



Office for Democratic Institutions and Human Rights

REPUBLIC OF CROATIA

PARLIAMENTARY ELECTIONS 2011

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

21-23 September 2011



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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	EXECUTIVE SUMMARY	1
III.	FINDINGS.....	3
A.	BACKGROUND.....	3
B.	LEGAL FRAMEWORK.....	3
C.	ELECTION ADMINISTRATION.....	4
D.	VOTING RIGHTS AND VOTER REGISTRATION	5
E.	CANDIDATE REGISTRATION	6
F.	CAMPAIGN AND CAMPAIGN FINANCING	6
G.	MEDIA	7
H.	ELECTION OBSERVATION.....	8
IV.	CONCLUSIONS AND RECOMMENDATIONS.....	8
	ANNEX: LIST OF MEETINGS	10

**REPUBLIC OF CROATIA
PARLIAMENTARY ELECTIONS 2011**

OSCE/ODIHR Needs Assessment Mission Report

I. INTRODUCTION

In anticipation of an invitation to observe the upcoming parliamentary elections, expected to be held on 4 December 2011, and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) undertook a Needs Assessment Mission (NAM) from 21 to 23 September. The NAM was composed of Beata Martin-Rozumilowicz, OSCE/ODIHR Head of Election Department, and Richard Lappin, OSCE/ODIHR Election Adviser.

The purpose of the mission was to assess the pre-election environment and the preparations for the elections. Based on this assessment, the NAM should recommend whether to deploy an OSCE/ODIHR election-related activity for the forthcoming elections, and if so, what type of activity best meets the identified needs. Meetings were held with officials from state institutions, the election administration, and the judiciary, as well as with representatives of political parties, the media, and civil society. A list of meetings is included as an annex to this report.

OSCE/ODIHR would like to thank the Ministry of Foreign Affairs and European Integration and the OSCE Office in Zagreb for their assistance and co-operation in organizing the NAM. OSCE/ODIHR would also like to thank all of its interlocutors for taking the time to meet with the NAM.

II. EXECUTIVE SUMMARY

The upcoming elections will be the seventh parliamentary elections following Croatia's independence in 1991, and the first since the conclusion of European Union (EU) accession negotiations on 30 June. Voters will elect 151 Members of Parliament (MPs), including 3 out-of-country and 8 national minority representatives.

The election campaign is expected to focus on the anticipated EU accession, corruption investigations involving the former prime minister, and the arrest of war crime suspects and concurrent increase in nationalist rhetoric. Several interlocutors met during the NAM voiced concerns about the conduct of the upcoming campaign, especially in areas with national minority populations.

The four-tiered election administration headed by the State Election Commission enjoys a high level of public trust, and is widely perceived to administer elections in a professional and transparent manner. However, certain interlocutors questioned the effectiveness of a measure allowing parliamentary parties to be represented on lower-level commissions due to the late appointment of such representatives and unclear nomination procedures.

Significant amendments have been made to out-of-country voting provisions that fix the number of out-of-country MPs at three and limit voting locations to diplomatic and

consular offices. While welcomed by most OSCE/ODIHR NAM interlocutors, concerns were raised about the capacity of a reduced number of polling stations to ensure that all out-of-country voters could vote, as well as the provision of adequate voter information.

Recent amendments passed by the parliament to modify the way in which national minority seats are allocated have been repealed by the Constitutional Court. Accordingly, the same provisions as in the 2007 parliamentary elections will apply. However, the current political discourse illustrates a widespread view that the system of national minority representation should be addressed.

Voter registration is passive and all Croatian citizens over the age of 18 are eligible to vote, including those residing abroad permanently. Many OSCE/ODIHR NAM interlocutors expressed longstanding concerns about the accuracy of the voter lists. The equality of voting rights is further challenged by the existing electoral district boundary delineations.

Political parties and coalitions can register candidates in an open and inclusive process. However, contrary to paragraph 7.5 of the 1990 OSCE Copenhagen Document, the law does not permit individuals to independently stand, but only in groups of independent candidates.

Campaign finance regulations have been strengthened and harmonized under the new Law on Political Activity and Election Campaign Financing. While the regulations were largely welcomed as improving transparency and accountability, some concerns were raised about the efficacy of sanctions and the manner in which regulations will be applied in practice.

The media environment in Croatia is diverse and offers a plurality of viewpoints. Most media and party representatives stated that broadcast media obligations to provide equal access to all candidates typically result in lengthy programmes that fail to engage the electorate.

Although the majority of OSCE/ODIHR NAM interlocutors expressed confidence in the integrity of the electoral process, most welcomed a potential OSCE/ODIHR election observation activity, recognizing that further improvements could be made and that an independent external assessment and recommendations may contribute to this process.

While some recommendations from previous OSCE/ODIHR missions have been implemented, several areas would benefit from continued attention. In particular, this relates to the legal framework, new campaign finance provisions, and the electoral campaign, especially in areas with minority populations. For this reason, the OSCE/ODIHR NAM recommends the deployment of a Limited Election Observation Mission to observe the parliamentary elections. In addition to a core team of analysts, the mission recommends the secondment of six long-term observers from OSCE participating States. In line with OSCE/ODIHR standard methodology, the mission would also contain a media monitoring element. Systematic observation of election day proceedings is not envisaged.

III. FINDINGS

A. BACKGROUND

On 15 July 2011, Prime Minister Jadranka Kosor announced that elections would be held on 4 December. These elections will be the seventh parliamentary elections following Croatia's independence in 1991, and the first since the conclusion of EU accession negotiations on 30 June.

By law, parliamentary elections must be called between 30 and 60 days from the date of the dissolution of parliament, which is still in session at the time of writing. Although the election date has not yet been confirmed by the President, most OSCE/ODIHR NAM interlocutors expected elections to be held on 4 December.

Voters will elect 151 MPs to serve a four-year term in a unicameral parliament (*Sabor*). The parliament is elected from 12 multi-member districts. The territory of Croatia is divided into ten districts, each electing 14 MPs under a proportional system. Parties must receive five per cent of the valid vote in a district to receive a mandate. In addition, there are two non-territorial districts. One represents Croatian citizens residing abroad and elects 3 MPs under a proportional system, while the other is reserved for representatives of national minorities, and elects 8 MPs under a majoritarian system.

The current government is led by the Croatian Democratic Union (HDZ), with the participation of the Croatian Peasant Party (HSS), the Independent Democratic Serbian Party (SDSS), and two independent MPs. HDZ is seeking a third consecutive term in office following victories in 2003 and 2007. They will be challenged in these elections by the "Alliance for Change" coalition, which includes four opposition parties; the Social Democratic Party (SDP), the Croatian People's Party – Liberal Democrats (HNS-LD), the Istrian Democratic Assembly (IDS), and the Croatian Party of Pensioners (HSU).

OSCE/ODIHR has observed eight elections in Croatia since 1997.¹ A Limited Election Observation Mission (LEOM) was deployed for the 2009/2010 presidential election. The mission concluded in its final report that the elections "complied overall with OSCE commitments and other international standards for democratic elections," although continued efforts "are necessary to address remaining issues."

B. LEGAL FRAMEWORK

The primary law governing the upcoming elections is the 1999 Law on the Election of Representatives to the Croatian Parliament (LERCP, amended in 2010). The legal framework encompasses a number of other laws, including the 1990 Constitution (amended in 2010), the 2011 Law on Political Activity and Election Campaign Financing, the 2007 Law on Voter Lists, and the 2006 Law on the State Election Commission (amended in 2007). In addition, elements of the 2003 Law on Electronic Media (amended in 2009), 1999 Law on Districts, and the 1993 Law on Political Parties (amended in 2001) are applicable, as well as decisions and regulations by the State Election Commission (SEC). Although the new campaign finance regulations apply to all elections in Croatia, there has been no other harmonization of electoral legislation.

¹ All reports are available on the OSCE/ODIHR website: www.osce.org/odihr/elections/croatia.

OSCE/ODIHR has previously recommended that the legal framework should be “reviewed, consolidated and harmonized.”

In addition to the new campaign finance regulations (see below), significant amendments were made to out-of-country voting provisions. In 2010, the Constitution and consequently the LERCP were amended to fix the number of out-of-country seats at three, a number previously determined by voter turnout.² In addition, out-of-country voting will now only take place at diplomatic and consular offices, with voting not permitted in alternative locations.³ While most OSCE/ODIHR NAM interlocutors welcomed these amendments as a means to improve the integrity of the vote, some concerns were raised about the capacity of a reduced number of polling stations to ensure that all out-of-country voters could exercise their vote, as well as the provision of adequate voter information to those Croatian citizens residing abroad.

Amendments passed by the parliament in June 2010 to modify the way in which national minority seats are allocated were overturned by the Constitutional Court in July 2011. Under the existing law, 8 minority representatives are elected through 6 separate elections, with 3 seats reserved for the Serbian minority and 5 seats for the other 21 constitutionally recognized minorities. Voters who are identified on the voter lists as being from a national minority are entitled to choose to vote for either national minority candidates or in their territorial-based district.

The amendments sought to introduce two key changes. First, the three seats reserved for the Serb minority would be transferred from the national minority district to the ten general territorial-based districts. Second, the other minorities would retain five reserved seats but also be granted a “supplementary vote,” allowing them to vote in both their territorial-based district as well as in the national minority district. The Constitutional Court, however, ruled that the amendments were unconstitutional.⁴ Accordingly, the same provisions as in the 2007 parliamentary elections will apply. Several OSCE/ODIHR NAM interlocutors expressed dismay at the late timing of the decision, as well as with the argumentation provided. The current political discourse illustrates a widespread view that the system of national minority representation should be addressed.⁵

C. ELECTION ADMINISTRATION

Parliamentary elections are administered by a four-tier system, comprising the SEC, Constituency Electoral Commissions, Municipal and City Electoral Commissions, and Voting Committees. The SEC stated that the number of polling stations is expected to be between 6,700 and 7,000.

² In 2007, for example, five out-of-country MPs were elected. As such, the overall number of MPs elected to the next parliament will be reduced from 153 to 151.

³ The 2009 and 2010 OSCE/ODIHR final report noted that polling stations were located in premises other than diplomatic and consular offices in 11 countries.

⁴ See, Constitutional Court Review of the Legislation U-I-/3786/2010, Decision 29.07.2011: [http://sljeme.usud.hr/usud/prakswen.nsf/92b93a268fe63c89c1256e2f000538db/c12570d30061ce54c12578dc0039610e/\\$FILE/U-I-3786-2010.pdf](http://sljeme.usud.hr/usud/prakswen.nsf/92b93a268fe63c89c1256e2f000538db/c12570d30061ce54c12578dc0039610e/$FILE/U-I-3786-2010.pdf).

⁵ See, Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities, Third Opinion on Croatia, 27 May 2010, paragraph 26: http://www.coe.int/t/dghl/monitoring/minorities/3_fcnmdocs/PDF_3rd_OP_Croatia_en.pdf.

The SEC is responsible for the overall conduct of the elections. It is a permanent, independent, and professional body, whose nine members are elected by the parliament. The SEC president is also president of the Supreme Court, and two of the vice presidents are also Supreme Court judges. All other members of the SEC must be lawyers with 10 years of relevant professional experience. The current composition of the SEC was established in 2007, with all members due to serve eight-year terms. The SEC informed the OSCE/ODIHR NAM that its secretariat is now fully staffed, thereby addressing a recommendation from the 2009 OSCE/ODIHR final report.

Lower-level election commissions are appointed by the next higher election commission for the time period of a specific election. Members of these election commissions should also have a legal background. The law also affords opportunities for parliamentary parties to have representatives in the extended membership of all lower-level commissions, thus providing an important layer of transparency. However, as previously observed by OSCE/ODIHR, the effectiveness of this measure may be curtailed by the late appointment of party representatives, as well as a lack of clarity on how extended members are appointed. The SEC directly oversees out-of-country voting, co-ordinating technical aspects with the Ministry of Foreign Affairs and European Integration (MFAEI). Voting abroad takes place over a two-day period.

As in previous years, the SEC plans to organize cascade training for election commissions. The SEC will also produce specific election information materials for candidates, first-time voters, and the general electorate. All interlocutors met by the OSCE/ODIHR NAM expressed high confidence in the election administration and their ability to organize elections in a professional and transparent manner.

Complaints about alleged electoral violations can be filed with the SEC, which must decide on the complaint within 48 hours. Decisions of the SEC can be appealed to the Constitutional Court, providing for timely judicial review.

D. VOTING RIGHTS AND VOTER REGISTRATION

All Croatian citizens over the age of 18, including those residing abroad permanently, are eligible to vote. Voter registration is passive, with a central computerized database maintained by the Ministry of Public Administration (MPA). In line with the Law on Voter Lists, registration is based on citizenship data, as well as records of permanent residence and travel documents, provided by the Ministry of Interior and the MFAEI, respectively. Registration records for voters without a permanent residence in Croatia are held by the City of Zagreb MPA Office. Voters who expect to be away from their place of residence on election day can request a voting certificate, allowing them to vote at an alternative polling station.

Voters are able to check their details until 14 days before election day by either visiting local MPA offices, through an internet-based search programme, or via an SMS service. Electoral contestants also have the right to receive extracts of the voter lists from regional MPA offices. Although the OSCE/ODIHR NAM was informed that the computerized voter register includes mechanisms to prevent double entries, many interlocutors expressed longstanding concerns about the accuracy of the voter lists, particularly in light of preliminary data from the 2011 population census. The authorities acknowledged that

a lack of consistency in reporting migration and deaths may negatively affect the quality of the voter lists.

The equality of voting rights is challenged by the current delimitation of electoral district boundaries, as provided by the Law on Districts. Although the LERCP states that the number of registered voters in the 10 territorial-based districts should not differ by more than 5 per cent, the final voter lists published for the 2007 parliamentary elections indicate variations of more than 25 per cent.⁶ The need to revise district boundaries to ensure the equality of voting rights has been previously recommended by OSCE/ODIHR. In December 2010, the Constitutional Court issued a notification to the parliament calling for district boundaries to be redrawn in line with current population data, as well as to stipulate procedures for this. Government proposals to implement changes were met with firm resistance from the opposition who argued that any changes should only happen after the full results of the population census are known. Most political parties met by the OSCE/ODIHR NAM acknowledged the need for the next parliament to address this issue as a priority.

E. CANDIDATE REGISTRATION

Candidate registration begins on the day that elections are called by the president and ends 14 days prior to election day. Political parties and coalitions must submit a separate list of 14 candidates in each district that they wish to contest. Contrary to paragraph 7.5 of the 1990 OSCE Copenhagen Document, the legislation does not allow for individual independent candidates, but only for groups of independent candidates, as each list is required to include at least 14 candidates.⁷ Lists of independent candidates require a minimum of 500 signatures from eligible voters to be registered. As a means to encourage women candidates, the law provides for additional state funding to parties for each MP elected from the under-represented gender.

Candidates wishing to run in the national minority district may be nominated by political parties, registered national minority NGOs, or groups of voters. Candidates nominated by a group of voters in this district require only 100 signatures.

F. CAMPAIGN AND CAMPAIGN FINANCING

The official campaign starts the day after the registration of candidates is completed and lasts until the day before election day, when the campaign silence period starts. However, many prospective candidates have already started informing the electorate of their candidacy and views on political issues. The campaign is expected to be heated and focused on recent political milestones, including: the anticipated signing of the EU Accession Treaty and subsequent national referendum on accession; ongoing corruption investigations concerning HDZ and the former Prime Minister; recent convictions and arrests of International Criminal Tribunal for the former Yugoslavia (ICTY) war crimes

⁶ The 2002 Venice Commission Code of Good Practice in Electoral Matters, I, 2.2., states: "Seats must be evenly distributed between the constituencies... The permissible departure from the norm should not be more than 10%, and should certainly not exceed 15% except in special circumstances."

⁷ Paragraph 7.5 provides that participating States "respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination."

suspects and a concurrent increase in nationalist rhetoric; as well as ongoing economic recession and unemployment. Several OSCE/ODIHR NAM interlocutors voiced concerns about the conduct of the campaign, especially in areas with national minority populations.

In line with previous recommendations made by OSCE/ODIHR, as well as the Group of States against Corruption of the Council of Europe (GRECO),⁸ campaign finance regulations have been strengthened and harmonized under the new Law on Political Activity and Election Campaign Financing. Under this law, registered political parties are obliged to submit detailed income and expenditure reports annually to the State Audit Office. In addition, parties and coalitions contesting elections are required to submit complete campaign income and expenditure reports after an election to the SEC, which are then made public.

Parties are primarily funded through the state budget, membership fees, and donations. Each electoral contestant must open a special bank account through which all campaign contributions and expenditures must pass. The SEC has the authority to check these accounts at any moment. Foreign and anonymous donations are prohibited. The limit for contributions in a calendar year is set at HRK 30,000 (approximately EUR 4,024) for individuals and HRK 100,000 (EUR 13,412) for legal entities. In-kind contributions must be accounted for through invoices specifying their market value. Total campaign costs for a candidate list should not exceed HRK 1,500,000 (EUR 201,223) per district.

The SEC is responsible for overseeing campaign finance regulations, with assistance from the State Audit Office and other institutions when necessary. The SEC should publish its review of submitted reports within 60 days of the announcement of final results. As part of the review process, the SEC has the authority to request additional documentation and, if violations are determined, forward cases to the courts to decide on possible sanctions such as fines or the return of funds to the state budget. While the regulations were largely welcomed as improving transparency and accountability, some concerns were raised about the efficacy of sanctions and the manner in which regulations will be applied in practice.

The law also provides for proportional reimbursement of campaign costs for candidates who secure at least five per cent of the valid vote in their district. Varying levels of compensation are additionally provided to national minority candidates.

G. MEDIA

The media environment in Croatia was assessed by OSCE/ODIHR NAM interlocutors as providing the public with diverse information and a plurality of viewpoints. Television is the predominant source of political information, with two public and two private channels broadcast nationwide. Although there are a number of national and regional newspapers in circulation, the quality of journalism is seen by many as variable.

⁸ GRECO Evaluation Report on Croatia – Transparency of Party Funding, 30 November to 4 December 2009, page 19 to 23: http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%291_Croatia_Two_EN.pdf.

Freedom of expression and freedom of the media are guaranteed by the constitution. Although Croatia abolished prison sentences for defamation in 2006, recent draft amendments to the Criminal Code foresee a reintroduction of imprisonment as a sanction for defamation. The OSCE Representative on Freedom of the Media recently called upon the government to “withdraw the amendments and decriminalise defamation altogether, making it solely a civil offence.”⁹

The LERCP provides specific legislation covering the role of media during parliamentary elections, which is usually supported by more detailed regulations adopted by the parliament in advance of the elections (not yet passed). These provisions require broadcasters to provide free airtime on an equal basis to all electoral contestants. Many media and party representatives informed the OSCE/ODIHR NAM that the principle of equality, coupled with a large number of contestants, typically result in lengthy broadcasts of party programmes and stilted debates that fail to engage the public. Previous OSCE/ODIHR recommendations that the equality requirement be reconsidered have not been acted upon, with media representatives stating that discussion of reform consistently arrives too late in the electoral cycle and without sufficient time to implement changes.

The SEC is obliged by the LERCP to supervise the conduct of the media during the campaign, but it has no power to impose sanctions if media fail to abide by regulations. The Council for Electronic Media is authorised by the Law on Electronic Media to monitor the electronic media in general and to issue warnings and file charges when necessary.

H. ELECTION OBSERVATION

Although Article 94 of the LERCP provides for election observation by non-governmental organizations, there are no specific provisions for international observers or political party observers. In previous elections, OSCE/ODIHR observers have been granted full access to the electoral process. The prior OSCE/ODIHR recommendation that party representatives be permitted to observe parliamentary elections remains unaddressed.

The main domestic observation organization, GONG, plans to deploy some 600 observers on elections day, and intends to monitor campaign spending in the media in co-operation with the national chapter of Transparency International. GONG also plans to produce a number of voter education materials and provide a telephone hotline for any questions or concerns that voters may have.

IV. CONCLUSIONS AND RECOMMENDATIONS

The majority of OSCE/ODIHR NAM interlocutors expressed confidence in the integrity of the electoral process and the capacity of the SEC to administer elections professionally and transparently. Nevertheless, most interlocutors stated that they would welcome a potential OSCE/ODIHR observation activity for these elections, recognising that further

⁹ Regular Report to the Permanent Council by Ms. Dunja Mijatović, the OSCE Representative on Freedom of the Media, 17 March 2011: <http://www.osce.org/fom/76158>.

improvements could be made to the electoral process and that an external assessment and recommendations by OSCE/ODIHR may contribute to this.

While some recommendations from previous OSCE/ODIHR missions have been implemented, several areas would benefit from continued attention. In particular, this relates to the legal framework, new campaign finance provisions, and the electoral campaign, especially in areas with national minority populations. On this basis, the OSCE/ODIHR NAM recommends the deployment of a Limited Election Observation Mission to observe the parliamentary elections, contingent upon the receipt of an official invitation from the Croatian authorities. In addition to a core team of analysts, the mission recommends the secondment of six long-term observers from the OSCE participating States. In line with OSCE/ODIHR standard methodology, the LEOM would contain a media monitoring element. While the mission would visit a limited number of polling stations on election day, systematic observation of electoral proceedings is not envisaged.

ANNEX: LIST OF MEETINGS

State and Election Authorities

Ministry of Foreign Affairs and European Integration

Vinko Ljubičić, Director General, Directorate for Consulate Affairs
Jasminka Lončarević, Head, Department for International Legal Assistance
Marko Perić, Second Secretary, Department for Visas

Ministry of Interior

Željko Katić, Director, Department for Administration and Inspection Affairs
Dražen Mayka, Assistant Director, Directorate for Uniformed Police
Gordana Valenta, Head, Sector for Administrative Affairs, Aliens, and Citizenship

Ministry of Public Administration

Davorin Mlakar, Minister
Davor Ljubanović, State Secretary
Anita Markić, Director for Political System, State Administration and Local Government
Jadranka Jurinjak, Head of Sector for State Administration
Marijana Smiljanić, Head of Department for Electoral Register

State Election Commission

Zdravka Čufar Šarić, Vice President
Aleksandra Jozić-Ileković, Vice President
Davor Orlović, Member
Zorislav Ham, Member
Josip Vresk, Member
Janja Horvat Drobnjak, Member
Irena Kravos, Secretary
Slaven Hojski, Deputy Secretary

Parliamentary Committee on the Constitution, Standing Orders and Political System

Ana Lovrin, Member of Parliament
Vedran Bajsić, Head of the Deputy Speaker's Office, Croatian Parliament

Parliamentary Committee on Human and National Minority Rights

Zdenka Čuhnil, Chairperson, Member of Parliament
Nikola Ivančević, Secretary

State Audit Office

Nediljka Rogošić, Assistant Auditor General
Lidija Pernar, Assistant Auditor General

Constitutional Court

Teodor Antić, Secretary General

Political Parties

Croatian Democratic Union (HDZ)

Krunoslav Markovinović, Deputy Chairperson
Ivanka Roksandić, Deputy Chairperson

Croatian Peasant Party (HSS)

Stanko Grčić, President

Croatian People's Party – Liberal Democrats (HNS-LD)

Goran Beus Richembergh, Member of Parliament
Stanko Kordić, Secretary

Independent Democratic Serbian Party (SDSS)

Milorad Pupovac, Member of Parliament

Social Democratic Party (SDP)

Igor Dragovan, Member of Parliament
Josip Leko, Member of Parliament

Media

Croatian Radio Television (HRT)

Gordana Mrden, Acting Editor-in-Chief, Croatian Television
Duško Radić, Acting Editor-in-Chief, Croatian Radio
Dražen Miočić, Chief Editor of News Programmes
Nikola Kistić, Programme Manager
Mislav Togonal, Deputy Programme Manager, Croatian Television

Croatian Journalist's Association

Zdenko Duka, President

Civil Society

GONG

Deragan Zelić, Executive Director

International Community

OSCE Office in Zagreb

H.E. Ambassador Enrique Horcajada Schwartz, Head of Office