

**Analysis of the
implementation of ODIHR
recommendations
in relation to the 2022 ODIHR
Final Report on Presidential
and Early Parliamentary
Election in Serbia**

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The final report of the ODIHR Election Observation Mission on the April 2022 elections contains 26 recommendations for improving the electoral process in Serbia, nine of which are considered to be a priority. None of the recommendations from that report, which can be evaluated at this moment, are considered by CRTA as completely fulfilled. We would like to remind you that the activities of the state, i.e., of the Working Group for Cooperation with the OSCE/ODIHR, are non-transparent and that the public is not aware of the results of its work after the 2022 elections. According to the available information, out of 15 recommendations that can be evaluated, the CRTA analysis shows that progress was recorded only in the area related to the administrative aspects of the electoral process, while the recommendations related to the key problems in the electoral process – pressure on voters, misuse of public resources and public office and media reporting – remain unfulfilled. The readiness of the state to choose to respond only to recommendations that do not contribute to the fundamental resolution of election issues has been present in previous attempts to improve electoral conditions.

It should also be borne in mind that the only instance that can give an assessment of the fulfilment of ODIHR recommendations is the ODIHR itself and that for a certain number of recommendations, an assessment of fulfilment can only be given after the end of the election process.

Speaking of ODIHR last year's recommendation, which was partially fulfilled, it should be noted that the Republic Electoral Commission is taking steps towards the introduction of standardised training for all members of local electoral commissions and polling station committees. Nevertheless, those trainings are not yet mandatory for members of local electoral commissions.

When it comes to the recommendations concerning **the position and reporting of the media**, which has been assessed as one of the most burning issues in elections for years, and which ODIHR has been classifying as one of the priority areas for several years, there has been no

substantial progress made. The opportunity to improve this area was created in the process of drafting the new Law on Electronic Media, the draft of which was completed on October 7th, 2023. Although the Draft Law was a step forward in terms of excluding political bodies from the process of nominating members of the Council of the Regulatory Body of Electronic Media (REM), it failed to ensure the functional independence of the REM. It was not foreseen that, instead of the current Council, a new one would be elected after the enactment of the new law, which is the goal outlined in the Media Strategy. By achieving this goal, a substantial contribution could be made in the process of fulfilling ODIHR's long-standing recommendation regarding the necessity of strengthening the independence of the REM.

The Draft Law also introduces specific procedural obligations for the REM during the election campaign, such as setting time limits for handling complaints and adopting a monitoring plan during the campaign, which is in line with other ODIHR recommendations. Nonetheless, the draft explicitly excludes the party's status for complainants in the process, which effectively hinders judicial review of the REM's decisions and is in contradiction with the obligations of the OSCE's Copenhagen Document.

In the aforementioned Draft Law on Electronic Media, the media reporting on the activities of officials during election campaigns is regulated by a provision that is identical to the one that was applied during the 2022 election campaign and which in practice did not produce any effects. It is a provision that was introduced into the domestic legislation in December 2021, which envisaged a ten-day ban on media coverage of the ceremonial inaugurations or events regarding the commissioning of projects of public interest by state officials who are also candidates. This provision was unanimously assessed by international and domestic experts who professionally observe election campaigns as an inefficient guarantee of equal conditions for election participants. Among the other organisations that have critically analysed this provision, ODIHR itself in its report on the 2022 elections, states: "Legal changes from December 2021 (...) prohibit the media from reporting on the opening or inauguration events by the state officials, who are also candidates, but only during the last ten days before the Election Day. Given the short time frame and extensive media coverage of such events prior to the ban period, this provision was insufficient to address the significant and inappropriate advantage of the position effectively." This is why it has been recommended that **the regulation of media reporting on officials who are also candidates should be further strengthened by extending the ban on media coverage of all opening and inauguration events throughout the entire campaign period.**

The recommendation referring to the creation of a safer environment for the work of journalists was not fulfilled, not even at the level of improving the legal framework, since the planned changes to the Criminal Code were missing. Verbal attacks and campaigns directed against journalists continued, and the intensity of SLAPPs against investigative journalists and the media is worrying.

The issue of pressure on voters, which appears for the first time in the ODIHR recommendations in 2014, and repeats in the 2017 and 2020 recommendations, and is a priority topic in the 2022 recommendations, but still remains unresolved. Therefore, the recommendation related to this the issue is considered unfulfilled. It cannot be said that the authorities have established any legal and institutional monitoring mechanisms to prevent intimidation and pressure on voters, especially when it comes to employees of public and state enterprises.

When it comes to **the abuse of public office and public resources**, this issue appears for the first time in 2020. In its evaluation, ODIHR considers it partially fulfilled. However, the issue of the proactivity of competent state authorities when sanctioning such abuses, which is found in the ODIHR report from 2017, has not been resolved, and the recommendation from 2022, which includes both of these issues, must be considered unfulfilled.

Some of the key recommendations that ODIHR reiterates practically after every election observation in Serbia, and that refer to the ***financing of political activities***, have not been fulfilled. First of all, it was recommended that, in order to promote equal conditions among election participants, it is necessary to consider **the limitation of election campaign expenses**. This has been repeated in every ODIHR Observation Mission report since 2014, but remains neglected. Finally, **there was no explicit regulation of the campaign carried out by third parties**, which ODIHR singled out as a priority recommendation in its Final Report in 2022. The necessity of regulating all promotional activities of third parties in connection with the elections, which involve expenditures, is underlined in the Joint Opinion of the Venice Commission and the OSCE/ODIHR.

The revision of the Unified Voters' Register, which the ODIHR Mission recommended in 2020, and then in 2022 in the latest recommendations, has not been carried out to this day. The authorities did not enable the implementation of a complete audit of the Unified Voters' Register and of the Birth Register, and this is why we rate this recommendation as unfulfilled.

We would like to bring to your attention the fact that [after the April 2022 election, ODIHR](#) has, for the first time in ten years, recorded progress in fulfilling recommendations **on the basis of the evaluation of the degree of fulfilment of 85 out of a total of 146 recommendations sent to Serbia since 2012**. The ODIHR evaluation showed that by April of last year some recommendations were completely fulfilled (14), out of which, however, less than a third belong to the priority recommendations of the ODIHR. Moreover, there was an increase in the number of recommendations that were evaluated as partially fulfilled (from six to 31), and there were also recommendations evaluated as “mostly fulfilled” (from two to 14). On the other hand, as many as 26 of them were rated as unfulfilled.

	ODIHR RECOMMENDATION 2022	TYPE	IMPLEMENTATION STATUS	COMMENT
1	To enhance legal certainty and provide equal opportunities for electoral contestants, the legislation could benefit from a further review to address challenges related to misuse of administrative resources and access to media and eliminate remaining gaps and inconsistencies well in advance of the next elections and within an inclusive and transparent consultation process.	PRIORITY	Not implemented	
2	To ensure consistent application of election day procedures and enhance the professional capacity of the election administration, standardized mandatory training could be considered for all Local Electoral Commission and Polling Board members and prospective members, including the extended compositions.	PRIORITY	Partially implemented	
3	To address concerns over the accuracy of voter lists and increase public confidence, the authorities should facilitate the conduct of a full audit of the Unified Voter Register and the civil register as soon as practically possible, with the participation of relevant stakeholders, including political parties and civil society	PRIORITY	Not implemented	
4	Authorities should take measures to prevent misuse of office and state resources. The law should provide for a clear separation between the official functions and campaigning activities of the incumbents. Violations should be proactively prevented and addressed by the relevant authorities through proportionate and dissuasive sanctions.	PRIORITY	Evaluation not possible	There is no information on undertaken measures (if any), while part of this recommendation in relation to effectiveness of penalties would be possible to evaluate only during and after election process.

5	Authorities should put in place and implement effective legal and institutional oversight mechanisms to prevent intimidation and pressure on voters, including employees of public and state institutions and enterprises.	PRIORITY	Not implemented	
6	To ensure legal certainty and campaign finance accountability, the legislation should be further reviewed to address gaps and prior ODIHR and GRECO recommendations, including by explicit regulation of third-party campaigning and provisions on effective, proportionate and dissuasive sanctions for violations and inadequate reporting. To allow effective implementation, the Criminal Code should be brought in line with the Law on Financing of Political Activities.	PRIORITY	Not implemented	
7	The independence of the Electronic Media Regulatory Authority (REM) should be strengthened. Its responsibilities during the campaign period should be explicitly defined by law and extend to all aspects of the broadcast media coverage of elections. The REM should proactively use its legal powers to act ex officio on violations of media regulation based on its systematic monitoring.	PRIORITY	Not implemented	
8	To ensure consistency of the voting, counting and tabulation processes, the REC should promulgate clear, consistent and timely instructions and decisions on all election-day procedures that are not sufficiently regulated by the statutory law.	PRIORITY	Evaluation not possible	Evaluation possible during and after the election campaign.
9	The election administration should take measures to enhance the effectiveness of dispute resolution by substantive reviewing all election-day related complaints and facilitating the reporting of administrative and criminal offences to the competent authorities.	PRIORITY	Evaluation not possible	Evaluation possible during and after the election campaign.
10	To enhance the effective exercise of voting rights, the REC should develop and implement a timely, comprehensive and targeted voter education programme, including on voters' rights, the prevention of group voting, and the importance of voting by secret ballot.	Election Administration	Evaluation not possible	Evaluation possible during and after the election campaign.
11	The REC, the state and local authorities, in co-operation with the relevant disability organizations, should undertake further measures to ensure independent access of persons with various types of disabilities to the entire election process. Election authorities should provide detailed election information in various accessible formats.	Election Administration	Evaluation not possible	Evaluation possible during and after the election campaign.
12	The legislation should be further harmonized with the objectives of the UN Convention on the Rights of Persons with Disabilities by removing all remaining restrictions on voting rights on the basis of intellectual or psychosocial disability.	Voter Registration	Not implemented	

13	To guarantee universal suffrage and prevent undue disenfranchisement or unequal treatment of voters, consideration should be given to introducing objective, reasonable and non-discriminatory procedures for inclusion in the voter lists of citizens without permanent residence and opportunities for these citizens to exercise their voting rights.	Voter Registration	Evaluation not possible	Evaluation of Ministry of Public Administration practice is needed, but there are no available information.
14	To further promote pluralism in the electoral process and freedom of association, consideration could be given to removing the restriction against signing in support of more than one presidential candidate and one parliamentary candidate list.	Candidate Registration	Not implemented	
15	Consideration could be given to mandating by law that certifying authorities make their services available to all contestants on non-discriminatory terms. Election authorities should ensure accountability for any criminal offences or other abuses occurring during the candidate registration process.	Candidate Registration	Not implemented	
16	To promote a level playing field among contestants, consideration should be given to introducing a campaign expenditure limit. Legal deadlines for distributing public funding for election campaigns should be adjusted to allow meaningful possibilities for campaigning. Safeguards against misuse of public funds allocated for campaign should be introduced in the law.	Campaign Finance	Not implemented	
17	The Anti-Corruption Agency should be obliged by law to identify violations proactively and in a timely manner, and respond to complaints by issuing formal decisions, subject to a judicial review. The law should prescribe expedited deadlines for the entire dispute resolution process related to campaign finance violations.	Campaign Finance	Evaluation not possible	Evaluation of Agency practice possible during and after the election campaign.
18	The competent state authorities should contribute to the strengthening of media pluralism by further increasing media ownership transparency, promoting diversity of political content in the media, and systematically monitoring broadcasters' compliance with their legal obligations.	Media	Not implemented	
19	State bodies should publicly and strongly condemn all threats against journalists and put in place effective measures to protect journalists against attacks aimed at silencing them, including by prosecuting perpetrators.	Media	Not implemented	
20	The regulation of the media coverage of officials who are also candidates could be further strengthened, including by extending the ban on the media coverage of all opening and inaugurating events for the entire duration of the campaign period.	Media	Not implemented	

21	In line with international good practice, the Administrative Court should be legally bound to review all election-related cases in public hearings whereby the parties have the right to be heard.	Complaints and Appeals	Not implemented	
22	The competent authorities should take prompt and effective steps to investigate allegations of offences, including voter intimidation and vote buying. Perpetrators should be held accountable in a timely manner. The Ombudsman should adopt a proactive approach, including by voter information campaigns, to encourage voters to report such violations.	Complaints and Appeals	Evaluation not possible	Evaluation possible during and after the election campaign.
23	Further efforts should be made to allocate adequate premises for polling stations in order to prevent overcrowding, ensure the secrecy of the vote and provide easy independent access for voters with physical disabilities.	Election Day	Evaluation not possible	Evaluation possible during and after the election campaign.
24	The Republic Electoral Commission should publish the preliminary turnout data as soon as possible after the closing of the polls. To further enhance transparency and trust in the results tabulation process, the REC should consider publishing preliminary election results disaggregated per polling station in an accessible format as they become available.	Razvoj događaja nakon održanih izbora	Evaluation not possible	Evaluation possible during and after the election campaign.
25	In order to reduce or eliminate the need for repeat elections, consideration could be given to amending the law to prescribe that the voting is repeated only in case of serious irregularities that may affect the election outcome, after exhausting all other measures, such as examination of the election material, and formalized recounts of the votes cast.	Razvoj događaja nakon održanih izbora	Not implemented	
26	Measures could be considered to enhance the transparency of the post-election dispute resolution, including by publishing comprehensive information on complaints filed to LECs in the REC's complaints register.	Razvoj događaja nakon održanih izbora	Evaluation not possible	Evaluation possible during and after the election campaign.