

## **CRTA's analysis of measures proposed by the Working Group for Cooperation with OSCE/ODIHR to improve the election process**

The CRTA analysed the Opinion on measures for improving the election process prepared by the Working Group for Cooperation with the Organisation for Security and Cooperation in Europe and the Office for Democratic Institutions and Human Rights in coordinating and monitoring the implementation of recommendations for the improvement of the election process. The document was presented at the meeting of the Working Group held on March 1<sup>st</sup>, 2021, which CRTA, as an organisation dealing with the election process, attended as an observer.

Having analysed the opinion, CRTA assesses that, **although the Working group proposed a couple of adequate measures, the state yet again misses the opportunity to recognise the essential problems and work on solutions that would contribute to improving the quality of the election process.** The Working Group completely neglected the abuse of state office and resources, problems in campaign financing, pressure on voters, as well as unbalanced media representation of electoral actors, which both the ODIHR and domestic observers identified as the most problematic and priority areas to address after the 2020 elections.

Instead of re-analysing and recognising the problems when it comes to the misuse of state resources, campaign financing and pressure on voters, the Working Group only quotes the legal changes adopted in 2019 and leaves no room for further improvements.

When it comes to the media, CRTA believes that the Opinion contains measures that will not essentially solve the problem of media inequality and that may even cause additional ambiguities in the procedure and interpretation of competencies between the Regulatory Authority of Electronic Media and the Oversight Committee of the Serbian Parliament.

Furthermore, solutions related to the use of legal remedies represent a step backwards and might even narrow the voters' right to file complaints. It is also worrying that the Working Group does not recognise the need to verify the Voters' Register in order to determine its status.

There are certain measures that can be assessed as positive. For example, CRTA points out fines for broadcasters for broadcasters who violate the regulations on reporting during the election campaign for which the REM is responsible, which is in line with ODIHR and CRTA recommendations, as well as with measures envisaged by the Media Strategy. Additionally, the CRTA assesses the preparation of the new REM Rules of Procedure as a step in the right direction. The new Rules of Procedure would also apply to commercial media service providers, a measure that was in effect until 2020. The proposed improvements of publishing polling board records, as well as the content and continuation of pollen board members, would also be positive developments. Moreover, CRTA positively assesses the plan to legally regulate certain issues that have so far been the subject of by-laws, such as the position of observers, publishing polling board records, or ex officio authorisation of the REC to repeat voting at polling bards where it is not possible to establish election results, or to correct obvious omissions in the records. By introducing these mechanisms into the law, their implementation will be guaranteed in all subsequent election cycles. Nevertheless, these measures do not touch upon crucial problems of the election process that reflect in the aforesaid areas and that the Working group obviously has not dealt with.

In its Opinion on the measures that should be undertaken, the Working Group covered slightly **more than one half** of the 29 recommendations published by ODIHR after the 2020 elections. The CRTA's analysis shows that the measures proposed by the Working Group relate to seven of the 11 priority recommendations, as well as to 11 of the 18 other recommendations put forward in the ODIHR report. Nevertheless, the Working Group did not provide adequate, complete or clear answers to the implementation of the ODIHR recommendations, while in some areas there may even be backsliding.

The CRTA believes that it is necessary to accelerate the work on improving election conditions in Serbia and on fulfilling the recommendations from the last OSCE / ODIHR report, bearing in mind that five months have passed from the moment the report was published until the first Working Group document. The next elections are fast approaching, too. Moreover, CRTA considers that completely ignoring four out of eleven priority ODIHR recommendations is unacceptable.

Let us remind you that, in 2020, OSCE/ODIHR officially [assessed the fulfilment](#) of their 56 recommendations, including those repeated from previous cycles. The assessment shows that, since the parliamentary and presidential elections in 2012, **none of the recommendations have been fully implemented**, that only 6 recommendations have been “partially implemented”, and only two have been “mostly implemented”. The remaining 48 recommendations have the status of not implemented, which puts Serbia in the rank of countries in the region that have the lowest level of compliance with OSCE/ODIHR standards in terms of the quality of the election process.

In the following table, CRTA will give comments on 1) measures to improve the electoral process, which do not provide an adequate or complete answer to the problem or where there are ambiguities in their implementation, 2) areas where further application of ODIHR recommendations is avoided or rejected.

### 1) Measures that do not provide an adequate, complete or sufficiently clear answer to problems

Chapter	Proposal	CRTA's comment
<b>1. Measures concerning the procedure for passing laws and other general acts that need to be amended in order to improve the election process</b>	1. Legal changes should be adopted after public consultations, while essential aspects of the electoral process should not be changed immediately before elections.	The opinion of the Government Working Group does not provide a time frame in which the measures will be implemented. However, the Working Group states that the fundamentals of the election process will not change if there is less than a year left until the next elections. If the adoption of new election laws is envisaged, the CRTA proposes a comprehensive consolidation of the election legislation through the adoption of the Law on the Elections, without changing the electoral system, through a broad public debate and without violating good practice and international principles on electoral legislation.
<b>2. Measures concerning the relationship between laws and regulations</b>	2. Adoption of new election laws: the Law on the Election of Members of the Parliament, the Law on the President of the Republic and the Law on Local Elections	Consideration should be given to the ODIHR Priority Recommendation 1, 2012: <i>“In line with previous OSCE/ODIHR recommendations, the legal framework for elections should be reviewed, consolidated, and harmonized, possibly by introducing a single comprehensive electoral code.”</i> The ODIHR Recommendation number 1 in the 2014,

		<p>2016 and 2017 reports also point to the need for a systematic approach to the revision of election legislation.</p> <p>This area is covered by <b>CRTA’s recommendation for fair and free elections number 17</b>, which requires the systematisation of legal and electoral matter through a unified Law on the Elections.</p>
<p><b>3. Measures concerning the election administration</b></p>	<p>Extending the competencies of local electoral commissions: appointing polling boards, performing logical and computational control of the records, deciding on complaints to the work of polling stations</p>	<p>Although rational reasoning was applied for the support to the Republic Electoral Commission through the extension of competencies to local electoral commissions, their capacity for quality work in accordance with the new competencies is called into question, as well as their timely preparation. It would be necessary to conduct training for members of local commissions.</p> <p>Since the adoption of new election laws is planned, CRTA believes that this is an opportunity to adopt a unified Law on the Elections (<b>CRTA recommendation number 17</b>), i.e. to reform the entire system of election administration, increase transparency of its work, harmonise deadlines for election actions and improve polling board capacities (the <b>CRTA recommendations number 17, 18 and 19</b>)</p>
<p><b>4. Measures concerning legal remedies in the election procedure</b></p>	<p>Use of legal remedies in the election procedure: submission of complaints to local electoral commissions, decision-making of the REC on a possible appeal, and of the Administrative Court in the appeal procedure. The question of the right to submit complaints and of the introduction of an advance.</p>	<p>The proposed measures might lead to narrowing of the circle of voters who can file complaints and complicate the procedure for filing complaints through the introduction of an administrative fee or some similar form of advance payment. The Administrative Court is deprived of the possibility to determine the factual situation, and leaves / gives the possibility to revoke the second instance decision of the REC on the complaint, only if there is a significant violation of the Rules of Procedure or misapplication of the substantive law (formal errors). The Law on Administrative Disputes gives the Administrative Court the opportunity to determine the factual situation and resolve disputes. A better solution would be to extend the deadline for filing complaints to two days from the day when the decision was made or from the action that the complainant considers incorrect, or from the day when the omission was made.</p> <p>This area is covered by <b>CRTA’s recommendation for fair and free elections number 13</b>, which deals with the effectiveness of the protection of electoral rights and proposes solutions related to legal deadlines.</p>
<p><b>6. Measures concerning candidacy</b></p>	<p>The number of signatures supporting the electoral list is not linked to the number of Members of Parliament, but to the number of voters at the time of the decision to call the elections.</p>	<p>There is a danger that list submitters who propose a list of more than a third of the candidates for councillors will be in a situation to collect the full number of voter signatures, as if they were submitting the entire list.</p> <p>In this area, <b>CRTA proposes the recommendation for fair and free elections number 1</b>, which indicates the need to introduce the obligation for the list holder to be a candidate in the elections; the need to return voters’ supporting</p>

		statements to the jurisdiction of notaries and courts; separation of the process of submitting electoral lists and the official start of the election campaign.
<b>7. Measures concerning voter registration and the Voters' Register</b>	The Ministry of Public Administration and Local Self-Government should allow the public to see the names of voters who vote at polling stations, after the conclusion of the Voters' Register, on the Ministry's official website.	<p>There is no benefit from this measure, on the contrary, it can cause additional suspicion of the public and open the space for possible manipulations. Therefore, the potential publication of data from the Voters' Register should be approached carefully, with consideration to comparative solutions and through public consultations, in a transparent procedure. Moreover, the opinion of the Working Group does not mention possible amendments to the relevant laws, which the ODIHR mentions as necessary to determine the type and the scope of personal data, to ensure legality and to protect privacy.</p> <p>One of the potential solutions for consideration, which would respond to the request to increase the transparency of the Voters' Register and the trust of voters, would be to publish the initials of voters with the address of residence, by polling stations, which would allow additional verification of the Voters' Register by citizens, without compromising personal data and without the risk of data misuse.</p> <p>In this area, CRTA proposes to update and verify the Voters' Register, which, inter alia, includes the publication of the number of voters in the Voters' Register by polling station immediately after the designation of polling stations (<b>CRTA's recommendation number 12</b>).</p>
<b>7. Measures concerning voter registration and the Voters' Register</b>	Giving the right to vote to persons who are partially legally capable.	<p>The measure did not provide an answer to the question which legal act needs to be amended in order to give the right to vote to these persons, whether they are registered in the Voters' Register or they need to be entered in the future, what will be legal grounds or regulations and which institution will do it.</p> <p>While it is not clear how the Working Group intends to implement this measure, <b>CRTA's Recommendation number 11</b> mandates ensuring equal voting rights for all categories of voters.</p>
<b>8. Measures concerning the media</b>	In the field of electronic media, the behaviour of all media service providers, both public services and commercial and cable, national and cross-border, shall be regulated by a single by-law (Rules of Procedure) issued by REM.	<p>It should be noted that the intention of the new REM Rules of Procedure to include commercial media service providers is a solution that existed until 2020, and the abolition of which was accompanied by reactions from civil society and the expert public.</p> <p>Nevertheless, extending the obligation of general acts of the REM to media service providers whose program is rebroadcast in Serbia cannot be done by simply prescribing such an obligation in the REM's by-law. We would like to remind you that the Regulatory Authority of Electronic Media in the document number 05/1652/14/16-24 dated June 7<sup>th</sup> 2016, presented an interpretation of the relevant legal framework regarding the jurisdiction of Serbia over media</p>

		<p>service providers whose program is rebroadcast in Serbia. In that document, the REM concluded: “in order for the media service providers to be under our jurisdiction, it must in all cases be based in Serbia, regardless of whether editorial decisions are made in Serbia or in an EU Member State and regardless of whether a significant part of the workforce works in Serbia or in an EU member state. This means that in none of the mentioned cases can it be stated that there is a jurisdiction of Serbia, since the foreign companies broadcasting the programme of TV stations Sport Klub and N1 do not have their headquarters in Serbia, but in Luxembourg.”</p> <p>In addition, the Media Strategy pointed out the need to consider the possibility of amending the laws dealing with the election campaign with regard to the media over which the REM does not perform oversight (activity under measure 4.5). Therefore, if after consideration it is determined that such a possibility exists at all, it is clear that it can be implemented only by amendments to the Law and not by by-laws passed by the REM.</p> <p><b>CRTA’s Recommendation number 5</b> deals in detail with the prevention of discrimination of campaign participants in the media, including the specification of the media service providers’ obligations in this field.</p>
<p><b>8. Measures concerning the media</b></p>	<p>Giving wider competencies to the Oversight Committee of the Assembly in overseeing the application of the rules on media reporting on state officials’ activities.</p>	<p>The standpoint of the Working Group regarding the competencies of the REM, concerning the oversight of the implementation of the rules of media reporting on the activities of state officials who are at the same time participants in the elections, is contrary to the one expressed by the Government of the Republic of Serbia in the Media Strategy 2020-2025. Namely, within measure 4.5. (“Conditions provided for equal media coverage of all participants in the election campaign”) the following activity is envisaged:</p> <ul style="list-style-type: none"> <li>- Amendments to the regulations (Law on Electronic Media) explicitly prescribe the manner in which the REM performs oversight during election campaigns, which should be extended to all aspects of election reporting (with a special focus on so-called public officials’ campaigning), and prescribe more efficient sanctions, including making quick and timely decisions during the election campaign.</li> </ul> <p>It should also be noted that the Working Group entrusted the competence for adopting the Rules of Procedure on the obligations of all media service providers to the REM. In this case, the credibility of this body to oversee the implementation of its own acts is questionable.</p> <p>CRTA also assesses that such measures are completely inadequate, as they largely rely on measures that had already been implemented before the 2020 elections, with the introduction of the Oversight Committee, but did not yield</p>

		<p>results, which is why the ODIHR reiterated its recommendation relating to strengthening REM's independence proactivity. The opinion of the Working Group on the independence of the REM is insufficiently explained and, apart from listing the sources of power from which independence needs to be ensured, including the civil sector, it proposes no concrete steps in this regard.</p> <p>As far as the REM is concerned, <b>CRTA's recommendations number 7 and 8</b> call for a clear definition of the REM's obligations during the campaign, as well as for the introduction of clear mechanisms for the selection and determination of responsibilities of the REM Council.</p>
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## 2) The ODIHR recommendations that are rejected or ignored

Chapter	Proposal	CRTA's comment
<b>7. Measures concerning voter registration and the Voters' Register</b>	<b>No measures</b>	<p>In relation to the necessary implementation of the verification of the Voters' Register in Serbia, the ODIHR sent <b>one priority recommendation</b> to the authorities:</p> <p><i>10. In order to address the issue of the accuracy of excerpts from the Voters' Register, the authorities should carry out a detailed check of the Unified Voters' Register as soon as practically possible.</i></p> <p>In the <b>recommendation number 12</b> regarding the updating and verification of the Voters' Register, CRTA also indicates the need to carry out this process according to international standards, but also other aspects of the updating process – from training, to identifying practical problems in the updating, increasing oversight and transparency.</p> <p>Unfortunately, highlighting only one aspect, its publication, will not contribute to identifying and finding a sustainable solution to the problem of the Unified Voters' Register.</p>
<b>9. Measures concerning abuse of state resources in the election campaign and pressures on voters</b>	<b>No measures</b>	<p>The ODIHR registered problems in these areas even after the adoption of legal changes during the 2020 elections referred to by the Working Group, which is why it sent <b>two priority recommendations</b> to Serbia:</p> <p><i>3. Authorities should undertake measures to prevent misuse of office and state resources. The monitoring of compliance should be effective, and sanctions imposed should be proportionate and dissuasive,</i></p> <p><i>4. Authorities should undertake measures to prevent pressure on voters, including employees of state or state-affiliated institutions and enterprises. Cases of alleged duress must be thoroughly investigated and individuals responsible brought to account.</i></p> <p><u>In its recommendations</u>, CRTA also addresses the prevention of misuse of state resources and the actions of the Anti-Corruption Agency (<b>recommendations 3 and 4</b>), as well as the prevention of pressure on voters (<b>recommendation 9</b>). The CRTA outlines several potential steps to combat these negative practices:</p> <p><i>3a. Ensure consistent interpretation of legal provisions on misuse of public resources</i></p> <p><i>3b. Consistent sanctions for the misuse of property, names and activities of public companies for political purposes</i></p> <p><i>3c. Prohibit public officials at all levels of government from actively participating in</i></p>

		<p><i>public events in the election campaign that promote plans or results of the work of public bodies, organisations and public services</i></p> <p><i>3d. Prohibit extraordinary allocation of budget and other public funds during the election campaign, as well as thirty days before and after the campaign</i></p> <p><i>3e. Extend the ban on the misuse of public resources to employees in the public sector who are not public officials or civil servants</i></p> <p><i>4a. The agency should use statutory powers ex officio in order to protect the public interest</i></p> <p><i>4b. Ensure timely acting of the Agency upon complaints</i></p> <p><i>4c. Publish all decisions of the Agency on the website</i></p> <p><i>9a. Directly prohibit by law keeping of parallel records at the polling station that jeopardise the secrecy of voting</i></p> <p><i>9b. Additionally improve legal provisions relating to the prohibition of pressure on employees in public companies and public administration</i></p> <p><i>9c. Improve the protection of citizens' personal data in order to prevent electoral pressure</i></p>
<p><b>10. Measures concerning election campaign financing</b></p>	<p><b>No measures</b></p>	<p>The ODIHR also registered problems in these areas during the 2020 elections, which is why it sent <b>one priority recommendation to Serbia</b>:</p> <p><i>5. To enhance transparency, the law could be amended to require reporting and disclosure of campaign income and expenditure prior to election day. Consideration could be given to making the ACA conclusions mandatory and to publish them at a later stage.</i></p> <p><b>CRTA's Recommendation number 2</b> is in line with the ODIHR recommendation. As a step to improve campaign financing, it proposes: <i>2b, Mandatory submission and publication of an interim report on election campaign expenses before Election Day.</i></p> <p>It is worrying that this recommendation has been rejected as a step that would "support incomplete transparency" without suggesting alternative or other approaches to strengthening the transparency of campaign financing in Serbia.</p>