

SERIES OF STUDIES ABOUT ELECTION LEGISLATION

Analysis of selected technical aspects of electoral process in the OSCE
Member States

Sarajevo, September 2015

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ABBREVIATIONS

BiH	Bosnia and Herzegovina
CEC BiH	Central Election Commission of Bosnia and Herzegovina
FBiH	Federation of Bosnia and Herzegovina
OSCE	Organization for Security and Co-operation in Europe
OSCE/ODIHR	OSCE Office for Democratic Institutions and Human Rights
PS	Polling station
RS	Republic of Srpska

INTRODUCTION

Coalition for Free and Fair Elections 'Pod Lupom', composed of 6 civil society organizations from the whole country, has started monitoring the election process in Bosnia and Herzegovina (BiH) on July 1, 2014.

The general assessment of the Elections observed is that they were held in a democratic and fair atmosphere and in accordance with the Election Law and related rules and procedures, with a small number of irregularities and critical situations, and isolated incidents.

However, some irregularities in the electoral process were observed during fieldwork in certain legal arrangements and application of existing regulations, which suggests that there is a need for improvements in the Election Law and the implementing regulations of the CEC BiH as well as in their implementation in the field and in narrowing the space for possible abuse. In relation to this, the Coalition made a number of recommendations in its Final Report on the General Elections 2014¹ in BiH.

After observing the implementation of the General Elections, the Coalition activities continue in the direction of contributing to the improvement of the electoral process in Bosnia and Herzegovina. In the post-election period the Coalition organized a conference in Sarajevo and three round tables in Mostar, Banja Luka and Tuzla where the relevant stakeholders, especially those who are directly participating in the electoral process, discussed the presented recommendations, and were asked to give their opinions on problems identified by the Coalition, as well as on other issues of election legislation.

With the aim of argumentation and conduct of fruitful discussions on specific topics which are identified as 'burning issues', the Coalition made a decision to form a working group composed of young researchers in April 2015 with the task of analyzing the Election Laws of the OSCE Member States. The first analysis is related to the Polling Station Committees which were characterized as the weakest link of the electoral process in Bosnia and Herzegovina. The following analysis dealt with election deadlines because one of the Coalition's recommendations was to shorten the existing deadlines from 180 to 120 days since the day of election announcement. Third analysis was reviewing the protection of electoral rights of all election actors as well as the protection of the citizens' electoral will. The fourth, final, analysis, gives an overview on technical aspects of the electoral process with the aim of comparing it with the solutions from analyzed states and potentially emphasizes certain good practices that could be applicable in the case of BiH.

¹ Coalition's Final report can be found at the following link:
<http://podlupom.org/userfiles/file/Kona%C4%8Dni%20izvje%C5%A1taj%20-%20Finalna%20verzija%20za%20%C5%A1tampu%20%28BOS%29.pdf>

METHODOLOGY

Research methodology is based on a detailed study of election legislation, primarily the Election Laws of the Member States of the OSCE, 39 out of 57 of them. Due to limited capacity, as well as taking into account the relevance of the legislation in the context of BiH, the research excluded a certain number of Member States, mainly those with Anglo-Saxon legal tradition, countries outside Europe as well as the smaller European countries like San Marino, Andorra, etc.²

The survey includes the following countries: Albania, Armenia, Austria, Azerbaijan, Belarus, Bulgaria, Montenegro, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Netherlands, Croatia, Iceland, Italy, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Hungary, Macedonia, Moldova, Norway, Poland, Portugal, Romania, Russian Federation, Slovakia, Slovenia, Serbia, Spain, Sweden, Switzerland, Turkey, Ukraine and Uzbekistan.

For this research the OSCE/ODIHR database of legal regulations of the Member States of the OSCE was mainly used³. It is important to emphasize that most of the translations are unofficial and made just for research purposes. Reports of election monitoring missions by OSCE/ODIHR⁴, were used as an extra source along with other available information from organizations dealing with electoral processes⁵.

For this purpose, the Coalition 'Pod Lupom' formed a working group composed of 7 researchers/collaborators out of over 200 applicants that applied to Coalition's public call for researchers/collaborators.

The data that will be presented in this study were obtained in a way that the Coalition primarily divided the states per members of the working group. After that, working group received tasks according to areas/topics on which they had to provide adequate answers from Election Laws and regulations of countries they were researched about.

The received answers point out different legal traditions, emphasizing at the same time different levels of development of political culture, election awareness which can be assessed through the level of regulation of certain areas. So countries that can be characterized as those with highly developed awareness of the election process and the rules of conduct for the election (eg. The Scandinavian countries) very poorly define a number of questions, and give to election commissions, and sometimes even to citizens, quite wide powers to organize and conduct elections. On the other hand, countries that have in their recent past gone through a transition of their political and economic systems, and even wars, tend rather to have a very detailed regulation of all segments related to the electoral process, which again points to the efforts of these countries to thus prevent potential election fraud and manipulation. This

² Research did not include the following Member States:

Andorra, BiH, Greece (no available translation of the Election Law to English), Ireland, Canada, Liechtenstein, Luxembourg, Malta, Monaco, Mongolia, USA, San Marino, Tajikistan, Tunisia, Turkmenistan, United Kingdom and Vatican. The Election Law of BiH was analyzed separately and used for comparison of electoral solutions.

³ <http://legislationline.org/>

⁴ <http://www.osce.org/odihr/elections>;

⁵ <http://www.idea.int/elections/>; <http://aceproject.org/>

variety of regulations was a challenge in making an analysis in terms of recognizing trends and common features that can possibly serve as examples of good practice for BiH.

WHY TECHNICAL ASPECTS OF THE ELECTORAL PROCESS?

Through independent observation of Election Day during the General Elections 2014., through a network of 2.600 civic, non-partisan observers who reported from a total of 1.348 polling stations (PS), the Coalition 'Pod Lupom' collected and processed the data concerning technical aspects in the implementation of the following processes: opening of the polling stations, voting, closing of the polling stations, and determining the votes on the Election day.

Key findings indicate the following:

- At 65% observed PS the electoral material was held by the president of the Polling Station Committee on the night before the Election Day;
- At more than 40% of PS were noted the cases of so-called family voting (more than one person in the voting booth);
- Over 30% of PS are not adjusted for people with disabilities;
- A quarter of PS recorded at least one case that one person provides assistance in voting to a number of voters;
- At 8% of PS the form with the summary of results was not placed visibly (ZR1 form, so called yellow copy), and at the large number of PS the visibility of this data was limited;
- In more than 40 municipalities were observed the cases of incorrect packaging of election materials;
- In a quarter of observed municipality was observed incorrect filling of forms by Polling Station Committees.

Following the irregularities observed by observing the General elections 2014, the Coalition 'Pod Lupom' gave several recommendations in its Final report which would lead to the improvement of the electoral process. Given recommendations, even though they are technical, would lead to the improvement of the transparency of the electoral process, as well as to the higher degree of confidence and trust by citizens in the whole process.

Given recommendations are the results of identified problems or deficiencies of specific segments of the electoral process, and are reflected in the following:

- The strict adherence to the provisions of the Election Law and the provisions of implementing regulations that stipulate the provision of security of electoral materials at each polling station;
- Introduce separate transparent ballot boxes for each level of government that is being elected;
- Reduce the height of voting booths to the minimum height that ensures the secrecy of voting;

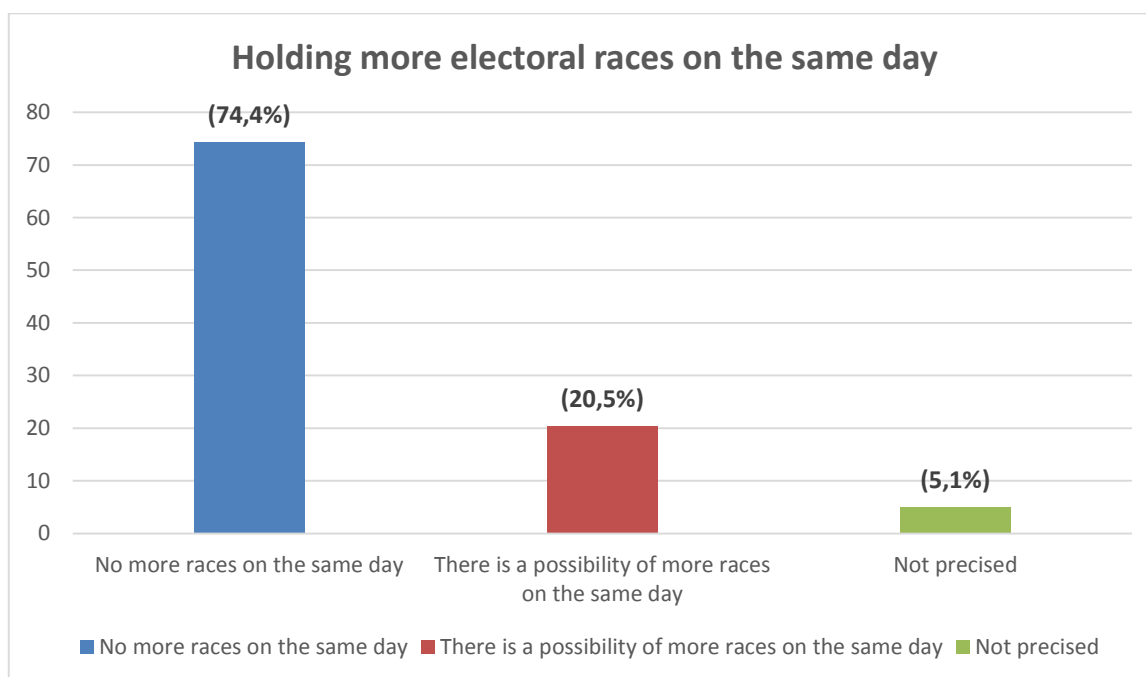
- Technically improve the making of copy of form with the summary of results in order to make them readable, and place them publicly at the polling station after the completion of all process at the polling station;
- Consider the introduction of the ordinal numbers on the ballot for political subjects;
- Consider marking the ballots with serial numbers to improve security.

ANALYSIS BY AREA

Holding more electoral races on the same day

BiH Election Law provides the maintenance of local and general elections. These elections are held separately, every two years. Local elections are held for mayors of cities and municipalities and mayor of Brčko District; representatives in the local assemblies (RS), councils (FBiH) and the assembly of Brčko District. The General Elections, on the other hand, have a greater number of races, ie levels of government to be elected. Overall there are 6 electoral races: the Presidency of Bosnia and Herzegovina, the House of Representatives of the Parliamentary Assembly of BiH, House of Representatives of the Federation of BiH, the National Assembly of the Republic of Srpska, the President and Vice-Presidents of the Assembly of the Republic of Srpska and Cantons.

By analyzing available laws of the OSCE Member States included in this study, we found that the large majority of countries do not maintain more electoral races on the same day. This information applies to as many as 29 of the 39 states or 74.5% of them.⁶ Only two states or 5.1% do not specify this issue, and in 8 of 39 countries or 20.5% of them have planned the maintenance or the possibility of holding more electoral races on the same day.⁷



The appearance and number of ballot boxes and voting booth height

In the realization of the Election day, the more electoral races on the same day mean, for the electoral administration, that in FBiH and RS are held elections for 4 levels of government, while in Brčko District the electoral administration prepares the elections for 5 levels

⁶ Georgia, Slovenia, Romania, Ukraine, Norway, Germany, Latvia, Switzerland, Albania, Azerbaijan, Estonia, Montenegro, Lithuania, Finland, France, Macedonia, Moldova, Portugal, Croatia, Uzbekistan, Slovakia, Czech Republic, Italy, Turkey, Russia, Kyrgyzstan, Poland, the Netherlands, Belarus.

⁷ Iceland and Denmark do not specify the issue, while in the following countries can have or already have more electoral races on the same day: Sweden, Armenia, Bulgaria, Hungary, Austria, Serbia, Kazakhstan, Spain

depending on the entity citizenship of citizens and thus their selection for which entity they will vote. In practice, the current way of organizing the voting process and the counting of votes suggest that it could be improved in order to prevent possible abuses related to the insertion of the ballots in the ballot boxes by voters. Currently there is only one, non-transparent, ballot box at the polling station. Although it is provided that a voter must insert ballots separately, practice shows that this is often not the case, and that the voters insert all ballots together. The existence of as many ballot boxes as election races would highly contribute to the prevention of abuse, and facilitate and accelerate the process of counting of votes.

When it comes to the analyzed OSCE Member States, the general conclusion can be that the laws seldom specify these questions, and that often these matters are dealt with by by-laws and regulations of the local election administration. From the available legislation it is clear that only 8 countries⁸ (20,5%) clearly precise that the ballot boxes must be made of transparent material, the same number says the opposite⁹, while in other states, 23 of them or 58,9% this issue is not clear. Available regulations related to the number of ballot boxes used in the states where there are more races on the same day, unfortunately, do not point to concrete solutions. For example, they show precisely that more boxes are being used in Austria, and Albania for local elections, while in the majority of the states this conclusion cannot be made. The assumption is that this issue is defined by by-laws of the competent authorities for the conduct of elections, whose translations are rarely available.

The voting booths that are used at the elections in BiH provide maximum secrecy to voters which are their primary purpose. However, practice shows that in some cases there are indications of abuses carried out by voters during the voting process – in same occasion it is a replacement of already filled ballots for the blank (ie Bulgarian train) or the voters photographing their ballots, and later they receive money for these ballots or other benefit for their vote etc. All of this is difficult to notice and to control with the existing voting boots, and often these situations are perceived only within the polling station area or in its surrounding.

The analyzed available state regulations covered in this survey, unfortunately, not at all or only roughly talk about the height of the voting booth. In fact, the vast majority of states treat this issue in a way that the height and appearance of the voting booths should be adjusted to ensure the principle of secrecy of the voting process. The assumption is that the possible details, having in mind that is not provided otherwise, are defined by implementing acts of the election administration.

Announcing the results at the polling station

According to the current electoral legislation in BiH, election results from the polling stations are, so to speak, in its first public disclosure announced at the polling station upon the completion of the counting of votes in a way that the copy of the Record with summary of

⁸ Georgia, Ukraine, Bulgaria, Montenegro, Serbia, France, Macedonia, Azerbaijan

⁹ Denmark, Hungary, Austria, Germany, Švcarska (eg canton of Valais), Uzbekistan, the Netherlands, Belarus

results is put on a visible place to be available to everyone present. Coalition 'Pod Lupom' recorded, while observing the last General Elections in October 2014, that this procedure is respected in most cases¹⁰. However, at the same time a large number of observers noted that the visibility of information on the given copy is very bad, and that photograph or a copy of it could not serve as an understandable document of the confirmed election results. For this reason, followed the recommendation of the Coalition for this form, - its copy, to be improved in an appropriate manner.

Similar to the above, in this question the research showed that, unfortunately, the technical aspects of the electoral process are often not available in the English language which would enable more reliable and more detailed analysis. From what was available, it is visible that 13¹¹ of 39 states or 33,3% announces the results in the same or a very similar way as in BiH, with the copy of the Minutes or Record with results. At the same time,

<p>Turkey</p> <p>The copy with the results remains displayed for one week after the elections</p>
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there is an interesting example of Turkey where this copy stays announced for one week after the elections, and that the official copies must be provided to the observers of all political subjects at their request. In Georgia, a large amount of data from the Record is at the same time entered in the part of the record that is displayed during the whole day at the polling station, for example – the number of received ballots, voter turnout etc. The available regulations of other countries do not allow for clear conclusion to be made about the announcement of the results from the polling stations. It is interesting to point out a few examples: in Sweden the information about the results is provided on the phone and entered in the system, after which is immediately published on the website of the election administration; in Norway the access to election results that is entered in the system is given to the media that immediately have access to the received results; in Hungary the copy of results, that is entered into the IT system that monitors the results, is available to all interested parties three days after the election.

Voting process

Voting

Analyzing the method of voting in the framework of this study, from the available regulations it is visible that the vast majority uses paper ballots (33/39 states). Only 5 of them provide so called combined voting – apart from paper ballots there is also electronic voting or voting by voting machines (Germany, Estonia, Kazakhstan, France, Russia¹²). In Switzerland, as this area is under the jurisdiction of the cantons, the situation varies from canton to canton. A number of states is in some stage of testing or is still testing different forms of electronic voting. So,

¹⁰ Coalition observers have noted that at 7% of polling stations, which were observed by the Coalition, the form with the summary of the results is not visibly displayed (ZR1, yellow copy).

¹¹ Georgia, Romania, Ukraine, Armenia, Bulgaria, Azerbaijan, Serbia, Francuska, Moldova, Portugal, Spain, Turkey, Poland

¹² Kazakhstan: electronic system 'Sailau'; in Germany and France there are voting machines; in Russia the CEC provides procedures for this type of voting if there is a decision made to use this kind of voting at the Elections; Estonia: voting via the Internet.

for example, Norway has tested such voting in 2013, in Austria this is still a pilot project, the Netherlands has used voting machines (NEDAP voting machines). However, they all kept paper ballots because of security. The same machines have been used on presidential elections in Germany and the parliamentary elections in the European Union but have been declared unconstitutional in 2009.

The appearance of ballots

Speaking about the appearance of the ballot, the research attempted to obtain the data about the order of political subjects on the ballots and security labels on them. In this context, political subjects are marked with ordinal numbers in 17 states¹³, in alphabetical order in 5 states¹⁴, while in other states there is a combination of determining the order as a result of the lottery position, previous election results etc. It is interesting to point out the example of Norway where the voter can change the order of candidate by preference ie by putting the ordinal number next to his name; or to delete the candidate from the list by crossing his name on the ballot. In Germany, at the Bundestag elections, the order of political subjects on the ballot depends on the results of the last elections, while the remaining places are determined alphabetically. France does not use the ballots with combined list of political subjects; the voters vote in a manner that they receive multiple ballots of different political subjects and they put in the envelope only the ballot with the name of selected candidate. If the ballot of political subjects has more candidates, the preference between them is determined by ordinal numbers.

In 17 states
political subjects are marked
with ordinal number on the
ballot

In the context of safety markings on the ballots, the vast majority of countries do not offer a clear conclusion considering the available materials for analysis – 27 of them. The remaining 8 countries out of 39 mark the ballots with serial numbers¹⁵, and 4 with watermark¹⁶.

The counting of ballots

In almost all of the countries analyzed the manual counting of votes is applied. Combined counting, manual and electronic, is mentioned in the case of Norway, Latvia, Estonia and Kazakhstan. In Norway, for example, there is a scanner for counting. However, in the smallest municipalities the counting is still done manually. The capacity of counting in Oslo was up to 50.000 votes per hour which enabled the completion of counting process until the morning after the Election Day. The vast majority of states also defines that the counting process takes place immediately after the end of voting and that is continued until the completion of the work. For example, the available analyzed documents show that

Latvia
provides breaks during the
counting of votes

¹³ Georgia, Slovenia, Sweden, Romania, Bulgaria, Hungary, Austria, Latvia, Switzerland, Estonia, Montenegro, Serbia, Finland, Macedonia, Croatia, Poland, Netherlands

¹⁴ Armenia, Iceland, Denmark, Azerbaijan, Slovakia

¹⁵ Georgia, Slovenia, Armenia, Albania, Macedonia, Moldova, Croatia, Italy

¹⁶ Serbia, Turkey, Russia (not necessarily a watermark, another form of printing protection can be used – the decision on this is made the latest 60 days before the Elections), Kyrgyzstan

only in Latvia there are breaks during the performance of this work, while other states either define strictly uninterrupted counting or we were not able to make a clear conclusion from available resources.

The accessibility of the polling station for persons with disabilities

From the available state regulations of the states covered by this research it is visible that the vast majority of them provides that the polling stations should be adjusted in order to enable access to persons with disabilities or that the voting must be enabled otherwise (for example, voting with assistance etc.). It is interesting to note that in at least

Iceland, Hungary, Norway
and Poland

use ballots in Braille letter

4 states (Iceland, Hungary, Norway and Poland) they use ballots in Braille in order to enable visually impaired persons to have the chance to vote independently. A few interesting examples include Norway where voters that cannot come to the polling station can either vote from home; or if they cannot access the polling station, can vote outside the polling station in the presence of members of the Polling Station Committee; which is the case in Croatia; in Switzerland persons older than 60 years or persons that cannot come to the polling station can send their 'vote' via a member of their household that has to bring along the medical documentation to present to the members of the Polling Station Committee; in Finland, each polling station has assigned an assistant who is in charge of providing assistance to voters when needed.

INSTEAD OF A CONCLUSION

With this analysis, the Coalition 'Pod Lupom' completes the series of studies of available regulations regarding the elections in the OSCE Members States, in the manner described in the methodology of the survey. We hope that the prepared materials will be of use to both general, and the professional community, especially to the decision makers during their work on the preparation of amendments of existing or potential enact of a new Election Law in BiH.

ANALYSIS PREPARED BY:

Jelena Tanasković Mićanović

RESEARCHES/COLLABORATORS:

Edita Miftari, Elma Tahmaz, Ilma Aljović, Damjan Jugović, Nenad Bosnić, Srđan Ostojić i Stevan Salatić.