

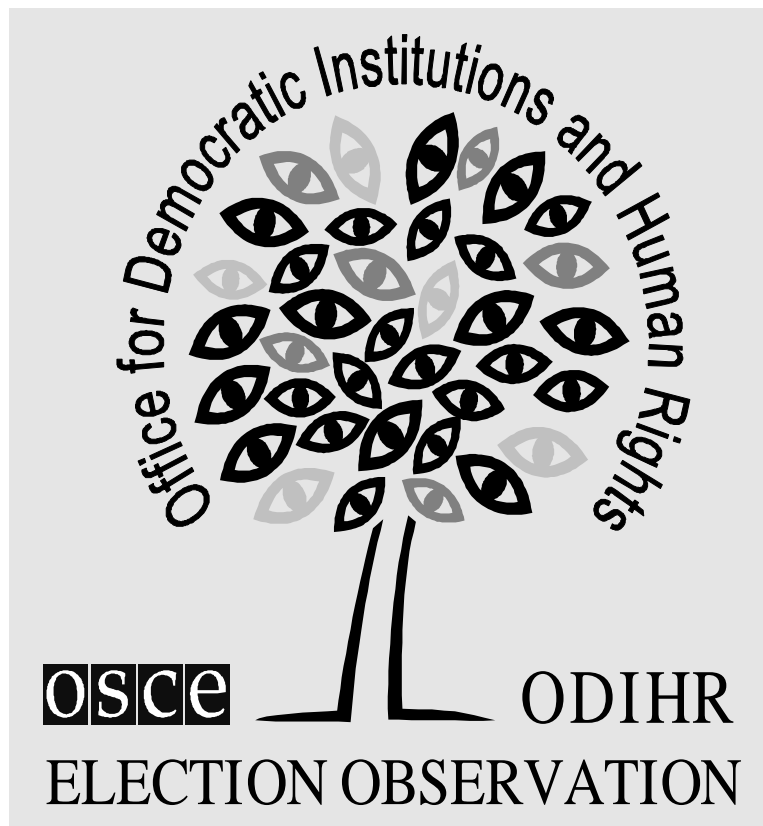


Office for Democratic Institutions and Human Rights

REPUBLIC OF CROATIA
PARLIAMENTARY ELECTIONS
(HOUSE OF REPRESENTATIVES)

2 and 3 JANUARY 2000

FINAL REPORT



Warsaw
25 April 2000

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2 and 3 JANUARY 2000

I. INTRODUCTION

The Organisation for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) established an Election Observation Mission (EOM) in Zagreb on 19 November 1999 to monitor the parliamentary elections to the House of Representatives. At the time, the election date had not been announced. On 27 November, acting President Pavletic announced the election would take place on 3 January 2000.¹

Mr. Nikolai Vulchanov, OSCE/ODIHR Election Advisor, was appointed as Head of the OSCE/ODIHR Election Observation Mission. Ms. Helle Degn, President of the OSCE Parliamentary Assembly (OSCE PA), was appointed by the OSCE Chairman-in-Office as his Special Representative to lead the short-term observation.

The Final Report consolidates the findings of eight core-staff based in Zagreb, 12 long-term observers deployed in the 10 election constituencies in Croatia, and over 350 short-term observers from 30 OSCE participating States, including 25 parliamentarians from the OSCE Parliamentary Assembly, staff from embassies in Zagreb, as well as representatives from inter-governmental and international non-governmental organisations based in the region. In addition, nine parliamentarians from the Parliamentary Assembly of the Council of Europe (PACE) took part in the observation. A preliminary statement with a press release was presented by President Helle Degn on 4 January 2000, in conjunction with other officials including Mr. Nikolai Vulchanov for the OSCE/ODIHR and Senator Daniel Goulet for the PACE. This was a joint statement by the OSCE and the Council of Europe.

On 3 January, observers visited more than 1,200 polling stations in Croatia. The EOM also observed polling in Bosnia and Herzegovina, monitoring the election at all 29 polling stations in 15 locations over the two election days (2 and 3 January). The European Institute for the Media undertook a long-term media monitoring for the OSCE Mission to Croatia and the OSCE/ODIHR, with financial support from the European Commission.

The OSCE/ODIHR Election Observation Mission would like to thank the OSCE Mission to Croatia for its support throughout its stay in Croatia and the OSCE Mission to Bosnia and Herzegovina, the OSCE Mission in Kosovo and the Embassies of the OSCE participating States in Zagreb and Sarajevo, for their co-operation and participation in the short-term election phase.

The Election Observation Mission wishes to express its gratitude to the Ministry of Foreign Affairs, the Governmental Office for Co-operation with the OSCE, the State Election Commission, and the Parliament of the Republic of Croatia for their assistance and co-operation during the course of the observation.

¹ In diplomatic and consular offices abroad, polling was scheduled to take place over two days (2 and 3 January 2000).

II. EXECUTIVE SUMMARY

The 2-3 January 2000 election to the House of Representatives of the State Parliament of the Republic of Croatia marked progress towards meeting the country's commitments of democratic governance as a participating State of the OSCE.

The election took place within a new legislative framework. Notwithstanding its late adoption, the new law remedied some concerns expressed after the 1995 and 1997 elections in Croatia. The Constitutional Court further improved the electoral environment through important decisions and the prompt disposition of complaints. A plurality of political parties was able to compete effectively for seats in the House of Representatives.

Important concerns that fundamentally impede Croatia's democratic development, and expressed to the Government by the international community as early as October 1998, remain to be addressed. First among such concerns is a provision of the Law on Citizenship granting the right to Croatian citizenship, and consequently the right to vote, to ethnic Croats born abroad and having no permanent residence in Croatia, based on ethnic criteria only. Second, a large number of citizens of Croatia, mostly members of the Serb minority, who left the country during the war, remain effectively unable to assert their citizenship and therefore exercise the right to vote. Third, a provision of the election law granting national minorities the right to special seats in the House of Representatives has been used to justify the creation of separate ethnic voter registers, with the ethnicity of individuals identified, that raise a risk of discrimination and intimidation. The newly elected House of Representatives should address these concerns well in advance of the next elections.

As in previous elections, though somewhat improved, the State media remained excessively biased in favour of the ruling party, both in quantitative and qualitative terms.

Other important concerns relate to the effective participation of political parties in the work of election commissions, the accuracy and transparency of voter registers, campaign financing provisions, and certain provisions of the election law that remained vague both for in-country and out-of-country voting.

The choice of 3 January as the election date was unusual in recent European practice. Although the choice of an election date is a sovereign decision, the date chosen should have been avoided, as many important election deadlines fell on or close to religious holidays. The choice of such a date also impacted on the election campaign.

On election day, in general, polling was conducted in a calm and orderly manner. Except for isolated cases of intimidation of voters and domestic observers, citizens were able to express their political will freely. For the first time in Croatia, non-partisan domestic observers were able to monitor the event, a significant improvement. However, the polling in Bosnia and Herzegovina was marred by an excessive number of voters in some polling stations and widespread irregularities, raising concerns about the integrity of the process there.

The OSCE stands ready to continue the dialogue with the Parliament, the Government and other authorities of Croatia with a view to addressing the concerns and recommendations contained in this report.

III. LEGAL FRAMEWORK

A. General Background

The Constitution of Croatia, promulgated in December 1990, establishes a bicameral parliament, the Croatian *Sabor*. The lower house, the House of Representatives has general law-making powers subject to review by the upper house, the House of Counties. The House of Representatives shall have not less than 100 and not more than 160 members who are elected on the basis of direct, universal and equal suffrage by secret ballot. Members of the *Sabor* are elected for a four-year term. Previous parliamentary elections were held on 29 October 1995 (House of Representatives) and 13 April 1997 (House of Counties).

In addition to the Constitution, the elections are regulated by a body of legislation, the most important being: the Law on the Election of Representatives to the Croatian National Parliament (1999),² hereafter the election law; the Law on the Constituencies (1999); the Law on Electoral Registers (1992) and the Law on Croatian Citizenship (1991). Other relevant legislation include: the Criminal Code; the Constitutional Law on the Constitutional Court; the Law on Political Parties; the Law on Public Assembly; the Public Information Law; the Law on Croatian Radio and Television (HRT); the Decree on Permanent and Temporary Residence (1991); the Law on Passports (1991)³ and the Law on Identity Cards (1991,1992). Regulations on the conduct of Croatian Radio and Television (HRT), the Electoral Code of Ethics and Decisions and Mandatory Instructions issued by the State Election Commission (SEC) also form part of the electoral framework.

B. The Adoption of the Election Law

Prior to the adoption of the new election law, the international community based in Zagreb, repeatedly called for a timely and politically inclusive review of the legal framework governing the election process in an attempt to increase political consensus. In previous reports, the ODIHR had also stressed that election legislation should enjoy broad support among the political forces contesting the election. An agreement on principles for parliamentary elections was reached on 25 May 1999 between the ruling Croatian Democratic Union (HDZ) and six opposition parties. However, it was not possible to transform the agreement into joint legislative proposals and, regrettably, the new election law did not enjoy the full support of opposition parties. Significantly, no amendments were made to the Law on Croatian Radio and Television, which would transform it into a true public service broadcaster. However, a code of conduct was introduced to regulate the election-related broadcasts of HRT, the State broadcaster.

The new election law was finally passed on 29 October 1999 and came into force on 13 November 1999 close to the expiry of the Parliament's mandate. The adoption of the election law and of a new law on constituencies close to the election, and the introduction of amendments at a late stage ensured that the pre-election environment in Croatia was, once again, marked by uncertainty, repeating a pattern noted in previous elections.

² The Law on Election of Representatives to the Croatian National Parliament is applicable for the election of Representatives to both houses of the Croatian Sabor. However, this report is confined to a discussion on the articles relevant to the election to the House of Representatives.

³ A new Law on Passports was adopted in 1999 and came into force on 1 January 2000.

C. Election System

The election system has changed repeatedly since 1990. Initially, a mixed election system providing for 60 members elected from single mandate constituencies and 60 members elected by proportional representation from one nation-wide constituency was established. Thirteen seats were reserved for ethnic-Serb voters and a small number of seats were reserved for other smaller national minorities. This system was substantially amended in 1995 with the reduction of the number of members elected from single mandate constituencies to 28 and the number of members elected through proportional representation increased to 80. The 1995 amendments included the introduction of a fixed number of 12 seats for out of country voters, most of whom did not have a permanent residence in Croatia, and which included a large number of ethnic-Croats granted citizenship through the controversial Law on Croatian Citizenship (1991). The number of seats reserved for the ethnic-Serb population was reduced from 13 to 3.

Unlike the previous legislation, the election law adopted in October 1999 dispenses with the single mandate constituencies. Ten territorial constituencies were established in Croatia, No. 1–10, each electing 14 members on the basis of candidate lists. In an attempt to equalise the “weight” of each vote, the law provides that the number of registered voters in each of the 10 in-country constituencies should not vary by more than $\pm 5\%$. In constituencies No. 1 – 10, mandates are allocated to the party lists proportional to the valid votes cast for each party using the D’Hondt method. To be eligible to participate in the distribution of mandates in a particular constituency, parties or coalitions must receive 5% or more of the total valid votes cast in that constituency.

In addition to the 10 in-country constituencies, the election law creates a special constituency, No. 11, for Croatian citizens without permanent residence in Croatia. Between 0 and 14 members of parliament can be elected through constituency No. 11, subject to the condition that the average nation-wide “price of a mandate” allocated through the in-country constituencies is approximately equal to the “price of a mandate” allocated through the out-of-country constituency.⁴ Thus, the new election law eliminates the fixed quota that had previously resulted in the over-representation of the non-resident electorate.⁵ Seats for constituency No. 11 are also allocated by the D’Hondt method.

In accordance with the Constitution recognising the existence of national minorities, the new election law creates a separate constituency for ethnic minorities, constituency No. 12, who elect a total of five members.⁶ The Hungarian, Serbian and Italian minorities are granted one reserved mandate each. One mandate is reserved for members of the Czech and Slovak minorities combined. The fifth mandate is reserved for members of the Austrian, German, Ruthenian, Ukrainian, and Jewish minorities combined. Members of ethnic minorities can vote for either a candidate or party contesting the specific minority election or vote for a list in the constituency of their permanent residence. Seats for national minority representatives were allocated according to the first-past-the-post method.

⁴ The average “price of a mandate” is the ratio between the total of valid votes cast in the in-country constituencies divided by 140, the total number of mandates allocated through these 10 constituencies. Based on official results, the average “price of a mandate” was 19,816 votes, which resulted in the allocation of six seats through constituency No. 11.

⁵ This constituency was represented by 12 seats in the outgoing Parliament.

⁶ Article 18, paragraph 1, of the Constitutional Law on human rights and freedoms and the rights of national and ethnic communities or minorities (1991) -stipulating a proportional representation for national minorities comprising more than 8% of the population- was suspended in 1995.

D. Legal issues

1. Citizenship

The Constitution provides that “all citizens of the Republic who have reached the age of 18 years shall have universal and equal suffrage”. Citizens who find themselves outside the borders of Croatia may cast their votes in the States in which they find themselves. Eligible voters are registered according to the Law on Electoral Registers, not amended since it came into force in 1992.

Following the 1991 referendum, Croatia adopted a new citizenship law. The citizenship law grants all former citizens of the Socialist Federal Republic of Yugoslavia (SFRY), who had republican citizenship of the Socialist Republic of Croatia as of 8 October 1991, citizenship of new Croatia. This continuity of citizenship applies regardless of actual residence in Croatia and these persons automatically became citizens of Croatia. This law provides for various ways of acquiring Croatian citizenship. One controversial provision entitles “a member of the Croatian people”,⁷ who does not have a place of permanent residence in the Republic of Croatia, to seek citizenship based on ethnic criteria only, if the person can show that he or she is attached to the legal system and customs of the Republic of Croatia and that he or she accepts the Croatian culture. Such citizenship applicants simply have to submit a written statement that he or she considers himself or herself to be a Croatian citizen, for their application to be processed by the administration.

The citizenship law and its implementation are fundamentally flawed in the following regards. The law creates unequal requirements for acquiring citizenship based on ethnicity and thereby discriminates between ethnic Croat citizenship applicants and those from other ethnic groups. Ethnic Croat applicants do not need any link to the territory of Croatia whereas non-ethnic Croats must show five years of continuous residence in Croatia immediately prior to their application. This has proved difficult for many to establish due to the displacements caused by several years of war. Furthermore, citizenship applicants must declare their attachment to the legal system and customs in the Republic of Croatia, accept Croatian culture and indicate proficiency in Croatian language and Latin script. The legal and administrative obstacles to acquire or prove Croatian citizenship for those who are not ethnic Croats have for many proved an insurmountable problem.

In addition, basing citizenship on ethnicity alone without any nexus to the territory of Croatia, thus discriminating against other ethnic groups, is contrary to international instruments, including the Universal Declaration of Human Rights, the International Covenant on civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

A large number of citizens of Croatia, mostly members of the Serb minority, who left the country during the war, were effectively prevented from asserting their citizenship of Croatia, thus denying them the right to vote. The authorities of Croatia adopted a Return Program to facilitate this process. Nonetheless, a large number of refugees from Croatia in the Federal Republic of Yugoslavia (FRY) and Republika Srpska of Bosnia and Herzegovina were not

⁷ The phrase “member of the Croatian people” has been interpreted to mean an ethnic-Croat. For the purposes of this report, it is assumed that the phrase “member of the Croatian people” does not include members of the Serb, Hungarian, Italian, Czech, Slovak, Austrian, German, Ruthenian, Ukrainian, Jewish, or other national minorities in the Republic of Croatia.

able to receive confirmation of their entitlement to Croatian citizenship and were disenfranchised for this election.

To fulfil the provisions of the citizenship law, documents must be issued to individuals to evidence their entitlement to citizenship. Applicants face lengthy administrative procedures. Individuals may apply for citizenship or present entitlement to existing citizenship to the Ministry of Interior, which maintains the official citizenship records. If the application is accepted, the Ministry of Interior issues a decision (*rešenije* or *prima facie evidence*) on granting citizenship. After this, the citizen goes to the respective municipal civic status office where his or her record is included in the book of citizenship, maintained by the municipality, and the municipality issues a certificate for citizenship (*domovnica*). Neither document includes the individual's photograph. The Municipal authority in Zagreb maintains the citizenship books for citizens without permanent residence in Croatia, and the diplomatic and consular offices of Croatia issue the citizenship certificates. Only after these procedures are completed, can an individual apply at the Ministry of Interior for a passport and, if he or she has permanent residence in Croatia, for identity card. The citizenship law states that Certificate of Citizenship serves to *prove* Croatian citizenship, while a valid identity card, military identity card or passport *evidences* citizenship. Implemented selectively, these administrative procedures could prevent individuals from proving his or her claim for citizenship.

The citizenship law enables a large number of persons who continue to have Bosnian citizenship to apply for and receive Croatian citizenship, thereby granting the right to participate as candidates and voters in the Croatian elections. Conversely, the law creates administrative and legal obstacles that hinder and even prevent Croatian citizens from non-Croatian national groups from acquiring or proving citizenship.

2. National Minorities

The election law reserves five seats for members of national minorities, creating special rules to ensure that they are represented in a way which might otherwise not be possible in a society polarised along ethnic lines. This should doubtless be regarded as a legitimate effort to ensure that members of such minorities, whose concerns might otherwise be neglected or ignored, will be represented in the national legislature. However, the progressive reduction of the seats for national minorities raises concern about their effective representation and the single seat allocated to ethnic Serb citizens appears as a token gesture. Furthermore, the current arrangement perpetuates the identification of citizens by their ethnicity, while the number of seats does not offer an effective representation.

The creation of reserved seats for national minorities in the election law and the provisions of the Law on Electoral Registers have been used to justify the inclusion of "nationality", or ethnic identification, on voter registers. In the context of the Law on Electoral Registers (Article 9), the term "nationality" is indeed used to indicate ethnic origin. Observers reported that many voters were uncomfortable with the inclusion of ethnicity on the notification of entry in voter registers that were sent to all voters. Similarly, some parties and a number of voters objected that voters were included on separate ethnic voter lists.

3. Campaign Finance

In general, the provisions of the election law concerning funding for the campaign of political parties are not sufficient. For instance, the law requires a pre-election disclosure of intended

expenditures and their sources, but does not compel political parties to disclose their financial records after the election. As such, the legal provisions offer only limited transparency.

Additionally, the new law provides some public funding for the campaign of political parties but the formula favours the majority party, as the number of party deputies in Parliament is the main factor in determining the amount of funding.⁸ Thus, the largest party in parliament, the Croatian Democratic Union (HDZ) received most of the public funding. For new parties, the law provides that the amount of this funding is to be determined by the Government and is contingent upon the party receiving at least 5% of the valid votes in at least one constituency.

4. Vague Provisions

The election law remains vague in some essential areas including: the procedures and documents required for voter identification and registration for in- and out-of-country voting; and procedures for sorting different types of ballots during the vote count and aggregation of results at constituency level.

The State Election Commission attempted to clarify some of these vague provisions by issuing 12 mandatory instructions. However, some of the instructions further increased the complexity of the electoral system, introducing special polling stations for different categories of voters at a very late stage in the election process. Conversely, instead of issuing mandatory instructions detailing polling day procedures for voting committees, the State Election Commission issued only “reminders”. Thus, voting committees could interpret some legal provisions differently, with the result that the implementation of polling and counting procedures was not uniform across the country.

The law does not establish all administrative election deadlines, and the timing for a number of these is unclear. These include: the deadline for repeat elections for national minority representatives; the appointment of standing members of the State Election Commission by the Constitutional Court; the drawing of lots if no consensus can be reached on the nominations of augmented members of election commissions; the appointment of Constituency Commissions (CECs) by the SEC or when the CECs appoint the lower level commissions; the appointment of voting committees in diplomatic and consular offices; the publication of decisions on complaints by the SEC or the publication of election results.

5. Constituencies

The election law states that the number of voters registered in the constituencies shall not vary by more than +/- 5%. The law also states that when defining the constituencies, attention must be paid to the borders of counties, cities and municipalities.

The law on constituencies, adopted simultaneously with the election law, divided the country in 10 territorial constituencies respecting the +/-5% variation according to the voter registers compiled before election day. However, given the large number voters who switched from the minority lists to the regular constituency lists, official final results showed greater variations in the size of constituencies, the largest between constituencies No. 4 and 10, respectively 333,735 and 391,959 voters, a 12.7% variation.

⁸ The formula is detailed in the Law on Political Parties. Of the total funds, 20% is divided among competing parties evenly and 80% distributed according to representation in parliament.

IV. PRE-ELECTION PHASE

A. The Election Date

Elections must be held not later than 60 days after the expiry of the mandate or the dissolution of the House of Representatives. The mandate of the outgoing parliament expired on 27 November 1999. Therefore, the elections had to be held no later than 27 January 2000.

Article 5 of the election law specifies that the President decides when to call the election and that a minimum of 30 days must elapse from the day the elections are called until election day.

In November, the rapid deterioration of late President Tudman's health prevented him from announcing the date of election, although 22 December was widely expected. Following Parliament's adoption of the Law on Temporary Incapacitation of the President on 26 November 1999, then acting President Pavletic called the election for 3 January 2000. Such an election date is unusual in recent European practice. Although the choice of an election date is a sovereign decision, where possible such a date should be avoided as it falls close to a holiday period and complicates the administration of the election. Indeed, many important election deadlines fell on or close to religious holidays. The choice of such a date also impacted on the dynamism and intensity of the election campaign, thereby lessening the potential for political parties to inform voters on their platforms and for voters to receive this information.

B. Election Administration

The election administration comprises a four-tier structure: the State Election Commission; 11 Constituency Commissions; 543 Municipal Election Commissions (MECs) or City Election Commissions (CiECs) and over 6,500 Voting Committees (VCs).

In contrast to the 1995 and 1997 elections, the new election law introduced partial party representation on election commissions at all levels, thus increasing the confidence of voters and candidates in the electoral process. Each election commission has a standing core membership that is augmented by additional members who are nominated by political party/coalitions, and appointed after the approval of candidate lists. Political parties nominated members of voting committees in large numbers, thereby enhancing the political participation and transparency of the process.

The election law stipulates that members nominated by political parties or coalitions should be proposed by consensus. However, if agreement by parties considered as opposition cannot be achieved, the law provides for the membership to be determined by a lottery drawing. The lottery drawing could potentially give representation only to peripheral parties at the expense of stronger parties, which enjoy broader support. A mixed system could be considered, including secured membership for the main political parties, and a lottery to distribute the remaining positions on the commissions.

On 18 December, the SEC decided that registered candidates could also serve as augmented members of election commissions. However, as candidates competing in the elections, this could constitute a personal conflict of interest, given the requirement for election commissions to act in an independent and impartial manner.

Ostensibly, members of the augmented composition have the same rights and duties as standing members of a commission. However, the law does not specify the precise time when such members are entitled to assume their positions. Party members joined the commissions at a relatively late stage, only after the acceptance, determination and announcement of candidate lists.

1. Structure of the Election Administration

a. State Election Commission (SEC)

The State Election Commission (SEC) has overall responsibility to administer the elections. The standing membership of the SEC consists of the President of the Supreme Court, who is ex officio the President of the SEC, four members, and their deputies. The Constitutional Court appoints the standing members and deputies. Standing members must be either judges of the Supreme Court or distinguished lawyers and must not be members of political parties. The opposition parties were unable to reach consensus on their nominations and on 17 December, these augmented members were decided by a lottery organised by the Constitutional Court.

The Election Law establishes that the SEC shall determine polling stations and appoint voting committees in diplomatic and consular offices. As such, the SEC assumed the role of the Constituency Election Commission for out-of-country voters.

b. Constituency Election Commissions (CECs)

The election law establishes 11 CECs, one for each of the 10 territorial constituencies in Croatia and one for national minorities. The standing membership of CECs consists of a president, two members, and their deputies, appointed by the SEC. Members must be either judges or distinguished lawyers, but the law does not specify that CEC members should not be members of political parties. The augmented membership of the CECs consists of two representatives of the majority party or coalition and two representatives proposed on the basis of consensus by opposition parties or coalitions. The CECs were appointed on 3 December. However, many were keen to wait for the party members to join before starting their work in earnest. The failure of opposition parties to agree on their nominations caused a delay in the work of the CECs. The lottery drawing to determine the augmented membership took place only on 17 December, and the SEC issued its decision in this regard on 20 December.

c. Municipal and City Election Commissions (MECs and CiECs)

The MECs/CiECs are appointed by the Constituency Election Commissions and have the same number of members as the CECs. Members must be either judges or distinguished lawyers. But as is the case for the CECs, the law does not specify if standing members may be members of political parties.

d. Voting Committees (VCs)

The Voting Committees (VCs) administer the voting process at the polling stations on election day and count the votes cast. A VC includes the president, four members, and their deputies. Two VC members and their deputies are designated by the majority party or

coalition and two VC members and their deputies are designated by the opposition parties or coalitions. Political parties must designate members, at the latest, eight days before the day of the elections. If the names are not delivered to the competent election commission, the commission will appoint members independently. The President of the VC and the deputy must not be members of any political party and should preferably be in the legal profession.

2. Performance of the Election Administration

The election law does not specify the earliest possible date for the appointment of the SEC by the Constitutional Court, although it cannot be less than 30 days before an election. This minimum 30-day timeframe is short, and, in view of the 3 January election, presented unique challenges for the election administration.

Although the election date had yet to be announced, the SEC began work on 20 November following its appointment the previous day. To support its work, the SEC appointed a temporary staff of 17 professionals, including judges, councillors to the State Parliament and administrators. The SEC issued 12 Mandatory Instructions, 10 of which before the appointment of augmented members from the political parties. Therefore, as the party members joined the election commissions at a relatively late stage, they were de facto excluded from the early part of the decision making process. However, the SEC administered the elections in a transparent manner, responding promptly to requests for legal clarifications from parties, NGOs, international organisations and citizens. A number of augmented SEC members expressed their general satisfaction with the commission and had confidence in its impartiality and professionalism. Nevertheless, some concerns remain.

The 12 Mandatory Instructions released by the SEC cover a variety of issues, the most important being those dealing with out of country voting (N^o XII), “expelled” persons (N^o X) and voting by members of national minorities (N^o VI).

According to Mandatory Instruction VI, voters from national minorities who wished to cast their ballots for parties contesting the elections in constituencies N^o 1-10, had to request their transfer on election day from the separate, ethnically distinguished voters lists, to the “ordinary” lists. VCs generally informed voters of this possibility and only a few were denied this option. The effect was to publicly highlight voters’ ethnicity. Thus, the effort to promote the interests of minorities by granting reserved seats may in fact serve as a basis for ethnic discrimination and intimidation. Furthermore, the effect of this provision potentially contravenes Paragraph 31 of the Copenhagen Document.⁹ The SEC did not consult with representatives of national minorities to establish the most effective mechanism to ensure the instructions were appropriate, or to implement an effective voter information program, a responsibility which fell primarily to the parties and candidates competing for the minority vote.

As a result of the conflicts in Croatia, a large number of persons were displaced. Croatian legislation distinguishes between “expelled” persons and “displaced persons” forced from their homes at different periods of the conflict, a distinction not supported by international law. Approximately 16,000 “expelled” persons and “displaced persons” were registered to

⁹ Paragraph 31 reads: “Persons belonging to national minorities have the right to exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law. The participating States will adopt, where necessary, special measures for the purpose of ensuring to persons belonging to national minorities full equality with other citizens in the exercise and enjoyment of human rights and fundamental freedoms”.

vote at special polling stations (approximately 14,500 “expellees” and 1,400 “displaced persons”). Following the adoption of Mandatory Instruction X, the SEC established 299 polling stations for “expellees” from Vukovar-Srijem County (part of Constituency V) and 10 polling stations for “expellees” from Osijek-Baranja (part of Constituency IV). These voters are overwhelmingly ethnic-Croats. Although not specifically mentioned in Mandatory Instructions X, the SEC established only two polling stations for “displaced persons” (overwhelmingly ethnic-Serbs).

Although the number of voters in question is relatively small, the distinction between these two categories of voter is discriminatory. Furthermore, the Independent Serb Democratic Party (SDSS) complained to CECs N^o 4 and 5 that the number of “displaced persons” had been underestimated by a factor of three. The limited number of polling stations for displaced persons and the inaccuracy of voter lists also created problems on election day.

Following a warning of the Constitutional Court, the SEC issued Mandatory Instruction XII on voting certificates for permanent residents of Croatia who wish to vote abroad. Initially, the instruction required all citizens, including refugees, who have a permanent residence in Croatia, to present an out-of-country voting certificate before voting. Most refugees are ethnic-Serbs who have not returned to their homes, often due to legal and administrative obstacles, and were unable to obtain a certificate from municipal authorities. This instruction was inappropriate, as it would have resulted in their effective disenfranchisement. Later, following another statement by the Constitutional Court on 31 December, the SEC clarified that the instruction was relevant only for limited duration (up to 30 days) temporary residents overseas, and thus did not apply to refugees. Unfortunately both the original instruction and the clarification were issued late in the election process and some voters and even members of VCs were not aware of the revised procedures.

Instead of issuing mandatory instructions to ensure uniform procedures at polling stations, the State Election Commission issued mere “reminders”. The reminders did not have sufficient legal weight nor did they add detail lacking in the election law and in previously issued mandatory instructions. The reminders should have elaborated on procedures for: voting outside the polling station (mobile voting); the sealing of the ballot boxes; the application and checking of ultraviolet ink (for polling stations in BiH); the list of documents which evidence citizenship, personal identity and residence both inside and outside Croatia; addressing void ballots and the counting procedure. Due to the large number of ballot types, ballot boxes and voter lists, the SEC should have considered instructions for polling at “special” polling stations.

The accounting procedures for ballots printed and distributed to polling stations were insufficient, particularly to polling stations in diplomatic and consular offices abroad. Only 1,500 ballots for Constituencies 5 and 9 were sent to BiH, despite the large number of ethnic-Serb refugees from Eastern Slavonia and Knin temporarily residing there. Similarly, in view of the large number of refugees from Constituencies 5 and 9 residing in the Federal Republic of Yugoslavia (FRY), too few ballots were distributed to polling stations in Belgrade, Kotor and Subotica. The fact that ethnic-Serb refugees did not vote in large numbers at polling stations in FRY is irrelevant, as had they chosen to do so and been able to prove their Croatian citizenship, insufficient ballots would have been available.

The standing membership of the MECs and CiECs were appointed on 16-17 December. Observers reported they were informed on their responsibilities and were notified of SEC decisions and mandatory instructions. However, due to the complicated procedures and the

late issuing of procedural instructions, some were unaware of the correct procedures for all categories of voters at different polling stations. For example, in some instances, MECs had not been informed that there will be separate voter lists for national minorities.

Observers expressed a general concern that training of the VCs was insufficient, particularly in view of the complexity of voting and the relatively late issuance of some mandatory instructions and polling station procedures. In a number of cases, VC members were appointed late in the process and the timing of the election further reduced the option for training the VCs.

C. Registration of Party and Independent Lists

All registered political parties in the Republic of Croatia have the right to propose candidate lists either as a single party list or as a joint list submitted by two or more political parties. Voters may also propose lists of independent candidates on the basis of at least 500 supporting signatures.

The legal deadline for submission of lists was 11 December 1999. In total, 282 party and independent candidate lists were accepted by the SEC to contest the seats in Constituencies No. 1-11, including 21 for Constituency No. 11. A total of 30 candidates were registered in the separate election contests for the five seats allocated to national minorities in Constituency No. 12.

The main political forces contesting the election were the ruling party, the Croatian Democratic Union (HDZ), and the two opposition coalitions. The first coalition comprised the Social Democratic Party (SDP) and the Croatian Social Liberal Party (HSLs). The second comprised the so-called "Porec group" including the Liberal Party (LS), the Istrian Democratic Congress (IDS) and the Croatian People's Party (HNS), as well as the Croatian Peasant Party (HSS). Together, these two coalitions were known as the "opposition six". On the political right, The Croatian Party of Right (HSP) entered in a coalition with the Croatian Christian Democratic Union (HKDU). A large number of smaller parties also contested the elections.

The HDZ, self-defined as a centre-right movement, had been the party of Government since 1990. From 1998, in an attempt to offer a coherent and unified alternative to the Government and ruling party, the centre-left opposition parties worked to co-ordinate their position on important political issues. The stated electoral objective of the "opposition six" was to secure a two-thirds combined majority in the House of Representatives enabling them to implement a program, including Constitutional amendments.

A number of parties competed for the votes of the national minorities. The most significant of these were the Independent Serb Democratic Party (SDSS) and the Serb People's Party (SNS). These parties were strongest in areas with a higher concentration of the Serb national minority. The SDSS submitted lists to only four of the 10 constituencies.

D. Election Disputes and Judicial Supervision of the Election

1. Role of the Constitutional Court and the SEC

The Election Law establishes a two-tiered system for resolving election disputes (State Election Commission and Constitutional Court). Most election-related petitions filed by

candidates or political parties fall within the primary jurisdiction of the State Election Commission.¹⁰ Decisions of the SEC can be appealed within 48 hours to the Constitutional Court if they involve irregularities with candidate registration and the voting and counting procedures. Political parties, candidates and at least 100 voters or 5% of the voters in a constituency may also file a petition with the Constitutional Court to contest the constitutionality and legality of the election, within 30 days after the official publication of the final results.

The competence of the Constitutional Court also includes a supervisory function through the issuing of “warnings” and statements. The Court set up a three-person panel to receive complaints and review election related appeals. Eight opinions and statements were issued, mostly on Mandatory Instructions issued by the State Election Commission. Three specifically addressed out-of-country voting, including two statements on the certificates required from voters abroad according to Mandatory Instruction XII. The Court also upheld its previous ruling delivered in the run up to the 1997 Presidential election, restricting the legal definition of voting locations abroad.¹¹ The expiry of the term of eight of the eleven Constitutional Court justices coincided with the pre-election period. Some of the new nominations were controversial. However, in fulfilling its tasks, the Constitutional Court reached important decisions and further improved the electoral environment through the prompt disposition of complaints and issuing of balanced “warnings” and statements.

The legal framework should be reviewed, to address the following shortcomings:

- While article 88 of the Law on the Constitutional Court indicates that voters may file an appeal against a decision of the SEC, only political parties and candidates are entitled to bring a case before the SEC according to article 97 of the election law.
- No time limitation for reaching a decision is stipulated with regard to the constitutionality and legality of the election, pursuant to article 85 of the Law on the Constitutional Court.

2. Complaints to the Ethics Commission

The election law gave the SEC ultimate responsibility to “supervise the regularity of the campaign”, albeit with limited powers to enforce the relevant legal provisions. However, the election law also created an Ethics Commission responsible for supervising the campaign. The coexistence of these two institutions led to a confusion of responsibilities and did not significantly improve the campaign environment.

The Ethics Commission consisted of a president and six members appointed by political parties, three from the majority party and three from opposition parties in line with the party composition of the outgoing House of Representatives. The Ethics Commission was charged with monitoring the actions and behaviour of election participants during the campaign period and the procedures of the elections, and carrying out “extra-administrative supervision of campaigning”. The Ethics Commission adopted an Electoral Ethics Code, which called on all participants in the election to respect basic values such as fairness, tolerance, and

¹⁰ Other courts are not involved in the resolution of election disputes, with the exception of municipal courts for voter registration issues.

¹¹ Deletion of any reference to “foreign offices”, which the Court had found in breach of the Foreign Affairs Act: ruling of 13 June 1997 – U-VII-741/1997. This ruling was confirmed by an “announcement” on the same issue released on 27 December 1999.

truthfulness. The Ethics Commission expected parties and individuals that violated the code “to publicly apologise to the individuals they insulted.”

Between 10 December 1999 and 3 January 2000, the Ethics Commission adopted, with consensus or by majority vote, seven announcements and four warnings. Most of them were connected with party behaviour during the campaign and with individual HTV broadcasts considered in violation of the Electoral Ethics Code. The Ethics Commission worked in a professional manner, and its announcements and warnings were balanced and not influenced by party-political considerations. However, the Ethics Commission had no power to enforce its decisions or impose penalties on those who violated the Ethics Code. The Ethics Commission could not even ensure that its warnings were properly broadcast in the public and private media. Therefore, as its powers stood, the Ethics Commission was unable to significantly influence the conduct of the campaign.

E. Voter Registration

1. Voter and Civil Registers

The Law on Election Registers, adopted in 1992, was not amended for this election. This law provides for voter registers to be updated on an on-going basis and to be open for inspection by individual voters at municipal offices. The police maintain the registers on residence on which the voter registers are primarily based. The municipal civil status offices maintain the books for births, deaths, citizenship and other civil events, thus being an additional source of data for the voter registers. The Office for Displaced Persons and Refugees (ODPR) produces the lists, which form the basis of voter lists for “expellees”, “displaced persons” and refugees from BiH temporarily residing in Croatia. The Municipality of Zagreb maintains the register for citizens without a permanent residence in Croatia.

The main requirement for voting in Croatia is that a voter must vote in the polling station corresponding to his/her address of permanent residence, unless the person has a certificate issued by a municipal body which documents the right to vote at a designated polling station elsewhere.

A total of 3,827,000 voters were registered in the 10 in-country constituencies, of which 330,000 were from national minorities.¹² According to the final results published by the SEC, out-of-country Constituency No. 11 had a total of 360,000 voters registered.

Opposition political parties complained about inaccuracies in the registers, the limited time available to update and correct the registers and about lack of transparency in their compilation. Inaccuracies in Eastern Slavonia were a particular cause for concern. Although voter lists should be subject to public scrutiny, so long as a record of ethnicity remains on the lists, these should not be publicly displayed, as it may open the potential for discrimination and intimidation.¹³

¹² Information supplied to the EOM by the data processing centre of the City of Zagreb (GZAOP).

¹³ The public display of ethnic identification may also be deemed contrary to Paragraph 32 of the OSCE Copenhagen Document (1990) which stipulates that “To belong to a national minority is a matter of a person’s individual choice and no disadvantage may arise from the exercise of such choice”. Article 3(1) of the Council of Europe’s Framework Convention for the Protection of National Minorities (1994) provides similarly that “Every person belonging to a national minority shall have the right freely to choose to be treated as such or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice”.

A number of examples for deceased persons whose names were on the voter lists were brought to the attention of international observers. This is another indication that there is a need to further improve the accuracy of voter registers.

Perhaps due to the timing of the election, a number of county administrations only finalised the voter lists on 29 December 1999, after the legal deadline.

The ODIHR urges that a public, centralised, and computerised civil and voter registration system be introduced to improve the accuracy and standardisation of the data recorded.

2. Registration of Out-of-country Voters

Two categories of voters may vote abroad. Firstly, those without a permanent residence in Croatia, and secondly, those with a permanent residence in Croatia who at the time of the elections have a temporary residence abroad or happen to be abroad.

The law on Electoral Registers provides that those with a permanent residence in Croatia may have their names added to the registers on election day on the basis of proof of citizenship and the right to vote (certificate of citizenship, passport, identification card). However, the law does not state whether this also applies to voters without permanent residence in Croatia. The SEC extended this provision to voters without permanent residence in Croatia. These voters were entitled to register on election day, after providing evidence of citizenship and an identification document with a photograph. It remained unclear how an individual could prove that he or she had no permanent residence in Croatia and whether it was possible to have permanent residence both in Croatia and another State.

The registers for voters without permanent residence in Croatia were not publicly posted and it was only possible for these voters to check their entry on the register if they telephoned the administrative offices in Zagreb. Before the elections, in early December, the number of registered voters without permanent residence in Croatia stood at approximately 350,000. Few voters were added after the announcement of the election, and there was little incentive for them to do so, as they were able to register at polling stations on election day. Observers reported inaccurate registers with large numbers having their names added on election day. Many were able to do so by simply producing their Croatian passport, which does not prove residence (either within or outside Croatia) and opened the potential for multiple voting.

3. Voter Certificates

Voters who are away from their place of permanent residence may apply for a certificate which enables them to have their names temporarily added to the voters list at the place of their temporary residence prior to the closing of registers. Voters who were temporarily resident overseas were required to apply for a voting certificate from the authorities in the municipality of their permanent residence. The instruction detailing this requirement was issued on 24 December. Therefore many voters did not receive timely information to apply for certificates.

Voters who are inadvertently excluded from the voter list may apply to the municipal authority on election day for a certificate enabling them to vote.

4. Displaying and Amending Voter Lists

Voter information slips, which contained details of individual entries on electoral registers, were sent to voters' home addresses in a timely manner. These enabled voters to correct inaccurate data before the closing of the registers or have their names added after proving entitlement. Some parties and voters expressed concern that the voter information slips contained a record of a voter's ethnicity. In Split and Rijeka County, a number of notifications were sent where voters' "nationality" was marked "unknown", although many of these voters in Split had their "nationality" correctly identified in previous elections. In Vukovar, an estimated 30% of voter information notices were returned as their properties were destroyed during the conflict. In other cases, voters did not receive their notices at all. There were a number of instances where municipal authorities sent deceased persons such information slips, although some had died many years previously. Such cases received publicity and lessened voter confidence in the registration process.

F. Media and the Elections

The conduct of the media, and in particular of the State broadcaster, Croatian Radio-Television (HRT), has been a major source of concern over the past years. Previously, the Croatian Democratic Union (HDZ) exerted tight control over HRT particularly during election campaign periods. HDZ officials enjoyed significantly greater access to HRT's two main units, Croatian Television (HTV) and Croatian Radio (HR). Coverage of government and party officials was generally positive, while opposition parties and politicians were often portrayed in a critical way. A counterbalance was provided mainly by a number of independent print media and several private local electronic media.

These concerns have been raised on a number of occasions, including in ODIHR final reports on the 1995 and both 1997 elections. The new election law and the guidelines adopted by the outgoing Parliament went some way to addressing these concerns. However, appropriate legislation should be adopted to transform HRT into a true public service broadcaster.

1. Legal Framework

The election law includes certain provisions to govern the conduct of a diverse electronic and print media in Croatia, *inter alia* providing for broadcast-time and print-space to all political parties for campaign purposes on an equal and non-discriminatory basis. All media are bound "to make it possible for the parties to make good [that] right". To supplement these provisions, and in an attempt to realise the aims, the House of Representatives adopted a set of Regulations for Coverage of the Election Campaign by Croatian Radio and Television (HRT), the main source of news for a majority of the population in Croatia and adjacent areas of Bosnia and Herzegovina. These Regulations stipulate that HRT, in its news and editorial coverage, may not give preferential treatment to "candidates already holding official government position".

According to the Regulations, HRT was bound to ensure "equal representation throughout its programs" for all political parties, party coalitions, lists of independent candidates, and representatives of "indigenous ethnic minorities." HRT was to guarantee impartial and balanced reporting. On HTV, parties could submit footage of a limited number of campaign rallies for broadcasting after the regular news. In addition, there were two special election-related formats. In one, parties could broadcast special 45-minute programs. In the other, representatives of all lists running in a given constituency participated. There was no

provision for additional free advertisement time, but parties could place paid advertisements under equal conditions and at a discounted rate. Similar provisions for campaign coverage and advertisements applied to Croatian Radio.

2. EIM's Monitoring

From July 1999, the European Institute for the Media (based in Düsseldorf, Germany) carried out for the OSCE a long-term media monitoring of HRT. From 10 December, thanks to funding provided by the European Commission, the EIM broadened the scope of its monitoring and provided the following data to the OSCE/ODIHR Election Observation Mission (covering the period 10 December 1999 to 1 January 2000). The EIM monitored news and current affairs programs and special election-related broadcasts in a number of electronic and print media.¹⁴

In contrast to previous elections and so far as the mandatory broadcast time were concerned, opposition parties were granted access on an equal basis. However, both the special programs for individual parties and those covering all parties running in a constituency contributed little to increase voter information and interest. Within the shows featuring one single party, there was little discussion on controversial issues. Most broadcasts covering specific constituency contests featured representatives of all competing political forces. Whilst this clearly granted equal treatment to all, such formatting was not conducive to stimulating and thorough debate. Typically, each participant had 30 seconds to reply to each question. Similarly, the succession of free party advertisements on State television, with no debate or discussion did little to provide voters with any real opportunity to identify the main political forces and election issues.

Outside the special election-related broadcasts, major concerns about HTV's editorial position remain. Importantly, though somewhat improved over previous elections, the news and editorial coverage of HRT still clearly favoured the ruling party in both quantitative and qualitative terms. Contrary to the regulations on HRT, EIM noted a broad and overwhelmingly positive coverage of government officials representing the ruling party, even when their activities were of minor significance and a generally limited and negative coverage of the opposition.¹⁵ This can be explained partly due to continuing reports about late President Franjo Tudman. Another reason was that HTV sometimes failed to report on news, which could have been interpreted as embarrassing for the HDZ or the government. Croatian Radio (HR) showed a similar pattern to HTV, especially with regards to the very high amount of coverage given to public officials affiliated to the HDZ. However, the share of positive coverage for HDZ-affiliated public officials was noticeably smaller than on HTV.

The opposition had access to the private electronic media that provided a more balanced coverage of the electoral campaign. OTV, Obiteljski Radio, and Radio 101 showed a more balanced picture and provided information that the State broadcaster failed to do. Private

¹⁴ The European Institute for the Media is expected to release shortly a Final Report on their 1999-2000 media monitoring of the parliamentary and presidential elections in Croatia.

¹⁵ On HTV, of a total of 29 hours and 40 minutes of current affairs programs and election-related programming monitored, almost 12 1/2 hours went to HDZ-affiliated officials, and another 5 hours and 13 minutes to the HDZ as a party (of which around 1 hour and 8 minutes were in a positive context). Those figures correspond to 42.0% and 17.6%, respectively, of the total time monitored. In contrast, the combined total for the Opposition Six and officials affiliated to those parties was 7 hours and 18 minutes. A similar pattern was observed on the main news on HTV 1 ("Dnevnik" at 19:30 hrs.). Overall, the HDZ and officials affiliated to it enjoyed a disproportionately high amount of coverage on HTV and on HR.

electronic media was also engaged in voter education, often in co-operation with civic associations and initiatives.

The print media provided a welcome alternative to the electronic media by covering a much wider range of topics and by reporting on news ignored by the national broadcasters. While a wide range of opinions were presented in the print media and voters had a genuine access to information, most print media showed some level of political favouritism for one party or another.

3. Media in Bosnia and Herzegovina

Under a contract with the OSCE Mission to Bosnia and Herzegovina (BiH), the Independent Media Commission (IMC) monitored a selected number of media outlets transmitting in BiH. The IMC identified four broadcasters that displayed bias in favour of the HDZ and the HKDU during their main news when reporting on the Croatian Elections.¹⁶ Other than one minor negative mention, these media sources did not allocate any time to cover the political program or campaign activities of any of the main opposition parties. Two of these media sources, HRTV Mostar and HRTV Radio Mostar are defined by the IMC as public broadcasters. Therefore, they have a duty to report in a politically balanced manner, an obligation they did not fulfil.

Voters were also able to receive HRT transmissions from Zagreb. On 1 January, pictures of late President Tudman were shown together with the text “do not betray him”. As elections occurred in BiH on 2 January, such a broadcast was a violation of the campaign silence period. This incident serves to highlight that the media provisions in the election law and the regulations adopted by HRTV are inconsistent with a two-day election. Moreover, the SEC and the Ethics Commission do not have the jurisdiction to enforce Croatian media-related legislation and election regulations in other States.

G. Election Campaign

As in any election campaign, political parties should have the opportunity to present their political program and debate the issues with political rivals. Similarly, voters should receive information enabling them to make an informed choice on election day. The opposition parties were not consulted about the election date, and were critical of the decision to hold the elections on 3 January. Significantly, the election took place against the backdrop of the death of late President Tudman and during the Christmas holiday and New Year celebrations. The pre-election campaign period was relatively short and as a consequence of the choice of the date, it was noticeably subdued.

The pre-election campaign was conducted in a calm atmosphere, with all political parties able to convey their electoral platform to the voters. Fundamental freedoms were respected and political parties did not face bureaucratic obstacles in conducting public meetings or interference from State bodies.

H. Domestic Non-Partisan Observers and NGO Election Activities

In contrast to previous national elections, domestic non-partisan observers were allowed by law to monitor the process at all levels and were granted the right to view all electoral

¹⁶ HRTV Mostar, HRTV Radio Postaja Mostar, Oscar C TV and Radio Herceg Bosna.

materials. In 1997, contrary to the spirit of the 1990 OSCE Copenhagen Document (paragraph 8), the SEC refused to accredit non-partisan domestic observers. Following a decision of the Constitutional Court, Croatian NGOs were able to observe the 1998 local by-elections. The OSCE/ODIHR welcomes article 107 of the new parliamentary election law, which brings Croatian legislation in line with the Copenhagen Document. On 3 December, the SEC adopted the rules concerning the rights and duties of observers from non-governmental associations. These associations must be registered in the Republic of Croatia and be active in the observation of elections or the promotion of civil rights.

The rules on domestic observation provided that the number of observers present at a polling station may be limited to five if there is insufficient space, and if their presence could hinder voting or compromise the secrecy of the vote. Following an appeal, the Constitutional Court removed this restriction.

The SEC accepted the applications of twelve NGOs and civic associations to observe the elections. By far the most significant was “Citizens to Observe the Elections in an Organised Manner” (GONG, *Gradani organizirano nadgledaju glasanje*), which deployed more than 5,000 observers and covered approximately 4,500 polling stations. In general, domestic observer groups were able to conduct their activities without interference, although a few isolated cases of harassment and impeded access to polling stations were reported.

An association of 148 Croatian NGOs formed Glas 99 to encourage voters to participate in the polls and conducted a voter education program. In total, over 1,000 people contributed time and energy to the activities of Glas 99.

V. ELECTION DAY

A. General Assessment

In Croatia, VCs generally carried out their duties in a professional and conscientious manner. However, observers reported that the secrecy of the vote was endangered by inadequate screening for voting booths in many polling stations observed, and the use of private houses as polling stations. In a number of precincts, the complexity of polling procedures, particularly during the count had a negative impact on the work of precinct commissions.

Out-of-country voting was held over two days in diplomatic representations of Croatia in 79 countries. A large number of voters cast ballots at most of the 29 polling stations in 15 sites in Bosnia and Herzegovina. This resulted in overcrowding, with 5,000-8,000 voters casting ballots in some polling stations, raising serious concerns about the integrity of the process in these places. In a preliminary statement, the international observation mission called upon the Croatian authorities to investigate the serious irregularities that were observed in some polling stations in Bosnia and Herzegovina.

B. Voting

1. Overall Assessment of Voting in Croatia

Observers reported that voting was well conducted, with 92% of report forms giving a positive assessment. Only a few serious incidents were reported and, in general, the VCs worked conscientiously to ensure the correct procedures were implemented. Polling was

conducted in a calm atmosphere largely free from intimidation. From the polling stations observed, domestic observers were present in large numbers and VC members were drawn from a wide array of parties, thereby contributing to the transparency of the process. Observers reported that voters generally understood the procedures and the VC explained the procedure when handing ballot papers.¹⁷

The overwhelming majority of polling stations observed received sufficient number of ballot papers, the correct types and opened on time. However, a number of polling stations were too small for the task or were considered otherwise unsuitable either because they were located in inappropriate locations such as private houses and bars or because they were inaccessible for voters with physical disability.

Observers were concerned about the secrecy of the vote. Poor layout, badly designed and poor quality voting screens, together with overcrowding at times compromised voters' privacy and in some cases raised doubts about the secrecy of the vote. The voting booths were frequently placed too close to the VCs and the screens were facing the wrong way. In a few instances, no voting screens were provided for voters.

Whilst the introduction of ballot papers with serial numbers can improve accountability, it could also compromise the secrecy of the vote, particularly for mobile voting and in polling stations where only a few voters cast ballots. It would have been advisable for VCs to mix ballots after their initial reconciliation before voting began. Generally, the VCs had endeavoured to secure the ballot boxes correctly, however, the boxes were flimsy and poorly designed.

In a small number of cases, campaign material was noticed in close proximity to polling stations and there were isolated reports of campaigning inside polling stations. Observers reported that on occasions, unauthorised persons were present in some polling stations including uninvited police and local officials. In a few cases, observers considered that local officials were interfering in the process or attempting to influence voters.

VCs generally checked voter identification documents before issuing a ballot paper. However, in many small settlements they did not systematically ask voters to produce identity documents, ostensibly because they knew each other as they resided in the same communities. A small number of VCs permitted people to vote on behalf of others (proxy voting), but generally voters were required to vote in person and on a number of occasions voters who wished to vote for a relative were refused. Some observers expressed concern that there was a high incidence when more than one person was present at a voting booth at the same time, mostly spouses. The VCs did not appear to consider this a serious problem and were slow to react. Group voting jeopardises the secrecy of voting

Mandatory Instruction VIII detailed the procedures for VCs to assist disabled voters and for mobile voting. VCs usually followed the procedures correctly, although in some cases voters were assisted by the VCs in casting their ballots rather than by a person of the voter's choice. The procedures for mobile voting were vague. They should be reviewed to ensure that it is not possible for the VCs to know for which candidate or party the voter has cast a ballot. Due to the high turnout, it was not always possible for the VCs to visit medical institutions.

¹⁷ The ballot paper itself contained an instruction on voting procedures.

2. War Affected Areas of Croatia

During the 1997 local and House of Counties elections, observers reported problems in the area administered by UNTAES, including inaccurate voter registers, late opening of polling stations, and an insufficient supply of ballot papers. During the current elections, polling was generally well conducted in the war affected areas, including Eastern Slavonia and municipalities in Constituencies No. 6, 7 and 9. Some concerns remain regarding the suitability of some premises to serve as polling stations, in particular private houses, and the distribution of polling stations in areas of national minorities' concentration. The secrecy of the vote was more frequently compromised in these areas and unauthorised persons and police observed more often than in other parts of the country. The conduct of polling for displaced persons in Eastern Slavonia needs to be improved to ensure this category of voters enjoy equal and non-discriminatory treatment in exercising their rights.

3. The National Minority Ballot and Special Polling Stations

Due to the creation of different voting procedures for national minorities and the large number of polling station types established for different categories of voters, polling in some locations was complicated. Observers reported that voters generally understood the process at the “special” polling stations and the procedures for national minorities, but many were confused when confronted by a number of different ballot boxes.

Polling stations were established for the following categories of voters: “expelled” persons; “displaced persons”; those without permanent residence in Croatia but temporarily in Croatia; those with a permanent residence in BiH and a temporary residence in Croatia; those temporarily away from the constituency of their permanent residence; military, prisoners and those serving on ships; and those without a permanent residence in Croatia, “permanently” residing abroad. Some polling stations had to cope with 16 different types of ballot papers and 16 different result protocols and extracts (minutes) as well as multiple ballot boxes. In general, VCs conducted their duties professionally and conscientiously. The turnout figures for national minorities demonstrate that a majority chose to vote in the contests for constituencies N^o 1–10. In the vast majority of cases, they were able to do so without impediment. However, observers noted that in a few cases, members of VCs were hostile towards “displaced” persons and ethnic-Serbs, and some voters faced problems in receiving ballot papers for the constituency contest. In a few cases, the VCs even refused their requests.

There was a lower number of polling stations in some areas with a concentrated population of certain national minorities. Such voters had therefore to travel farther to vote, which may have been a disincentive. In addition, in areas where national minorities are concentrated, an attempt should be made to have representatives from national minorities on VCs.

Polling was well conducted and no major irregularities were reported from polling stations in prisons and military establishments where observers were granted access.

“Expelled” persons were able to vote close to their place of temporary residence. The conduct of the polling at these sites was similar to polling at other regular polling stations. In a large number of cases, the registers for “expelled persons” from Vukovar-Srijem County, contained the names of less than 10 persons. There was some evidence that voters were registered both at their places of permanent residence and on the special voter list for “expellees”.

In contrast, only two polling stations were set up for “displaced persons” and received only as many ballots as registered voters. As a result, “displaced persons” had to travel sometimes long distances and endure long delays to exercise their right to vote. The voter registers at these polling stations were inaccurate and many voters had to follow a burdensome administrative procedure to receive certificates to vote. As a number of such voters were not found on the special voter lists, many were told by the VCs they might not be able to vote. In the Vukovar polling station for “displaced persons”, observers reported that the premises were wholly inappropriate for the task, voting was poorly organised, and conducted in a tense environment with voters enduring long delays before being able to cast ballots.

The SEC established six polling stations in Zagreb for persons without permanent residence in Croatia but who happened to be in country on election day, and 21 polling stations for voters with a permanent residence in BiH and a temporary residence in Croatia. Polling at these locations was conducted under the procedures established for out-of-country voting, including the application of ultra-violet ink. Voters at these locations cast ballots for Constituency No. 11 or for the national minority, Constituency No. 12. Observers reported that polling was generally well conducted and followed the established procedures.

4. Voting at Diplomatic and Consular Offices in Bosnia and Herzegovina.

Following an agreement between the Presidency of Bosnia and Herzegovina and Croatia, 29 polling stations at 15 locations were established in BiH for the 302,000 pre-registered voters.¹⁸ This total reflects voters who do not have a permanent residence in Croatia. This category of voters includes mainly ethnic-Croats who have resided permanently in Bosnia and Herzegovina and who acquired Croatian citizenship based on ethnic origin alone under the Law on Croatian Citizenship. Most of the voters in this category also have BiH citizenship. This category of voters overwhelmingly cast ballots for parties and candidates in Constituency N^o 11. After voting took place, the final figure given for the total number of registered voters in Bosnia and Herzegovina was 314,884.¹⁹

A second category of voters, those who have a permanent residence in Croatia were also able to vote and permitted to register on election day if they could prove Croatian citizenship, identity and residence. The majority of voters in this category are ethnic-Serb refugees from Croatia, but most lack the documentary proof as required by the Law on Croatian Citizenship. The international community has long been concerned about the rights of these Croatian citizens and has encouraged the Croatian authorities to issue the appropriate documents without linking their issuance to an application to return to Croatia. Such a procedure has not been put in place and consequently, a large number of refugees suffered de-facto disenfranchisement. In an attempt to remedy this problem, the State Election Commission extended the list of documents accepted to register and to vote abroad. This, combined with the possibility for voters without permanent residence in Croatia to be added to the voter lists on election day, heightened concerns of potential multiple voting for out-of-country voters, mainly in Bosnia and Herzegovina. In response, the SEC agreed to introduce the use of ultra violet ink to mark voters’ fingers after casting a ballot. However, indelible ink, introduced for voters in Bosnia and Herzegovina, did not fully eliminate the possibility of trans-border multiple voting.

18 Information received from Zagreb Municipality on 7 December 1999.

19 SEC Report 9 of 7 January 2000.

In addition, Croatian citizens who were temporarily in BiH (less than 30 days) could vote. These last two categories of voters could cast ballots for Constituencies No. 1 – 10 or for national minority candidates.

The SEC introduced a number of procedures that relate specifically to out-of-country voting and a separate procedural guide for use by the VCs. These out-of-country polling stations received a special extract of the voter registers, which covered voters with residence in settlements and municipalities in the vicinity of the polling station. In a few notable cases, polling stations had over 10,000 voters on these lists.²⁰ Additionally, voters could register to vote on election day if they proved their Croatian citizenship, identity and residence.

With the assistance of the OSCE Mission to Bosnia and Herzegovina, the observation mission deployed observers in BiH to monitor polling at all locations on both election days full-time. The turnout was high and many voters had to wait four to five hours to cast their vote. Regrettably, the VCs received an inadequate number of ballots for the constituencies of permanent residence of the ethnic-Serb refugee population, with the potential consequence that, had these citizens chosen or been able to vote in larger numbers, sufficient numbers of ballots would not have been available.

Incidents of double voting, proxy voting, lack of application of ultra violet ink or scrutinising for previously applied ink, failure to thoroughly check the voter list before registering voters, inaccurate marking of the voter list, and attempts to influence voters' choice were observed. Such irregularities were most frequently observed at polling stations in Mostar, Siroki Brijeg, Livno and Capljina. However, many committees worked hard to ensure voters were able to cast their ballots and frequently turned away voters who were ineligible or wanted to cast proxy ballots for relatives. When observers reported irregularities, the Croatian Embassy and Consular staff intervened to instruct the VCs to follow the correct procedures.

The register for voters without permanent residence in Croatia contained many inaccuracies. From the total number of voters who cast ballots over the two days, 17% had their names added to the voter lists on election day. Many voters were asked to provide only proof of Croatian citizenship rather than proof of identity and residence. During the early stages of voting, some voters with permanent residence in Croatia but who had a long-term residence in BiH, were asked to provide a certificate from their municipality (in accordance with the original version of Mandatory Instruction 12). This affected the ethnic-Serb refugee population who did not possess such documents, and who were subsequently refused the right to vote. Later, VCs were advised of the correct procedures and such voters were able to vote. However, the VCs in Banja Luka asked some voters who produced a valid Croatian passport for additional proof of citizenship as well as other documents.

A large number of voters cast ballots on the basis of a Croatian passport, including those added to the voter lists on election day. The Croatian Ministry of Interior had advised the ODIHR EOM that Croatian passports do not prove a permanent residence. Voters were seldom asked to provide the correct documents to evidence their place of permanent residence. Therefore, the potential for multiple voting existed if voters travelled from location to location. The application of ink was an important safeguard against multiple voting, even though its application and checking was not uniform. However, the registers for citizens without a permanent residence in Croatia are inaccurate and it is not possible to prove that a

²⁰ 53,000 in Novi Travnik, 41,000 at the two polling stations in Sarajevo, 36,000 at the four polling stations in Mostar, 12,217 at one of the polling stations in Siroki Brijeg, and 11,000 in Tuzla.

citizen does not have a permanent residence in Croatia. As such, the potential for cross-border voting still existed in both directions. Notwithstanding the fundamental problem raised by the citizenship law, the long-term solution is to improve the accuracy of the registers and to ensure that persons only vote at their place of permanent residence with the required evidence for citizenship, personal identity and residence.

C. Turnout

1. Turnout in Croatia

At various intervals during 3 January, the State Election Commission announced voter turnout figures for polling on the territory of Croatia. The turnout for the 10 in-country constituencies averaged 75.3%. The highest turnout was in Constituency N° 3 with 79.6%, the lowest were in Constituencies N° 5 and 9 (from which many ethnic-Serb citizens are displaced) with 72.2% and 72.9% respectively.

2. National Minorities

National Minorities				
	Registered voters *	All votes cast for minority lists **	Valid Votes cast for minority lists **	Votes cast for regular constituency *
Serb	278,620	27,789	25,978	111,473
Hungarian	15,861	4,591	4,412	6,625
Italian	18,035	6,785	6,529	7,397
Czech/Slovak	12,856	3,571	3,449	6,716
Austrian/German/ Ukrainian/Ruthenian/ Jewish	6,105	1,049	1,003	2,940

* Figures provided by the data processing centre of the City of Zagreb (GZAOP)

** Final results published by the SEC on 19 January 2000

Each minority or group of minorities is allocated one seat, in accordance with the provisions of the new election law. As indicated above, the result is that the seat for the Serb minority is won with 25,978 votes, while the MP for the Austrian/ German/ Ukrainian/ Ruthenian/ Jewish minorities is elected with 1,003 votes.

As shown from the number of votes cast for the regular constituencies (column 4), an overwhelming majority of voters from the national minorities preferred to cast their ballots for candidates competing in the regular constituency contests, thereby further questioning the practice of listing minorities on separate lists.

After adding the numbers of ethnic-Serb voters who cast ballots for the minority seat (column 2) and those who switched to vote for constituency lists No.1-10 (column 4), it is obvious that the turnout figure for this category of voters is much lower than for other minorities or the ethnic-Croat population. An explanation may be that many voters on the lists for the Serb

minority are refugees in BiH and FRY, who either chose not to vote, or were unable to do so, due to bureaucratic obstacles or the limited number of polling stations.

3. Turnout in Bosnia and Herzegovina

As VCs are not obligated to reconcile the number of ballots used and the number of voters having cast a ballot on 2 January, the first day of polling. As such, it was difficult to establish turnout in BiH for the first day. VCs were reluctant to provide figures, but observers estimated that approximately 40,000 voters participated on the first day. Some polling stations processed a vast number of voters. For instance, in Capljina, about 6,000 voters were processed on the first day, approximately one every seven seconds. Such speed puts in question the integrity of the process.

According to the final results published by the SEC, of the 315,000 registered voters, more than 110,000 cast ballots over the two days, giving a turnout of approximately 35%. The overwhelming majority of these were ethnic-Croats. However, polling at certain polling stations in Bosnia and Herzegovina was much higher, for instance Capljina (88.4%) and Siroki Brijeg (67.7%).

Although the SEC established two polling stations in Republika Srpska, the Croatian-Serb refugee population did not turn out in large numbers. The turnout in Banja Luka and Prijedor was only 506. This can be explained in part by the failure of the political leadership of the Serb community to encourage the population to vote. However, some of these potential voters were turned away because they did not have the required documents, as the fast procedure for issuing citizenship certificates was never implemented.

4. Turnout in Federal Republic of Yugoslavia

Although the legal deadline had passed, the SEC accepted the late agreement of the Federal Republic of Yugoslavia authorities to permit the establishment of polling stations at three locations on its territory. According to information provided to the ODIHR EOM by the Zagreb Municipal authority, the total number of registered voters in the FRY was 8,015. This figure appears low in view of the large number of ethnic-Serbs currently residing in the Federal Republic of Yugoslavia as refugees from the conflict in Croatia. Many of these refugees are Croatian citizens and a large number continue to maintain a permanent residence in Croatia. The names of many will therefore not appear on the register delivered to the Diplomatic and Consular Offices. The figure of 4,648 registered voters given by the SEC was inexplicably even lower. In total, only 1,534 voters cast ballots (492 for constituency N^o 11, 738 for constituencies N^o 1–10, and 314 for the national minority constituency).

D. Vote Count

Observers assessed the conduct of the count positively, with 95% reporting it was well conducted. However, some confusion was noted during the counting of votes and the completion of the result protocols, particularly in polling stations where VCs had to deal with a large number of different types of ballot paper. For instance, in Vukovar at the polling station established for displaced persons, the VC had to complete 60 protocols.

Procedures were generally adhered to, although the VCs did not consistently verify the number of voters who had voted according to the voter lists before opening ballot boxes. In a few cases, observers reported that there were a small number of ballots in the ballot box in

excess of the indicated number of voters recorded as having cast ballots. The election law states that in such cases, the count must be terminated and polling automatically repeated. This provision may be drastic, if the discrepancy is very small. However, discrepancies may indicate irregularities during polling. Such situations should be addressed by the higher-level election commission (constituency commissions or SEC), or resolved in court in the light of other evidence.

In the overwhelming majority of cases, VCs agreed on the determination of invalid ballots, and only a few notes of dissent were added to the protocols. In general, all members of VCs, including those representing political parties, were given copies of the protocols.

E. Tabulation and Publication of Preliminary Results

The State Election Commission announced the preliminary partial results at 00:30 hours on 4 January. These figures were based on results from 27% of polling stations. A second announcement of the preliminary partial results was made at 02:00 hours, based on 61% of polling stations. In both cases, figures for each constituency were detailed, with the exception of constituency N° 11, where partial preliminary results were not announced until 12:00 hours, and these did not give results for polling stations in BiH which were first announced only at 18:00 hours on 4 January. Unfortunately, preliminary results from individual in-country polling stations were not made available to political parties.

VI. THE POST ELECTION PHASE

A. Tabulation and Publication of Final Result

The SEC issued preliminary results for each constituency in a timely manner. However, the final results were not issued until 19 January due to repeat elections. Only after the final results were released, did the political parties receive details of the results for each polling station. The ODIHR welcomes the release of this information, which enables the results to be reconciled with the copies of protocols given to members of the VCs.

B. Results and Repeat Elections

Polling was repeated at 11 polling stations under Article 85 paragraph 2 of the election law which stipulates that polling must be repeated when there are more ballots found in the ballot boxes than the number of voters having voted. In most cases, the number was only a few ballots in excess. None of the re-run elections were sufficient to change the results of the elections in any of the constituencies, and voter turnout on 9 January at these polling stations was very low. The requirement to re-run voting at these polling stations delayed the announcement of the final results until 19 January.

VII. FINAL RESULTS

The final results were published on 19 January, after the expiry of the complaints and appeals period. These were available on the SEC web site and published in the state media, but only for constituency level and the national minority contest.

The final outcome of the election for the constituencies N° 1-11 is summarised as follows:²¹

Party/Coalition	Votes Constituencies N° 1-10	%	Votes Constituency N° 11	%	Seats	%
SDP/HSLs	1,133,136	40.84	5,182	4.12	71	48.64
HDZ	722,359	26.04	107,928	85.89	46	31.50
HSS/LS/HNS/IDS	385,389	13.89	1,043	0.83	24	16.44
HSP/HKDU	146,496	5.28	6,203	4.94	5	3.42
Other parties	386,900	13.95	5,299	4.22	0	0
Total	2,821,020	100	125,655	100	146	100
Invalid Votes	46,740	1.66	1,186	0.94		

The non-resident population voted overwhelmingly in favour of HDZ and six candidates were returned to Parliament. Krunoslav Kordic, who had been removed from his position as Mayor of Capljina by the High Representative for BiH in November 1999 for obstructing the implementation of the Dayton Agreement, was among the six elected.

VIII. RECOMMENDATIONS

The ODIHR suggests the following recommendations for future elections:

1. The citizenship law should be amended in line with European practice. An amended law should create equal conditions for applicants; it should not discriminate between those from different ethnic group nor base citizenship entitlement on ethnic criteria alone.
2. Legal and administrative obstacles preventing Croatian citizens from exercising their right to citizenship and to vote should be removed, in particular for ethnic Serb refugees in BiH and FRY.
3. The legal distinction between “displaced persons” and “expellees” should be removed to ensure equal treatment of all displaced persons.
4. The list of documents accepted to evidence citizenship, personal identity and place of permanent residence respectively should be clarified, both for in-country and out-of-country voter registration and voting.
5. The Law on Electoral Registers should be amended, removing the obligation to record a voter’s ethnic origin, and provide for their public display, thereby enhancing the transparency of the registration process and voter confidence.
6. The quality and accuracy of the voter registers for citizens without permanent residence in Croatia should be significantly improved.

²¹ A total of 3,496,808 voters were registered in the 10 in-country constituencies. A total of 360,110 voters were registered in Constituency N° 11.

7. A voter education program aimed at all voters should be implemented at an early stage during the next elections.
8. If the principle of granting special political rights to members of national minorities is maintained, the number of seats reserved for their specific representation in Parliament should be reviewed.
9. The election legislation should detail all necessary administrative deadlines. The period between setting the date of the election and election day itself should be extended from the current minimum of 30 days. Candidate and party list registration could then take place sooner and the time available for official campaigning could be increased. It would also enable party representatives to join the election commissions at an earlier stage and be more involved in the decision making process.
10. A new media legislation should be considered aimed at transforming HRT into a true public-service broadcaster and guaranteeing its editorial independence.
11. The SEC's authority should include the power to enforce decisions and consideration should be given to granting it power to lay financial penalties for violation of campaign regulations.
12. Consideration should be given for more administrative support to the State Election Commission, recruited in a transparent manner. Such support staff could include experts in the field of media and campaign.
13. The legal provisions regarding campaign finance should be enhanced to include the obligation to disclose sources of funding and the total amount spent on campaigns.
14. The SEC reminders detailing polling station procedures should be issued as mandatory instructions and should contain all details on voting at various categories of polling stations.
15. In BiH, improved training of voting committees is required, as well as transparent selection of voting committee members. The protocols for out-of-country voting should record separately the figure for voters added to the registers on election day.
16. Unsuitable locations for polling stations, such as private houses and bars, should be avoided. Polling stations should be evenly distributed across the territory of Croatia, thereby ensuring that voters do not have to travel far to cast ballots.
17. Providing each polling station with new ballot boxes would be a costly exercise, but should be considered for future elections together with the introduction of proper voter screens and a well considered polling station layout.
18. The secrecy of the vote needs to be improved to ensure voters enjoy complete privacy when marking their ballots. Consideration should be given to introduce a voter education program stressing the right to vote in secret, except when voters explicitly request assistance.
19. The provisions regulating mobile voting should include deadlines for informing voting committees of the request, and should require that all such ballots be cast in a mobile box.

20. The election law should be brought in conformity with the law on the Constitutional Court regarding legal entities entitled to appeal SEC decisions.
21. Preliminary polling station results should be made public shortly after the count.
22. Article 85 of the Election law should be amended so that re-run elections are not called automatically for minor discrepancies in election results. Such discrepancies should be addressed by higher-level election commissions or resolved in court taking into account evidence showing other irregularities. Decisions of lower-level election commissions on results should be appealable to the SEC.

The OSCE stands ready to co-operate with the Parliament, the Government and other authorities of Croatia in the implementation of the above recommendations.