



PREDLOG ZA PROMENU IZBORNE ADMINISTRACIJE U SRBIJI

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PROPOSAL FOR REFORM OF ELECTORAL ADMINISTRATION IN SERBIA

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ENG



UVODNE NAPOMENE

Izborne procedure i izborna administracija predstavljaju oblast sa mnogo izazova koji se ponavljaju od izbora do izbora. Zakonska regulativa je neusklađena pa je neophodno učiniti napore da se sva akta koja tretiraju izbornu materiju međusobno usaglase i usklade - nadležnosti različitih izbornih organa i rokovi koji moraju da se ispoštuju; usaglašavanje raznih zakona, pravilnika i propisa, kako ne bi dolazilo do kontradiktornih postupanja i odluka.

Zakonski i institucionalni okvir koji prati regulaciju izborne administracije godinama nije bitnije promenjen i iz njega se generišu brojni problemi koji nastaju u izborima. Zbog tenzija i većeg broja nepravilnosti, svi ti problemi su se multiplikovali na izborima 2016.

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.

IZBORNA ADMINISTRACIJA U SRBIJI

Izborna regulativa u Srbiji ne poznaje stalnu profesionalnu izbornu administraciju koja bi objedinjavala sve aspekte izbornog procesa - od evidencije birača, preko organizovanja i sprovođenja izbornog procesa, finansiranja, praćenja uloge medija, do analiziranja i iniciranja usavršavanja izbornog sistema i procesa. Izborna administracija odnosi se samo na izborne organe.

Organi za sprovođenje izbora su Republička izborna komisija (RIK), birački odbori i opštinske/gradske izborne komisije.

Zakon o izboru narodnih poslanika kaže da se članovi RIK-a imenuju na četiri godine (tj. koliko traje mandat poslanicima u Narodnoj skupštini), a birački odbori i opštinske/gradske izborne komisije za svake izbore.

U dosadašnjoj praksi izbornih procesa uočen je niz problema u vezi sa njihovim funkcionisanjem koji su kulminirali na poslednjim izborima 2016.

ELECTORAL ADMINISTRATION IN SERBIA

Serbian electoral regulations do not recognise a professional electoral administration, solely responsible for all aspects of the electoral process, from voter registration, to organisation of elections, election financing, media monitoring, to analysing 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.

U prvom delu ćemo ukazati na ključne izazove u vezi sa izbornom administracijom, da bismo u nastavku naveli preporuke sa ciljem unapređenja čitavog izbornog procesa.

NESTALNI KARAKTER IZBORNE ADMINISTRACIJE

Glavni nedostatak *ad hoc* izborne administracije ogleda se u tome što ona nema stabilnu strukturu, stalne izvore finansiranja, ciljeve i jasno utvrđena pravila. To za posledicu često ima njenu nedovoljnu stručnost za obavljanje izbornih radnji, pa se neke greške pojavljuju iznova u svakom izbornom procesu.

U najvećem broju slučajeva posao izborne administracije obavljaju lica koja nisu obučena niti kvalifikovana za vršenje tog posla. Ta lica ovaj posao obavljaju samo tokom izbornog procesa, a nakon njegovog završetka se vraćaju svojim redovnim aktivnostima.

Sastav biračkih odbora, opštinskih/gradskih izbornih komisija, pa i samog RIK-a, kao centralnog organa za sprovođenje izbornog procesa, zavisi od rasporeda snaga u republičkom ili lokalnim parlamentima što dovodi u pitanje nezavisnost od stranačkih uticaja, smanjuje nivo poverenja građana u nepristrasnost odluka i demokratski karakter izbornog procesa u celini.

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.

NADLEŽNOSTI IZBORNE ADMINISTRACIJE

Prema trenutnoj regulativi, RIK je nadležan za samo jedan deo izbornog procesa – neposredno organizovanje i sprovođenje izbora i tu možemo da govorimo o uskoj izbornoj materiji. Nju možemo podeliti u nekoliko ključnih segmenata: proces kandidovanja, sprovođenje izbora, birački spiskovi i utvrđivanje rezultata izbora. Obe komisije – centralni i lokalni nivo se pojavljuju i u procesu zaštite izbornog prava, jer su prva instanca kojoj se javljaju oni koji smatraju da su nekom radnjom ili delom oštećeni u korišćenju svog izbornog prava.

Važni delovi izbornog procesa nisu u nadležnosti izborne administracije, poput uloge medija, finansiranja političkih aktivnosti i vođenja biračkog spiska. Oni su razbacani po drugim institucijama koji imaju malu ili nikakvu koordinaciju sa izbornom administracijom.

Upravo među njima posmatrači i beleže brojne nepravilnosti, za čije prevazilaženje su potrebna sistemska rešenja i kontinuiran rad izborne administracije.

POWERS OF THE ELECTORAL ADMINISTRATION

According to current regulations, the RIK is tasked with only a segment of the electoral process, the actual organisation 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.

NEMOGUĆNOST POKRETANJA POS- TUPKA PO SLUŽBENOJ DUŽNOSTI

RIK može da, ukoliko utvrdi da je prekršeno izbornopravo i po usvojenom prigovoru birača, kandidata ili podnosioca izborne liste, ponovi postupak glasanja, poništi postupak ili radnju kojim je prekršeno izbornopravo.

Izborni organi, međutim nemaju nadležnost da, u cilju zaštite izbornog prava, pokreću postupke po službenoj dužnosti protiv političkog subjekta ili zaposlenog u izbornoj administraciji čime veliki broj prekršaja i povreda zakona ostaje bez adekvatne sankcije, što povratno negativno utiče na subjekte u izbornom procesu i motiviše ih da krše izbornopravo.

NISKI KAPACITETI ZA SPROVOĐENJE IZBORA STALNIH I PROŠIRENIH SASTAVA BIRAČKIH ODBORA

U prošireni sastav biračkih odbora, opštinskih/gradskih izbornih komisija i RIK-a ulazi po jedan predstavnik podnosioca izbornih lista. Ne postoje jasni kriterijumi koje bi predstavnici proširenog sastava trebalo da ispune da bi

INABILITY OF ELECTORAL AUTHORITIES TO ACT ON THEIR OWN INITIA- TIVE (*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 incentivises them to violate electoral rights.

LIMITED CAPACITY TO APPOINT CORE AND NON-CORE MEMBERS OF POLLING BOARDS AND ELECTORAL COM- MISSIONS

Core polling boards, municipal/city electoral commissions, and the RIK are augmented by the addition of non-core members, each of

mogli da uđu u prošireni sastav organa koji sprovode izbore, kao što ne postoje ni jasni kriterijumi ili kvalifikacije za izbor predstavnika u stalni sastav izbornih organa.

Ovakve odredbe i nedovoljno odgovoran odnos stranaka prema organima koji sprovode izbore omogućavaju da se u prošireni sastav izbornih organa imenuju i lica nedovoljne stručnosti ili koja nisu u dovoljnoj meri upoznata sa postupkom sprovođenja izbora. Nedovoljno poznavanje procedure i neobučenosť dovodi do proizvoljnog tumačenja, konflikata, grešaka, prijavljivanja nepravilnosti i u slučajevima kada do njih ne dođe, a neretko do otežavanja ili prekidanja glasanja.

Istovremeno, nedostatak redovne edukacije za stalne sastave biračkih odbora dovodi do grešaka na biračkim mestima, koje su najizraženije u utvrđivanju rezultata posebno kada je zbog nezvesnosti rezultata ili spajanja izbora na više nivoa, birački odbor izložen dodatnom pritisku.

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.

PREPORUKE ZA IZMENU IZBORNE AD- MINISTRACIJE U SRBIJI

Kako se ne bi ponavljale greške iz prošlosti, važno je ponuditi sistemska rešenja na sve uočene probleme u radu izborne administracije. CeSID je formulisao set preporuka koje su definisane na osnovu gore definisanih problema i one idu u pravcu uvođenja profesionalne izborne administracije u Srbiji.

PREPORUKA 1: FORMIRANJE PROFESIONALNE IZBORNE ADMINISTRACIJE

Formirati trajnu, profesionalnu izbornu administraciju koja bi objedinjavala sve poslove vezane za izborni proces. Ona bi bila zaštićena od smene vlasti, rasporeda i odnosa stranaka u parlamentu i izbornih rezultata.

Članovi centralnog izbornog organa bi bili imenovani na vremenski period duži od tra-

RECOMMEN- DATIONS FOR REFORM OF ELECTORAL ADMINIS- TRATION 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

janja jednog izbornog ciklusa – na primer, na pet, sedam ili više godina i tako bi se sprečilo da promene u parlamentu utiču na rad članova.

Definisati zakonom jasne kriterijume za rad u izornoj administraciji po dosadašnjim iskustvima i primerima dobro uređenih izbornih administracija; zavisno o kom organu je reč da poseduje iskustvo od tri do pet godina u sprovođenju izbora; da ne obavlja dužnost u organima stranke, udruženju ili fondaciji koje su organizaciono ili finansijski povezane sa strankom, niti je uključen u bilo kakvu stranačku aktivnost; da nije funkcioner ili zaposlen u organima izvršne vlasti; da mu nije bila izrečena kazna za radnju koja predstavlja težu povredu izbornih zakona ili propisa za koju je lično odgovoran; i slično.

Članovi opštinskih/gradskih izbornih komisija ili biračkih odbora mogu da budu zaposleni u upravi - na centralnom nivou ili nivou opštine. Oni bi imali zaduženja za neke aspekte izbornog procesa u periodima između dva kruga izbora – na primer, starali bi se o biračkom spisku, unapređenju izbornih procedura, sprečavanju sukoba interesa i sl. Samim tim što su zaposleni u upravi, njihova odgovornost za radnje u toku izbornog procesa bila bi veća, a proces sprovođenja izbora bi se učinio efikasnijim.

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 organisationally 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.

PREPORUKA 2: PROŠIRIVANJE NA- DLEŽNOSTI IZBORNOJ AD- MINISTRACIJI

Proširiti listu nadležnosti izbornoj administraciji, sa uže izborne materije na kompletan izborni proces koji treba da uključi regulaciju izborne komunikacije (ponašanje medija u izbornom procesu), finansiranje političkih aktivnosti i vođenje biračkog spiska.

Na taj način će se preduprediti greške koje nastaju zbog nekoordinacije raznih tela koja se trenutno bave ovim izbornim aspektima *čime se stvaraju uslovi da se tokom čitave godine (a ne samo u izbornim kampanjama)* stručnjaci bave unapređenjem izbornog procesa.

PREPORUKA 3: MO- GUĆNOST DA IZBORNA ADMINISTRACIJA PODNOŠI IZBORNE INICI- JATIVE

Izborna administracija treba da raspolaže zakonodavnom inicijativom u oblasti izbornog prava. Smisao stalne izborne administracije jeste da permanentno prati stanje u izbornom procesu, analizira stanje izborne demokratije, organizuje istraživanja, angažuje stručnjake

RECOMMENDATION NO. 2: BROADEN THE POWERS OF THE ELECTORAL AD- MINISTRATION

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 analyse the state of play of electoral democracy; commission research; engage experts and non-governmental

i nevladine organizacije u analiziranju pojedinih otvorenih pitanja, prati uporednopravna iskustva, vrši edukaciju - i zbog svega toga mora raspolagati zakonodavnom inicijativom u oblasti izbornog prava.

Izborni organi moraju imati šira ovlašćenja u pogledu kontrole i pokretanja prekršajnih/krivičnih prijava protiv lica koja su prekršila norme izbornog prava. Od izborne administracije se očekuje da prva uoči probleme u primeni zakona u izbornom procesu, stoga joj treba omogućiti i da predlaže rešenja za uočene probleme, ali i da ima mehanizam za efikasniju kontrolu i sankcionisanje prekršilaca izbornih zakona.



PREPORUKA 4: REDOVNA EDUKACIJA ZA STALNE I PROŠIRENE SASTAVE BI- RAČKIH ODBORA

Članovi proširenog sastava - predstavnici političkih stranaka / grupa građana / kandidata - moraju da budu (obavezno) osnovno obučeni za nadzor i praćenje izbornog procesa. Na taj način bi se izbegli mogući nesporazumi na biračkim mestima, a time bi se i izborni proces učinio regularnijim. Obuka svih predstavnika biračkih odbora, standardizovana i prilagođavana promenama izbornog zakonodavstva, trebalo bi da bude deo redovnih aktivnosti izborne administracije.

organisations 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 misdemeanour 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 EDU- CATION 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

Predstavnici stalnog sastava izborne administracije moraju biti u sistemu stalne edukacije u skladu sa planom i programom koji će unapred biti propisan od strane centralnog organa.

Stalni sastav biračkih odbora trebalo bi da bude finansiran iz javnih izvora kao i do sada, bez obzira da li se radi o mesečnoj plati - ukoliko se uvede trajna administracija - ili dnevnicama za angažman u izbornom procesu.

Predstavnike u proširenom sastavu biračkih odbora trebalo bi da plaćaju političke stranke/grupe građana/kandidati koje oni predstavljaju iz sredstava predviđenih za finansiranje kampanje ili da svoje aktiviste i članove podstaknu da na volonterskoj bazi posmatraju izbore. Argument više u prilog ovoj tezi ogleda se i u jednostavnoj činjenici da svako treba da bude plaćen od strane onoga ko ga je i angažovao.

of polling boards and electoral commissions that is standardised 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.

ZAKLJUČAK

Izbori 2016 su pokazali da postoji nemali set problema koji se javljaju od izbora do izbora. Nestalni karakter izborne administracije, njene nadležnosti i niski kapaciteti su neki od najvažnijih problema u ovdašnjem zakonodavstvu. Da bi se problemi na izborima rešili na sistemski način, potrebno je reformisati izbornu administraciju u pravcu formiranja nezavisne institucije, sa proširenim nadležnostima i stalnim planom edukacija čime će se otvoriti prostor za kontinuiran rad na unapređenju izbornog procesa.

Samo na ovaj način formirana institucija može da obezbedi uslove da i birači u Srbiji dobiju priliku da glasaju van tzv. kontrolisanih uslova, putem interneta a ne isključivo na biračkom mestu.

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.