

2022

Recommendations for improving the electoral process

General and presidential election, 3 April 2022



Introduction

Despite the many changes introduced by new legislation enacted in early 2022, the elections held on 3 April 2022 have reaffirmed the need to come up with and apply different – or entirely new – arrangements for organising and conducting elections and thoroughly overhaul election laws. CeSID views the statutory amendments as part of a broader series of compromises within the scope of the two rounds of inter-party dialogue, as well as an effort by the governing coalition to avoid another opposition boycott.¹ That being said, CeSID believes what usefulness these changes may have had has now been spent and that continuing with ad hoc procedural changes will bring little progress, if any. Many technical, procedural, and substantive alterations have been made to electoral legislation since 2019 (mainly to regulate election dispute resolution and introduce a middle tier of electoral authorities), whereby all electoral laws have been recast to a greater or lesser degree. This has changed the spirit of some of these rules with little or no public consultation, and it would now be opportune to discontinue these bottom-up amendments and take a bird's eye view of election regulations to open debate on comprehensive, consistent arrangements. Any future discussions ought to result in amendments focusing on long-term, systemic changes to the rules of the game.

At the same time, efforts must be made to harmonise and align all regulations governing electoral issues to avoid contradictions in action and decision-making. This primarily entails investing the various electoral bodies with clearer and better defined powers; clarifying the time limits involved; and aligning the multitude of laws, byelaws, regulations, and other pieces of secondary legislation regulating elections either directly or indirectly.

Systemic and long-term recommendations

CeSID believes that **dialogue about comprehensive, consistent changes to the electoral system and election administration** should be opened at the earliest opportunity to address these long-standing challenges. Firstly, because the piece of legislation that first governed the operations and structure of the Republic Electoral Commission (REC) was fast-tracked through parliament in 2000 with no public consultation and only as a stopgap, and its problems were not resolved by the 2022 Law on the Election of Members of Parliament (LEMP). Secondly, these issues were not dealt with (or were addressed only minimally) during the two rounds of inter-party dialogue, in spite of alterations to many procedures, both major and minor, which largely affected the spirit of the rules. Lastly, the 2000 electoral law, which laid the foundations for the election system and the REC, was enacted without public consultations only six weeks before that year's election, whilst the 2022 LEMP was also adopted a mere two months ahead of the poll. Evidently, **all major electoral regulations were either originally adopted or amended for**

¹ Dialogue between political parties and organisations took place between the summer of 2019 and the autumn of 2021, first with the intermediation of civil society organisations and then with the involvement of members of the European Parliament. Also, the Serbian Government's Working Group for co-operation with the OSCE and ODIHR has been active in parallel. The first round of the talks did not bear fruit, whilst the other, resulting in much more extensive amendments, helped make the 2022 election highly competitive and precluded a boycott.

reasons of political expediency. The results have been legal unpredictability, poorly prepared and fragile institutions, and little time for the public to meaningfully learn about the numerous changes.



Electoral system

Recommendations for reforming the electoral system

#1 Open debate about reforming the electoral system.

#1.1 Replace the proportional electoral system featuring a single constituency and closed electoral lists with a proportional system with direct election (a ‘personalised proportional system’), whereby voters in each constituency would receive a personalised ballot paper both showing the name of the candidate and indicating their affiliation with an electoral list (political party), and the overall result for each electoral list would then be the sum of votes received by its candidates throughout Serbia, in all constituencies where the list fielded candidates.

#1.2 Divide Serbia into multiple constituencies where each would elect more than one member of parliament (MP), or into 250 single-member constituencies (in accordance with the number of MPs envisaged by the Serbian Constitution).

#1.3 Introduce personalised ballot papers to replace closed electoral lists, where voters would be able to see both the names of candidate from their constituency and the lists/political organisations they represented.

#1.4 Introduce a principle whereby candidates elected by popular vote gain seats in parliament, rather than those seats being awarded to and controlled by electoral lists/political organisations. The new arrangements should mean that each electoral list/political organisation would have to produce a list of candidates ranked by the percentage of votes each of them won in the election.

#1.5 Open additional discussions about gender quotas, independent candidates, and minority representation.



Electoral administration

Recommendations for reforming the electoral administration

#2 Open debate about reforming the electoral administration.

#2.1 Establish a professional, permanent electoral administration tasked with all duties in connection with the electoral process. Define clear criteria for appointment (having three to five years of professional experience in organising elections; not being an officer of a political party or an association or foundation operated or financed by a political party; not being a political party activist; not being an official or employee of an executive government body; and not having been found personally guilty of a major violation of electoral laws or rules) and appoint REC members who fulfil these criteria for a term of office

longer than one election cycle (at least five years). This would shield the electoral administration from changes in government and shifts in parliamentary majorities, including those brought about by elections.

#2.2 Broaden the currently narrow scope of powers of the REC to include other aspects of the electoral process, such as auditing campaign finance, monitoring media, and maintaining the electoral register.

#2.3 Allow the electoral administration to propose electoral laws.

#2.4 Make local electoral commissions ‘semi-professional’ by requiring their members to be civil servants at either the central or sub-national level. These officials would be tasked with some aspects of the electoral process between two elections, such as managing the electoral register, proposing improvements to electoral procedures, and preventing conflicts of interests. Their status as civil servants would make them more accountable for their actions in the electoral process and increase the efficiency of elections.

#2.5 Amend the Local Elections Law to prohibit local (municipal and city) elections taking place simultaneously with general or presidential ones.

#2.6 Amend the Local Government Law to require all local authorities to have identically designed official websites that would uniformly display the results of local elections and decisions, rulings, and other documents relevant for organising and conducting elections at the local level. Require the Ministry of Public Administration and Local Government (MoPALG) to establish a single database to record election results from all local authority areas.



Status of ethnic minority electoral lists

#3 Align the Political Parties Law with the LEMP to prevent abuse with minority list nominations. Ensure the LEMP is aligned with provisions of the Political Parties Law that govern the participation of ethnic minority parties and coalitions in elections to prevent abuse of parties officially designated as representing ethnic minorities and the special treatment accorded to minority political groups. Launch broad-based public discussion about this issue and ensure the process is fair.



Voting by Serbian nationals abroad

#4 Open discussion about reforming voting arrangements for Serbian nationals abroad. CeSID believes that this issue ought to be raised as part of a broader debate on the electoral system to identify short- and long-term recommendations for improvements.

#4.1 Amend the LEMP to change the rules for voting abroad to permit polling stations to be opened at all embassies and consulates regardless of whether more than 100 voters are registered to vote in each of these location or allow voters to register online.

#4.2 As part of broader electoral reform efforts, open debate focused specifically on remote voting for Serbian nationals abroad and the creation of temporary registers for those voters.



Election dispute resolution

#5 Consider and implement participatory, systemic, and coherent reform of the section of the Criminal Code treating crimes against suffrage (Chapter 15, Criminal Offences Against Electoral Rights).

#6 Amend and improve the section of the Criminal Code dealing with crimes against suffrage and require the prosecution service to bring charges against perpetrators of offences directly or indirectly linked with electoral rights *proprio motu*, meaning on their own initiative and without formal prompting from any party.

#7 Clarify which election disputes cases require public hearings to comply with globally accepted standards, including the right to receive reasonable notice of a claim, reasonable opportunity to prepare a defence, and the right to a fair and impartial fact-finding process, hearing, and decision. Any amendments in this regard must also strike a balance with the efficiency and speed of the electoral process.

Practical and short-term recommendations



Electoral administration

#1 Require local electoral commissions (LECs) and the Republic Electoral Commission (REC) to react on their own initiative and without formal prompting from any party in cases where they detect violations at any stage of the electoral process.

#2 Introduce a secure and transparent case management system that contains all necessary information, duly explained procedures and rules of procedure, forms, legal remedies, and decisions.

#3 Work extensively and consistently with LECs to enhance their capacity for decision-making in election disputes, and in particular to align practices in interpreting evidence.

#4 Develop an annual training plan for the electoral administration at all levels – national, provincial, and local – and regularly conduct training aimed at increasing the capacity of electoral commissions for fact-finding and taking appropriate action when ruling on applications and complaints.

#5 Standardise training for polling boards (PBs) to be offered by the electoral administration as an on-going activity between elections to prevent variations in practice that can lead to inconsistency in PB decision-making, and publish statistics showing numbers of people trained and subsequently engaged as PB members.

#6 Amend the LEMP to shift responsibility for financing non-core PB members from the central government budget to the political organisations nominating those members, which will enhance their accountability.

#7 Adopt a byelaw to introduce clear competence-based criteria for PB members to eliminate the current practice where inadequately knowledgeable or experienced individuals are appointed to electoral bodies. This would lead to greater quality and compliance in the electoral process, particularly on polling day.

#8 Make the electoral process **more inclusive** by clarifying existing rules and/or introducing new ones on voting away from polling stations and on voting by visually impaired people and those in long-term residential care.

#9 Require all polling stations to be accessible to persons with disabilities.



Candidate nomination

#10 Allow members of the public to formally endorse more than one electoral list whilst permitting anyone to verify online which list, if any, their support is recorded for.

#11 Ensure that the authenticity of signatures given in endorsement of electoral lists can be verified.

#12 Amend the LEMP to remove the requirement for parties or organisations to collect endorsements during an election campaign if they were able to collect the 10,000 endorsements required at the time of registration.



Campaign finance

#13 Amend byelaws of the Anti-Corruption Agency to clarify the structure of political groups' campaign expenditures. We recommend dividing expenditures into more categories than the current four and making those categories more consistent, thereby grouping identical and substantially similar costs together so as to present as realistic a picture as possible of the expenses incurred by political organisations. Our recommendation is that advertising expenditure be divided into: (1) television; (2) radio; (3) on-line; (4) print media; (5) out-of-home (OOH); and (6) printed promotional materials, such as leaflets, brochures, stickers, promotional pens, folders, etc. Costs of public events

would remain in Category (7). Category (8) would comprise expenses of PR agencies, media buying firms, and advertising agencies; opinion polling firms should be grouped under Category (9); and all other expenditures should come under Category (10).

#14 Introduce a tripartite verification procedure for political advertising expenditures. This recommendation is based on the view that scrutiny of advertising expenses is key to the overall control process, as advertising accounts for more than 70 percent of all costs. We therefore propose that the watchdog disclose media outlets' terms and conditions and cost of advertising for political groups, as well as prescribe how the execution of media plans is substantiated through a tripartite verification procedure by the political groups themselves, media buying agencies or intermediaries, and relevant audience measurement firms.

#15 To ease pressure on voters, mitigate the risk of vote buying, and generally reduce inequality between political groups, we propose that a new article be introduced into the Political Finance Law to stipulate which activities political actors would be barred from undertaking in the course of a campaign (such as offering free medical examinations and engaging in humanitarian activities) that are often used to unduly influence voters.



Access to media

#16 Legislate the media regulator REM's requirement to systematically monitor media reporting of the election campaign and activities of government officials, penalise any violations within very short periods of time (no longer than 72 hours) given the time constraints of the election context, and release public reports (every 15 days during the campaign and within 45 days after polling day).

#17 Require the REM's rules are binding not only on public service broadcasters (as is currently the case) but also on private media outlets, which are now subject only to non-binding recommendations.

#18 Shorten the pre-election media blackout to the 24 hours immediately preceding polling day, introduce a clearly defined oversight body or bodies (a Parliamentary committee, the REC, or REM) and prescribe meaningful sanctions to deter non-compliance.

#19 Amend the Advertising Law to regulate political advertising outside election campaigns. The current Article 47[5] of the Law on Electronic Media does not provide appropriate guidance, leaves room for disguised advertising, and does not regulate advertising outside election campaigns in print, online, and OOH media. This provision currently reads: '[t]aking into account its programming content, a media service provider shall be required to [...] respect the ban on political advertising outside of election campaigns, and, during such campaigns, permit registered political parties, coalitions and candidates to be represented without discrimination'. Criteria used to price political advertising slots must apply equally to all candidates and all entities that have nominated candidates or electoral lists and must be made publicly available.

#20 Reform the Election Campaign Supervisory Body to make it functional. This entity has to date proven to be passive and inoperative, and it has contributed little if anything to enhancing the electoral process (due to its massive dependence on the governing coalition). Moreover, its powers overlap with those of the REM and some of the ad hoc bodies created as a result of the inter-party dialogue.



Electoral register

#21 Review the electoral register and cross-reference all databases using a clear and precisely defined methodology. Although the Single Electoral Register Law is a fairly sound piece of legislation, the public are largely mistrustful of the integrity of the electoral register itself and the data it contains. It is therefore crucial for the relevant government ministry to initiate a review of the register and its data with the aim of making it more reliable and accurate.

#22 The current arrangement for checking one's electoral register data on the web site of the Ministry of Public Administration and Local Government is fundamentally solid, but has proven inadequate and not entirely fit for purpose. Here, the current rules must be fully applied (as set out in Article 14 of the Single Electoral Register Law) to enhance the transparency of the register by mandating that its relevant extracts be made publicly available to members of the public at local government offices. This provision requires municipal/city authorities to make the portion of the electoral register that pertains to the local authority area available for inspection by the public, one day after an election is called, and to advertise this fact in the media or, where necessary, by other means (meaning by displaying written notices on physical bulletin boards at their offices). This would provide sufficient time for those whose data are incorrectly registered or absent to request modifications or register. As part of this effort, also consider aligning rules for making parts of the electoral register public with personal data protection regulations to enhance the transparency of the process.



Election dispute resolution

#23 Harmonise regulations and allow cases to be brought electronically, as provided for by the Law on Electronic Documents, Electronic Identification, and Trust Services in Electronic Transactions and the General Administrative Procedures Law. Clearly envisage options and rules for communicating with parties in these proceedings electronically.

#24 Revise byelaws and require that sections of polling board minutes setting out any protests by polling board members must be provided alongside election materials to ensure all facts about the course of polling day can be appropriately identified.

#25 Ensure the prosecution service is more proactive in bringing charges against polling board and electoral commission members who violate laws.

#26 Develop an annual training plan for political parties and organisations at all levels – national, provincial, and local – and regularly conduct training aimed at increasing capacity of political parties and organisations to keep abreast of mechanisms in the election dispute resolution process and how to use them.

#27 Develop an annual training plan for officers of the Administrative Court at all levels – national, provincial, and local – and regularly conduct sessions (annually or before an election) aimed at increasing the Court’s capacity for fact-finding taking appropriate action when ruling on appeals.

#28 Organise and conduct educational campaigns for voters and disseminate information the public about how to use electoral dispute resolution mechanisms and access the appellate process.

#29 Develop forms for lodging complaints in the election process and make sufficient numbers of copies available at polling stations. These should contain all necessary information and instructions on how to complete and lodge them.

#30 Consider changing ballot papers to include a coupon with a serial number matching that of the ballot paper, or certified with a stamp that each polling station would be provided with. The PB member would hand the ballot paper to the voter only after tearing off the coupon. This would prevent abuses involving blank ballot papers removed by voters from polling stations.



Abuse of public resources and public office

#31 Re-examine and amend the statutory framework intended to prevent abuse of public resources, including pressure on civil servants and public-sector employees, and rules governing abuse of public office. These changes should be aimed at creating a level playing field and ensuring party political interests are segregated from those of public administration.