

IN EFFECT, DO WE ELECT IMAMO LI IZBORA



Report

Discussion Table: **Protecting electoral integrity: The role of prosecutors in safeguarding voter rights**

Conference: ["In effect, do we elect?"](#)

October 24, 2024

Materials used in the roundtable discussion are available [here](#).

I Working Document - Goal of the Roundtable discussion

As a basis for the discussion, participants were provided with CRTA's research on the work of the prosecution in cases related to electoral irregularities from the electoral process in December 2023. The research showed the performance of prosecutor's offices across Serbia in cases formed from complaints during the 2023 and 2024 elections. It revealed that out of 170 cases handled, only 2 were conclusively resolved, 55 criminal charges were dismissed, and 70 are still in the pre-investigative phase. The working document also presented an analysis of the prosecutor's actions in response to CRTA's complaints and several cases reported by the media. Finally, the document concluded with recommendations that CRTA considers as potential solutions and improvements to the current situation in the Republic of Serbia. The working group consisted of participants engaged with this issue in Serbia, the region, and around the world, including public prosecutors, members of electoral commissions, members of parliament, and representatives of civil society. The discussion was closed to the public.

The discussion addressed the state of the prosecution's work globally, highlighting that electoral offenses and crimes periodically receive focus, but overlapping jurisdictions, limited resources, and lack of political will often hinder prosecutor's office efficiency. Examples of successful practices in other countries were discussed, such as establishing special units for election cases in Kenya, Latvia, and the USA, where criteria and deadlines for initiating proceedings are clearly defined. The importance of collaboration among all relevant bodies was emphasized, as well as the need for a prompt response through specialized financial prosecutors and units that facilitate more effective prosecution of election-related crimes.

II State of Affairs Worldwide

The discussion also highlighted research on the work of prosecution offices in other countries, noting that electoral offenses, misdemeanors, and crimes are only periodically the focus of prosecutors. It was also pointed out that overlapping jurisdictions, limited resources, and lack of political will can be obstacles to efficient prosecution. After highlighting these obstacles, potential solutions were provided through various examples from around the world:

- Establishment of special prosecutorial units for election cases (Kenya, where they also have the task of raising an indictment within a year);
- A special unit within the electoral body for dealing with integrity violations (Latvia);
- A special department within the Ministry of Justice for election offenses with clear criteria for initiating proceedings (USA);
- Joint work of all bodies dealing with elections, from anti-corruption agencies to electoral commissions and the prosecution, to address overlapping jurisdictions (Armenia);
- Special financial prosecutors conducting swift proceedings with fines for defendants, bypassing otherwise lengthy court procedures and demotivating election actors (France).

III Approach in Regional Countries (Bosnia and Herzegovina, North Macedonia)

According to speakers, when there is a large number of irregularities, citizens lose faith in the electoral process, as happened in Bosnia and Herzegovina in 2018. It was noted that this process was one of the worst in terms of electoral irregularities. The prosecution faced a situation where faith in the electoral process had eroded, and the working approach needed change. This led to timely capacity building in the prosecution, police, and the Central Election Commission (CEC). The prosecution adapted sensitivity to these cases by focusing on education, establishing criteria for action, and developing communication between the prosecution, police, and the CEC. As part of these efforts, offenses not directly related to elections were also investigated, such as document forgery and abuse of office. Following the change in approach and increased awareness, all 15 prosecuted cases were resolved, with 13 individuals convicted and 2 acquitted for election-related offenses during the 2020 elections in Brčko District. Most criminal cases were resolved through plea agreements, with the average duration of proceedings around 14 months. During the 2024 elections in Bosnia and Herzegovina, with the help of undercover investigators and special investigative actions, indictments were raised against 5 individuals who acted as an organized group.

It was emphasized that efficient case prosecution requires the dedication of other bodies, as courts can prolong cases if they do not prioritize them. For example, in Dobož, during the 2020 elections, 67 indictments were filed against 330 individuals, but in 2024 there were fewer election-related crimes. The chief prosecutor organized a meeting to improve election protection, assigned a liaison prosecutor, and ensured transparency through public reporting on indictments.

On the other hand, an example from North Macedonia showed that although voter migration was carried out legally and in accordance with positive law, the prosecution obtained convictions

by examining financial flows and investigating who financed the voter migration operation, leading to the prosecution of the party leadership.

IV Challenges in Serbia and Social Context

In Serbia, the discussion addressed citizens' fear of initiating proceedings. The issue of gifts distributed by political parties during elections was also discussed, as well as the limited ability of prosecutors due to inconsistent actions by the legislature. Following significant public attention on electoral irregularities in 2000, penalties for election-related offenses were increased in 2002, but unfortunately, these penalties were short-lived, lasting only until 2005. In Serbia, nearly all offenses under Chapter 15 of the Criminal Code are punishable by a fine or up to one year in prison. If these criminal offenses are processed through a summary procedure, it greatly impedes the prosecution's efficiency. This includes the possibility of postponing criminal prosecution. Based on judicial practice, suspended sentences would follow, reducing the likelihood of detention.

The issue of prosecutor shortages in Serbia was also raised, noting that there are only 600 prosecutors across the entire territory of Serbia. Achieving the same level of awareness as in Bosnia and Herzegovina is unattainable for Serbia, as it cannot rely on just 30 prosecutors who are proactively interested in education on election cases. Prosecutors lack the support needed to defend their cases. There is a need to revise the definitions of criminal offenses, establish special forms, and allow the use of special investigative actions for certain offenses.

V Criticism

Criticism directed at the prosecution in Serbia primarily focused on inactivity. Examples were given where criminal complaints were filed, but months later, there was no outcome or indication of whether any action was taken. These complaints were filed by civil society organizations or electoral bodies. One example involved a person who used a weapon to force polling station committee members out, spent time alone with election materials, and yet, despite the report, the police did not intervene, and the prosecutor did not process the case. There were also examples of complaints filed by electoral commission members that were not acted upon. Witnesses, documents, and clear evidence existed, including copies of records of polling station activities where the final results were altered despite other members having copies. It was further mentioned that everyone is aware of workplace pressures and the organization of political rallies. A large number of employees get a day off, leading to public companies not operating that day, which in itself constitutes a criminal offense. Citizens refuse to cooperate even in other cases, yet evidence is still obtained, and such cooperation is secured.

There was also criticism that the prosecution does not act ex officio when a journalistic report provides all relevant facts that could be part of a criminal complaint.

VI Recommendations

During the session, participants emphasized recommendations for improving the efficiency of prosecutors and strengthening the integrity of the electoral process, summarized below:

- Provide a wide range of sanctions;
- Utilize civil society organizations for evidence collection;
- Establish a mechanism for civil society organizations to initiate proceedings when citizens are unable to;
- Timely preparation of prosecution work on election cases;
- Enable the education of prosecutors, police, and electoral bodies on electoral crimes;
- Establish coordinated work among prosecutors, police, and electoral bodies;
- Appoint liaison individuals between the prosecutor's office and electoral commission;
- Ensure the transparency of prosecution work, especially in informing the public about actions taken;
- Publish court decisions with reasoning, especially when defendants are acquitted;
- Continue organizing such working groups and include courts in the process;
- Allow the use of special investigative actions;
- Increase penalties for election-related offenses and adjust the prescribed offenses to modern circumstances by expanding the description of methods of commission and prescribing special forms of offenses;
- Deepen the investigation into other criminal offenses not covered in Chapter 15 of the Criminal Code but whose factual description suggests another criminal offense may have occurred.