/documents/rfm/2008/11/35149_en.pdf.

⁴⁰ Apart from HRT, the most popular nationwide electronic media are private TV channels *Nova TV* and *RTL*. There are also a number of TV companies that broadcast regionally or locally. Several print media with political content are available nationally, with the newspapers *Jutarnji List*, *Večernji List*, *24 Sata* and *Slobodna Dalmacija* having the largest circulation.

⁴¹ The reason of suspension was explained by HRT's editor-in-chief to be the journalist's lack of professionalism.

⁴² See press release on <http://www.hnd.hr/hr/homepage/priopcenje/63067>.

public communication. Journalists are guaranteed the right to report and to have access to information. Censorship is forbidden.⁴³

Existing media laws were amended to bring media legislation in line with democratic standards and EU requirements, including the Law on Croatian Radio and Television and the Law on Media.⁴⁴ The Law on Electronic Media was adopted in 2003.⁴⁵

The media-related provisions of the presidential election law are rather brief and general, stipulating equal coverage of candidates by the media and granting the same conditions of access to candidates.⁴⁶ To supplement the law, the HRT council, the oversight body for HRT, adopted campaign coverage rules that provide for free airtime to all candidates, among other things. Prior to the first round, each candidate was entitled to five special two-minute reports, one thirty-minute talk show appearance, and two appearances in special debate programs with all candidates on both public TV and radio. The order of appearance of candidates in these programs and their dates were determined by lottery.

C. OSCE/ODIHR LEOM MEDIA MONITORING

The OSCE/ODIHR LEOM media monitoring covered two periods, 4 to 26 December 2009 (prior to the first round) and 28 December 2009 to 8 January 2010 (prior to the second round). It focused on four television stations and five daily newspapers.⁴⁷

First Round

Prior to the first round, the media aired various election-related programs, including televised debates between candidates, talk shows, news, and special election programs. Such programs gave voters the opportunity to compare candidates and enabled them to make an informed choice. Within the period monitored, candidates used paid advertising extensively in a variety of media; Mr. Bandić, Mr. Josipović and Mr. Primorac, purchased most on television. Newspapers published overviews of political platforms and offered in-depth interviews with candidates.

A restrictive interpretation by the regulatory bodies, the SEC and the Council for Electronic Media, of provisions requiring equal candidate coverage on public and private media somewhat limited editorial independence. It also constrained the amount of information available to voters,

⁴³ See Article 38 of the Constitution.

⁴⁴ The Law on HRT, amended in 2003, defines the legal status of HRT as a public institution. The law stipulates that HRT must satisfy the interests of the public and present diverse information. HRT is also obliged to respect and encourage political, religious and other ideas and should not advocate the positions of a certain political party in its programs. The Law on Media, amended in 2004, regulates concentration of ownership in the field of print media and guarantees protection of journalists.

⁴⁵ The Law on Electronic Media, adopted in 2003, regulates the private electronic media, with some provisions applying also to the public service broadcaster. The law establishes the media regulatory authority and introduces cross-media concentration controls.

⁴⁶ Articles 13, 14 and 15 of the presidential election law.

⁴⁷ Media monitoring included quantitative and qualitative analysis of the coverage, assessing both the amount of time and space allocated to each candidate and the tone of the coverage. The coverage of other relevant political subjects, such as the government, the President and political parties, was also analyzed. The monitoring included the publicly funded HTV1 and HTV2, and the privately owned *TV Nova* and *RTL* as well as the daily newspapers *Jutarnji List*, *Večernji List*, *24 Sata*, *Slobodna Dalmacija* and *Vjesnik*. Television monitoring focused on all primetime political and election-related broadcasts from 18:00 to 24:00 hours.

including in regional media.⁴⁸ Regulatory bodies maintained that if one candidate was interviewed, all other candidates should get the same amount of airtime to meet the requirement.

There were discernable differences in the coverage of the campaign in the news between HTV1 and the two main private TV channels, *TV Nova* and *RTL*. HTV1 news made an obvious effort to interview all candidates and to cover their activities. In the four weeks preceding the first round, HTV1 devoted 15 per cent of its campaign-related primetime news coverage to the activities of Mr. Hebrang, the tone of which was mostly neutral or positive. Mr. Primorac received some 14 per cent of mostly neutral coverage. Mr. Vidošević and Mr. Bandić received 13 per cent each of mainly neutral coverage. Mr. Josipović received some 7 per cent of mostly neutral coverage, while other candidates received between 4 and 8 per cent.⁴⁹ HTV1 organized two debates: one on 20 November with 10 candidates (2 decided not to participate) and one on 22 December among all candidates. HTV1 representatives noted the difficulty of strictly observing the equality principle with 12 presidential candidates to the OSCE/ODIHR LEOM.

In contrast to HTV1, private stations *TV Nova* and *RTL* divided candidates into two groups, based on opinion polling.⁵⁰ They covered the first group in their news programs, but offered limited or no coverage to the second. *TV Nova* provided comparable campaign-related primetime news coverage to Mr. Primorac (22 per cent), Mr. Vidošević (20 per cent) and Mr. Bandić (20 per cent), mainly neutral or sometimes negative in tone. Mr. Hebrang (14 per cent), Mr. Josipović (14 per cent) and Ms. Pusić (9 per cent), however, received mostly neutral or positive coverage. *RTL* devoted similar amounts of coverage to the first three candidates; of these, Mr. Bandić got the largest proportion of negative coverage.⁵¹ Mr. Hebrang and Mr. Josipović received 17 and 16 per cent, respectively, of mainly neutral and positive coverage on *RTL*.

TV Nova also organized debate programs for candidates. From the first group, five participated and one declined. Some candidates from the second group, however, complained to the SEC over unequal treatment, deciding not to participate in their candidate group debate (see below Section VIII. Complaints and Appeals). One of these candidates also complained to the Council for Electronic Media. The council sent a warning to *TV Nova*, reminding it of its obligation to treat all candidates equally. *TV Nova* subsequently cancelled the second debate program. The Croatian Association of Journalists regretted this cancellation and accused the regulator of “interfering in *TV Nova*’s editorial policy”, pointing out that dividing candidates into two groups was necessary to make programming more interesting for voters.⁵²

Second Round

Between the two rounds, the media continued to offer voters sufficient information to make an informed choice. Monitored media coverage between the two rounds was generally balanced.

⁴⁸ For instance, the local private TV station director in Osijek informed the OSCE/ODIHR LEOM that the difficulty in strictly observing the equality principle with 12 presidential candidates led him to decide not to provide any news coverage to not violate the law.

⁴⁹ Most of HTV1’s primetime news coverage of other relevant political subjects went to the activities of government ministers. Overall, they were portrayed in a neutral and positive light. The next most covered subjects were the HDZ, followed by the incumbent president, and the SDP.

⁵⁰ The first group included Ms. Vesna Pusić, Mr. Primorac, Mr. Bandić, Mr. Josipović, Mr. Hebrang and Mr. Vidošević. The second one involved Ms. Škare-Ožbolt, Mr. Mikšić, Mr. Vukšić, Mr. Jurčević, Mr. Tudman and Mr. Kajin.

⁵¹ 14 per cent of Mr. Bandić’s coverage was negative.

⁵² See <http://www.hnd.hr/hr/homepage/priopcenje/63088>.

The two contestants had ample opportunity to present their views through the media. The equal coverage requirement was easier to implement with only two candidates. Six debate programs were aired on public and private broadcasters. These, valuably, allowed voters to compare contestants and their platforms. Paid advertisements were used extensively by both candidates. In line with its legal obligations, HRT continued to offer free airtime to both candidates. This took the form of five special reports, up to two minutes long, on both TV and radio. HTV1 organized two debates between the candidates, aired on 30 December and 8 January.

The coverage of both candidates on public and private broadcasters was generally balanced. Between the two rounds, HTV1 devoted 54 per cent of its campaign-related prime time news to Mr. Bandić and 46 per cent to Mr. Josipović. Coverage of both candidates was mostly neutral and positive. By contrast, on the second public TV channel (HTV2), Mr. Bandić received 62 per cent of mainly neutral but sometimes negative coverage. Part of this was devoted to his role as Zagreb Mayor. By comparison, Mr. Josipović received 38 per cent of neutral or positive coverage.

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

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

VIII. PARTICIPATION OF WOMEN

The constitution defines gender equality as one of its highest principles. The Law on Gender Equality stipulates general principles for the protection and promotion of gender equality as well as means of protection from gender discrimination. The law foresees distinct measures for promoting gender equality in state bodies. It aims to achieve equal gender participation and stipulates measures that need to be taken if representation of any gender falls below 40 per cent.⁵³

Among the 12 presidential candidates, there were 2 women – Ms. Vesna Pusić and Ms. Vesna Škare-Ožbolt. Specific gender issues were not on the campaign agenda. Neither did any of the candidates address women as a specific electorate. Women generally appeared to be well-represented among candidates' campaign staff.

Two vice-presidents and two members of the nine-member SEC are women, as are five of thirteen judges of the Constitutional Court, including the president. The OSCE/ODIHR LEOM was informed that women are generally well-represented in the courts and that the stipulated 40 per cent quota for gender representation is also fulfilled in the higher ranks of the judiciary.

⁵³ Article 12 (3) of the Act on Gender Equality. Since the change of government in July 2009, Croatia has had its first female prime minister. In total, there are 5 women among the 21 members of government. Out of 153 parliamentarians, 36 are women (24 per cent), better represented in the SDP and the Croatian People's Party (32 and 40 per cent, respectively).

Women were particularly well-represented in the lower-level election administration, with more women than men working in the VCs.

Based on the above law, the Governmental Office on Gender Equality was established in 2004. Its main task is to elaborate government policy on gender equality, to initiate legislation and to co-ordinate and monitor the implementation and compliance with laws and other regulations on gender equality. In the previous municipal and parliamentary elections, the office conducted public awareness campaigns aimed at enhancing women's participation in elections.

IX. PARTICIPATION OF MINORITIES

Between the 1991 and 2001 censuses, the proportion of minorities compared to Croatia's overall population decreased from 16 to 7.5 per cent, reportedly due to migration during the 1990s and the avoidance of some citizens to declare their belonging to minority groups. The three largest minorities are Serbs (4.54 per cent), Bosniaks (0.47 per cent), and Italians (0.44 per cent).⁵⁴

A representative of the Serb minority, Mr. Veljko Džakula, was nominated as a presidential candidate by a coalition of Serb parties⁵⁵ and collected the required 10,000 signatures. In his program, Mr. Džakula stressed, among other issues, the economic development of areas devastated during the war and creating conditions for the return of some 80,000 registered Serb refugees. He withdrew his nomination before the deadline for registration, stating that he had fulfilled the goals of his campaign by being nominated, i.e. raising public awareness about the problems of the Serb minority.

Mr. Josipović and Mr. Bandić included the promotion of minority rights in their campaign programs. During a TV debate on HTV1 on 8 January 2010, both candidates underscored their positions, including favouring amendments to electoral legislation with regards to minorities. The largest Serb party, the Independent Democratic Serb Party (SDSS), declared its support for Mr. Josipović before the second round.

The constitution and the Constitutional Law on the Rights of National Minorities (CLNM), passed in December 2002 contain core principles for the protection of minorities. There are no special provisions for voters belonging to minorities during presidential elections, while the CLNM contains detailed provisions for parliamentary elections.⁵⁶

X. DOMESTIC AND INTERNATIONAL OBSERVERS

The legal framework is inconsistent in its provisions for observation of elections. Under the presidential election law, only political parties that nominate candidates can observe, whereas under the parliamentary election law, only non-governmental organizations (NGOs) have the

⁵⁴ See Central Bureau of Statistics, www.dzs.hr/hrv/censuses/census2001/Popis/H01_02_02/H01_02_02.html.

⁵⁵ He was nominated by the Serbian Peoples' Party, New Serbian Party and Serbian Democratic Party. The biggest Serbian Party, the Independent Democratic Serb Party (SDSS), represented in parliament, however, according to its party president, Mr. Vojislav Stanimirović opposed the candidature of Mr. Džakula and called it a provocation.

⁵⁶ Based on the CLNM, the parliamentary election law guarantees eight seats in the 153-seat parliament for 22 recognized national minorities. These representatives are exclusively elected by members of minorities in a separate electoral constituency.

right to observe. The SEC issued a mandatory instruction on observers clarifying the legal provisions and allowing four categories of observers:⁵⁷ from political parties, independent candidates, domestic NGOs and foreign observers. Domestic observers are not centrally accredited. Representatives of registered parties and independent candidates provide their observers with an official designation letter. Observers must submit this letter to respective VCs to receive their accreditation documents. NGOs have to submit a request for permission to observe to the SEC. Having received this permission, observers then receive their accreditation card from VCs. All foreign observers are accredited by the SEC.

Political parties and presidential candidates took full advantage of their right to deploy observers during this election. The domestic NGO, GONG, deployed observers to some 15 per cent of polling stations and had mobile observer teams in BiH.

XI. COMPLAINTS AND APPEALS

The complaints and appeals framework for presidential elections is not fully in compliance with OSCE commitments.⁵⁸ The current framework lacks adequate transparency and was not clear to all election participants. The law also fails to provide proportionate remedy to complainants and appellants. Finally, a lack of legal provision for keeping public records of complaints is apparent; good electoral practice stipulates publication of “full details concerning the handling of each complaint or appeal, including the decision of the dispute-resolution body and its justification.”⁵⁹

The SEC is the first instance body for complaints with regards to candidate nomination as well as election procedures. The Constitutional Court serves as the appellate court for SEC decisions in these cases. The SEC also receives complaints regarding the “correctness of the electoral campaign”. SEC decisions in these cases cannot be appealed. This lack of a possibility to appeal decisions of a first instance administrative body contradicts OSCE commitments.⁶⁰

A. COMPLAINTS REGARDING THE NOMINATION AND ELECTION PROCEDURE

The presidential election law provides that complaints may be filed to the SEC in relation to “irregularities in the nomination procedure or in the procedure for the election”.⁶¹ The SEC refused registration to eight nominees, seven of them for failing to collect the required 10,000 signatures and one for late filing of nomination documents. Five of them complained to the SEC, which rejected all complaints. Four nominees appealed the SEC decisions to the Constitutional Court, which in all cases upheld the SEC decision.

⁵⁷ Mandatory Instruction III on Rights and Duties of Observers and Monitoring of the Implementation of Election for the President of Croatia, issued by the SEC on 9 November 2009.

⁵⁸ OSCE 1990 Copenhagen Document, paragraph 5.10 and OSCE 1991 Moscow Document, paragraphs 18.2, 18.3 and 18.4. See also Venice Commission Code of Good Practice in Electoral Matters: CDL-AD(2002), page 11.

⁵⁹ See Existing Commitments for Democratic Elections in OSCE Participating States, OSCE/ODIHR, Warsaw 2003, page 75, available at http://www.osce.org/publications/odihr/2003/10/12345_127_en.pdf.

⁶⁰ OSCE 1991 Moscow Document, paragraph 18.4 provides that the participating States “will endeavour to provide for judicial review of such regulations and decisions”, referring to administrative decisions. See also paragraph 5.10 of the 1990 OSCE Copenhagen Document.

⁶¹ Presidential election law, Article 45.

The provision to complain about “irregularities in...the procedure for the election” was narrowly interpreted by the SEC as referring only to election day procedures. The remedy stipulated by the presidential election law provides only for an annulment of polling station results in cases of severe irregularities. In principle, this limits the ability of the SEC to address complaints of a less extreme nature. The SEC, however, informed the OSCE/ODIHR LEOM that it would, in practice, recount and review ballots, although not explicitly provided for by law. Presidential candidates were reportedly aware of this possibility, but no complaints on voting, counting or tabulation were lodged with the SEC in either round.

The right to complain about nomination and election day procedures is limited to political parties, to voters who have nominated candidates and to independent candidates. Nonetheless, with respect to appeals on nomination and election procedures, the scope of appellants is broadened and also includes no less than 100 voters.⁶² This provides another example of inconsistencies within the legal framework.

The presidential election law provides for reasonable timelines for the resolution of these complaints to enable effective remedy for the complainant. It stipulates a 48-hour timeline for each step of the complaint process, including the decisions of the first (the SEC) and the last (Constitutional Court) instance bodies. Thus, the maximum time for the respective bodies to reach a final decision is eight days after the act that is the subject of the complaint has occurred.

B. CAMPAIGN-RELATED COMPLAINTS

Complaints with respect to the campaign are dealt with under the SEC’s authority “to supervise the correctness of the electoral campaign”.⁶³ The presidential election law, however, does not describe the complaint process for campaign-related disputes. The law also fails to enumerate what constitutes “correctness” of the campaign, leaving election participants without clear guidance of how to conduct their campaigns.

For campaign-related SEC decisions, the law does not designate the Constitutional Court as an appellate body. Thus, there is no instance that is entitled to receive appeals on SEC decisions or to examine the factual basis of the SEC’s supervision of ‘the correctness of the campaign’. OSCE commitments, international standards for democratic elections and electoral good practice establish that there should be a clearly defined complaints process with the possibility to appeal decisions of first instance bodies.⁶⁴

Several campaign-related complaints were filed with the SEC before the first round by presidential candidates for unequal treatment by the media. In one case, the SEC issued a press release underlining to *TV Nova* its responsibility to provide equal conditions for candidates when it broadcasts debates. In response to another complaint, the SEC advised HRT that it was

⁶² The Constitutional Act on the Constitutional Court of the Republic of Croatia, Article 91.

⁶³ Presidential election law, Article 22 (6).

⁶⁴ See 1990 OSCE Copenhagen Document paragraph 5.10, OSCE 1991 Moscow Document, paragraph 18.4, Existing Commitments for Democratic Elections in OSCE Participating States, OSCE/ODIHR, Warsaw, 2003, http://www.osce.org/publications/odihr/2003/10/12345_127_en.pdf, page 75, as well as the Venice Commission Code of Good Practice in Electoral Matters, CDL-AD (2002) 23 at page 11 and Resolving Election Disputes in the OSCE Area, OSCE/ODIHR 2000, Page 10, available at: http://www.osce.org/publications/odihr/2000/08/12350_130_en.pdf.

inappropriate for television guests to express their views on specific candidates and to invite viewers to vote for specific candidates, if the program topic was not the presidential election.

During the second round of the election, the SEC received two complaints from Mr. Josipović's campaign. The first one was a letter sent to the media and addressed to the SEC in relation to a campaign leaflet that juxtaposed the two second round candidates in terms of their religious beliefs and patriotism. In response, the SEC called on the two candidates to conduct "a fair and correct election campaign" and refrain from statements that fail to respect human rights and tolerance.⁶⁵ The SEC ordered the leaflets to be removed from public places. Mr. Bandić's campaign denied any involvement and contended that the leaflet had harmed both sides.

The second complaint was filed by Mr. Josipović's campaign headquarters. It argued that a Bandić campaign ad "abused [Mr. Josipović's] voice and words".⁶⁶ In the absence of legal provisions, the SEC had not defined clear written rules regarding 'correctness' of the conduct of a campaign. In response to the complaint, however, the SEC found that the ad was designed "in an impermissible way" and was in violation of this principle of "correctness",⁶⁷ and decided to halt its broadcast. The SEC later stated that it had based its decision on "electoral practice...expressed in earlier decisions" of the SEC and the Constitutional Court.⁶⁸ The SEC did not request Mr. Bandić's response. Neither was he represented when the decision was taken. Rules of natural justice and electoral good practice require that parties to a dispute be heard and given opportunity to respond.⁶⁹ Mr. Bandić reacted publicly to the decision, stating that it had no legal basis and accusing the SEC of censorship.

C. LEGALITY AND CONSTITUTIONALITY OF THE ELECTION

The presidential election law establishes the Constitutional Court as the first and final instance on requests to "supervise the constitutionality and legality" of elections.⁷⁰ During this election, the Constitutional Court received three such requests. The requests were campaign-related, two of them in essence appeals of SEC decisions in relation to campaign-related complaints. Since such SEC decisions cannot by law be appealed, the applicants attempted to invoke the role of the Constitutional Court to supervise the constitutionality and legality of the election.

The first request was filed on 9 December by Mr. Bandić to the Constitutional Court requesting it to supervise the legality of the election in respect of the SEC's decision to prohibit raising campaign donations by text messages. On 15 December, the court declined the application. It found that SEC decisions cannot be appealed when it is exercising its supervisory role. The second request was filed on 21 December by first-round candidate Ms. Škare-Ožbolt. She

⁶⁵ SEC 'Statement and Warning', Class 013-04/10-11/28 File No. 507-10-01 issued on 5 January 2010.

⁶⁶ Letter from Mr. Josipović's campaign to the SEC, dated 6 January 2010. The ad used parts of a speech made by Mr. Josipović at a meeting of SDP regional branches. There, he presented a map of Croatia with his first round results shown in red. A recording of Mr. Josipović's statement was used in Mr. Bandić's campaign spot saying that Croatia's "map would turn completely red", alluding to the political meaning of the colour.

⁶⁷ SEC 'Statement and Warning' No. 507/10/02 of 6 January 2010.

⁶⁸ SEC Decision No. 013-04/10-11/30 of 8 January 2010.

⁶⁹ See Article 30 of the Law on General Administrative Procedure (2009). Natural justice refers to procedural fairness. In its simplest form, it has three rules: the right to be heard; the right to an unbiased forum; and the right to receive decisions that are based on logical proof or evidence. See also Existing Commitments for Democratic Elections in OSCE Participating States, OSCE/ODIHR, Warsaw 2003, page 75, available at http://www.osce.org/publications/odihr/2003/10/12345_127_en.pdf.

⁷⁰ Presidential election law, Article 43; Constitutional Act on the Constitutional Court, Article 87.

alleged that the media had failed to provide equal conditions for all candidates. The court decided four days after the second round and found that the case did not fall within its purview; it identified the SEC as the correct instance.⁷¹ While the court in its supervisory role is not bound by the strict timelines that apply when it acts on appeals for SEC decisions, the timing of its decision denied the candidate effective remedy.

The third request was filed on 8 January by Mr. Bandić who argued that the decision of the SEC to ban broadcasting of his campaign spot violated “his right to campaign freely and inform the public”.⁷² Mr. Bandić also opined that the SEC had made an erroneous decision without first giving him an opportunity to be heard. In its response on 14 January, the court found that there was no appeal of the SEC’s supervision on the correctness of the election campaign. It thus confirmed that election participants have no right to appeal decisions that affect their ability to campaign. The court, however, added that the SEC in its authority to “supervise the campaign has the right to ban video clips of candidates...if it considers that they constitute a violation of the permitted and proper way of election campaigns”.⁷³ The court also recognized that the law failed to provide objective criteria on the correctness of an election campaign and indicated its intention to file a report to parliament with respect to this and other deficiencies in the legal framework for elections.

XII. ELECTION DAY

The OSCE/ODIHR LEOM did not conduct a comprehensive and systematic observation on election day, but OSCE/ODIHR LEOM observers visited a limited number of polling stations and MECs/CiECs across the country. Voting in both rounds took place in an orderly manner. VC members at polling stations visited seemed generally aware of procedures and managed the process professionally and efficiently. Their performance improved due to additional training and instructions received before the second round.

Voter lists appeared to be largely accurate. OSCE/ODIHR LEOM observers noted that in a few instances, voters were turned away for reasons such as not being aware that they had to temporarily register to be able to vote outside their place of residence or that the address of their polling station had changed. This mainly occurred during the first round. OSCE/ODIHR LEOM observers noted that VC members in polling stations visited during the first round were not always fully aware of SEC instructions that any photo ID could be accepted. Instructions given by the MECs/CiECs between the two rounds appeared to clarify this issue.

The layout and technical arrangements in several polling stations visited during both rounds did not fully ensure the secrecy of the vote. This did not appear to impact voters’ choices, but VCs should have received more clear instructions on how polling stations should be set up to fully ensure compliance with this important principle.

Mobile voting was carried out in most polling stations visited. Although there was no clear guidance on this process, it appeared to be generally conducted in a timely and orderly manner with two VC members present, as required by law. Mobile voting was used to compensate for

⁷¹ In addition, the court commented that the law lacked objective criteria to measure what constituted “equal conditions for all candidates”.

⁷² Letter from Mr. Bandić to Constitutional Court dated 8 January 2010.

⁷³ Constitutional Court decision U-VII/111/2010 of 14 January 2010.

voters who did not find themselves on VLs in some retirement homes. VCs instructed them to request mobile voting from the polling stations of their permanent residence, if in the vicinity.

The counting process seemed generally to ensure transparency and accuracy. No major inconsistencies were reported. However, the OSCE/ODIHR LEOM noted that VCs did not conduct a thorough ballot check before counting them, especially in the first round. This could be explained by the lack of detailed procedures in the instruction manual. VC performance during the counting process seemed to improve in the second round; this, to some extent, showed the positive impact of additional training that was conducted for VC members between the two rounds.

The delivery of election materials and results protocols to relevant MECs/CiECs by VCs appeared to be performed promptly and efficiently. Protocols were checked by MECs/CiECs before handing them over to data entry centres. The results tabulation appeared to be efficiently conducted.

Although almost all polling station results were processed by 22:00 hours on both election days, preliminary results were announced by the SEC only at midnight due to campaign silence provisions. The official final result was announced at noon on the day after the second round. Mr. Josipović got 60.3 per cent of vote, winning in all but one of the 21 counties in Croatia.⁷⁴

Voter turnout in the first round was 43.96 per cent, historically the lowest voter participation in a presidential election since 1991. Voter turnout in the second round significantly increased to 50.13 per cent. The most significant increase was noted in the out-of-country vote in BiH; turnout in the second round there almost doubled from 19.07 to 36.65 per cent, reportedly due to a strong get-out-the-vote effort on election day. Mr. Bandić immediately accepted the second round results and congratulated the winner.

XIII. RECOMMENDATIONS

The following recommendations are offered for consideration by the authorities, political parties and civil society of Croatia, in further support of their efforts to improve the conduct of elections. The OSCE/ODIHR stands ready to assist the authorities and civil society in these efforts. The recommendations are made in two sections: those that are priority recommendations and others.

A. PRIORITY RECOMMENDATIONS

1. In line with previous OSCE/ODIHR recommendations and those of others,⁷⁵ it is recommended that the legal framework for elections is thoroughly reviewed, consolidated and harmonized. Consideration could be given to a comprehensive general electoral code that would encompass all technical aspects for the conduct of elections, including those presently addressed by mandatory instructions issued by the SEC. Specific chapters to address the unique aspects of local, parliamentary and presidential elections could be included in this code.

⁷⁴ Mr. Bandić won 92.02 per cent of the total out-of-country vote.

⁷⁵ For example, in a report of 7 February 2005 to the parliament, the SEC made a series of recommendations to improve the presidential election law. After the 2007 parliamentary elections, the SEC again published a set of recommendations.

2. A clearly defined complaints procedure should be established, consistent with the rules of natural justice and electoral good practice. The legal framework should lay out procedures for complaints in a concise manner, covering all aspects of elections. The election dispute mechanism should provide for the right to appeal all decisions made by election authorities and ensure that all administrative decisions can be reviewed by a judicial body in line with OSCE commitments.
3. The institutional reform of the SEC should be completed and a permanent, professional SEC membership established. The SEC should be supported by adequate human and material resources to enhance its capacity, independence and authority.
4. Efforts should continue to enhance the accuracy of voter lists, deleting entries of voters deceased abroad and ensuring accurate information about voter's actual place of residence.
5. Impermissible campaign activities should be more clearly defined in the law. A precise definition of what constitutes "correctness" of an election campaign should be included to create predictable conditions for election contestants.
6. Measures to enhance safeguards for protection of the secrecy of the vote should be taken. These should include improvements in the technical layout of the screens and clear guidelines on how polling stations should be arranged.
7. Consideration should be given to establishing a limit on the size of a donation that natural and legal persons can make during presidential election campaigns to a political party or a candidate and to include "goods and services" as a component of overall campaign income.
8. The law should provide clear rules on reporting on campaign expenditures between both rounds of an election as well as final reporting of political parties and candidates. Such reporting should include itemization of their expenditures as well as information about sources and amounts of the funds raised.
9. An independent body responsible for the receipt, monitoring, audit and reporting on campaign finances should be designated. This body should have the authority to conduct or initiate investigations and to issue effective and proportionate sanctions for violations and non-compliance with regulations.
10. The presidential election law should be amended to clarify the responsibilities of the media during an election campaign, especially the legal provision on equal coverage of contestants, in a manner that does not impede the media's editorial independence.

B. OTHER RECOMMENDATIONS

Legal Framework

11. The legal framework should clearly define the scope and extent of the SEC's mandatory instructions on lower-level election commissions and in other election-related matters.

12. A definition of what set of activities the campaign silence provision refers to should be introduced. The currently different timelines for election silence in different laws should be aligned in order to avoid confusion.
13. The legal framework should be amended to allow all categories of observers to observe all aspects of the election process.
14. Consideration should be given to removing the requirement that voters can only support the nomination of one presidential candidate. This requirement could result in the disqualification of a prospective candidate without the candidate's knowledge or control.

Election Administration

15. Consideration could be given for the SEC to develop and implement a comprehensive communication strategy towards all stakeholders involved in elections to ensure adequate and timely information. This strategy could be implemented through multiple means and cover all aspects of the electoral process, such as voter registration, registration of candidates and parties, voting procedure, campaign finance and election day observation.
16. Training for VC members should be intensified. All VC members should at least receive a copy of the election day procedure manual. The same manual could be made available to candidates, political parties and observers.

Complaints and Appeals

17. Consideration should be given to prescribing sanctions for violations that are proportionate to the offence. These should also include a provision to take remedial actions, if appropriate, before using sanctions.
18. The SEC should maintain a record of complaints and inquiries, noting all stages of follow-up that have been undertaken.

Election Day Procedures

19. Consideration should be given to more comprehensively describing the procedure for mobile voting in the law to further safeguard the integrity of the election process.
20. To ensure full confidence in the integrity of the results, the procedure for counting of ballots should be described in more detail in the election day procedures manual for polling stations and during training sessions of VC members.

Media

21. Given that the Council for Electronic Media conducts monitoring of the broadcast media, consideration could be given to granting it a formal role in monitoring the coverage of elections. This monitoring could assist the SEC in the implementation of media-related provisions of the presidential election law.

ANNEX: FINAL RESULTS

**PRESIDENTIAL ELECTION
 FINAL RESULTS⁷⁶**

1st ROUND

Republic of Croatia	Total	
No of voters	4 495 233	
No of voters who voted	1 975 909	43,96 %
No of valid ballots	1 954 441	98,94 %
No of invalid ballots	20 890	1,06 %

Candidates	No of votes	% of votes
1. Milan Bandić	293 068	14,83 %
2. prof. dr. sc. Andrija Hebrang	237 998	12,04 %
3. prof. dr. sc. Ivo Josipović	640 594	32,42 %
4. Josip Jurčević	54 177	2,74 %
5. Damir Kajin	76 411	3,87 %
6. Boris Mikšić	41 491	2,10 %
7. prof. dr. sc. Dragan Primorac	117 154	5,93 %
8. prof. dr. sc. Vesna Pusić	143 190	7,25 %
9. Vesna Škare-Ožbolt	37 373	1,89 %
10. prof. dr. sc. Miroslav Tuđman	80 784	4,09 %
11. Nadan Vidošević	223 892	11,33 %
12. Slavko Vukšić, ing.	8 309	0,42 %

2nd ROUND

Republic of Croatia	Total	
No of voters	4 495 528	
No of voters who voted	2 253 570	50,13 %
No of valid ballots	2 222 607	98,64 %
No of invalid ballots	30 547	1,36 %

Candidates	No of votes	% of votes
1. prof. dr. sc. Ivo Josipović	1 339 385	60,26 %
2. Milan Bandić	883 222	39,74 %

⁷⁶ According to SEC website: <http://www.izbori.hr/izbori/izbori09predsjednik.nsf/wi?OpenForm>, for detailed results of the first round see here: http://www.izbori.hr/2009Predsjednik/rezultati/r_00_0000.html, for detailed results of the second round here: http://www.izbori.hr/2009Predsjednik/rezultati2K/r_00_0000.html.

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/odihhr).