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Observation of the general elections in Bosnia and Herzegovina

Report

Ad hoc Committee of the Bureau of the Assembly

Rapporteur: Lord RUSSELL-JOHNSTON, United Kingdom, Alliance of Liberals and Democrats for Europe

The manner in which the 1 October 2006 General Elections in Bosnia and Herzegovina were conducted was generally in line with Council of Europe standards. However, as a result of constitutional ethnicity-based limitations to the right to stand for office, these elections were again in violation of Protocol 12 to the European Convention of Human Rights and Council of Europe commitments. The ad hoc Committee therefore calls upon the authorities and newly elected Parliament to adopt without further delay amendments to the Constitution that will remedy these violations. In this respect, it should be noted that the failed amendments in April 2006 only partly addressed the constitutional shortcomings mentioned.

I. Introduction

1. Following the invitation by the Speakers of the House of Peoples and House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina, the Bureau of the Assembly decided, at its meeting on 30 June 2006, to set up an ad hoc Committee to observe the general elections in Bosnia and Herzegovina, scheduled for 1 October 2006, and appointed me as the Chairman and Rapporteur of the ad hoc Committee.

2. On 4 October 2004, a co-operation agreement was signed between the Parliamentary Assembly and the European Commission for Democracy through Law ("Venice Commission"). In conformity with Article 15 of the agreement: "When the Bureau of the Assembly decides to observe an election in a country in which electoral legislation was previously examined by the Venice Commission, one of the rapporteurs of the Venice Commission on this issue may be invited to join the Assembly's election observation mission as legal adviser", the Bureau of the Assembly invited an expert from the Venice Commission to join the ad hoc Committee as advisor.

3. Based on the proposals by the political groups in the Assembly, the ad hoc Committee was composed as follows:

Socialist Group (SOC)

Ms Gülsun BILGEHAN Turkey

Ms Gaby VERMOT-MANGOLD Switzerland

Ms Maria Rosario Fatima ABURTO Spain

Ms Maria Josefa PORTEIRO GARCIA Spain

Ms Lydie ERR Luxembourg

Group of the European People's Party (EPP/CD)

Mr Pedro AGRAMUNT Spain

Ms Urszula GACEK Poland

Mr Mehmet TEKELIOĞLU Turkey

Alliance of Liberals and Democrats for Europe (ALDE)

Mr Morten ØSTERGARD Denmark

Mr Johannes RANDEGGER Switzerland

Lord RUSSELL-JOHNSTON United Kingdom

European Democrat Group (EDG)

Mr Ruhi AÇIKGÖZ Turkey

Mr Yuri SHARANDIN Russian Federation

Group of the Unified European Left (UEL)

Mr Alexander FOMENKO Russian Federation

Venice Commission

Mr Serguei KOUZNETSOV, Administrator,

Secretariat

Ms Caroline RAVAUD, Head of Secretariat of the Monitoring Committee

Mr Bas KLEIN, Deputy to the Head of Secretariat of the Interparliamentary Co-operation Unit

Mr Frank DAESCHLER, Logistics Co-ordinator

4. The ad hoc Committee acted as part of the International Election Observation Mission (IEOM) which also included the OSCE Parliamentary Assembly (OSCE-PA) and the election observation mission of the Organisation for Co-operation and Security in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR).

5. The ad hoc Committee met in Sarajevo from 29 September to 2 October 2006 and held, *inter alia*, meetings with representatives of the main parties participating in these elections, the High Representative and heads of international missions in Bosnia and Herzegovina, the Chairman of the Central Election Commission (CEC), the Head of the Election Observation Mission of the OSCE/ODIHR and his staff, as well as representatives of civil society and mass media. The programme of the meetings of the ad hoc Committee appears in Appendix 1.

6. On Election Day, the ad hoc Committee was split into 11 teams which observed the elections in and around Sarajevo, Mostar, Pale, Travnik and Srebrenica.

7. The IEOM concluded that the manner in which the 1 October 2006 general elections in Bosnia and Herzegovina were conducted was generally in line with international standards for democratic elections. However, it was regretted that, due to constitutional ethnicity-based limitations to stand for office, these elections were again in violation of Protocol 12 to the European Convention of Human Rights (ECHR) and of commitments made to the Council of Europe, as well as article 7.3 of the OSCE 1990 Copenhagen Document. The joint IEOM press release issued after these elections appears in Appendix 2.

8. The ad hoc Committee wishes to thank the OSCE/ODIHR election Observation Mission and the Special Representative of the Secretary General of the Council of Europe in Sarajevo and his staff for their co-operation and the support provided to the ad hoc Committee.

II. Political and legal context

10. The electoral framework in Bosnia and Herzegovina remains complex as a result of the unique constitutional arrangements contained in the Dayton Agreements. During these elections, the voters in Bosnia and Herzegovina were voting for the three members of the State Presidency and the members to the State House of Representatives. In addition, voters in the Republika Srpska (RS) voted for the President and Parliament of the RS and voters in the Federation of Bosnia and Herzegovina (FBiH) for the House of Representatives of the FBiH.

Cantonal elections were also held in the FBiH, but these were only observed by our ad hoc Committee to the extent that they had an impact on the state and entity level elections.

11. The general elections in Bosnia and Herzegovina are governed by the Constitution and the 2001 Election Law, as amended. Moreover CEC regulations and several provisions in other legal documents regulate the practical organisation of the vote. The Election law was most recently amended in March 2006. These amendments introduced, *inter alia*, a passive voters' registration system and abolished the Election Complaints and Appeals Council. In addition, the extensive powers of the High Representative also include several aspects related to the election process.

12. The Constitution of Bosnia and Herzegovina, which is an annex to the 1995 General Agreement for Peace (Dayton Agreement), continues to enshrine ethnicity-based restrictions on the right to stand for office. Only citizens of Bosnia and Herzegovina who identify themselves as Bosniak, Serb or Croat can run for the tripartite State Presidency. This effectively bars anybody belonging to the so-called "others" from running for these offices. In addition, on the level of the entities, only Serbs can run for the Presidency of the RS. Moreover, voters in the RS can only vote for a Serb candidate and voters in the FBiH can only vote for Bosniak and Croat candidates for the State Presidency. As noted in RES 1513 (2006), adopted by the Assembly in June 2006, as well as in several opinions adopted by the Venice Commission, these provisions are in violation of Protocol 12¹ to the ECHR as well as of the commitments made by Bosnia and Herzegovina when joining the Council of Europe.

13. The Election Law as amended in March 2006, except in respect of the constitutional limitations mentioned above, provides an adequate basis for the conduct of democratic elections. However, some provisions of the Election Law, notably those dealing with denial of suffrage rights by a decision of the High Representative, verification of signatures in support of a candidate, the procedure for election-related complaints and appeals, as well as the composition of the election commissions may not be fully in line with established democratic practise and should be reviewed by the authorities in co-operation with the Venice Commission.

14. In April 2006 the parliament failed to adopt a series of amendments to the constitution that, *inter alia*, foresaw the indirect election of the Presidency of Bosnia and Herzegovina by the House of Representatives. The indirect election of the Presidency would have addressed the shortcoming that voters in the RS can only vote for a Serb candidate for the Presidency of Bosnia and Herzegovina, and voters in the FBiH only for a Croat or Bosniak candidate. However, it should be noted that the afore mentioned constitutional amendments did not address the shortcoming that only members of the Serb, Croat and Bosniak constituent people can stand for election. Therefore, even if the constitutional amendments had been adopted, the underlying constitutional framework for these elections would not have been in compliance with the ECHR and Council of Europe commitments.

15. The political landscape in Bosnia and Herzegovina remains divided along ethnic lines, with parties, with few exceptions competing mainly for the vote within their own ethnic communities. The main Serb parties are the Alliance of Independent Social Democrats (SNSD), the Party of Democratic Progress (PDP) and the Serb Democratic Party (SDS). The main Bosniak parties are the Party of Democratic Action (SDA) and the Party for BiH (SBiH). The Croat side, traditionally represented by the Croatian Democratic Union of BiH (HDZ-BiH) became more fragmented when the Croatian Democratic Union 1990 (HDZ 1990) split from the HDZ-BiH, as a result of the former's opposition to the proposed constitutional amendments which the HDZ-BiH supported. Of the main parties, only the Social Democratic Party (SDP), although nominally a Bosniak party, projected itself as a multiethnic party.

III. Election Administration

16. The General Elections on 1 October 2006 were the first elections fully administered by the authorities of Bosnia and Herzegovina without any involvement of the international community. However, the international community retained an advisory status within the Central Election Commission for these elections.

17. The elections were administered by a three-tiered election administration consisting of the Central Election Commission (CEC), 142 Municipal Election Commissions (MECs) and 4.299 Polling Station Commissions (PSC).

18. The CEC consists of 7 members appointed for a five-year term by the Parliament of Bosnia and Herzegovina. Two of the members are representatives of the Bosniak, 2 of the Croat and 2 of the Serb community, while the so-called "others" are represented by 1 member. The chairperson of the CEC is elected from among the members on a 15-month rotation basis. The MECs consist of 3 to 5 members, depending on the number of voters in the municipality. The MEC members are appointed by the Municipal Council/Municipal Assembly to which they pertain, subject to approval by the CEC.

19. All parties and independent candidates have the right to nominate members to the PSCs. The PSCs are appointed by the MECs to which they pertain via a lottery system organised by the CEC.

20. A number of MECs complained that a substantial number of PSC members had no previous experience, partly as a result of the fact that smaller parties could not nominate sufficient representatives to fill their allocated PSC posts. The MECs are obliged by the Election Law to provide training for all PSC members. However lack of

resources and centralised training manuals hindered the uniformity of training provided by the MECs.

21. The CEC and MECs conducted their work in a professional and fully transparent manner. This resulted in a high confidence of all electoral subjects, as well as the general public, in the impartiality and efficiency of the election administration.

IV. Candidate and Voter Registration

22. The candidate registration process took place in a transparent and inclusive manner, leaving aside the previously mentioned constitutional ethnicity-based limitations on the right to stand for office. In total, 56 political subjects (parties, coalitions, independent candidates and independent lists) were registered for these elections, reflecting the full range of the political spectrum in Bosnia and Herzegovina, and providing the voters with a broad choice on Election Day.

23. The SBiH nominated a Bosniak to stand as a candidate in the RS for the Presidency of Bosnia and Herzegovina which was rejected on grounds of the constitutional provisions which restrict candidacy on the basis of ethnicity. This decision was upheld by the Appellate Division of the BiH State Court and has been appealed to the Constitutional Court. The SBiH has publicly stated its intention to appeal to the European Court of Human Rights in Strasbourg on this matter.

24. The SDP, which draws most of its support from Bosniak voters, put forward only a Croat candidate for the State Presidency on behalf of the FBiH. The Croat nationalist parties strongly objected to the possibility of having the Croat candidate for the presidency being elected by mostly Bosniak voters. This underlines the continuing ethnic division and polarisation at the political level in Bosnia and Herzegovina

25. One of the main results of the March 2006 amendments to the Election Law was the change from an active to a passive system of voters' registration. The Central Voters register, from which the voters' lists are compiled, is based on the civil register which is known as "Citizens Identification Protection System" (CIPS). Every citizen over 18 years of age is obliged by law to register with the CIPS and is thereby automatically included in the voters' list. The Central Voters Register was closed on 17 August 2006. As a number of citizens were not included on the voters' list due to their non-registration with CIPS, the CEC decided to include on supplementary lists all voters who had applied to the CIPS between 17 August and 15 September. Voters who applied after 15 September to CIPS were allowed to vote by tendered ballot. As a result of the new passive registration system, the number of registered voters, as of 15 September 2006, increased by more than 400.000, highlighting the success of the new passive registration system.

26. As in previous elections, Displaced Persons (DPs) had the choice between voting in their current place of residence or in their pre-1991 constituency, either in person or by absentee ballot. DPs had to make their choice before 18 July 2006. If no choice was made, the voter was to be assigned the same voting option as during the previous elections. If no previous registration existed they would be registered in their pre-1991 constituency by default. The CEC decided that voters who lost their DP status between 18 July and the closing of the voters' lists on 17 August - in total 4.000 voters - retained their special voting rights for these elections.

V. Pre-election period and Media

27. The campaign, which started on 1 September, was dominated by issues relating to inter-ethnic relations and future constitutional reform. Regrettably, the campaign atmosphere was marked by strong nationalist rhetoric, while issues such as the economy, social welfare and education remained in the background.

28. External development, such as the outcome of the referendum on State-status of Montenegro and the negotiations on the future status of Kosovo, influenced the campaign. A number of Serb political figures raised the option of a referendum on independence for Republika Srpska and a link between the status of the RS and the ongoing talks on Kosovo was sometimes made. This led the High Representative publicly to warn the head of the SNSD that he would take action if divisive language of this kind continued to be used.

29. The official signing, on 26 September 2006, of a special co-operation agreement in Banja Luka between the RS and the Republic of Serbia proved to be very controversial in this respect and was widely condemned, both inside and outside Bosnia and Herzegovina, as potentially destabilising for both the country and the region.

30. On the other side, key Bosniak politicians campaigned for the further integration of Bosnia and Herzegovina as a unitary state while a number of Croat politicians called for the establishment of a separate Croat entity.

31. The ad hoc Committee welcomed the fact that, despite the strong nationalist rhetoric, the campaign took place in a relatively calm atmosphere and that no violent incidents were reported.

32. Bosnia and Herzegovina has a wide and pluralist range of media, which allowed the voters to obtain the

information necessary to make an informed choice on Election Day. Legal requirements regarding the provision of free airtime to all contestants were generally respected. Media interest in the electoral campaign was relatively low. The state level public broadcasters overall reported on the election campaign in a balanced and impartial manner. The entity level broadcasters, as expected, reported mostly along ethnic lines. Private broadcasters followed similar patterns.

33. A restrictive interpretation of legal provisions at times hindered the coverage of the electoral campaign. Generally, broadcasters' interpretation of the provisions of equal access to the media was taken as meaning that debates could only take place if all political subjects participated and that interviewing one candidate in a news programme would imply giving similar airtime to all other contestants.

VI. Election day - Vote count and tabulation

34. On Election Day the vote and the vote count took place in a tranquil and well organised manner. The members of the ad hoc Committee especially noted the generally good atmosphere in the polling stations and between the members of the PSCs.

35. As a result of the large number of ballots that each voter could cast, as well as the complexity of the ballot papers, long queues and overcrowding were noted at times in polling stations. In order to resolve the long queues, a number of PSCs gave voters the choice to cast their ballot in public instead of in the voting booth, thus infringing the principle of the secrecy of the vote. However, this seemed mostly the result of unfamiliarity with the voting procedures and not of any ill intent.

36. The accuracy of the voters' list, as a result of the passive voters' registration system and the linkage between the voters and civil registers, was highlighted by the relatively small number of voters who could not find their name on the voters list. The few omissions noted in the voters list would seem to be mostly the result of erroneous residency information in the CIPS database.

37. During the vote count, procedures were either not, or incorrectly, followed in a number of polling stations. Again, this was considered mostly due to unfamiliarity with the counting procedures as a result of inadequate training of commission members and not due to any malign intent.

38. The preliminary turnout for these elections was 54.5%. This is an increase of 0.6% in comparison to the 2002 figure. However, this increase does not take into account the higher number of registered voters for these elections as a result of the newly introduced passive voters' registration system.

39. According to the preliminary results, the Presidential race was won by the SBiH for the Bosniak candidate, the SDP for the Croat candidate and the SNSD for the Serb candidate. The SNSD also won the Presidential race for Republika Srpska. In the state level Parliament, the SNSD won 10 seats, the SDA 9, the SBiH 8, the SDP 5, the SDS 4, the HDZ BiH, 3, the HDZ 1990 2 and the DNZ 1 seat. The elections to the Assembly of the RS were won by the SNSD which, according to the preliminary results, won a majority of seats. In the FBiH, the SBiH and SDA won most seats in the House of Representatives (although the latter lost seats in relation to the outgoing Parliament).

VII. Conclusions and recommendations

40. The manner in which the 1 October 2006 General Elections in Bosnia and Herzegovina were conducted was generally in line with Council of Europe standards. However, as a result of constitutional ethnicity-based limitations to the right to stand for office these elections were again in violation of Protocol 12 to the European Convention of Human Rights and Council of Europe commitments. The ad hoc Committee therefore calls upon the authorities and newly elected Parliament to co-operate with the Venice Commission in the drafting of amendments to the Constitution that will remedy these shortcomings. These amendments should be adopted without further delay.

41. The Election Law, as amended in March 2006, forms an adequate basis for the conduct of democratic elections. However, some provisions in the amended law may not be fully in line with established democratic practice. The ad hoc Committee therefore calls upon the authorities to co-operate with the Venice Commission of the Council of Europe to resolve any shortcomings in the Election Law that the forthcoming opinion of the Venice Commission on this law may identify.

42. The prevalence of ethnicity-based arrangements in political life is hindering the further social and economic development of the society of Bosnia and Herzegovina. In Bosnia and Herzegovina the distribution of all posts, elected and non-elected, is derived from the pre-war composition of the population, as established by the census of 1991. A new census should therefore be organised as soon as possible by the authorities of Bosnia and Herzegovina.

Appendix 1

AD HOC COMMITTEE TO OBSERVE THE GENERAL ELECTIONS IN BOSNIA AND HERZEGOVINA

01 October 2006

PROGRAMME

Thursday, 28 September 2006

Arrival of the members of the ad hoc Committee

All members will be met at the airport and provided with transport to the hotel Holiday Inn:

Hotel Holiday Inn

Zmaja Od Bosne 4

Sarajevo 71000

Tel: +387-33-288-000

Fax: + 387-33-663-862

Friday, 29 September 2006

Hotel Holiday Inn

14:00 Ad Hoc Committee meeting

Joint Briefing programme

15:00 Opening statements by the Heads of the Parliamentary Delegations and ODIHR EOM

- Ambassador Lubomir Kopaj, Head of the OSCE/ODIHR EOM
- Amb. David Heath, Head of the OSCE PA Delegation
- Lord Russel-Johnston, Head of the Council of Europe Delegation

15:30 Introductions to the Political Background and Analysis

- Dr.Christian Schwarz-Schilling, the High Representative and EU Special Representative for BiH
- Amb.Douglas Davidson, Head of the OSCE Mission to BiH
- Mr.Tim Cartwright, Special Representative of the Council of Europe (confirmed)
- Amb.Michael Humphreys, Head of the European Commission's Delegation to BiH

16:30 Briefing by the ODIHR EOM Core Team

- Ms.Beata Rozumilowicz-Martin, Deputy Head of the Mission – Political Overview and Main Election Issues
- Mr.Roumen Maleev, Election Analyst – Election Administration, Observation Forms
- Mr.Rasto Kuzel, Media Analyst – Media Landscape

- Mr. Juan Pedro Garcia Crespo, Security Officer – Security Awareness
- Mr. Robert Lech, Logistics Officer – Logistics and Finance Issues
- Q&A

17:30 Representative of the BiH Court

18:00 Media representatives

- Nezavisne Novine
- BHT
- Dnevni Avaz
- Balkan Investigative Reporting Network

Saturday, 30 September 2006

Hotel Holiday Inn

09:00 CEC (confirmed verbally-all 7 members)

09:45 Meeting the main political parties of both entities (8 parties/25 min each, encouraged to leave 5-10 min for Q&As each)

- 09:45 SDA
- 10:10 SBiH – Ms. Azra Hadziahmetovic, Member of the Chairmanship (confirmed)
- 10:35 SDP
- 11:00 HDZBiH
- 11:25 HDZ.1990
- 11:50 SNSD
- 12:15 SDS
- 12:40 PDP

13:05 – 13:50 NGOs representatives

- Mr. Srdjan Dizdarevic, President of the Helsinki Committee for Human Rights in BiH (confirmed)
- Ms. Irena Hadziabdic, Executive Director of the Association of Election Officials of BiH (confirmed)
- Women to Women
- GROZD
- Centre for Civic Initiatives

13:50-14:15 Regional briefing for teams deployed to Sarajevo and its vicinity

Teams deployed to regions will meet their drivers and interpreters (in the lobby in front of the Congress Hall)

14:15 Sarajevo teams meet their interpreters and drivers

Sunday, 01 October 2006

Observation of the Parliamentary Elections

Monday, 02 October 2006

Hotel Holiday Inn

09:00 Debriefing

14:00 Joint Press Conference (TBC)

Afternoon

Departure of the members of the ad hoc Committee

Tuesday, 03 October 2006

Departure of the members of the ad hoc Committee (continued)

Appendix 2

First elections fully administered by Bosnia and Herzegovina authorities show further progress

SARAJEVO, 2 October 2006 – Yesterday's general elections in Bosnia and Herzegovina were generally administered in line with international standards and represented further progress in the consolidation of democracy and the rule of law. These were the first elections since the Dayton Peace Agreement to be fully administered by Bosnia and Herzegovina authorities.

However, due to constitutional ethnicity-based limitations, these elections were again in violation of international standards and commitments for universal and equal suffrage, concluded the International Election Observation Mission in a statement in Sarajevo today.

"Real progress toward democracy in Bosnia and Herzegovina was made yesterday, and I congratulate the country and its people for conducting a fair electoral process in which representatives could be freely chosen", said David Heath, Head of the OSCE Parliamentary Assembly Delegation and Special Co-Ordinator of the OSCE short-term observer mission.

Lord Russell-Johnston, Head of Delegation of the Parliamentary Assembly of the Council of Europe, said: "The sun shone on a tranquil and well organized election, in which all citizens and peoples of Bosnia and Herzegovina showed their firm commitment to a democratic society. I was greatly encouraged and am now confident that before the next election a constitution will be agreed which will finally be fully in line with Council of Europe standards and commitments".

Some 94% of observers assessed the voting positively, but citing instances of overcrowding, family voting and voters not being found on the voter lists. However, Polling Stations Committees generally were helpful in assisting voters in locating their polling stations. The process deteriorated somewhat during the count, which 20% of observers assessed negatively, frequently noting procedural irregularities.

"Despite overall well administered elections, it was a disappointment to see some problems emerge during the count. All necessary steps, including effective training of election officials, should be undertaken so that voters' confidence can be more fully assured", concluded Ambassador Lubomir Kopaj, Head of the long-term observation mission of the OSCE Office for Democratic Institutions and Human Rights.

A wide political spectrum, with 56 parties, coalitions and candidates, and a diverse media provided voters with a broad choice. The election campaign was calm, overall, but marked by sharp nationalist rhetoric and occasional inflammatory statements.

Save for the constitutional limitations mentioned above, the election legislation provides a sound basis for the conduct of democratic elections. The transition from an active to a passive system of voter registration was conducted in a generally smooth manner and appeared to be well accepted. The Central Election Commission

performed its duties in a transparent and efficient manner and enjoyed confidence amongst political subjects.

¹ *"The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."* t