



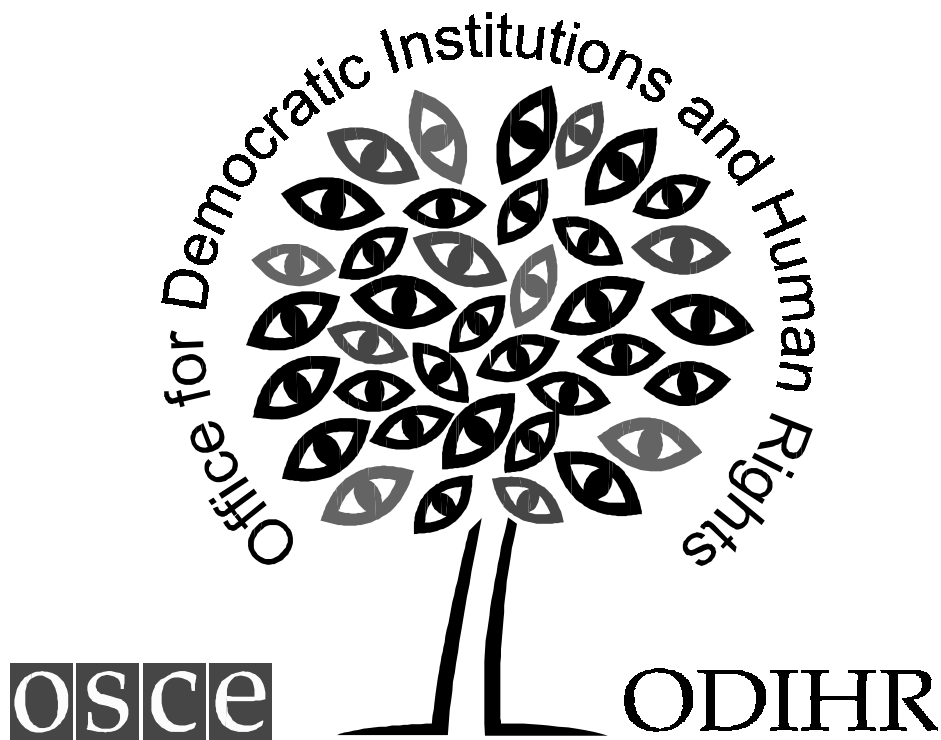
Office for Democratic Institutions and Human Rights

# REPUBLIC OF SERBIA

## EARLY PARLIAMENTARY ELECTIONS

24 April 2016

### OSCE/ODIHR Limited Election Observation Mission Final Report



Warsaw  
29 July 2016

### EDITED: ONLY Executive Summary & Recommendations

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**REPUBLIC OF SERBIA**  
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**24 April 2016**

**OSCE/ODIHR Limited Election Observation Mission Final Report<sup>1</sup>**

**I. EXECUTIVE SUMMARY**

Following an invitation from the authorities of the Republic of Serbia to observe the 24 April 2016 early parliamentary elections, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed a Limited Election Observation Mission (LEOM). The OSCE/ODIHR LEOM assessed compliance of the electoral process with OSCE commitments, other international obligations and standards for democratic elections, as well as with national legislation. For election day, the OSCE/ODIHR LEOM joined efforts with a delegation from the Parliamentary Assembly of the Council of Europe (PACE) to form an International Election Observation Mission (IEOM). Both institutions involved in this IEOM have endorsed the 2005 Declaration of Principles for International Election Observation.

The 24 April 2016 early parliamentary elections offered voters a variety of choices. While the election administration performed its duties efficiently and generally enjoyed the trust of the electoral stakeholders, its handling of post-election complaints and processing of results raised concerns. Fundamental freedoms were respected, but biased media coverage, undue advantage of incumbency and a blurring of distinction between state and party activities unlevelled the playing field for contestants.

The legislation provides an overall sound basis for the conduct of democratic elections in line with OSCE commitments and other international obligations and standards. However, it leaves some issues under-regulated or regulated only by instructions of the Republic Electoral Commission (REC). A number of previous recommendations by the OSCE/ODIHR and the Council of Europe's Venice Commission remain unaddressed. Key shortcomings include unclear rules on candidate registration, insufficient measures against the misuse of administrative resources for campaigning, inadequate regulation of campaign finance, deficiencies and loopholes in dispute resolution, an absence of sanctions for some violations and the lack of provisions on election observation.

Fundamental freedoms were respected and candidates were able to campaign freely. However, representatives of the ruling Serbian Progressive Party and, to a lesser extent, the Socialist Party of Serbia increased their participation at official events during the electoral campaign, taking undue advantage of incumbency and blurring the distinction between state and party activities, at odds with OSCE commitments and Council of Europe standards. Widespread reports of the ruling parties exerting pressure on voters, particularly those employed in the public sector, and enticing voters through welfare initiatives raised concerns about the ability of voters to cast their vote freely, as provided for by OSCE commitments. The absence of comprehensive campaign regulations and of a competent campaign monitoring body potentially left irregularities unaddressed.

The elections were administered by a two-tiered election administration, consisting of the REC and 8,377 Polling Boards (PBs). The REC met all legal deadlines, operated in an efficient and transparent manner and adopted detailed instructions for these elections, including guidelines for PBs. However, training sessions for PBs lacked uniformity and were only available to chairpersons and their deputies. While most OSCE/ODIHR LEOM interlocutors expressed confidence in the REC's work before election day, some raised concerns regarding its processing of results and handling of post-election

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<sup>1</sup> The English version of this report is the only official document. An unofficial translation is available in Serbian.

complaints. Voters could have benefited from a broader education campaign, especially with regard to voting procedures and the secrecy of the vote. The law does not provide for safekeeping measures of electoral materials before or after election day.

Voter lists were updated through the Unified Voter Register on the basis of municipalities' records, inputs provided by state institutions, and voters' requests. Although voters could review their data and request corrections, voter lists were not displayed for public scrutiny. This lack of transparency of the voter registration process negatively affected public confidence in the accuracy of the lists and is not in line with international good practice.

The REC registered 20 candidate lists nominated by political parties, coalitions of parties and groups of citizens in an inclusive manner. This provided voters with a range of political choices. However, some submitters of lists took advantage of the lack of clear criteria in the law to apply for national minority status solely to obtain the related privileges. In total, eight national minority candidate lists contested the elections independently, while another national minority party ran as part of coalition lists with non-minority parties. Unclear rules for signature verification and insufficient transparency of this process led to a perception of arbitrariness in candidate registration. The deadline for candidate registration is 10 days before election day, which puts at risk the timely printing of ballots and raises concerns about the ability to effectively resolve potential complaints.

In 2014, amendments introduced to the Law on Financing Political Activities reduced public funding for parties' regular activities and campaigning, in line with an OSCE/ODIHR and Venice Commission recommendation. However, a number of other recommendations on campaign finance have yet to be taken into account. Overall, the regulatory system does not ensure transparency, integrity and accountability of campaign finances. The significantly greater financial capabilities of the ruling parties compared to other contestants undermined the equality of opportunity.

Public media provided equal airtime to contestants to present their platforms, in compliance with legal obligations. However, the government and the ruling party activities dominated campaign coverage in the news and current affairs programmes. The analytical and critical reporting on the influential nationwide television channels was narrow, partly due to widespread self-censorship resulting from political influence over the media sector. In the absence of an effective mechanism for monitoring media conduct during the campaign, media bias, instances of a smear campaign, and cases of infringement of media freedom were not addressed.

Some 35 complaints and appeals were filed on the registration of 11 candidate lists before election day, while over 60 complaints requesting the annulment of results and calling for repeat voting were filed after election day. The 24-hour deadline for complaints does not provide sufficient time for seeking legal redress. The OSCE/ODIHR LEOM was not made aware of official complaints with regard to the alleged misuse of administrative resources and pressure on voters, but received reports of a perceived fear of retribution for filing complaints as well as a general lack of trust in the effectiveness of the judiciary and investigatory bodies. While the law stipulates that the REC may annul voting in a polling station (PS) and order repeat voting, the REC's authority is limited by a Supreme Court ruling that stipulates that it may not act upon irregularities *ex officio*, including annulling voting and ordering repeat elections, which is not in line with good practice. Overall, the dispute resolution mechanism does not provide effective legal redress.

The law establishes a gender quota for candidate lists with at least every third candidate being from the less represented gender. One candidate list had a woman as its first candidate. Of 75 permanent and extended members of the REC, 20 were women. Women were generally underrepresented in the rallies observed by the OSCE/ODIHR LEOM, and contestants generally did not address issues

specifically affecting women in their programmes. The combined coverage of female political actors in most monitored media did not exceed 10 per cent, although it was notably higher on certain outlets.

Despite previous OSCE/ODIHR recommendations, the legal framework does not provide for observation by citizen and international organizations, and the issue is regulated by REC instructions. The REC accredited 196 international observers and 1,689 citizen observers in an inclusive process.

In accordance with standard practice for LEOMs, the OSCE/ODIHR LEOM did not observe election day proceedings in a systematic or comprehensive manner. In the limited number of PSs visited by international observers, election day procedures were generally conducted efficiently and in accordance with the law. However, the design of voting screens and layout of PSs did not ensure the secrecy of the vote. During counting, a number of PB members were unfamiliar with procedures for the reconciliation between the number of signatures on the voter list and number of cast ballots.

Overall, the law does not prescribe a transparent and accountable tabulation process. The REC used its wide discretionary powers in an inconsistent and arbitrary manner to address inaccuracies in 164 results protocols. Although the decisions were taken in an open and inclusive manner, this process is not prescribed by the law and resulted in a number of voters being disenfranchised. While this led to protests and to opposition parties disputing the integrity of the electoral process and the accuracy of the election results, no appeals were filed against any of these REC decisions. The REC annulled the results and ordered to repeat voting in 15 PSs. Repeat voting was conducted on 4 May and the REC pronounced the final results on 5 May.

(...)

These recommendations as contained throughout the text are offered with a view to enhance the conduct of elections in Serbia and bring them fully in line with OSCE commitments and other international obligations and standards for democratic elections. These recommendations should be read in conjunction with other recommendations offered previously by the OSCE/ODIHR and with recommendations contained in the joint opinions on Serbian election legislation of the OSCE/ODIHR and the Venice Commission. The OSCE/ODIHR stands ready to assist the authorities of Serbia to further improve the electoral process and in following up on recommendations contained in this and previous reports.<sup>96</sup>

#### **D. PRIORITY RECOMMENDATIONS**

1. The electoral legislation would benefit from a comprehensive review to address legal loopholes and unclear provisions. To ensure legal certainty, substantial regulations should be included primarily in the law, while only those related to technical matters and details should be included in REC instructions.
2. To increase transparency and contribute to trust in the accuracy of voter lists, consideration could be given to displaying preliminary voter lists for public scrutiny in line with the law and international good practice.
3. Rules on candidate registration, including procedures for the verification of supporting signatures, should be clarified to ensure transparency at all stages, consistency and legal certainty.
4. To promote a level playing field among contestants and ensure the separation of state and party interests, consideration should be given to introducing campaign regulations including on preventing the misuse of administrative resources and abuse of office. Compliance should be monitored by a competent and independent body and violations should be punished with proportionate and dissuasive sanctions.
5. To enhance the transparency of campaign finances, previous OSCE/ODIHR and Venice Commission recommendations should be addressed, including introducing an expenditure ceiling, a requirement to submit interim financial reports as well as the timely publishing of the financial reports and ACA conclusions. The law should prescribe proportionate and dissuasive sanctions, and irregularities should be sanctioned.
6. Consideration should be given to clarify the REM's competences in investigating and sanctioning breaches of legislation in a timely manner. In addition, the REM should act upon its own initiative, based on systematic monitoring election coverage and compliance with established regulations.

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<sup>95</sup> Following an OSCE/ODIHR recommendation after the 2012 election, the REC published disaggregated final results after the 2014 elections.

<sup>96</sup> In paragraph 24 of the 1999 OSCE Istanbul Document, OSCE participating States committed themselves "to follow up promptly the ODIHR's election assessment and recommendations."

7. The law should prescribe a simple, accessible and effective legal redress for election day irregularities and provide for challenges of election results. All complaints should be reviewed with due process.
8. In line with good practice, the REC should have authority ex officio to rectify or overturn decisions taken by polling boards/lower electoral commissions, to annul elections if irregularities affect the outcome, and to order repeat voting to avoid disenfranchising affected voters.

## **E. OTHER RECOMMENDATIONS**

### **Election Administration**

9. To ensure that voters are fully informed of their rights and responsibilities, the REC could intensify its efforts and undertake comprehensive voter education activities sufficiently in advance of the elections.
10. Consideration could be given to conducting standardized training on electoral procedures for all PB members.

### **Voter Registration**

11. The blanket restriction on suffrage rights of persons declared mentally incompetent should be removed or decided on a case-by-case basis by the court, depending on specific circumstances.

### **Candidate Registration**

12. Legislation should be amended to give an opportunity to individual citizens to stand as independent candidates.
13. To make the candidate registration process more inclusive, the restriction that voters may support only one candidate list could be reconsidered.
14. The LER should include provisions regarding the deadlines and conditions for the withdrawal of registered candidates.
15. Deadlines for candidate registration could be reconsidered to allow for more thorough verification of registration documents, to ensure an effective redress in case of appeals and to provide sufficient time for ballot printing.

### **Media**

16. The independence of the public media could be further strengthened by setting up a mechanism that would provide for sufficient funding and reduce their dependency upon the state budget.
17. Consideration should be given to regulate media coverage of officials who are also candidates, in order that they do not enjoy an unduly privileged position compared to other contestants.

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## **Complaints and Appeals**

18. The effectiveness and transparency of the dispute resolution process could be improved by introducing a legal requirement for the applicant's right to a hearing involving both parties, publishing information on complaints and decisions in a timely manner, and extending the 24-hour deadline.

## **Participation of National Minorities**

19. Measures should be taken, including clear criteria established by law, to prevent the abuse of provisions for candidate lists to obtain the status of national minority.

## **Citizen and International Observers**

20. In line with OSCE commitments, the law should include provisions on access of citizen and international observers to all stages of the electoral process and clearly define their rights and obligations.

## **Election Day**

21. Authorities could consider reviewing voting screen design and polling station layout, to ensure the secrecy of the vote and consider requiring badges for all PB members.

## **Tabulation and Transmission of Results**

22. Procedures governing the inspection of materials should be clearly established allowing for a meaningful and uniform review. Measures should be taken to secure election materials during inspection.
23. To enhance the transparency and integrity of the electoral process, the law should prescribe a detailed tabulation process that is conducted by the election administration.
24. Measures should be taken to enhance the accuracy of PBs' work including on counting and drafting of PB protocols. Proportionate sanctions should be imposed for irregularities.
25. The timely publication of disaggregated election results by polling station should be enshrined in the law in order to increase transparency and confidence in the process.