

# ELECTION ANNEX

## Pressure on Voters

Pressure on voters, primarily employees in public enterprises and institutions and beneficiaries of social programs, and the spread of the atmosphere of fear, challenge free and direct elections guaranteed by the Constitution as well as the rule of law.

### Explanation of the Problem

In the last few election cycles, an increasing number of irregularities have been observed that represent the abuse of state authorities by representatives of the ruling party and its officials in order to provide voter support and definite votes. The report of the OSCE/ODIHR Limited Mission for the early parliamentary elections in 2016 states that the Mission received "widespread reports of the ruling parties exerting pressure on voters, particularly those employed in the public sector, and enticing voters through welfare initiatives" (OSCE/ODIHR, 2016:1), as well as voters "being subjected to direct threats, mostly regarding loss of employment", "pressure on public and private sector employees to attend SNS rallies in Bor and Nis", that "SNS used to give away food packages, provide free health care services, arrange child protection workshops and trips for pensioners to influence voters in the campaign in Kovacica, Sid, Novi Sad, Vrsac, Sombor and Sabac" and that "the Roma community was particularly vulnerable to vote-buying" (OSCE/ODIHR, 2016:11).

There are similar "credible allegations of pressure on voters and employees of state-affiliated structures" (OSCE/ODIHR, 2017:1) in the report of OSCE/ODIHR Election Assessment Mission at 2017 presidential elections. The report also states that "despite the availability of new voting screens, observations noted that the secrecy of the vote was not adequately safeguarded" (page no. 4) Allegations of exerting pressure on "employees of state and state-affiliated institutions to support Mr Vucic and secure, in a cascade fashion, support from subordinate employees, family members, and friends" were especially prevalent, as well as that some of the supporters of Mr Jankovic and Mr Obradovic faced "repercussions for their political activities, including dismissals and changes of employment conditions" (page no. 9) For that purpose, "photographs of completed ballots were to serve as evidence on election day" and the OSCE/ODIHR EAM observed several instances of "voters taking photos of their ballots despite an explicit prohibition to use mobile phones, cameras and video cameras in polling stations" (page no. 9).

We can find even more dramatic examples of the use of certain public companies and institutions in order to collect votes for the ruling party at 2018 Belgrade elections. They are not only contrary to good democratic practice, established democratic rules and international standards, but also to a valid legal framework in the Republic of Serbia. It is primarily about pressure exerted on employees in the centers for social work and beneficiaries of services thereof that belong to vulnerable categories of population. Thus "elderly care housekeepers in Belgrade centres for social work were instructed (...) by the Serbian Progressive Party to gather data from their beneficiaries and ask them to whom they would vote whereas the ones who worked under a fixed-term contract were evinced that they would find a way for their

permanent employment if they fulfilled this task" (Final report of CRTA election observation mission, 2018:49). A similar task, at the initiative of the Ministry of Labour, Employment, Veteran and Social Affairs, was also assigned to associations of people with disabilities, which was confirmed by a female employee of the City Association of Blind in Belgrade (<http://www.yucom.org.rs/protokolom-o-saradnji-animira-se-deo-glasackog-tela/>), while in the centers for social work money was paid, according to pre-obtained lists, to people who are not beneficiaries of the centres but definite SNS voters (CRTA, 2018:49). At these elections, far more intense harassment of citizens by telephone was noticed, not just of supporters and members, but also ordinary citizens who never left the phone number to any party, and the citizens were offered various "free of charge" services as part of the promotion of the party. Threats to voters were also directed by the president of the municipality of Grocka, stating that he was informed about whether a particular voter had voted and urging them to "vote for the state" so that "they are able to ask for something from the state in return" (CRTA, 2018:46).

The atmosphere of fear and pressure on voters was further strengthened after the municipal elections in Lucani on 16 December 2018, in the course of which CRTA election observation mission identified more than 200 vehicles with license plates not referring to Lucani, as well as vehicles without license plates. Vehicles would stop near polling stations, and unidentified persons would communicate with voters and members of polling boards (<https://crt.rs/tag/lucani/>). CRTA also filed criminal charges against persons in 11 public bodies and companies whose vehicles were present at the elections in Lucani, which is an issue we will address in more detail in the section about functional campaigns.

The expansion of the atmosphere of fear and pressure among citizens is further contributed by: increasing number of events of keeping parallel records at polling stations, unknown persons who, most often from vehicles and in the immediate vicinity of polling stations, list voters who exercised their right to vote, photographing filled out ballots that even some national MPs publish publicly and on social networks, writing down codes (combinations of characters and numbers) on ballots, etc. All these methods allow "party brokers" - local intermediaries between the ruling party and the voters (those are usually employees and superiors in public companies and institutions, as well as municipal/city party officials and activists) to leave the impression on voters that it is not only possible but also certain to control to whom they gave their vote, and in such an atmosphere, fearing for their jobs or as beneficiaries of social services, it is not desirable to express their electoral will freely.

### Regulations

Rule of law is a fundamental prerequisite for the Constitution of the RS and is based on inalienable human rights. The rule of law shall be exercised through free and direct elections, inter alia. (Art. 3, para. 2). Suffrage shall be universal and equal for all, the elections shall be free and direct and voting is carried out by secret ballot in person (Art. 52, para. 2). According to the Law on the Election of Members of Parliament, no one is entitled, on any ground, to prevent or compel the citizen to vote, call him/her responsible for voting, and ask him/her to say who he/she voted for

or why he/she failed to vote (Art. 2, para. 2). The use of pagers, mobile phones and other means of communication is prohibited at the polling station (Art. 55, para. 6). A separate room shall be provided at each polling station where it is possible to secure the secrecy of voting (Art. 58, para. 2). Further instructions on measures securing the secrecy of voting shall be determined by the Republic Electoral Commission (Art. 55, para. 7).

Offenses against suffrage are established by the Criminal Code. Whoever by use of force or threat coerces another one at elections, impeachment vote or referendum to exercise or not to exercise his/her voting right or to vote for or against a particular candidate or proposal shall be punished with imprisonment of three months to three years. (Art. 155, para. 2). Whoever offers, gives, promises a reward, gift or other benefit to another one in order to vote or not to vote at elections or referendum for or against a particular person that is proposal, shall be punished with a fine or imprisonment of up to three years (Art. 156, para. 1). The same penalty shall be imposed on whoever demands or receives a gift or other benefit to vote or not to vote at elections or referendum for or against a particular person that is proposal (para. 2). Whoever at elections or referendum violates the secrecy of voting, shall be punished with a fine or imprisonment of up to six months (Art. 160, para. 1). For the members of the polling boards or other persons in the exercise of their voting-related duties, longer imprisonment is provided for such criminal offenses.

The field of disclosure of information on the violation of regulations, violation of human rights (including the electoral right), as well as the exercise of public authority against the purpose for which it is granted ("whistleblowing") is governed by the Law on the Protection of Whistleblowers. A whistleblower is any natural person who engages in whistleblowing, in the context of his/her work-based relationship; employment procedure; use of services rendered by public authorities and other authorities, holders of public authorisations or public services; business cooperation and the right of ownership in a company (Art. 2, para. 2). A whistleblower shall be entitled to protection in accordance with the Law, if he/she engages in an act of whistleblowing at the employer, at the authorised authority or in public, in a manner prescribed by the Law (Art. 3, para. 1). A whistleblower may make a disclosure to the public, without prior notification to the employer or an authorised authority, in case of imminent danger to life, public health, safety, environment, the emergence of large-scale damage i.e. if there is imminent danger of destruction of evidence (Art. 19, para. 1). It is forbidden to put the whistleblower in a less favorable position, the whistleblower is entitled to compensation for damage caused by whistleblowing, as well as the right to judicial protection (Art. 21-23).

Voting at the polling station shall be implemented directly by the polling board. The polling board is competent to ensure the correctness and secrecy of the vote. The more precise competencies of polling boards are defined in the Rules of Procedure of the Polling Boards adopted for each elections. The polling board checks whether signs and symbols of the submitters of the electoral lists i.e. candidates and other advertising material are displayed at the polling station, within a 50-meter radius of the polling station. According to the rules of procedure of polling boards: 1) It is forbidden for all the persons with no rights and duties related to the conduct of

elections to stay at the polling station; 2) The use of mobile phones and other means of communication, as well as cameras and video cameras, is prohibited at the polling station; 3) It is forbidden at the polling station to make lists of voters who turned up for voting (by recording names or ordinal numbers from the electoral roll of the voters who turned up for voting or failed to turn up for voting) out of the official records in the excerpts from the electoral roll. Violation of these prohibitions is considered a violation of order at the polling station. A fine of 10.000 to 30.000 RSD will be imposed on a person who uses a pager, a mobile phone and other means of communication at the polling station (Law on the Election of Members of the Parliament, Art. 113). A fine of 10.000 to 30.000 dinars will be imposed on a person who causes disorder at the polling station, due to which the vote had to be interrupted. (Law on the Election of Members of the Parliament, Art. 114).

An invalid ballot is the one that is not filled out, the one filled out in such a way so that it is impossible to determine for which electoral list the vote has been cast, and the one with more than one electoral list circled (Law on the Election of Members of the Parliament, Art. 74, para. 6). If the ballot is filled out in such a way that it can be reliably determined for which candidate the voter has cast his/her vote, such ballot will be valid despite the fact: 1) that comments, slogans and other messages are written down or drawn on the ballot; 2) the names of other candidates or the names of other applicants are crossed out (the Rules of Procedure of Polling Boards). Practically, if the voter wrote down a code on the ballot or marked the ballot in any other way, but it can be clearly determined which electoral list or candidate he/she voted for, the ballot will be considered valid.

### Law Enforcement Regulation

Authorities in charge of the conduct of elections - polling boards and the Republic Electoral Commission - are obliged to inform voters about their suffrage and the manner of protection thereof during the election procedure. Every voter, candidate and submitter of electoral list is entitled to file a complaint to the Republic Electoral Commission due to breach of suffrage during the elections, or irregularities in the procedure of candidacy i.e. voting (Law on the Election of Members of the Parliament, Art. 95, para. 1). The Republic Electoral Commission shall ensure lawful conduct of the elections (Art. 34, para. 1), and in the second instance, against any decision of the Republic Electoral Commission made upon an objection, an appeal may be lodged to the Administrative Court (Article 97, para. 1). On the other hand, the public prosecutor's office as an independent state authority shall play a key role in the prosecution of offenders, including offenses against suffrage.

### Consequences on the Quality of the Electoral Process

Granting political rights, including electoral right, constitutes an empty and meaningless constitutional norm if there are no legal guarantees that voters and their electoral decision will be fully protected from any form of pressure and coercion. The secrecy of the electoral right is one of the most important constitutional provisions in the Republic of Serbia. The secrecy of the right to vote is the basis of a constitutional and political life of a society. If secrecy is not appropriately guaranteed, public life and public policies will be based on hypocrisy, pressure and coercion, which never yields

favorable outcome for society and democracy. Inappropriate impacts on voters' electoral decision appear in different forms, where vote buying with money or services, as well as creation of a sense of fear among voters that they will be subject to reprisal and punishment if they fail to support a particular list at elections, are the most dangerous ones. In this case, it is a form of clientelist relations that are established between voters and political parties and politicians, which are non-programmatic, secret and conditional. If the voter fails to do what he/she was asked to do, he/she will face direct consequences. Coercive voting is directly opposed to the democratic and constitutional structure of the state. Stable democratic states, such as the United States, the United Kingdom, Germany and France faced similar issues but in the 19th and early 20th century.

No one is entitled to prevent or compel the voter to vote, to hold him/her to account because he/she voted or failed to vote or ask him/her to say why and who he/she voted for. Voting has to be free and secret. If these preconditions are not met, it is not possible to talk about free elections, democratically elected representatives of the people and the rule of law. All political actors, the authorities responsible for conducting the elections, as well as state authorities have to be involved in the action of liberating citizens from fear that control over who they gave the vote to at the elections is possible. Innovative solutions in the electoral legislation should take this direction - reduction and making the control by party brokers difficult.

In comparative practice, in countries that used to face the issues of open pressure on voters, three factors contributed to the elimination or at least mitigation of such problem. First, political will needs to exist to remove party brokers - local intermediaries between parties and voters - who, by securing votes to the ruling party, at the same time ensure their own positions in society, public sector and party organization, as well as to eliminate the structural causes that make voters vulnerable to the pressure coming from the intermediary. Obviously, the political will to remove a group of electoral "parasites" - brokers does not exist, but it did not exist in the time of other political regimes that were governing Serbia, either. Also, structural causes cannot be remedied in the short term. In societies that are poor, as well as among the poor citizens, vote buying is a much more frequent phenomenon. High unemployment rates, low and uncertain earnings, low level of education and qualification of the population, high level of state participation in the economy are just few of the factors that increase the likelihood that voters will suffer economic consequences due to their political choices. Simply put, the absence of economic freedom directly leads to the absence of political freedom.

Another direction to tackle the issue of pressure on voters has to be to raise the "costs" that brokers – local intermediaries - have. First of all this assumes increase in the perception of the brokers themselves that their illegal actions will be punished and the sanctions, including prison, will be imposed on them if they commit offenses against suffrage. The biggest burden in this field lies with opposition political actors who have to devise innovative practices and actions that would enable the public to find out about as many examples as possible in which voters were pressured not to vote according to their free will. However, the state authorities in charge of the conduct of elections and the public prosecutor's office also have a role in informing

citizens and the public regarding their suffrage, the way of protection thereof, and the legal mechanisms at their disposal.

Finally, the third direction to address the pressure problem is to reduce the capacity of political parties and brokers to monitor and control whether voters really voted as they were asked for. In this segment, it is also possible to revise certain legal solutions and provisions in order to make monitoring of the voters' electoral decision difficult. Amendments to the law have to be aimed at protecting the secrecy of the vote. Such amendments should protect the most vulnerable categories of voters by reducing the chances of post-election reprisal. If the secrecy of the electoral right is additionally ensured, voters may accept implicit agreements with brokers exerting the pressure, but they can still vote freely. Securing of secrecy and making the control difficult reduce the effects of vote buying and pressure on voters, although elimination of structural causes remains the key to the full elimination of clientelist practices.

### **Recommendations**

In order to mitigate the pressure on voters exerted by local intermediaries, most often employees and superiors in public companies and institutions, as well as municipal/city party officials and activists, we suggest the following recommendations:

Recommendation 1: Make amendments to Article 19 of the Law on the Protection of Whistleblowers, in the section related to whistleblowing to the public, so that it also includes violations in the field of suffrage.

Approximate (minimum) time required for the realization of recommendations: by 01 November 2019

Recommendation 2: Modify the decision by which the polling board distinguishes valid ballots from invalid ones in order to disable the identification of for whom the voter cast his/her vote on the basis of a comment/code, etc. on the ballot. Retain the provisions according to which a valid ballot is the one in which one ordinal number is circled next to the electoral list, the ballot where the name of the electoral list is circled, as well as the ballot filled out in the manner from which it can be concluded for whom the voter cast his/her vote: 1) if the voter circled the name and surname of the first candidate on the electoral list on the ballot; 2) if the voter circled the name or part of the name of the electoral list on the ballot; 3) if the ordinal number and name of the electoral list and the name and surname of the first candidate are circled on the ballot. Modify the provision according to which the ballot is valid despite the fact that comments, slogans and other messages are written down or drawn on the ballot. Such ballots will be deemed invalid. The modification should be accompanied by a comprehensive educational campaign organized by the Republic Electoral Commission.

Approximate (minimum) time required for the realization of recommendations: by 01 November 2019

Recommendation 3: A clearer legal definition of the prohibition of the use of mobile phones at polling stations and the tightening of sanctions, including higher fines and the introduction of prison sentences, if the prohibition is violated. Introduce provisions modeled on the law in Italy that faced the same problem: 1) At the elections and referenda, it is forbidden to take mobile phones and other devices that can be used for taking photos or recording of the ballot into the area provided for voting; 2) The voter shall, with the document proving his/her identity, hand over to the chairman of the polling board the device referred to in paragraph 1 which he/she possesses; 3) The device the voter handed over to the chairman of the polling board shall be returned to the voter after he/she completes voting. Separate minutes shall be kept of the taken and returned devices; 4) A person who violates the prohibition referred to in paragraph 1 shall be punished with imprisonment of 3 to 6 months and a fine (Gazzetta Ufficiale n. 80 del 4 aprile 2008). The fine has to be high enough to dissuade voters from violating the prohibition. The prohibition would not apply to members of the polling board and accredited observers. The modification of the legal solution has to be accompanied by a comprehensive voter education campaign to be conducted by the Republic Electoral Commission, and materials that are submitted to polling boards need to include such materials which clearly indicate that the use of mobile phones and other devices that enable taking photos and recording of ballots is a prohibited and punishable act.

Approximate (minimum) time required for the realization of recommendations: by 01 November 2019

Recommendation 4: Introduce statutory prohibition (instead of the current practice of the prohibition by Rules of Procedure of Polling Boards) of keeping of parallel records of voters who turned up for voting (by recording the name or the ordinal number from the excerpt from electoral roll of the voter who turned up or failed to turn up for voting). Provide for fines and prison sentences for offenders and the possibility of lodging an objection to the Republic Electoral Commission, which decides whether the voting at that polling station will be repeated.

Approximate (minimum) time required for the realization of recommendations: by 01 November 2019

Recommendation 5: Extend the prohibition of staying at the polling station of all persons who do not have the rights and duties related to the conduct of elections on the prohibition of keeping all persons without rights and duties related to the conduct of elections within a 50-meter radius of polling stations. Contain the current possibility (Law on the Election of Members of the Parliament, Art. 58, para. 6) to lodge an objection to the Republic Electoral Commission in case of violation of the said provision, which decides whether the voting at that polling station will be repeated. Provide for fines and prison sentence for offenders.

Approximate (minimum) time required for the realization of recommendations: by 01 November 2019

Recommendation 6: The Republic Electoral Commission, as the institution that takes care of the lawful conduct of elections, launches a comprehensive campaign aimed

at educating voters, which will be conducted through public broadcasting as well as through printed materials, especially about the voting procedure, the importance of the secrecy of voting, the prohibition of confiscation or concealment of the ballot according to the provisions of the Criminal Code, as well as legal mechanisms that protect the voters from pressure, including the rights belonging to them under the Law on Protection of Whistleblowers.

Approximate (minimum) time required for the realization of recommendations: without delay

Recommendation 7: An open call by the public prosecutor's office to report abuse and offenses against suffrage, granting and receiving voting-related bribe and other related offenses, consider the protection of witnesses of such events and investigate suspicion of the existence of such offenses even before criminal charges are pressed.

Approximate (minimum) time required for the realization of recommendations: without delay

## **Election Administration**

Imprecision and selectivity in the application of electoral regulations and procedures, as well as the insufficient training of electoral authorities, primarily of polling boards, cause numerous procedural and technical errors during the conduct of elections repeated in each election cycle, diminishing the confidence of citizens and political actors in the electoral process and bringing into question the legitimacy of election results.

### Explanation of the Problem

Legislative framework related to the election administration has not been significantly changed and improved for years, although in the previous period there were some proposals for the reform of the election administration (e.g. CeSID's Draft Law on the State Electoral Commission). The unsatisfactory character of the election administration, low level of professionalism, narrow competence and inability to initiate procedures ex officio, as well as low capacities and poor quality of the work of polling boards that bring into question the process of conducting elections and determining the results at the polling station are just few of the shortcomings due to which problem solving in this area should be addressed systematically and in the long run. System solutions in this field, however, go beyond the nature of the short-term recommendations contained herein.

Shortcomings in the functioning of the election administration generate numerous problems and defects during the electoral process. Although it would be expected the election administration to eliminate identified problems in time, irregularities and tensions were becoming more and more intense, reaching their peak at the parliamentary elections in 2016. On the day that the Republic Electoral Commission announced preliminary results of the election (26 April 2016), the Republic Statistical Office informed the public that errors were found in the minutes of the polling boards from a total of 320 polling stations, out of which no minutes were filed at all from 26 polling stations, 89 minutes contained "grave" errors, while 231 minutes had "minor" errors. It was also concluded that there were significant differences in 164 minutes from polling stations on the results that the REC would have to resolve, as well as that 3.072 ballots were not found (OSCE /ODIHR, 2016: 21). The RSO methodology "grave" mistakes include: non-existence of minutes or incomplete minutes, minutes that were not signed or were signed by the same person, a greater number of ballots in the ballot box than the number of signatures of voters on the excerpts from the electoral roll or than the number of votes won by the election participants altogether. On the other hand, the RSO regards the following as "minor" errors: differences in the number of obtained ballots and the number of unused ballots and/or number of registered voters, a greater number of signatures on excerpts from the electoral roll than the number of used ballots, minutes signed by just few instead of all members of polling boards.

The REC discussed the inaccurate minutes of polling boards at the sessions. The president of the REC stated that he would conduct "reconsideration of election results" in these 164 polling stations. Although such a procedure is not provided for by law, in 99 cases the votes were recounted. A total of 50 minutes were accepted as

valid. Repetition of voting was ordered at 15 polling stations (only those polling stations where the objections were officially lodged and where it was established that the number of ballots in ballot boxes was greater than the number of signatures in the excerpts from the electoral roll), while 11 minutes were declared invalid, automatically depriving the voters in these polling stations of suffrage because there was no repetition of the elections. The REC failed to publish new minutes after recounting of votes or any decision affecting the election result (OSCE/ODIHR, 2016).

In practice and according to the testimonies of observers and persons engaged in committees founded by the REC at municipal level to provide technical and logistical support during elections, the number of incorrectly completed minutes on the work of polling boards at the polling station itself is significantly higher than the one eventually presented to the public. Namely, data on voting results from the minutes are recorded in the system at municipal level, by the RSO, subsequently being recorded at the REC. In a large number of cases, the section of minutes summarizing results contains errors (e.g. the total number of votes given to all lists does not correspond individually to the total number of valid ballots), which makes the computer system unable to accept such minutes. Since there are no detailed procedures by which it is possible to make corrections in the minutes, approach to the above issue varies from municipality to municipality. The OSCE/ODIHR limited election observation mission, in the 2017 presidential election, found that in some cases the errors were corrected by the members of polling boards according to the suggestions of the representatives of the committees and the RSO, without any further examination of the election material and subsequent verification of the election results. Also, after removing "logical and calculation" errors, the corrected minutes would be recorded in the system without their presentation to the public (OSCE/ODIHR, 2017).

A step forward in eliminating the problems with completing minutes on the work of polling boards was a solution applied by the REC in the 2017 elections (also used in 2018 Belgrade elections), which introduced a mandatory control form. The form was used by the members of polling boards before they would start completing the minutes to check the logical and calculation agreement of results in the form first. Only after the proper completing of the control form would the data and results be transcribed into the minutes. However, regardless of the inclusion of the control form in the procedure for determining the results at the polling station, even 70 minutes contained a "grave" error in the 2017 elections, as well (CRTA, 2018:73).

### Regulations

Authorities in charge of the conduct of elections in the Republic of Serbia are polling boards and the Republic Electoral Commission (Law on the Election of Members of the Parliament, Art. 6). The consequence of the scenario in which Serbia is constituted as a single constituency is that there are only two levels of the election administration, and that, according to the law, the REC directly communicates with over 8.000 polling boards, educates them and appoints chairmen and members of polling boards. In order to facilitate communication and operation between the REC

and numerous polling boards, the REC Instructions on the Conduct of Elections form the committees in the local self-government units for each elections.

The Republic Electoral Commission is a permanent authority composed of the chairman and 16 members, as well as their deputies, who are appointed for four years by the National Assembly, at the proposal of the parliamentary groups. The expanded composition of the REC includes one representative and a deputy for the submitter of the declared electoral list. All REC members have to be law graduates. Polling boards are appointed for each elections. Their permanent composition includes a chairman and at least two members, as well as the deputies thereof, i.e. one representative of each submitter of the electoral list in the expanded composition. The number of members of the permanent composition of the polling board that belongs to each parliament group has to be proportionate to its representation in the National Assembly, except in cases where one or more parliamentary groups or parliamentary groups making up the coalition at elections include more than one half of the MPs. When determining the candidate's proposal for the chairman of the polling station, priority is given to a highly educated person experienced in the conduct of elections. The committees are not considered part of the election administration, but in practice they carry out a large number of activities falling within the competence of the electoral authorities. The committees collect and consolidate proposals for a permanent and expanded composition of polling boards, receive election material from the REC and submit it to the polling boards before voting, take over the electoral material from the polling boards after the vote and submit such material to the coordinators of the REC and inform the REC about course of the vote. The committee is composed of a coordinator (a mayor) and members proposed by parliamentary groups, and appointed by the REC.

### Consequences on the Quality of the Electoral Process

As already mentioned in the introductory part, the majority of issues in the functioning of the election administration cannot be eliminated without the implementation of systemic and long-term solutions. Although the permanent composition of the REC is appointed for four years, i.e. during the MPs term of office, the REC does not represent a permanent authority in the full sense of the word, since the term of office of the REC permanent composition is directly related to the term of office of the National Assembly. In addition to the unstable structure, other problems such as volatile sources of financing, lack of professional service, lack of clearly defined rules and goals that the election administration would use as guidance in its work also contribute to ad hoc character of the election administration. In addition, important segments of the electoral process are not within the competence of the election administration, and the REC is not entitled to initiate proceedings *ex officio*, due to which a large number of misdemeanours remain unsanctioned, or to launch initiatives or amendments to the legislation in order to improve electoral practice. After all, the proper place for such an analysis, as well as recommendations that would emerge from it would be the Republic Electoral Commission.

All problems perceived in the work of the central electoral authority are further transferred to the work of polling boards, which are tasked with directly conducting

elections at the polling station, ensuring the correctness and secrecy of voting, and determining the results of the voting at the polling station. The insufficient expertise of the members of polling boards, the lack of knowledge of the procedures and the lack of standardized training that at least permanent members of polling boards in a systematic and continuous manner would pass cause a large number of errors in the conduct of elections and determining results at the polling station, which is best reflected in the number of minutes on the work of polling boards containing "grave" errors.

For all of the above reasons, the problems in the functioning of the election administration should be systematically approached and system solutions should be offered that, unfortunately, go beyond the scope of this document, which contains recommendations that can be implemented in the short term. Long-term recommendations would include the formation of a professional election administration whose term of office would be longer than the one of the MPs, which would make the work of such administration independent of the current parliamentary majority environment. In order to avoid defects that characterize other "professional" and "independent" authorities involved in the electoral process, such as the Regulatory Authority of Electronic Media and the Anti-Corruption Agency, clear criteria for the selection of members thereof should be stipulated. Also, consideration should be given to the introduction of middle level of the election administration, rather than the existing committees, and the clear division of competencies and responsibilities of different levels of administration. Also, such modifications would be facilitated by increasing the number of constituencies from the existing one. Additionally, more precise criteria for participation in the permanent composition of polling boards should be prescribed, whereas it should be insisted that only employees of the public administration who are not associated with any type of party activities are entitled to participate in the permanent composition.

Changing the structure and manner of constituting the election administration would also enable the extension of competencies thereof, including the right of legislative initiative in the field of suffrage, as well as the right to initiate proceedings ex officio against political subjects and members of committees and polling boards. Although the powers of the REC are limited by the legal understanding established at the session of the Administrative Department of the former Supreme Court of Serbia dated 29 January 2007, which explicitly states that the REC is not allowed to act without objection, ex officio, the central electoral authority, in accordance with good election practice, would have to be entitled to correct and modify decisions of lower-tier electoral authorities, annul elections if determined that irregularities affect the outcome of the elections and instruct the recounting of votes in such polling stations. Professional election administration would have to organize and implement standardized training for all members of polling boards, including those in the expanded composition, while permanent members should be in the system of constant and continuous education, according to a clearly defined program, in order to eliminate misunderstandings and errors in the conduct of elections at the polling station. Changes in the manner of election, the organization of training, as well as by the introduction of sanctions for irregularities would ensure independence in decision-making and adequate professionalism.

## **Recommendations**

However, since most of the solutions listed above are difficult to implement without the professionalization of the election administration, we propose the following recommendations that can be implemented by the next elections:

**Recommendation 1:** Organize and conduct training and testing for all members of the permanent composition of polling boards and compulsory certification as a condition for the performance of duties in the permanent composition of the polling board. If the REC is not able to organize training, this task should be taken over by the ministry responsible for administrative affairs. Adopt the rules about criteria and procedures for the selection and engagement of trainers and educators for training of members of polling boards. This would enable the implementation of training by independent experts and organizations involved in monitoring and improving of the electoral process, without additional burdening of the competent ministry capacity.

Approximate (minimum) time required for the realization: from 01 September 2019 to the next elections

**Recommendation 2:** Instead of the present solution referred to in the Instructions on the Conduct of Elections, when determining the proposals of candidates for the polling board chairman, the priority should be given to a highly educated person experienced in the conduct of the elections, and a clear provision on the mandatory appointment of the chairman and deputy chairman of polling boards from among the employees of public administration should be stipulated.

Approximate (minimum) time required for the realization: before calling the next elections

**Recommendation 3:** Raise daily allowance for the engagement of the chairmen and deputy chairmen of polling boards in the electoral process, but also impose proportionate monetary sanctions if the minutes on the work of polling boards contain "grave" or "minor" errors.

Approximate (minimum) time required for the realization: before calling the next elections

**Recommendation 4:** Publish all minutes on the work of polling boards on the website of the Republic Electoral Commission immediately after recording the data from the minutes into the computer system.

Approximate (minimum) time required for the realization: at the next elections

**Recommendation 5:** Prohibit subsequent changes to the minutes on the work of polling boards while retaining the solution according to which, at the polling station, the results are first recorded in the control form, and then, after checking the logical and calculation agreement, they are transcribed into the minutes.

Approximate (minimum) time required for the realization: at the next elections

**Recommendation 6:** On the basis of good comparative practice, publish the process of the computer processing the submitted results on the REC website, live and

simultaneously with their recording into the computer system at the municipal level, by the committees and the Republic Statistical Office.

Approximate (minimum) time required for the realization: at the next elections

Recommendation 7: Make the work of the Republic Electoral Commission more transparent. Publish all documents relevant to the electoral process, including plenary sessions and meetings of committees, as well as preliminary and final voting results by polling stations. All sessions of the Republic Electoral Commission shall be broadcast live on the website of the REC.

Approximate (minimum) time required for the realization: at the moment of calling the next elections

## **Unified Electoral Roll**

Among citizens and political actors there is a lack of confidence in the electoral roll due to the disagreement of the number of adult citizens living in Serbia and the number of registered voters in the Unified Electoral Roll. Mistrust generates some (un)reasonable suspicion that a large number of deceased persons vote in the elections, which has negative consequences on the overall legitimacy of the electoral process.

### Explanation of the Problem

According to the data of the Republic Electoral Commission, 6.724.172 voters were registered in the electoral roll for the presidential elections in 2017. The 2011 population census from registered 5.923.734 adults (Statistical Office of the Republic of Serbia: population by age and gender). The difference of about 800.000 people in the data of these two institutions is a source of widespread suspicion among citizens and certain political actors in whether the electoral roll is up-to-date. Also, bearing in mind the official data on the number of Serbian nationals who immigrate to other countries every year, even according to conservative estimates, the number of voters who are indeed present in the country on election day is by at least 1.000.000 lower than according to the data from the unified electoral roll.

Indicated differences in data cause a light and often irresponsible drawing of conclusions that there are many deceased persons in the electoral roll, and even estimates that those people vote at elections. Although there is no doubt that there are deceased persons in the electoral roll, because before the presidential elections in 2017 it was established that only in the territory of Belgrade in the Unified Electoral Roll there were 23 persons born in the 19th century, the appropriate application of the provisions of the Law on the Election of Members of the Parliament prevents the voting of the deceased and thus the overall election results cannot be brought into question.

Based on the experience so far and the number of voters in the electoral roll - the biggest leap occurred between the 2003 and 2007 parliamentary elections (about 140.000 voters) and parliamentary elections in 2007 and 2008 (about 100.000 voters) - the assumption is that the cause of the huge discrepancy between the data from the population census and from the electoral roll are not exclusively the deceased persons being in the electoral roll, but above all, a large number of voters registered in the electoral roll who do not live in the Republic of Serbia and are temporarily working abroad, as well as Serbs from Montenegro and Republic of Srpska with Serbian nationality.

In 2019, the ministry responsible for administrative affairs made certain positive developments in this field. Since mid-February 2019, the Registry of Deaths has been electronically linked to the Unified Electoral Roll, which in practice allows the names of the deceased to be deleted from the electoral roll within 24 hours. After the latest changes, the persons responsible for updating the part of the electoral roll for the area of the local self-government unit, within the municipal/city administration, receive daily information which persons were registered in the Registry of Deaths and

issue decisions ex officio on the removal of such persons from the Unified Electoral Roll. However, in order to restore citizens' confidence in the electoral roll and increase the transparency of the procedure for maintaining and updating the electoral roll, it is necessary that the Ministry of Public Administration and Local Self-Government makes additional updating of the electoral roll. This applies in particular to persons who live or who are temporarily working abroad, who meet all the requirements for exercising the electoral right - age, business ability, citizenship, residence - but the population census does not recognize them.

### Regulations

According to the Law on the Unified Electoral Roll (Official Gazette of the RS, 104/2009 and 99/2011), the electoral roll is kept by the ministry responsible for administrative affairs. The administration of the electoral roll by the ministry responsible for administrative affairs includes the following: analyzing the data from the electoral roll and taking measures to ensure their mutual consistency and accuracy, making changes in the electoral roll (registration, deletion, modification, amendment or correction) after the conclusion of the electoral roll (Art. 2, para. 2). The section of the electoral roll for the area of the local self-government unit is updated by the municipal i.e. city administration, as an entrusted job (Art. 2, para. 3). The electoral roll is kept as an electronic database.

The following is recorded in the electoral roll: the name and surname of the voter, the name of one of the voter's parents, the voter's personal identification number, the voter's date and place of birth, the voter's gender, the voter's polling station, the voter's place of residence and the address, the local self-government unit in which the voter has his/her place of residence, a foreign country where the voter is domiciled, domicile and address of the voter abroad and domicile for internally displaced persons (Art. 7, para. 1). The voter domiciled abroad shall be registered in the electoral roll according to the latest residence prior to his/her departure, or the latest residence of one of his/her parents, whereas the data about his/her domicile abroad are also registered in the electoral roll (Art. 6, para. 2).

The decisions on which changes in the electoral roll are based shall be made at the request of citizens or ex officio, based on data in registries of births, other official records and public documents (Art. 9, para. 2). The ministry responsible for internal affairs is also involved in the process of making changes to the electoral roll, which electronically submits data from the official records about the place of residence and domicile of citizens, on which changes in the electoral roll are based, directly to the ministry responsible for administrative affairs. The day after the elections are called, the municipal/city administration displays the section of the voter list for the area of the local self-government unit to citizens for inspection (Art. 14, para. 1)

According to the Law on Residence and Domicile of Citizens, adult citizens are obliged to register and cancel their domicile, register and cancel their residence, as well as register temporary stay abroad and return from abroad (Art. 4, para. 1) to the competent authority in place where residence or domicile is registered or cancelled (Art. 5, para. 1). Citizens who go abroad with the intention to stay for more than 90 days are obliged, before departure, to apply temporary stay abroad to the competent

authority (Art. 19, para. 1). The records of residence, domicile and temporary stay abroad are kept by the ministry responsible for internal affairs in electronic form (Art. 24, para. 1) and such records are an integral part of the register of residence (para. 3). Fines are foreseen for violations of legal provisions.

Supervision over the updating of the electoral roll is carried out by the ministry responsible for administrative affairs, through the administrative inspection (Art. 22). If it fails to ensure accurate and updated electoral roll, a fine will be imposed on a responsible person in the authority competent for updating the electoral roll for a misdemeanor in the amount of 25.000 to 250.000 RSD (Art. 25). Detailed rules governing other issues of relevance for the complete and accurate running of the electoral roll are stipulated in the Instructions on the Implementation of the Law on the Unified Electoral Roll. The Codebook of Changes also forms an integral part of the Instructions, on the basis of which it is possible to determine the type of change that the competent authority makes in the electoral roll.

According to the Law on the Election of Members of Parliament, in the voting procedure, the voter says his/her name first to the polling board and hands over a notice of voting, and with proves his/her identity with the identity card or other document. The voter cannot vote without submitting the proof of his/her identity. After verifying the identity of the voter, the chairman or a member of the polling board circles the ordinal number under which the voter is registered in the excerpt from the electoral roll and explains the manner of voting. The voter signs the electoral roll and takes the ballot. A special spray will be applied on the index finger of the right hand of each voter who has voted and received the voting material, as a sign that he/she had voted (Art. 68). The proper implementation of the Law and the control by the members of polling boards prevents double voting, as well as the voting of persons who passed away, and the lack of uniformity of the Unified Electoral Roll cannot influence the election results and the distribution of mandates in parliament, if the above requirements have been fulfilled.

The Law on Administrative Inspection stipulates that the administrative inspection shall carry out inspection supervision over the application of laws and other regulations governing, inter alia, electoral rolls and registry books. In performing the inspection, the administrative inspection removes the established illegalities and irregularities.

### Law Enforcement Regulation

In inspections in the process of keeping and updating the unified electoral roll so far, there have been no significant complaints about the work and keeping of the unified electoral roll carried out by municipal/city administrations, as an entrusted job.

According to the 2018 Report on the work of the Administrative Inspectorate dated 10 January 2019, out of the total number of inspections, 24 inspections were related to the application of regulations about the unified electoral roll. Out of a total of 2201 measures for the removal of the established illegalities, irregularities and shortcomings in the work proposed to the supervised authorities, 94 measures referred to the field of the unified electoral roll. Of these measures, 17 were related to

exercising the right to access the UER, five measures related to UER content, one measure related to the granting of authorization to update the UER, three measures related to the obligation of personal delivery of the decision on changes in the UER, 32 measures related to the obligation of timely delivery of data affecting the completeness, accuracy and timeliness of the UER management, 21 measures related to the UER updatedness and 15 measures related to other issues governed by the UER regulations. Unfortunately, it cannot be established from the Report whether any of 13 petitions for initiating misdemeanor proceedings to the competent courts lodged by the administrative inspectors refer to the application of the regulations on the unified electoral roll.

Taking into account the systemic shortcomings related to the area of the unified electoral roll and the difference in the number of the registered voters in the UER against the population census data, only 24 instances of inspection and 94 measures for elimination of illegalities, irregularities and shortcomings in the work sent to the authorities in charge of conducting and updating the electoral roll are not enough to bring some order to this area.

#### Consequences on the quality of the electoral process

Consistent application of the Law on the Election of Members of the Parliament and effective control in the voting procedure by the members of polling boards in a permanent and expanded composition precludes double voting, as well as the voting of persons who passed away. If mentioned requirements are met, for which the submitters of all electoral lists are responsible, by the appointment of members of polling boards in an expanded composition, non-updated unified electoral roll cannot affect the number of votes at the elections and the distribution of mandate in the parliament. Non-updated unified electoral roll can only affect data related to the voter turnout, as in practice the number of voters who exercised the voting right is significantly higher when counted against the "real" electoral body. For example, the voter turnout of 56.07% in the 2016 parliamentary elections is by at least 10 percentage points higher than according to the official data. Inadequate data on voter turnout diminishes the overall legitimacy of elections and political institutions.

However, different actors believe that electoral rolls are inaccurate and non-updated. There are constant reports that the deceased voters are still in the unified electoral roll, as well as that a significant number of voters domiciled abroad are registered at the old address, where they receive notices on elections (Report of the OSCE/ODIHR Mission on the assessment of the conduct of elections, 2017). Despite earlier OSCE/ODIHR recommendations, electoral rolls were not publicly disclosed, although there is a legal provision that guarantees the publicity of the electoral roll at the municipal/city level.

The lack of possibility of public access to the electoral roll limits the transparency of voter registration and raises suspicion of political actors and distrust of citizens in the UER. Although the 2002 Venice Commission Code of Good Practice In Electoral Matters, as well as Article 14 of the Law on the UER prescribe that "electoral records shall be published" (para. 1.2.iii), electoral rolls are not available for public access due to Law on Personal Data Protection. The lack of possibility of public access to

the electoral roll, large discrepancy (about 800.000) between the number of registered adults in 2011 and the number of voters registered in the unified electoral roll in 2017, as well as individual cases of deceased voters and calls for voting for voters who have never lived at the addresses to which such calls were delivered rightfully bring into question the transparency, updatedness and accuracy of electoral rolls among citizens.

In addition, most of the innovative comparative practices that do not exist in the electoral process of the Republic of Serbia, whose implementation is possible in the coming years, and which refer to the voting of voters domiciled abroad, such as voting by letter, allowing electronic voting outside the polling station, etc. cannot be carried out consistently in practice if we fail to make the electoral roll up-to-date and accurate. The same remark applies to any change in the type of electoral system and key electoral institutes, such as the number and size of constituencies.

### **Recommendations**

With an aim of removing distrust in the electoral process arising from the field of voter records, we suggest the following recommendations:

Recommendation 1: Cross-referencing data from the unified electoral roll with data from the ministry responsible for internal affairs and other state institutions to determine the number of "phantom" voters in the electoral roll. Perform the process as done in Northern Macedonia in 2016, in the form of a committee made up of all relevant actors from ruling and opposition parties, as well as representatives of foreign and domestic organizations dealing with election observation.

Approximate (minimum) time required for the realization of recommendations: by 01 November 2019

Recommendation 2: Conducting field inspection of the accuracy and updatedness the electoral roll on an appropriate sample, potentially even in two separate processes, in accordance with international standards and recognized methodologies. The supervision over the process of field inspection should include representatives of all relevant institutions, ruling and opposition parties, as well as domestic and foreign civil society organizations and concerned representatives of the academic community. Findings obtained in the field inspection would represent an excellent starting point for further updating of the electoral roll and additional supervision over the authorities of local/city administrations that the Ministry of Public Administration and Local Self-Government can conduct in those local self-government units in which the greatest irregularities are identified.

Recommendation (minimum) time required for the realization of recommendations: from 15 September to 01 November 2019

Recommendation 3: Consideration of possibilities and finding a solution for the publication of a part of the data contained in the excerpts from the electoral roll (ordinal number in the electoral roll, name and surname, gender and date of birth) due to the possibility of presenting them to the public in accordance with the law and

best international practice, which is also a recommendation of the OSCE/ODIHR Mission.

Approximate (minimum) time required for the realization of recommendations: by 01 November 2019 (application at the next elections)

Recommendation 4: Publication of data about the total number of voters registered in the electoral roll based on the UER electronic database, including data on the number of voters by place of residence by local self-government units, as well as data about the number of voters domiciled abroad, as well as the number of voters registered in the electoral roll as internally displaced persons.

Approximate (minimum) time required for the realization of recommendations: without delay

Recommendation 5: Regular informing of the public, at the end of each month, on the website of Ministry of Public Administration and Local Self-Government, on the number of changes made to the electoral roll, based on the codebook of changes established by the Rulebook on the Implementation of the Law on the Unified Electoral Roll (code 01 - cancellation of the residence address; 02 - registration of the residence address; 03 - cancellation of the domicile address; 04 - registration of the domicile address; 05 - cancellation of the domicile abroad; 06 - registration of the domicile address abroad; 07 - reaching the age of majority; 08 - reaching the age of majority on the election day)

Approximate (minimum) time required for the realization of recommendations: without delay

Recommendation 6: Continuous organization of training for employees in municipal/city administrations updating the electoral roll and improvement and strengthening of supervision over the work of the persons handling the electoral roll, including the consistent application of penalty provisions against the persons responsible for updating the electoral roll in the competent authority, if they fail to ensure accuracy and updatedness thereof. The data about conducted inspections and the number of petitions for the initiation of misdemeanor proceedings before the competent courts should be publicly published at the website of Ministry of Public Administration and Local Self-Government on a monthly basis.

Approximate (minimum) time required for the realization of recommendations: by 01 November 2019

Recommendation 7: Allowing personal access or access for a successor of the deceased person, after the elections, to the excerpt from the electoral roll and other documents, in order to remove suspicions that other persons had voted in the elections instead of the deceased, as well as persons being in the electoral roll, but had deceased.

Approximate (minimum) time required for the realization of recommendations: after the next elections