

**RESPONSE TO THE REQUEST  
FOR SUBMISSION OF  
PROPOSALS ON THE WAY  
FORWARD IN  
IMPLEMENTING ODIHR  
RECOMMENDATIONS**



Index: Crta3405/120424

Submitted to the National Assembly on April 12, 2024

## **RESPONSE TO THE REQUEST FOR SUBMISSION OF PROPOSALS ON THE WAY FORWARD IN IMPLEMENTING ODIHR RECOMMENDATIONS**

To whom it may concern,

Regarding the Request addressed to CRTA on April 11, 2024, we are sending you a list of priorities for improving electoral conditions in line with the findings of the CRTA Observation Mission and the ODIHR Observation Mission (ODIHR), as well as a Proposal on the way forward in implementing the recommendations.

### **CONTENTS**

<b>GUIDELINES FOR SETTING PRIORITIES</b>	<b>1</b>
PRIORITY AREA 1: INSTITUTIONAL ACCOUNTABILITY	1
PRIORITY AREA 2: UNIFIED VOTER REGISTER	3
PRIORITY AREA 3: MEDIA	4
PRIORITY AREA 4: PRESSURE ON VOTERS	5
<b>PROPOSAL FOR FURTHER IMPLEMENTATION OF ODIHR RECOMMENDATIONS</b>	<b>6</b>
GUIDELINES FOR ORGANIZING THE WORK PROCESS ON FULFILLING ODIHR RECOMMENDATIONS	8
<b>ANNEX 1: OBJECTIVES, AUTHORITY, AND COMPOSITION OF THE COMMISSION FOR THE REVISION, VERIFICATION, AND CONTROL OF THE ACCURACY AND UPDATING OF THE UNIFIED VOTER REGISTER</b>	<b>9</b>

### **GUIDELINES FOR SETTING PRIORITIES**

Setting priorities should be primarily based on the priority recommendations of ODIHR and the findings of other accredited observer missions. It is also necessary in this process to consider the recommendations from the Final Report of ODIHR after the parliamentary elections held in 2023, "in conjunction with past ODIHR recommendations that have not yet been addressed" as emphasized by ODIHR in Chapter XVI.

#### **PRIORITY AREA 1: INSTITUTIONAL ACCOUNTABILITY**

Combating impunity is a fundamental precondition for the rule of law and building citizens' trust in the institutions of the Republic of Serbia. State agencies and public institutions serve to uphold the laws and the interests of the state and the public within their jurisdictions, ethical standards and professional service, preventing any party or private interest from taking precedence over this obligation.

**ODIHR priority recommendation 5:** *The law should provide for a clear separation between the official functions and campaigning activities of the incumbents. Authorities should take measures to prevent misuse of office and state resources and any violations should be proactively addressed through proportionate and dissuasive sanctions.*

- **Prosecutorial accountability:** Determine responsibility for the failure of prosecutorial action in the electoral process and selective handling of citizen complaints. Call for criminal and disciplinary accountability of managers in Public prosecutor's offices in Belgrade, the Higher public prosecutor's offices in Belgrade, and the General public prosecutor's office, for abuse of official position and failure to use powers to control and supervise the work of lower public prosecutor's offices.
- **Prosecutorial proactivity:** Prosecutors must urgently and impartially engage in establishing the truth and accountability for violations of the law in the electoral process, including acts committed under the auspices of Serbian state institutions, primarily in the Ministry of Internal Affairs and the Ministry of Public Administration and Local Self-Government (including the Administrative Inspectorate), as well as in the Ministry of Foreign Affairs and the Consulate General in Banja Luka.
  - Public prosecutors' offices with jurisdiction must initiate proceedings to determine the criminal responsibility of officials in police stations who, through negligence and abuse of official position, unlawfully changed residency contrary to prescribed obligations and procedures.
  - Public prosecutors' offices with jurisdiction must initiate criminal proceedings against those responsible for compiling inaccurate voter registers under Article 158 of the Criminal Code.
- **Responsibility of entities whose work affects the functioning and content of the Unified Voter Register:** State institutions, bodies, and institutions must initiate disciplinary proceedings and utilize all internal control mechanisms against officials who have unscrupulously, unauthorizedly, and unlawfully made changes to the voter register, changed residences for citizens, and engaged in other abuses of position.
- **Responsibility of signature verifiers for election list support:** Immediate prosecution of verifiers involved in falsifying voter support statements for the candidacy of election lists and individuals who unlawfully handled voters' personal data.
- **Proactivity of the Administrative Inspectorate of the Ministry of Public Administration and Local Self-Government:** The Administrative Inspectorate must request the initiation of misdemeanor proceedings against every responsible person in authorities responsible for updating the voter register who failed to ensure its accuracy and timeliness.

- **Responsibility of REM:** Urgently initiate proceedings for the dismissal of all eight members of the Regulatory Authority for Electronic Media Council due to improper and negligent conduct and simultaneously issue a public call for proposing candidates for the election of new Council members.
- **Proactivity of REM:** Upon the constitution of a new composition of the Regulatory Authority for Electronic Media Council, conduct a process to determine any violations of obligations or non-compliance with conditions stipulated in the permit with media service providers to whom REM issues broadcasting permits and, in case of violations, take legally prescribed measures, including revocation of the permit.
- **Responsibility of public media services:** The boards of directors of public media services, to be appointed by the new composition of the REM Council, are to initiate procedures for the dismissal of general directors and chief editors of the news programs, and to conduct selection processes for filling these positions and select individuals who will perform their duties in accordance with the law and the principles of public media services.

## PRIORITY AREA 2: UNIFIED VOTER REGISTER

An accurate and uncompromised voter register is a crucial prerequisite for holding democratic elections since without it, the voters' will cannot be established on election day. As in previous electoral processes, public distrust in the voter register has stemmed from inadequate and untimely provision of data and facts regarding its status, fueling negative perceptions of the electoral process.

**ODIHR priority recommendation 4:** *To address concerns over the accuracy of voter lists and increase public confidence, the relevant laws, regulations, and practices should be reconsidered to enable access to voter registration data and facilitate the conduct of a meaningful audit of the Unified Voter Register with the participation of relevant stakeholders, including political parties and civil society, in line with data protection standards.*

**NOT ADDRESSED** - May 2, 2024 review

**Proposal by CRTA:** The Commission for the Revision, Verification, and Control of Accuracy and Updating of the Unified Voter Register is outlined in the document "*Objectives, Competencies, and Composition of the Commission for the Revision, Verification, and Control of Accuracy and Updating of the Unified Voter Register*" as Annex 1.

## PRIORITY AREA 3: MEDIA

Voter's informed will is the cornerstone of freedom of choice that constitutes free elections. It largely depends on truthful, comprehensive, and timely information and the encouragement of political pluralism in electronic media.

**ODIHR priority recommendation 7:** *The independence of the Electronic Media Regulatory Authority (REM) should be effectively guaranteed, in line with the new legal provisions. The REM should proactively use its legal powers to act ex officio on violations of media regulation, based on its systematic monitoring.*

**NOT ADDRESSED** - May 2, 2024 review

**ODIHR priority recommendation 19:** *To provide impartial information about the contestants and allow voters to make an informed choice, the media should exercise their right for editorial independence and avoid using material produced by parties in news and information programmes, especially during election campaigns.*

**NOT ADDRESSED** - May 2, 2024 review

### Proposals by CRTA:

- Significant improvement of professional standards at Radio Television of Serbia and Radio Television of Vojvodina is necessary for these institutions to function genuinely, not just nominally, as public media services for the citizens of Serbia.
- Opening up public media services RTS and RTV to various political options and significantly enhancing the commitment of these institutions to the obligation of providing objective and timely information and educating citizens is the first step in establishing political pluralism in the media.
- Appointing an expert working group to support public media services in aligning reporting with the best standards of professionalism and ethics.

The working group would provide expert support in developing strategies and self-regulatory acts to regulate the rules of professional and unbiased reporting by public media services, with a special focus on election campaigns and reporting on the work of the parliament. Even outside the election campaign, reporting on the activities and views of political entities should be done in the spirit of promoting political pluralism. The expert group would serve as educators for employees in public services, providing necessary training and consultations and conducting evaluations of the implementation of agreed measures and activities.

The working group would consist of 8 members, a group president, and a deputy president. Members would be prominent media experts proposed by parliamentary groups, with an equal number of members (two each) proposed by the largest opposition parliamentary group and the largest ruling parliamentary group. Four members would be permanent staff from the newsroom proposed by the board of directors of the public media service. The president and deputy president of the group would be appointed from among media experts on the proposal of the largest journalists' associations (having at least 500 members and registered for at least 15 years).

- It is necessary to initiate the dismissal process for all eight members of the Regulatory Body for Electronic Media due to irregular and irresponsible conduct and simultaneously announce a public call for the nomination of candidates for the selection of new members of the Board.
- After the establishment of a new composition of the Regulatory Body for Electronic Media, conduct a procedure to determine any breaches of obligations or non-compliance with the conditions provided by the license for media service providers to whom REM issues broadcasting licenses and, in case of violations, take legally prescribed measures, including revocation of the license.
- The boards of directors of public media services, to be appointed by the new composition of the REM Council, are to initiate procedures for the dismissal of general directors and chief editors of the news programs, and to conduct selection processes for filling these positions and select individuals who will perform their duties in accordance with the law and the principles of public media services.

## **PRIORITY AREA 4: PRESSURE ON VOTERS**

ODIHR in its Final Report notes that *“fundamental freedoms were generally respected in the campaign, but it was marred by harsh rhetoric, bias in the media, pressure on public sector employees and misuse of public resources.”*

**ODIHR priority recommendation 6:** *Authorities should prevent intimidation and pressure on voters, including employees of public and state institutions and enterprises and strengthen the oversight mechanisms.*

**NOT ADDRESSED** - May 2, 2024 review

### **Proposals by CRTA:**

- Investigate reported cases of pressure on voters and suspicions of misuse of citizen data and inform the public about the procedures involved;

- Further, enhance legal provisions regarding the prohibition of pressure on employees in public enterprises and public administration;
- Improve education and supervision/control of political entities regarding the collection and handling of personal data;
- Include social welfare centers in the regular inspection plan of the Commissioner for Information of Public Importance and Personal Data Protection;
- Enable investigative authorities to employ special evidentiary measures for offenses against electoral rights under Chapter XV of the Criminal Code for more effective evidence gathering;
- Develop additional mechanisms to impede potential influence and control of the executive branch over the actions and decisions of the prosecution in electoral cases (e.g., introducing jurisdictional competition among prosecutors).

## **PROPOSAL FOR FURTHER IMPLEMENTATION OF ODIHR RECOMMENDATIONS WITH PRIORITIES**

Addressing electoral recommendations is complex and involves various stakeholders, while continuous and timely activity to improve the electoral process is a prerequisite for substantive reform.

Guidelines and recommendations for fulfilling ODIHR recommendations can be found in election observation reports, such as the latest **Final Report on the snap parliamentary elections in 2023**. Relevant is ODIHR's finding that *“the frequency of early elections has further eroded public confidence in the functioning of democratic institutions and together with the lack of political will left needed reforms unaddressed.”* Also relevant is the First priority recommendation, which sets out basic principles and principles for fulfilling recommendations by emphasizing the need for the process to be approached *“well in advance of the next elections through an inclusive consultative process built upon a broad political consensus.”*

International obligations undertaken by Serbia through membership in the United Nations, the Council of Europe, and the Organization for Security and Co-operation in Europe (OSCE) are also relevant. For example, by signing the Istanbul Declaration (1999), Serbia accepted Article 25, thereby committing to **swiftly respond to ODIHR recommendations aimed at bringing elections in Serbia closer to the standards applicable to all participating states.**

Unfortunately, the process of fulfilling ODIHR recommendations has so far yielded severely limited results, considering that only five priority recommendations have been fully met in the past 12 years, while there has been a continuous departure from standards for free and fair elections and erosion of transparency and public trust in the electoral process.

Additionally, the existing mechanism established in 2019 for fulfilling ODIHR recommendations - **the Government of the Republic of Serbia Working Group for Cooperation with the OSCE and ODIHR in coordinating and monitoring the implementation of recommendations for improving the electoral process** - has, in its previous work, deviated from democratic standards and best practices, primarily concerning transparency, inclusivity, and timeliness<sup>1</sup> in all phases of the process: *from identifying problems and setting the agenda to preparing and adopting concrete solutions.*

**As a foundation for reforming the existing mechanism and framework for implementing electoral reform in Serbia, we highlight the ODIHR Handbook for Monitoring Recommendations for Improving the Electoral Process<sup>2</sup>, which emphasizes:**

***“The government has lead responsibility for implementing recommendations, given its executive powers and parliamentary strength. Genuine political will from the governing party (or parties) is, therefore, essential for effective follow-up. This can be demonstrated, for example, by those in power entering into national dialogue about reform and establishing concrete action plans. While ODIHR may assist states through follow-up activities, in order to ensure sustainability and ownership it is imperative that the process be internally driven. ODIHR recognizes that the ultimate responsibility for organizing elections lies with the participating States, and its follow-up activities, therefore, support sustainable electoral management capacities.”***

**Furthermore, ODIHR emphasizes:**

***“Implementing electoral recommendations can be politically divisive. Having an agreed framework of objectives can help maintain focus and make it easier to identify and agree on the way forward. The allocation of specific responsibilities among various agencies increases the likelihood of recommendations being implemented. Agreed timeframes for action also increase momentum for development and accountability of actions. Establishing periodic review mechanisms promotes momentum and allows for the recalibration of activities, if necessary. It provides an opportunity to check that proposed reforms are in line with OSCE commitments, international obligations and other standards for democratic elections. Public reporting on electoral reform increases accountability and transparency, and provides for higher levels of political and public confidence in the process.”***

---

<sup>1</sup>Serbia swiftly changed electoral rules twice - prior to the parliamentary elections in 2020 and during the presidential, parliamentary, and Belgrade elections in 2022. The amendments were adopted just a few weeks before the elections were called, contrary to international democratic standards that prohibit changing rules in an election year unless there is societal consensus. **Such sudden changes at the last minute, without significant public participation and dialogue, leave a significant negative impact on the fairness of electoral conditions.**

<sup>2</sup> <https://www.osce.org/files/f/documents/c/8/244941.pdf>



ODIHR also underscores that:

*“Public reporting on electoral reform increases accountability and transparency, and provides for higher levels of political and public confidence in the process.”*

**Public participation in the electoral reform process is one of the basic principles** on which the process of fulfilling ODIHR recommendations should be based, as stated in the Handbook:

*“Reform of the legal framework is essentially about changing the rules of the game, and should not be the exclusive competency of the winner of the last election. The reform process is stronger when there is **meaningful involvement, consultation and inclusion**, not only of the main opposition parties, but also of smaller political groups, EMBs, national experts, civil society and other stakeholders, including those who are at risk of marginalization from the process (see Chapter 9). **Examples of good practice include the establishment of multi-party parliamentary committees; working groups initiated by EMBs or civil society; and regular public consultations and awareness programmes.**”*

In the activities undertaken so far towards fulfilling recommendations, unfortunately, international standards and best practices as mentioned by ODIHR have not been followed, hence we propose **principles on which the process must be based to begin substantive work on implementing ODIHR and domestic organizations' recommendations for election observation.**

## **GUIDELINES FOR ORGANIZING THE WORK PROCESS ON FULFILLING ODIHR RECOMMENDATIONS**

The work on fulfilling recommendations for improving the electoral process should be guided at political, expert, and societal levels.

It is essential to ensure a **political consensus** based on expert findings, contributions, and consultations, aimed at agreeing on issues from which priorities will be defined and agendas set.

Based on the agreement from the previous step, **operational expert teams** under the auspices of Serbian state institutions would assume the responsibility to implement the agreed agenda within clearly defined timelines, in line with principles of transparency and public participation in defining public policy, legislative, and sub-legislative changes.

The results of the work of operational expert teams should be proposals for amendments and supplements to legislative and sub-legislative acts or proposals for the development of new acts, which should also be subject to **consultations and public discussions.**

**Public reporting on electoral reform increases accountability and transparency, as well as political trust and public trust in this process.** The Serbian public should be timely informed and involved in the process of improving the electoral framework and electoral conditions, both through **communication channels of state institutions and mechanisms, as well as through public broadcasting services and other media channels.**

## **ANNEX 1: OBJECTIVES, AUTHORITY, AND COMPOSITION OF THE COMMISSION FOR THE REVISION, VERIFICATION, AND CONTROL OF THE ACCURACY AND UPDATING OF THE UNIFIED VOTER REGISTER**

### **Objectives and principles**

The Commission for the revision, verification, and control of the accuracy and updating of the Unified Voter Register (UVR) is established with three objectives:

- 1. Determination of facts regarding the management and accuracy of the UVR;**
- 2. Implementation of control over the accuracy and updating of the UVR;**
- 3. Enhancement of transparency and citizen trust in the UVR.**

In its work, the Commission is guided by principles of transparency, protection of the public interest, and confidentiality in handling citizens' personal data.

The objectives, principles, authority, composition, and mode of operation of the Commission proposed in the following text should be provided for by appropriate amendments and supplements to the Law on the Unified Voter Register.

### **Authority**

- Analysis of data from the UVR at the level of personal data;
- Analysis of the legal validity of decisions based on which changes are made to the UVR;
- Analysis of statistical parameters of UVR movements;
- Analysis of access to the UVR, including an analysis of all orders in the operating system of the server and the database server of the UVR, identities, authorizations, and IP addresses from which authorized persons logging into the UVR are logged;
- Analysis of the entire documentation of the development and maintenance of the ICT system of the UVR, including the source code;
- Analysis of the process of updating and authorization of changes to the UVR;
- Analysis of the actions of the Administrative Inspectorate in supervising the work of the voters' register referees;
- Analysis of the Ministry of Interior's data on population movements and their consistency with data in the UVR;

- Analysis of the actions of Ministry of Interior officials responsible for citizen affairs (approval of residency and stay of citizens);
- Initiation and coordination of field controls of voters based on UVR analyses in cooperation with the Ministry of Interior and the Ministry of Public Administration, Local Self-Government and Digital Society (MPALSG);
- Initiation of the correction of identified irregularities in the UVR;
- Initiation of proceedings to determine liability when, in the process of determining facts about the management and accuracy of the UVR, there are grounds for suspicion of a violation of the law, by reporting the violation to the competent authorities;
- Initiation of the publication of parts of the UVR, statistical movements in the UVR, residency, stay, passivation, and other relevant data related to the voters' register;
- Initiation of a campaign to educate voters about updating the voters' register in cooperation with public broadcasting services and the MPALSG.

To fulfill its tasks and objectives within its jurisdiction, the Commission has access to databases of other state institutions and bodies, including:

- Ministry of Public Administration and Local Self-Government;
- Ministry of Interior;
- Republic Statistical Office;
- Republic Geodetic Authority;
- Units of local self-government (registries and records)

## **Composition and mode of operation**

The Commission is established and its members are elected by the National Assembly, by a majority of votes of the Members of Parliament, for a period of 5 years. The Commission consists of seven members, namely:

- three members proposed by the largest parliamentary group of the ruling majority;
- three members proposed by the largest parliamentary group of the opposition;
- one member from the ranks of the Civil Society Organizations working in the field of elections, with a minimum existence of 10 years, proposed by the largest parliamentary group of the opposition.

In its work, without the right to vote, representatives of the following institutions must also participate: Ministry of Public Administration and Local Self-Government, Ministry of Interior, Commissioner for Information of Public Importance and Personal Data Protection, i.e., three representatives of the Ministry of Public Administration and Local Self-Government (Administrative Inspectorate, Department for Registries and Local Self-Government, IT service), one representative of the Ministry of Interior, one representative of the Commissioner for Information of Public Importance and Personal Data Protection.

Representatives of various relevant international organizations also follow the work of the Commission as observers.

The Commission may invite domestic and international experts from various fields for consultation purposes during its sessions and between sessions.

International experts and representatives of international organizations may also participate in the work of the Commission, upon invitation from the Commission, without the right to vote.

During its work, the Commission, upon request, must provide all necessary information or ensure the presence of individuals directly involved in maintaining the UVR system, individuals responsible for data entry into the UVR, as well as experts familiar with the operations of the Ministry of Interior databases related to citizens' residency and stay.

## **Basic principles of work and decision-making**

- All members have the right to vote when making decisions;
- Decisions are made by majority vote;
- Members may appoint their deputies for work and decision-making purposes at Commission sittings;
- Only the representative of the citizens' association has the right to veto the Commission's decisions.

The commission has a president who is elected from among the members elected on the proposal of the opposition parliamentary groups, as well as a secretary and an expert team assigned by the National Assembly. When appointing the secretary and the expert team, care should be taken to ensure that they also come from the institutions that are obliged to participate in the work of the Commission, in order to ensure adequate professional and technical assistance on all issues of importance to the work of the Commission.

At the first sitting, the commission states who the persons proposed for president and secretary are, and thus the process of their election is completed (no vote is taken on their appointment).

At the first sitting, the Commission adopts the Commission's Rules of Procedure and the Commission's work plan.

The President of the Commission, with the help of the secretary, coordinates the work of the Commission and schedules and leads the sittings.

The Government of Serbia and all other state bodies are obliged to respond to the inquiry as soon as possible and provide the requested information or respond to the invitation to the meeting sent by the Commission.



The Commission regularly informs the public about its work and publishes all decisions and materials it uses in its work on the website of the National Assembly and the Ministry of State Administration and Local Self-Government.