

# PROPOSAL FOR REFORM OF ELECTORAL ADMINISTRATION IN SERBIA

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CENTRE FOR FREE ELECTIONS AND DEMOCRACY (CeSID)

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## INTRODUCTORY NOTES

*Serbia's electoral procedures and electoral administration are fraught with a number of challenges that recur in each electoral cycle. Legislation is inconsistent, meaning that efforts must be made to align and harmonise all electoral regulations – including aligning the powers of the various electoral bodies and the deadlines that must be met, as well as the multitude of laws, byelaws, and regulations –so as to avoid mutually contradictory actions and decisions.*

*The statutory and institutional framework that governs electoral administration has not changed appreciably in years, and has been the cause of numerous problems at election time. These tensions came to a head in the 2016 election, which was marred by numerous irregularities.*

## ELECTORAL ADMINISTRATION IN SERBIA

Serbian electoral regulations do not recognize a professional electoral administration, solely responsible for all aspects of the electoral process, from voter registration, to organization of elections, election financing, media monitoring, to analyzing and making improvements to the electoral system in general and to all of its constituent processes. The expression 'electoral administration' as used here denotes only electoral bodies.

Electoral bodies in Serbia are the National Electoral Commission (*Republička izborna komisija*, RIK), polling boards, and municipal/city electoral commissions.

Under the Law on the Election of Members of Parliament, RIK members are appointed to four-year terms of office (i.e. the same term as that of Members of Parliament), whilst new polling boards and municipal/city electoral commissions are established for each election.

Multiple issues have been identified with the operation of these bodies; these culminated in the latest election, that of 2016.

In the first part of this document we will indicate the key challenges that face the electoral administration, and will thereafter propose a number of recommendations designed to improve the entire electoral process.

### The transient character of electoral administration

The key shortcoming of an ad hoc electoral administration is its lack of a stable structure, permanent financing, objectives, and clear-cut rules. In consequence, such an administration is often insufficiently competent to undertake actions in the electoral process, meaning that some mistakes will recur in each electoral cycle.

In most cases, the duties of electoral administration are assumed by persons who are neither trained nor qualified to take on those tasks. These individuals do these jobs only in the course of an election, and return to their regular work once the election process is over.

The composition of polling boards, municipal/city electoral commissions, and the central electoral body, the RIK, depends on the balance of power in the national or local parliament, which may lead to undue party political influence and adversely affects confidence of members of the public in the impartiality of these bodies' decisions and democracy of the electoral process as a whole.

## **Powers of the electoral administration**

According to current regulations, the RIK is tasked with only a segment of the electoral process, the actual organization and implementation of an election; these may be considered narrowly technical duties. The RIK's tasks can be sub-divided into a number of key segments: registration of candidates; implementation of elections; electoral registers; and formal establishment of election results. Both the central and local-level commissions are also responsible for appeals, as they are the institutions of first instance for anyone who believes his or her electoral rights have been infringed upon.

Important aspects of the electoral process, including the role of the media, political party financing, and keeping of electoral registers, are outside of the remit of the electoral administration and are fragmented amongst a multitude of other institutions that have little or no co-ordination with electoral authorities.

It is here that observers have detected numerous irregularities, which require systemic solutions and continuing efforts on the part of the electoral administration.

## **Inability of electoral authorities to act on their own initiative (*ex officio*)**

Where the RIK upholds a complaint submitted by a voter, candidate, or person or entity that has put forward an electoral list, and determines that electoral rights have been infringed upon, the RIK may annul a procedure or action that led to the violation of electoral rights.

Electoral bodies, however, may not institute proceedings on their own initiative against political entities or staff of electoral administration in order to safeguard electoral rights. This means that many violations and infringements of the law go unpunished, which, in turn, has an adverse impact on participants in the electoral process and incentivizes them to violate electoral rights.

## **Limited capacity to appoint core and non-core members of polling boards and electoral commissions**

Core polling boards, municipal/city electoral commissions, and the RIK are augmented by the addition of non-core members, each of whom represents one entity that has put forward an electoral list. There are no clear criteria for becoming a non-core member, just as there are no clear criteria or qualifications that must be met for the appointment of core members of these electoral bodies.

These provisions, coupled with political parties' lax attitude towards electoral bodies, allow the appointment of individuals that are insufficiently competent or informed about the electoral process as non-core members. Inadequate knowledge of procedures and lack of training lead to arbitrary interpretations of facts, conflicts, errors, and unjustified reports of violations, and may frequently impede or interrupt actual voting.

At the same time, the absence of structured training for core members of polling boards leads to mistakes being made at polling stations. These are at their most common when results are tallied up, and especially where a closely contested vote or simultaneous elections at several levels place a polling board under particular pressure.

## **RECOMMENDATIONS FOR REFORM OF ELECTORAL ADMINISTRATION IN SERBIA**

*Systemic answers to all issues identified with the electoral administration are required if mistakes of the past are to be avoided. CeSID has prepared a set of recommendations to address the above problems; these are designed to facilitate the introduction of a professional electoral administration in Serbia.*

### **RECOMMENDATION No. 1: Establish a professional electoral administration**

Establish a permanent professional electoral administration to perform all work related to the electoral process. It would be shielded from the impact of changes in government, balance of power in parliament and relative strengths of parliamentary parties, and election results.

Members of the central electoral authority would serve terms of office longer than one electoral cycle – of, for instance, five, seven, or more years – which would prevent changes to the make-up of the parliament from affecting the operational independence of the authority's members.

A law should be enacted to govern criteria for employment in the electoral administration, based on the experiences of well-regulated electoral administrations from other jurisdictions. Depending on the level of the electoral authority, staff ought to have between three and five years of experience with implementing elections; additionally, employees could not simultaneously serve on the bodies of political parties or associations or foundations linked organizationally or financially with any political party, nor involved with any kind of party political activity. Officers or employees of executive authorities would also be excluded, as would individuals convicted of actions constituting infringements of electoral rights that they were personally responsible for. Other similar requirements could also be introduced.

Public administration employees at the national or municipal level could serve as members of municipal/city electoral commissions or polling boards. They would be tasked with particular aspects of the electoral process between two rounds of elections – for instance, they could update the electoral register, review enhancements to electoral procedures, address conflicts of interest, etc. Their status of public servants would mean greater accountability for actions taken in the electoral process, and would also ensure greater efficiency in implementing elections.

### **RECOMMENDATION No. 2: Broaden the powers of the electoral administration**

Powers of the electoral administration should be broadened so as to comprise not only narrowly technical electoral issues, but rather the entire electoral process, including regulation of communications at election time (i.e. the conduct of the media in the course of the electoral process), party political finance, and the electoral register.

This would prevent mistakes that occur due to the lack of co-ordination between various bodies that now deal with individual aspects of the electoral process, and ensure that experts are able to propose and make improvements to the process throughout the year (instead of only during election campaigns).

### **RECOMMENDATION No. 3: Allow the electoral administration to act on its own initiative**

The electoral administration should be able to initiate enactment and amendment of electoral legislation. The purpose of a permanent electoral administration is to constantly monitor the electoral process and analyze the state of play of electoral democracy; commission research; engage experts and non-

governmental organizations to examine outstanding issues; keep abreast of experiences from other comparable jurisdictions; and provide training. If it is to meet these objectives, the electoral administration must be able to propose electoral legislation.

Electoral authorities must also have broader powers to investigate violators of electoral norms and bring misdemeanor or criminal charge against them. The electoral administration is expected to be the first to detect concerns regarding the application of electoral laws, and this is why it should be allowed to propose solutions to these problems and have at its disposal a more efficient means of investigating and sanctioning those who violate electoral regulations.

#### **RECOMMENDATION No. 4: Regular education for core and non-core members of polling boards and electoral commissions**

Non-core members who represent political parties, civic groups, and candidates must receive (mandatory) basic training in oversight and monitoring of the electoral process. This would prevent any misunderstandings at polling stations and ensure greater compliance with election standards. Training for all members of polling boards and electoral commissions that is standardized and regularly updated to reflect amendments to electoral law should be part of the electoral administration's regular set of activities.

Core members of electoral authorities should undergo continuing professional development under a curriculum established in advance by the national-level electoral commission.

Core members of polling boards should receive funding from public sources, as is the case today, regardless of whether this is a monthly salary (if a permanent administration is introduced) or pay at a daily rate for work during the course of an actual election.

Non-core members of polling boards should receive remuneration from campaign funds of the political parties/civic groups/candidates they represent; alternatively, those contesting an election should motivate their activists and members to observe the election as volunteers. Whoever has engaged the polling board member should remunerate him or her: this general principle is an additional argument in support of this approach.

#### **Conclusion**

The 2016 election revealed a set of significant issues that have been recurring in each election cycle. The electoral administration's impermanence, as well as its limited powers and poor capacities, are among the key problems of Serbia's electoral law. A reform of electoral administration is required to address election-related problems in a systemic fashion, and should involve the creation of an independent institution, with a broadened remit and an on-going professional education plan. This would create room for continuing efforts to enhance the electoral process.

**Only such an institution can create the preconditions for voters in Serbia to be allowed to vote outside of what is termed 'controlled circumstances', i.e. online rather than exclusively at polling stations.**

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