

2023

Preliminary recommendations for improving the electoral process

Serbian general election, 17 December 2023



Introduction

The Serbian general election was called for 17 December 2023, alongside the election for the regional Vojvodina parliament and local polls in another 65 sub-national governments. The vote came only a little over 20 months after the previous general election of April 2022. This was the sixth election since 2012 (the 2022 vote included), as well as the fourth snap poll. The election was called after a lengthy period of prevarication by the authorities, protests over two mass shootings in Belgrade and the nearby town of Mladenovac, escalating tensions in Kosovo and Metohija, and demands by opposition groups for a vote by the end of 2023. The poll was marked by confrontation and mistrust between the key stakeholders, and these disruptions continued and heightened in the aftermath of the vote, with opposition parties accusing the authorities of electoral fraud as the polling stations closed.

Zero recommendation

Launch limited dialogue, at the very least, between the government and the opposition (together with the expert community and civil society) to restore basic trust. This can be achieved with the aid of independent moderation and if agreement is reached over less controversial and divisive procedural issues. No major questions can be addressed in the absence of such basic trust.

Practical and short-term recommendations



Electoral administration

- #1** Introduce rules whereby local electoral commissions (LIKs) and the National Electoral Commission (RIK) are able to react independently, without formal prompting (*proprio motu*), to any irregularities they may identify.
- #2** Work closely and continuously with LIKs to raise their capacity for decision-making in electoral disputes, in particular to ensure consistency in interpreting evidence.
- #3** Develop an annual training plan for the electoral administration at all levels (national, provincial, and local) and offer regular training to raise the capacity of electoral commissions for fact-finding and ruling on applications and complaints.
- #4** Standardise training for polling boards (PBs) and ensure the electoral administration offers this training regularly between elections to reduce disparities and consequent inconsistencies in practice. Publish attendance statistics to show how many future PB members receive this training.
- #5** Enact a statutory instrument to stipulate clear professional criteria for PB members to eliminate the current practice whereby individuals appointed to these electoral bodies lack expertise or are insufficiently familiar with election procedures. This would promote compliance with electoral rules, in particular on polling day.

#6 Make the electoral process more inclusive by clarifying and/or introducing rules to regulate voting outside polling places and procedures to allow voting by visually impaired persons and residents of care homes.

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



Nominations

#8 Allow members of the public to formally personally endorse more than one electoral list and make these endorsements available online for verification purposes.

#9 Ensure personal endorsements for electoral lists are compliant with applicable rules by allowing everyone to access these data online at all stages of the endorsement process.

#10 Allow only notaries public to authenticate personal endorsements in support of electoral lists and bar local authorities from doing so.

#11 Amend the Law on the Election of Members of Parliament (LEMP) to waive campaign endorsement requirements for political parties and groups that have collected 10,000 personal endorsements at the time of initial registration.



Campaign finance

#12 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).

#13 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.

#14 To ease pressure on voters, mitigate the risk of vote buying, and generally lessen inequality between political groups, we propose that a new article be inserted 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

#15 Legislate the requirement for the Regulatory Authority for Electronic Media (REM) to systematically monitor media coverage 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).

#16 Require the REM's rules to be 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.

#17 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 RIK, or REM) and prescribe meaningful sanctions to deter non-compliance.

#18 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.

#19 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

#20 Review the electoral register and cross-reference all databases using a clear and precisely defined methodology, given the large-scale public mistrust of the register and the integrity of its data. It is therefore crucial for the relevant government ministry to initiate a review of the register and verify its contents with the aim of making it more reliable and accurate.

#21 The current arrangement for checking one's electoral register data on the website 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). Doing so would provide sufficient time for those whose data are incorrectly registered or absent to request modifications or apply for registration. 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

#22 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.

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

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

#25 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 these political groups to keep abreast of mechanisms in the election dispute resolution process and ways to use them.

#26 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.

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

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

#29 Consider changing the appearance ballot papers so that each includes a coupon with a serial number matching that of the ballot paper, or so that each is certified with a stamp that each polling station would be provided with. The PB 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

#30 Review 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.

Systemic and long-term recommendations

CeSID believes that **dialogue about comprehensive, consistent changes to the electoral system and electoral administration** should commence at the earliest opportunity to address these long-standing challenges that have persisted for a number of reasons. Firstly, the piece of legislation that first governed the operations and structure of the RIK was fast-tracked through parliament in 2000 with no public consultation and only as a stopgap measure, and its problems were not resolved by the 2022 LEMP. Secondly, the 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 RIK, 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. **All major electoral regulations were either originally adopted or amended for reasons of political expediency.** The results have been legal uncertainty, 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 in all constituencies throughout Serbia 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-MP constituencies (in accordance with the number of parliamentary seats 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 name of the candidate standing in their constituency and the list/political organisation they represent.

#1.4 Ensure that 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 RIK members who fulfil these criteria to a term of office longer than one election cycle (i.e. at least five years). This would shield the electoral administration from changes in government and shifts in parliamentary majorities, including those brought about as a result of elections.

#2.2 Broaden the currently narrow scope of powers of the RIK 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 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.



Treatment 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 permit polling stations to be opened at all embassies and consulates regardless of whether more than 100 voters are registered to vote in any 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, wide-ranging, 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 dispute cases require public hearings in order for them to be compliant 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 considerations for the efficiency and speed of the electoral process.