



## GONG

### THE FINAL REPORT ON THE ELECTION FOR THE PRESIDENT OF THE REPUBLIC OF CROATIA

January 2 and 16, 2005

#### GENERAL INFORMATION

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At the election held on January 2, 2005 citizens of the Republic of Croatia were electing the president of the Republic of Croatia among 13 candidates. Since none of the candidates received 50% + 1 vote at the election, in the second round of the election held on January 16, 2005 they were electing the president of the Republic of Croatia between two candidates.

**4 403 871 voters** were listed in the Electoral Register in the first round of the election, while **4 404 976 voters** were listed in the second round. **4 003 645 voters** were included in the lists for voting in the Republic of Croatia in the first, and **4 004 750 voters** in the second round, while **400 226 voters** were included in the list of voters voting abroad in both rounds of the election.

Election was conducted in the total of **6 731 polling stations** in the first round and **6 724** in the second, **155** of which were located abroad.

Both rounds of the election for the president of the Republic of Croatia were monitored by 1000 GONG observers allocated to polling stations and to 61 mobile team that visited additional 803 polling stations in the first round and 79 mobile teams that visited 1180 polling stations in the second round. Mobile teams visited polling stations where there were no GONG observers present or where some problems occurred, which covered in total around 20%, and 30% of all polling stations in Croatia.

GONG observers monitored the election also in Diplomatic – Consular Offices of the Republic of Croatia in Graz, Vienna, Stuttgart, Berlin, Livno, Siroki Brijeg, Mostar, Paris and The Hague in the first round of the election, and in Graz, Vienna, London, Paris, the Hague, Zurich, Mostar and Orasje in the second round, while 6 mobile teams visited polling stations in Bosnia and Herzegovina (Bihac, Livno, Tomislav, Neum, Ljubuski, Grude, Posusje, Citluk, Stolac, Capljina, Mostar and Siroki Brijeg) on the day of the election.

#### GONG'S GENERAL ASSESSMENT

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GONG's general assessment is that the election, with the exception of some polling stations in Bosnia and Herzegovina, were conducted in accordance with the election legislation although there were some problems with the violations of election procedures by some polling commissions, voting of voters who were unable to attend the polling station, voters' lists, unlawfully set up polling

commissions consisting of members of political parties and violations of election silence. The level of polling commissions' professionalism and understanding of the election procedures ranged from satisfactory to very good, with certain exceptions. Irregularities that were noticed were successfully removed in cooperation with election administration bodies.

We find the conduct of the election on polling stations in Bosnia and Herzegovina which GONG was able to observe or inspect during or after the first round unsatisfactory due to the serious violations of election rules and regulations, such as for example tendering of ballots, partisan polling commissions or voting on behalf of several different persons. The conduct of the second round was satisfactory, since some of the irregularities were corrected in cooperation with election administration bodies, but also due to the higher number of observers. In both rounds of the election problems with voters' lists were rather obvious, with the large number of deceased persons included in the lists and a large number of persons who came to the polling stations on the election day with the proof of permanent stay or residence in Bosnia and Herzegovina who were not included in voters' lists.

## **LEGAL FRAMEWORK**

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Legal regulations that contain provisions on presidential elections in the Republic of Croatia are:

- The Constitution of the Republic of Croatia, Official Gazette of the Republic of Croatia - Narodne Novine (NN) No. 41/01
- The Constitutional Act on the Constitutional Court - final draft, Official Gazette NN No. 49/02
- The Law on the Election of the President of the Republic of Croatia, Official Gazette NN No. 22/92, 42/92, 71/97
- The Law on the Financing of Election Campaign for the Election of the President of the Republic of Croatia, Official Gazette NN No. 105/04
- The Law on Voters' Lists, Official Gazette NN No. 19/92
- The Criminal Code, Official Gazette NN No. 110/97, 27/98, 50/00, 129/00, 51/01 and 111/03
- Mandatory Instructions of the State Election Commission, Official Gazette NN No. 168/04, 170/04, 172/04, 175/04, 176/04 and 3/05

### **The Law on the Election of the President of the Republic of Croatia**

The president of the Republic of Croatia is elected by the majority of votes of all voters. In case none of the candidates receives this majority, a run-off between the two candidates who won the highest number of votes in the first round of the vote takes place after 14 days. In the second round of the election, the candidate who wins the highest number of votes of the voters who came out to the election is elected. If both candidates receive the same number of votes, the election is repeated once more.

Candidates can be nominated by political parties and voters, and the precondition for nomination of every candidate, regardless of who nominated the candidate, is to gather 10,000 valid signatures of voters listed in electoral register.

All Croatian citizens over 18 years-of-age, except the persons who were proclaimed legally incompetent, have the right to vote at the presidential election on the basis of universal and equal suffrage.

### **The Law on Voters' Lists**

Voters assert their right to vote on the basis of voters' lists. Voters' lists are public records kept in general administrative offices of every city or municipality corresponding to voter's place of permanent residence.

The notice of the Central State Administration Office for Public Administration issued on November 30, 2004 regulated in more detail the preparation of voters' lists for the election of the president of the Republic of Croatia as well as voting outside one's place of permanent residence.

Voters who were absent from the place of their permanent residence on the election day had the opportunity to vote in the place of their temporary residence if they removed their name from the voters' list in the place of their permanent residence at least 10 days, if they were in Croatia, or 4 days,

if they were abroad, before the election day and temporarily registered themselves in the voters' list corresponding to the place of their temporary residence or if they obtained a certificate on the temporary registration.

Croatian citizens who had the right to vote but who were not registered in the final and verified voters' lists that were delivered to polling stations, had an opportunity to attest their right to vote on the election day by presenting a certificate issued by proper authorities. On the election day certificates were issued by register's offices (for persons who became of age after voters' lists were made final), police stations (for certificates of permanent residence) and in general administrative offices.

Voters who have the place of permanent residence in the Republic of Croatia but were abroad on the election day voted on production of a proof of Croatian citizenship, proof of identity and a certificate for voting abroad issued by the local general administrative office in Croatia.

Voters who have the place of permanent residence in the Republic of Croatia but live abroad voted on production of a proof of Croatian citizenship, proof of identity and an official document of the country where they live that proves their residence in the country.

Voters without permanent residence in the Republic of Croatia voted on the basis of a voters' list kept in the General Administrative Office of Zagreb which was delivered to all diplomatic and consular offices where polling stations were set up.

### **Mandatory Instructions of the State Election Commission**

Mandatory Instructions (MI) are rules established by the SEC after the elections are called which interpret in closer detail legal provisions for administering elections. The State Election Commission issued 9 Mandatory Instructions in total:

The Sequence and the Timetable of Election Activities (MI I and XI),

Forms for Nomination Procedures (MI II),

Rights and Duties of Observers and the Procedure for Observing the Election (MI III),

Voting of Persons Serving in the Armed Forces of the Republic of Croatia, on Maritime or River Ships Under Croatian Flag and Imprisoned Persons (MI IV),

Voting of Physically Disabled Persons, Illiterate Persons and Persons Who Unable to Come to Polling Stations (MI V),

The Layout of Polling Stations (MI VI),

Voting Abroad (MI VII),

Forms for Administering Election (MI VIII).

### **MI on the Rights and Duties of Observers and the Procedure for Observing the Work of the Bodies that Administer the Election for the President of the Republic of Croatia**

In consistence with good practice, the SEC issued a mandatory instruction on the rights and duties of observers which regulate the rights and obligation of candidates' observers, non-partisan and foreign observers and the procedure for observing the election in closer detail. The issued regulation is completely in accordance with international standards and it enabled all accredited observers to observe the election without disturbance and provided them insight into the complete election process.

### **The Criminal Code**

Provisions of the Criminal Code that refer to violations of election regulation during election procedures have not been changed since the last parliamentary elections. Articles that stipulate sanctions for particular violations of election rules and regulations can be found in Articles 116-121: Violations of Voter's Freedom of Decision (Article 116), Denying the Right to Vote (Article 117), Abuse of the Right to Vote (Article 118), Violation of the Secrecy of Vote (Article 119), Destroying Election Material (Article 120), and Election Fraud (121).

### **The Law on the Financing of Election Campaign for the Election of the President of the Republic of Croatia**

On July 21, 2004 the Croatian Parliament passed The Law on the Financing of Election Campaign for the Election of the President of the Republic of Croatia (hereafter the Law) an emergency procedure.

The Law provides that election campaign is financed from one's own recourses and from the donations made by individual and legal persons from Croatia. A person who, along with Croatian, also has the citizenship of another country is not considered a foreign individual person. The Law lists the

donors from whom candidates are not allowed to receive gifts in the form of money, other assets and services for covering the expenses of election campaign. Obligations of candidates provided by the Law refer to submitting preliminary report to the State Election Commission on the amount and sources of the resources collected to cover the costs of election campaign not later than 7 days before election day and to delivering of information to the State Election Commission on the amount and source of resources used in election campaign within 15 days from the election day.

## **ADMINISTRATION AND CONDUCT OF THE ELECTION**

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### **State Election Commission**

In accordance with the Election Law, State Election Commission (SEC) was set up as the highest body for administering elections whose members are judges of the Supreme Court and distinguished lawyers, appointed by the Constitutional Court. The SEC ensured the legality of elections, appointed members of lower election commissions, issued Mandatory Instructions, announced constituency and candidate lists, and declared the results of the elections.

Due to imprecise provisions of the electoral law, the SEC had to regulate a number of issues by announcing mandatory instructions. 9 mandatory instructions were issued timely. We hold the opinion that the SEC should have issued Mandatory Instructions referring to the voting procedures for voters who are currently outside their place of permanent residence.

The SEC issued 59 public announcements, 3 of which in connection with nominations, one in connection with voters' lists and voting outside one's place of permanent residence, one in connection with polling stations outside Croatia, and one in the form of an appeal to election commissions to take into consideration accessibility of premises to disabled persons when deciding on polling stations, three announcements containing general information about the election and the election procedure, four on the damaging of posters, insults and atmosphere during the campaign, nine in connection with the obligation of the media and media promotion, twelve announcements referring to financial reports, eight referring to complaints and objections of the candidates, five announcements about the events of the election day, voter turnout and the results, and two announcements in connection with the events in Bosnia and Herzegovina.

Also, it answered a number of questions and resolved objections filed by participants in the election process, lower election administration bodies, NGOs, the media and etc. The most frequent questions and objections referred to the obligations of the media and media promotion.

GONG had an excellent cooperation with the SEC the whole time during the election process, except when we asked the election material of the first round of the election from several polling stations in the Republic of Croatia to be made available to us after the conduct of the second round of the election, since we received several phone calls from voters who wanted to know if they were marked as having cast the vote. The SEC asked us to deliver their names, which we refused holding the opinion that such practice would invade the privacy of the persons who turned to us.

Having in mind the working conditions, election regulation, the amount of work and tight deadlines of the election procedure, we hold the opinion that the SEC administered the elections well and that it reported to the public on all aspects of election process in a transparent and prompt manner.

### **City and Municipal Election Commissions, and Polling Commissions**

In accordance with the Law, a part of election administration was entrusted to the city and municipal election commissions.

GONG had a very fair cooperation with city and municipal election commissions, as well as most polling commissions. We received help and understanding from election commissions and most polling commissions in solving some minor problems at polling stations, except in several cases which we solved in cooperation with the State Election Commission.

The general impression is that in these elections election and polling commissions were well informed about the procedures, although the conduct of election administration ranged from bad to excellent.

Despite the fact that the Memorandum on the Operation of Polling Stations, was supplemented and updated by additional instructions and regulations, a part of the members of polling commissions did not receive it, or they did not read it.

Also, GONG received complaints made by citizens from several cities and municipalities in connection with partisan membership of polling commissions.

### **Central State Administration Office**

The performance of the Central State Administration Office in the first round of the election was unsatisfactory, both in terms of issuing directives to subordinate offices in connection with voters' lists and the monitoring of their work, as well as in terms of providing information to the public.

The provision of information about voters' lists by the Central State Administration Office to the public was insufficient, untimely and incomprehensible to voters. For example, announcement that it was possible to check whether one is registered in voters' list via sms was issued by the Central Administration Office 3 days before the election day although the deadline for correcting inaccurate data stated in voters' lists had expired 15 days prior to the election. Unclear or belatedly explained procedures for asserting the right to vote for certain groups of voters (voters who vote outside their place of permanent residence) and the uncooperativeness of certain general administration offices deterred some voters from coming out to the polls.

Some general administrative offices provided inaccurate information, which was confirmed by a survey conducted by GONG on December 23 and 24, 2004, considering that December 24 was the legal deadline for obtaining the certificate for voting outside one's place of permanent residence.

Out of the 25 randomly selected offices that were tested, only six gave a positive answer and provided accurate information to the question "Is it possible to obtain a voting certificate today?" Some of the inaccurate answers provided by the remaining 19 offices were the following: "we already concluded and printed out voters' lists" (Dubrovnik), "I do not know if it is still possible to do that. The boss knows that, but she is out." (Benkovac), "I don't now. You can and you cannot. Why don't you come and then we'll see" (Otocac), "You have been misinformed. You are late" (Zagreb – Dubrava), "But what do you need the certificate for when you cannot do anything with it" (Cirkvenica), "We have already concluded the lists. My superior from Karlovac said the media were lying" (Slunj), etc.

Central State Administration Office has full responsibility for the lack of information that voters' suffered, for unprofessional conduct of particular offices and the abstention of some citizens from voting.

Central State Administration Office improved its performance in the preparation for the second round of presidential elections after GONG made a public appeal on January 4, 2005. Specifically, apart from promptly issuing all needed directives for the operation of general administration offices, Central State Administration Office published advertisements in daily newspapers about the deadlines and the procedures for checking the data in voters' lists, as well as about voting outside the place of permanent residence. Unfortunately, due to tight deadlines, most advertisements were published on the last day on which the certificate for voting outside the place of permanent residence and in the Republic of Croatia could be obtained (Wednesday, January 12, 2005).

GONG referred numerous inquiries made by citizens in connection with voters' lists to the Central State Administration Office for Public Administration, whose employees for the most part answered the inquiries. Citizens continued to report on deceased persons registered in voters' lists, they continued protesting because they were not included in the lists or because they were suddenly transferred to another voters' list.

A large number of voters who were registered in voters' lists in Bosnia and Herzegovina on the election day open the issue of updating of voters' lists abroad, especially in Bosnia and Herzegovina, on the operation of polling commissions in Bosnia and Herzegovina and the inadequacy of Mandatory Instructions VII that refer to voting abroad.

## **ELECTION CAMPAIGN AND THE MEDIA**

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### **Candidacies**

The State Election Commission received a total of 22 nominations in the period set by law based on which the official list of candidates for the president of Republic of Croatia was compiled as follows:

1. Đurda Adlesic, Croatian Social Liberal Party (Hrvatska socijalno liberalna stranka – HSLS)
2. Miroslav Blazevic, Croatian Veterans' Party (Stranka hrvatskih branitelja – SHB)
3. Ljubo Česic, independent candidate
4. Mladen Keser, independent candidate
5. Jadranka Kosor, Croatian Democratic Union (Hrvatska demokratska zajednica – HDZ)
6. Doris Kosta, independent candidate
7. Anto Kovacevic, Croatian Christian Democratic Union (Hrvatska krscanska demokratska unija – HKDU)
8. Slaven Letica, independent candidate
9. Stjepan Mesic, Social Democratic Party of Croatia (Socijaldemokratska partija Hrvatske – SDP), Croatian National Party (Hrvatska narodna stranka – HNS), Croatian Peasant's Party (Hrvatska seljacka stranka – HSS), Istrian Democratic Assembly (Istarski demokratski sabor – IDS), Liberal Democratic Party (Stranka liberalnih demokrata – LIBRA), Liberal Party (Liberalna stranka – LS), Union of Primorje and Gorski Kotar (Primorsko goranski savez – PGS), Party of the Democratic Action of Croatia (Stranka demokratske akcije Hrvatske – SDA Hrvatske)
10. Boris Miksic, independent candidate
11. Ivic Pasalic, Croatian Block – Movement for a Modern Croatia (Hrvatski blok – Pokret za modernu Hrvatsku – HB)
12. Tomislav Petrak, Croatian Populace Party (Hrvatska puckska stranka – HPS)
13. Miroslav Rajh, Croatian Youth Party (Hrvatska stranka mladih – HSM).

The SEC rejected nine nominations because they contained a lower number of signatures than it was required by law.

This election recorded the highest number of candidates since the 1992 when the first election was conducted under the 1990 Constitution of the Republic of Croatia. In addition, for the first time there were as much as 3 female candidates and there were also 5 independent candidates. Candidates were in average 49.92 years of age – men were in average 50.7 years of age, while women were 47.33 years of age. The youngest candidate was born in 1978 and the oldest was born in 1934.

The official election campaign started on December 16, 2004 at midnight, and it lasted until December 31, 2004 at 12pm. On January 5, 2005 after the results of the first round of the election were determined, State Election Commission passed a decision on the run-off of the election for the president of the Republic of Croatia, which stipulated that the election campaign would end on January 14, 2005 at midnight.

### **Election campaign financing**

Preliminary reports on the amount and sources of funds collected for the expenses of election campaign were submitted to the State Election Commission before the expiration of the legal deadline which was December 25, 2005 at midnight by all candidates, except four candidates who submitted them on December 26 (Djurdja Adlesic and Doris Kosta) and on December 27 (Ante Kovacevic and Tomislav Petrak).

The two candidates who entered the second round had to deliver their preliminary reports by January 8, 2005 at midnight, which they did.

All except one candidates submitted the data on the amount and sources of funds spent in the election campaign to the State Election Commission within the legal deadline, that is, January 31, 2005 by midnight. Candidate Mladen Keser submitted the report on February 3, 2005.

Within 8 days from the receipt, the State Election Commission published in the Official Gazette, on the internet site [www.izbori.hr](http://www.izbori.hr) and in other media a complete report on the amounts and sources of the funds used by every particular candidate for the president of the Republic of Croatia for financing election campaign.

According to the reports submitted to the SEC by candidates, the total of HRK 24,039,070.48 was spent on election campaigns. Both presidential candidates who entered the second round reported approximately same amounts – Jadranka Kosor HRK 6,438,926.31 and Stjepan Mesic HRK 6,488,487.20, although the intensity of their campaigns differed greatly. Two media analysis agencies calculated that Jadranka Kosor's election campaign must have cost several times more than the reported amount. The fact that candidate Boris Miksic reported that he had spent HRK 6,000,000.00 from his own funds only in the first round makes the data even more interesting. This is also the highest reported amount among the three candidates who reported that they were financing their campaigns exclusively from their own private funds (the other two are Miroslav Blazevic and Ljubo Cestic) and it is also the highest individual amount of private funds spent on campaigns, that were reported, along with the above-mentioned, by another six candidates – Doris Kosta, Anto Kovacevic, Stjepan Mesic, Ivic Pasalic, Miroslav Rajh and Mladen Keser. Stipe Mesic reported the highest amount of funds spent on a campaign in total, and Miroslav Rajh reported the lowest total amount, only HRK 7,500.00. The highest number of different individual donors listed by name were reported by Stjepan Mesic: 56 individual and 88 legal persons, while two candidates reported that they were financed exclusively by their party (Jadranka Kosor by the HDZ, and Tomislav Petrak by the HPS), and five candidates reported that they were partly financed by their parties (Djurdja Adlesic by the HSLS, Slaven Letica by the Croatian Party of Rights – Hrvatska stranka prava/HSP, Stjepan Mesic by the SDP, SDA and Libra, Ivic Pasalic by the HB and Miroslav Rajh by the HSM). Candidate Slaven Letica pointed out that he had not included in the calculation the value of the volunteer work done by his election campaign team, which he estimated to the amount of approximately HRK 250,000.00.

All candidates for the president of Croatia who win at least 10% of the vote in an election have the right to reimbursement of election campaign expenditure in an equal amount from the State Budget of the Republic of Croatia. The amount of reimbursement was set by the Government of the Republic of Croatia to HRK 500,000 which are allocated from the election expense funds. Accordingly, three candidates acquired the right to reimbursement: Boris Miskic to HRK 500,000, and Stjepan Mesic and Jadranka Kosor to HRK 1,000,000.00 respectively, since they competed in the second round of the election as well. In the report on the amount and sources of funds spent in the campaign, Stjepan Mesic reported the said amount as his own private funds.

### **Election campaign**

Presidential candidates' election campaigns were conducted in an atmosphere of peace and tolerance, which is obvious from the small number of announcements and warnings issued by the Ethics Commission in connection with conduct of election campaign participants. Announcements mostly referred to the destroying of election posters, which were reported by several candidates, and which the SEC condemned as the violation of candidates' rights to election campaigning under equal conditions.

No incidents occurred on the 154 election rallies that took place prior to the first round of the election, except in Sinj where a bomb scare was reported.

The second round was marked by significant violations of election silence and observers and citizens reported to GONG a number of such cases in over 70 cities and municipalities during election day and the day before. Violations in question refer primarily to the distribution of leaflets to the benefit of one and against the other candidate that were distributed all around Croatia and having in mind the number and content of the leaflets it is reasonable to conclude that what happened was a systematic and organized violation of the Law on Presidential Election by the party and supporters of Jadranka Kosor. In addition, GONG received a number of reports about sms messages sent to voters, putting up posters and campaigning from vehicles during election silence. In reaction to citizens' reports, the SEC also appealed to everybody to refrain from any campaign activities during election silence period.

### **The media**

Before the official beginning of the campaign, the State Election Commission appealed to all media to ensure that articles 13 and 14 of the Law on the Election of the President of the Republic of Croatia are respected, and, in other words, stated that all media have the obligation to ensure that all candidates have the opportunity to present their platforms and conduct their campaigns under equal conditions. Furthermore, the SEC pointed out the professional responsibility of the media to make a separation between the activities of presidential candidates and their professional duties and reminded them that on the election day, as well as 24 hours prior to the election, all campaigning as well as any

publication of previous results or projections of election results is forbidden. The SEC repeated this several times during the campaign that preceded the first round of the presidential election in reaction to complaints filed by certain candidates.

In addition, GONG issued a public appeal to the media to give equal treatment to all presidential candidates and equal opportunity to present themselves and their platforms, in accordance with the right they have under the Law. GONG also used the occasion to emphasize the need for a more detailed revision of provisions of election legislation in the period between two elections.

Due to the increased number of violations of election silence during the campaign and the higher incidence of complaints filed by candidates in connection with the media attention given to some of them, the issue of amending election legislation regulating these matters became the central point of interest of the public in this campaign. Opinions about the need for abolition or shortening of election silence, and determining penalties for violators, as well as demands to let the media decide on the way they would cover elections and election campaign could be heard from different sides (politicians, the media, independent experts).

#### Equal conditions of election promotion

Legal provisions from Articles 13 and 14 of the Law on Presidential Elections that regulate the right of candidates to presentation of their platforms and election promotion and stipulate the obligations that the media have towards candidates have for the most part been respected and voters were able to receive information on candidates' platforms from the media.

Candidates' complaints filed in the first round of the election mostly referred to claims that a particular medium did not provide all candidates with equal coverage and opportunity to present their platforms which they were legally entitled to. The SEC found most of the complaints valid, except in two cases which refer to the publishing of the results of a public opinion survey conducted by a party and a TV broadcast in which one of the candidates participated and which, according to the SEC, was not directed at presenting election platform, but on an anniversary of the party.

The HRT and several presidential candidates inquired respectively with the SEC whether a debate between two or only a few candidates, which was announced by several media, was in line with election regulation. The SEC held the opinion that such debate would be in violation of the rules on equality of candidates during election campaign. The media found the programmes in which all 13 candidates would participate unappealing to the audience and after the SEC passed this decision many media abandoned the idea of organizing candidates' debates in the first round.

In response to an inquiry made by the HRT, the SEC expressed the opinion that participation of a state official in a TV programme would be in violation of legal provisions only if presidential candidates' platforms were presented in the TV appearance. Candidates' complaints in connection with the above-stated issue, the SEC judged as unfounded.

There were no complaints against the media during the campaign in the second round of the election. Nevertheless, all the complaints filed in the first round recognized the problem of imprecise and incomplete provisions of the Law on the Election of the President of the Republic of Croatia as a result of which the needs of candidates and voters were not satisfied.

#### Violations of election silence

According to citizens' reports, the media violated election silence on several occasions on the election day in the first round of the election (January 2), among other things, by making public projections of the results of the poll. It should be pointed out that, in reaction to the announcements of several media that they would make public the projections of results before the end of the election silence, the SEC has made additional appeals on the election day pointing out the moral responsibility of the media for such conduct, despite the fact that was not legally sanctioned.

Nova TV published the results of the exit poll at 6.45pm (before the closing of polling stations) and the HTV and the RTL after the closing of polling stations at 7pm, thus violating election silence, i.e. the Law on the Presidential Election. The media followed the same procedure in the second round of the election, and the projections of election results were once again made public on January 16 before the end of election silence, however, this time it was done after 7pm, i.e. after polling stations closed.

The SEC condemned such conduct of the media and gave an additional warning that the publication of exit polls had created confusion with voters in the first round and caused suspicion in the results of the election with a part of the public and certain presidential candidates because it was not clearly stated in the broadcasts that different data on the election results existed and that the published projections were not the actual results of the election. Since the SEC is the only body that provides relevant information on the results of the election, GONG, and, later on, the State Election Commission found the conduct of the HTV, which completely marginalized the press conference held



by the SEC immediately after the end of election silence in the first round of the election, unfair and unprofessional.

### Candidates' debates

While in the first round of the election voters were deprived of the most interesting part of the presentation of candidates' platforms – their debates – this was corrected in the second round when the two remaining candidates had the opportunity to confront each other in programmes on all three national TV stations (the HTV, the RTL and Nova TV). This provided an opportunity to citizens to receive more information about the candidates themselves, their programmes and attitudes about particular issues. These programmes proved to be very interesting to voters and a large number of the media and interested individuals involved into analyses and evaluations of the televised debates, thus keeping some of the burning issues in the centre of public attention and adding to the seriousness of the election process. Unfortunately, the media were focused on the same issues which were imposed by the candidates at the beginning of the campaign, many of which were not in any direct relation to the office of the president, and thus the important messages of the candidates about their concrete plans within the presidential power were not delivered, which left voters deprived of this basic purpose of an election campaign.

## **THE ELECTION**

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### **Atmosphere**

During the first round of the election GONG received more than 400, and in the second round more than 600 phone calls from citizens and observers in connection with uncertainties or violations of election procedures. GONG's general assessment is that the atmosphere at polling stations was tolerant and democratic, except in Split where an observer was assaulted in the first round of the election.

Election commissions' mostly fair organization of the elections contributed to the overall atmosphere. The State Election Commission and other election commissions were very transparent and open in their work.

### **Election day**

GONG's assessment of the election process is based on the reports of the observers and mobile observer teams, and citizens' reports. Based on the information gathered and processed by midnight, we can report that:

- for the most part, polling stations were properly prepared, opened and closed on time and they had all needed election material, except in several polling stations where ballot boxes were not properly sealed
- a large number of phone calls referred to problems concerning voters' lists (voters were not registered on the lists, deceased persons on the lists, tendered ballots, voters transferred to other voters' lists suddenly), inability to vote of the persons committed to hospitals, unwillingness of certain polling commissions to visit disabled and infirm voters at their homes and reports on members of political parties who were, despite the legal provision, sitting in polling commissions.

### **Violations of the election process regulations**

Violations of election process regulations were the following:

- problems with voters' lists (voters not registered on the lists, voters not registered in the lists of additionally registered voters despite having submitted all necessary documents on time, tendered ballots, voters transferred to other voters' lists, deceased persons registered in voters' lists, etc.);
- candidates' promotional material (posters, leaflets, etc.) in close vicinity of polling stations;
- family voting and not establishing voters' identity;
- members of polling commission circling voters' names in voters' lists using pencils and improperly set up screens which did not secure the secrecy of voting;
- incomplete polling commissions;
- excess of ballots in ballot boxes.

## **Election process abroad**

9 GONG observers monitored the first round of the election in Diplomatic and Consular Offices in Graz, Vienna, Paris, Stuttgart, Berlin, Livno, Široki Brijeg and The Hague. The poll was conducted in one day, January 2<sup>nd</sup>, 2005, from 7am to 7pm local time.

After processing report forms from polling stations in Široki Brijeg and comparing the extracts from electoral register that were submitted to the SEC a number of irregularities and faults were noticed in the election process: family and “double” voting, obsolete voters’ lists, more than 30% of additionally registered voters, failures to inspect proofs of identity and documents proving that a person has residence in Bosnia and Herzegovina, irregular lay-out of polling stations, overcrowded polling stations, polling commission members’ refusals to include observers’ remarks into the Protocols, campaigning at polling stations and partisan members of polling commissions. GONG compared the names of members of polling commissions with the elected and unelected municipal councillors from the 2004 local elections in Bosnia and Herzegovina (source: the official web site of the Election Commission of Bosnia and Herzegovina, [www.izbori.ba](http://www.izbori.ba)). We determined that some members of polling commissions in Vitez, Široki Brijeg, Čapljina, Ljubuski and Livno were also HDZ’s municipal councillors. Persons who were not elected to municipal councils, but who had been candidates on HDZ’s lists at the 2004 local elections in Bosnia and Herzegovina, were members of polling commissions in Tomislavgrad, Kupres, Livno and Prozor – Rama. In consequence, the SEC appointed new members of polling commissions in towns in question for the second round of the election.

Elections at the remaining polling stations where observers were present were conducted in an atmosphere of peace and in accordance with election regulation.

10 GONG observers monitored the first round of the election in Diplomatic and Consular Offices in Graz, Vienna, Paris, London, Stuttgart, Zurich, The Hague, Orasje and Mostar. 6 mobile teams visited 21 polling stations in Bosnia and Herzegovina (Bihac, Livno, Tomislav, Neum, Ljubuski, Grude, Posusje, Citluk, Stolac, Capljina, Mostar and Siroki Brijeg) on the election day.

In general, it can be said that the second round of the election in Bosnia and Herzegovina was much better organized and that polling commissions were much more professional in fulfilling their duties than in the first round of the election. Also, the election was observed by several OSCE mobile teams and one mobile team of SEC representatives which contributed to the transparency of the election and faster resolution of problems at polling stations.

Based on reports made during the election day and after the processing of observers’ report forms, it was determined that:

- ballot boxes were not properly sealed at two polling stations in Grude, and that polling commissions at polling stations in Orasje, Ljubuski and Livno received an insufficient quantity of election material;
- the poll at polling stations in Čapljina was completed at around 8.30pm due to a large number of voters who were in the hall at 7pm;
- there was an uneven distribution of voters to polling stations which caused overcrowdedness at the polling stations with a large number of voters and which made the work of polling commissions difficult;
- voters’ lists were not updated (deceased persons were found on the lists and a great number of voters who had been subsequently added to voters’ lists at polling stations – the number of such voters amounts up to 40%);
- when issuing ballot papers, polling commissions in most cases did not check whether the voters they were adding to the voters’ list were already listed in the voters’ list of the Republic of Croatia, which created opportunity for multiple voting and the documents that proved residence in Bosnia and Herzegovina that were accepted by polling commissions are also questionable;
- overcrowdedness at polling stations resulted in the formation of queues in which voters sometimes had to wait even several hours which made them nervous and deterred them from voting;

Elections at other polling stations where observers were present were conducted in an orderly manner and in accordance with the regulations.

## **Re-run elections**

After election materials from the first and the second round were submitted, State Election Commission ruled that the elections would be invalidated after the first round at the polling station no 5

in Karlovac and no 6 Slivnica Gornja, because an excessive number of ballot papers was found in the ballot box, and after the second round at the polling station no 11 Šibenik and 58 Grebastica Gornja also due to an excessive number of ballot papers found in the ballot box. Re-run elections were held on January 9, 2005 and January 23, 2005 with the same polling commission. Two GONG observers monitored the elections and the counting of ballots and their general assessment was that there were no violations of election procedures.

## **CHARGES FILED BY GONG**

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After the first round of the election for the president of the Republic of Croatia was completed, on January 5, 2005, GONG asked the SEC to make election documentation from polling stations in Bosnia and Herzegovina available for inspection, in order to verify the reports made by observers and the media about the violations of election legislation that had allegedly occurred on the election day at polling stations in Bosnia and Herzegovina. Inspection of documentation from polling stations was conducted on January 10, 11 and 12, 2005 at the premises of the State Election Commission.

Encouraged by the reports made by citizens and the media, we decided to check whether 10 randomly selected voters who were marked on the lists as having cast their ballots have indeed voted. To the knowledge of the persons we contacted by phone, voters themselves, their relatives or neighbours, it was determined that the said voters either did not vote in the first round of the election, or they had died.

For two persons at the polling station no. 14 in Capljina who were marked on voters' lists as having cast their ballot, it was determined by a phone call that they were deceased; for four persons at the polling station no. 14 in Capljina who were marked on voters' lists as having cast their ballot, it was determined by a phone call that they did not vote; for two persons at the polling station no. 39 in Orasje who were marked on voters' lists as having cast their ballot, it was determined by a phone call that they were deceased; for one person at the polling station no. 39 in Orasje who was marked on voters' lists as having cast the ballot, it was determined by a phone call that that was not the case.

The said data indicated that the criminal offences of abuse of the right to vote and election fraud were committed in such a way that the unknown perpetrators who had access to election material marked the voters in question in the extracts from electoral register as if they had voted, in violation of Article 118 of the Criminal Code, and used the ballot paper, which was in violation of Article 121 of the Criminal Code. Therefore, on January 13, 2005, GONG filed criminal charges against unknown perpetrators to the State Attorney's Office of the Republic of Croatia and for the purpose of conducting of a investigation of the criminal offences and the conducting of particular investigative actions and measures in order to collect information important for the start of the criminal proceedings for criminal charges from Articles 118 and 121 of the Criminal Code. In addition, we demanded that an investigation and investigative actions be conducted and charges, or indictment be pressed and upheld at the court of competent jurisdiction.

Information on which GONG's charges were based were obtained using the method of random selection on a small number of voters. Considering the serious indications that it was a question of an organized perpetration of criminal offences by unknown perpetrators, who are suspected to be members of the said polling commissions, we demanded that the appropriate state attorney's office investigate the documentation from other polling stations in Bosnia and Herzegovina where certain indication of perpetration of criminal offences of abuse of the right to vote and election fraud existed.

After the second round of the election journalists of the daily newspaper Jutarnji list came to us with a list of Croatian citizens with permanent residence in Prozor – Rama, Bosnia and Herzegovina, suspecting that these persons were marked in the voters' lists in the second round of the election as having voted, while they were allegedly deceased, as it was said in an article published in Jutarnji list. Once again we asked the State Election Commission to make the election material delivered from polling stations in Bosnia and Herzegovina available for inspection in order to verify journalists' claims. Inspection into the election material determined that the three persons at the polling station no. 26 in Prozor – Rama were marked as having voted, even though they were deceased.

Following the receipt of these new pieces of information, on January 24, 2005, GONG delivered additional information to the State Attorney's Office of the Republic of Croatia in connection with the previously filed charges.

## **ANNOUNCEMENT OF THE RESULTS AND OBJECTIONS**

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State Election Commission declared the final results of the elections for the president of the Republic of Croatia on January 31, 2005. According to the official results candidate Stjepan Mesic was elected president with the majority of 65.93% of the vote.

According to voters' lists that general administration offices delivered to polling stations and voting certificates, a total of 4 392 220 voters was registered on voters' lists. 2 241 760 ballot papers were found in ballot boxes, which means that the turnout was at 51.04%. There were 35 516 void ballot papers, which comes to 1.59% of total ballots cast.

State Election Commission received a total of 11 objections and appeals to the Constitutional Court. The Constitutional Court dismissed all appeals. Eight objections were filed in the first round of the election, five in connection with irregularities in nomination procedure, and three in connection with election procedure itself. Three objections were filed in connection with the second round of the election; however, they were dismissed on the grounds that they were filed by unauthorized persons.

## **THE REPORT AND RECCOMENDATIONS OF THE STATE ELECTION COMMISSION**

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Following the announcement of the official results, on February 3, 2005, the SEC submitted to the president of the Croatian Parliament and the Prime Minister:

### **A report on the election**

In its report on the election, the SEC states that irregularities, such as marking deceased persons on voters' lists as having voted, double voting in both the Republic of Croatia and Bosnia and Herzegovina and partisan membership of polling commissions, were determined at some polling stations. Also, the SEC states that it expects the "proper authorities to investigate the cases in which a suspicion of a criminal offence committed in the election process existed and for perpetrators to be deservedly punished".

### **Recommendation on the election regulation**

After considering the regulation that govern electoral issues in the Republic of Croatia (Law on Voters' Lists and the provisions governing the financing of election campaign in the election for the president of the Republic of Croatia), the SEC also, among others, made the following recommendations:

- election process should regulated in as much detail as possible and be equal for all types of elections;
- it is necessary to reach a unified decision on the composition of election administration bodies (on the size of the membership of polling commissions and whether members will be appointed according to their party membership)
- all issues regulated by Mandatory Instructions should be regulated by law
- election silence should last only during polling hours and election campaign period should start from the day on which elections were called;
- transparent financing of election campaign, as well as the penalties for irregular practices, should be regulated in more detail;
- it is necessary that the SEC becomes a permanent, professional body;
- Law on Voters' Lists should be updated and amended and voters' lists should be updated.

## **RECCOMENDATIONS MADE BY GONG**

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### **The State Election Commission**

It is necessary to make State Election Commission (SEC) a permanent body as soon as possible. Past members of the SEC were judges who had to perform their duties in court during the election period. In these elections, once again, the SEC had a close deadline after the elections were called (only 32 days) to pass 9 Mandatory Instructions, answer all questions, and deal with objections, appoint members of lower commissions, prepare the Reminder for the Operation of Polling

Commissions, coordinate the printing and distribution of election material, as well as the technical aspects of the elections.

The SEC should become a permanent body in order to:

- 1) provide better technical organization of elections
- 2) provide continuous education to members of election commissions and polling commissions
- 3) ensure the continuity of informing and educating voters
- 4) provide support to candidates
- 5) establish easier coordination of government administration bodies
- 6) control campaign financing
- 7) facilitate research

This type of permanent body can pay more attention to educating and providing timely information to all voters, members of polling commissions, election commissions and even candidates themselves. This is especially important because election rules change just before every election, which leads to legal insecurity and untimely informing of voters and candidates.

The Law on the State Election Commission as a Permanent Body should regulate:

- the composition and appointment of the members of the SEC
- incompatibility of the membership in the SEC with the performance of other functions
- the functions of the SEC in the period between elections
- special obligations of the SEC during the election process for parliamentary, presidential, or local elections, as well as in early elections at all levels, and the elections for local self-government
- the SEC's responsibilities for conducting a referendum
- financing of the SEC

Since the former Ministry of Justice, Administration and Local Self-Government has already drafted the Bill we appeal to the Croatian Parliament for this Law to be adopted as soon as possible.

### **Law on Voters' Lists**

The outdated Law on Voters' Lists (from 1992) is one of the main obstacles for conducting elections in a quality manner and facilitating the exercise of the right to vote to all categories of voters. In these election State Election Commission was once again forced to regulate the issues concerning voters' lists by issuing a number of Mandatory Instructions and official directives. Since the Mandatory Instructions and the directives were issued within a month of the election day, voters received information on the exercise of their right to vote only after particular rules and regulations were passed, which was obvious from the great number of phone calls and inquires made to GONG about the same issues in connection with voters' lists.

Apart from this, one of the major problems is the fact that voters' lists are not updated. Persons who have died or moved without officially changing their place of permanent residence can often be found registered in voters' lists. Although the Law stipulates the removal from voters' lists *ex officio* (the official has to determine *without any doubt* that persons who have died or moved away are registered in a voters' list), in reality this rarely happens because there are no necessary records.

Once again we received phone calls from citizens who were not registered in voters' lists although they had been registered in previous elections.

Another problem is the lack of a central voters' list. At the moment, this leads to

- difficulties in checking one's status in the voters' list outside of the place of permanent residence
- problems in determining the election body of the whole country
- problems in allocating voters to particular polling stations
- inability to control possible double entries in voters' lists

We recommend amendments to the Law on Voters' Lists. The Law needs minor technical amendments with the aim of:

- increasing efficiency and accurateness of keeping records
- establishing an internal network within government administration for transferring necessary data.

- creating a central electoral register
- increasing the responsibility for updating voters' lists
- increasing the quality of informing citizens about voting procedures for different categories of voters
- resolving the issue of the content of entries in voters' lists (citizen identification number-JMBG)
- providing free access to voters' lists to all those who are interested .

### **Election campaign financing**

A law that regulates the issue of election campaign financing was passed in Republic of Croatia for the first time in 2004 and it regulated presidential elections, while campaign financing in other election remains unregulated by law.

GONG expresses its concern and dissatisfaction with the Law, which failed to regulate the key issues of election campaign financing:

- The Law allows anonymous donations without any limits on the donated funds. It is possible for a company to anonymously finance the whole campaign of a presidential candidate, which gives space to corruption.
- No penalties are provided for persons who violate individual provisions of the Law. It is necessary to stipulate penalties for violations of provisions of this Law and the body to administer them.
- There is no requirement that preliminary reports on the amount and sources of funds collected for the expenses of election campaign be made public prior to election. Complete reports should be made public because the interests of the public are at stake here.
- No campaign spending limits have been set for parties and candidates and no limitation has been imposed on donations made by a single donor.
- The percentage of votes that candidates' need to win in order acquire the right to reimbursement of campaign expenditures from the State Budget should be included in this Law.

All of the above-stated brings into question both the transparency of an election, and the confidence in the credibility of the overall election process and its results.

### **The Law on the Election of the President of the Republic of Croatia**

The Law on the Election of Representatives to the Croatian Parliament is not sufficiently precise in the regulation of technical organization of elections, which resulted in the passing of a large number of subordinate legislation (Mandatory Instructions) prior to the elections. This had a negative effect on voters' and candidates' confidence in the law. Also, close deadlines for performing all election activities create additional pressure, confusion and insecurity in all those who participate in elections - administrators, candidates, observers and voters.

Thus, we suggest the following:

#### **a) Everything that was regulated by Mandatory Instructions should be proscribed by Law**

The regulation in question refers to the provisions that regulate the technical aspects of election administration which should be proscribed by the legislator and not by an administration body such as the SEC. These provisions already exist which means that they should only be finalized and incorporated into the existing legislation. They refer to:

- *the sequence and the timetable of election activities*
- *forms for conducting elections*
- *voting procedures for persons serving in the armed forces of the Republic of Croatia, persons serving on river or maritime ships under Croatian flag or imprisoned persons*
- *voting procedures for persons with physical disabilities, illiterate persons, and persons who are not able to come to polling stations*
- *layout of polling stations*
- *voting procedures for exiled persons and voters abroad*
- *the rights and duties of observers and the procedure for monitoring the operation of election administration bodies*

b) expanding the deadlines in election process

For the purpose of increasing the quality of the election process deadlines for conducting pre-election activities should be expanded from 30 to at least 45/60 days so that all election activities can be carried out in time.

c) appointment of party representatives to polling commissions

Various instances of party members being appointed to polling commissions were reported and confirmed at this election, despite the legal ban on such membership. Since political parties are those who are most interested in elections being conducted in a fair and transparent manner, we hold the opinion that parties should appoint their representatives to polling commissions for mutual supervision of the election process.

d) systematic education of the members of election bodies (particularly the members of polling commissions)

A number of irregularities that were reported on the election day once again occurred as a consequence of the polling commissions' lack of knowledge and unfamiliarity with the legal regulations of election process. Despite the fact that Reminders of the Operation of Polling Commissions were issued, we think that it is not enough to ask members of polling commissions to only read the Reminders (which many of them received only on the election day) for the elections to be conducted well. Educational training courses should be carried out several days before the elections.

e) postal voting

One of the recurring problems that arose in these elections as well was the problem of voting procedures for different categories of voters who were not able to vote at their polling stations on the election day (voters who were absent from their place of permanent residence on the election day, voters serving in the armed forces, voters serving on ships under Croatian flag, voters in penal institutions, etc). Following experiences of countries that have the legal opportunity to vote by post (Germany, United Kingdom, Bosnia and Herzegovina, Italy, etc), we recommend that this problem be solved by introducing this possibility into election legislation of the Republic of Croatia.

This would reduce the red-tape procedures of applying for special polling stations and issuing certificates on temporary removal from voters' lists. Once again, in this election, State Election Commission set up a great number of polling stations in army barracks, prisons and on ships. Apart from that, 155 additional polling stations were set up abroad and 12 additional polling stations were set up in Croatia for Croatian citizens living abroad who were in Croatia at the time of the election.

The right to vote by post would be granted to all voters who on time inform their city/municipality election commission or the State Election Commission for Voters Abroad, via general administration office of the city or municipality in which they live, that they would not be able to vote at their polling station on the election day. Reasons for voting by post refer to one's absence from the place of permanent residence, regardless of whether the person is in the country or abroad.

GONG's recommendations published in the *Election Package* publication defined the system for voting by mail that could be applied in Croatia without violating the secrecy of vote and creating conditions for election frauds.

f) regulations on media coverage of presidential candidates' election campaigns

Numerous objections to media coverage of presidential candidates' election campaigns made by candidates, media and voters themselves during campaign period indicated that the imprecise provisions of the Law on Election Campaign did not regulate this issue in an adequate manner. In consequence, the needs of candidates and voters for media presentation and complete and quality information were not satisfied in full.

It is necessary to lay down the rules, obligations and rights of candidates and the media during election campaign period, making a clear division between public and commercial media, since they fulfil different functions. Provisions should be directed at respecting candidates' right to equal access to all media, which does not necessarily have to be reflected in allocation of the same amount of airtime for presentation.

g) protection of the right to vote

Since the Constitutional Court repealed some of the provisions of the Law that regulate the protection of the right to vote on the ground of being unconstitutional as late as in April, it is necessary to

harmonize the provisions on the protection of the right to vote with the decision of the Constitutional court no. U-I /2495/2002 with the Article 91 of the Constitutional Act on the Constitutional Court of the Republic of Croatia.

- Article 91 of the Constitutional Act on the Constitutional Court of the Republic of Croatia

*Article 91*

*(1) Political parties, candidates, not less than 100 voters or not less than 5 percent of voters of the constituency in which the elections are held, have the right to submit an appeal against the ruling of the competent electoral commission to the Constitutional Court (electoral dispute).*

## **CONCLUSION**

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Amendments or adoptions of the above-mentioned legislation are the only way to make the election process completely transparent, to make sure that Croatian citizens are informed and to make them feel dignified while exercising their right to vote.

If the election legislation remains the same, the next elections will not be assessed positive regardless of the quality and the atmosphere of democracy surrounding the elections.

Therefore we appeal to the Croatian Parliament, ministries and other government institutions to launch and carry out a complete reform of the election legislation of the Republic of Croatia in order to approximate it to the standards of the European Union.