

44th SESSION

Report
CPR(2023)44-02
22 March 2023

Cantonal elections in Bosnia and Herzegovina (2 October 2022)

Monitoring Committee

Rapporteur:¹ Stewart DICKSON, United-Kingdom (R, ILDG)

Recommendation 491 (2023)	2
Explanatory memorandum	5

Summary

Following an invitation by the authorities of Bosnia and Herzegovina, the Congress deployed an observation mission to assess the cantonal elections held in the Federation of Bosnia and Herzegovina on 2 October 2022. On the Election Day, nine teams involving nineteen Congress observers visited some 125 polling stations to observe the election procedures, from opening to counting.

Overall, the Congress delegation found the 2022 cantonal elections calm and orderly, despite the long-standing political deadlock and continuous segmentation of all levels of government along ethnic lines. The election campaign was rather low-profile and marked by a lack of public debates, as well as the widespread disillusionment and mistrust of citizens in the political system. However, the Election Day was generally peaceful, well organised and in line with the appropriate provisions in most polling stations visited. The Congress delegation welcomed the numerous practical improvements implemented by the election administration to reduce the possibility of electoral fraud.

The Congress delegation identified several areas where there is room for improvement, notably regarding the accessibility and set up of polling stations, the appointment of polling station commissioners, the secrecy of the vote, the equal participation of women in cantonal political life, the transparency of and overview over campaign financing as well as the recurring issue of voters residing de facto abroad voting in cantonal elections. The delegation also regretted the difficulties following the Election Day with respect to the announcement of results and formation of cantonal governments. Furthermore, the delegation reiterated the previous Congress recommendation to organise cantonal elections separately from national polls to avoid regional issues being overshadowed by national concerns.

¹ Chamber of Local Authorities / R: Chamber of Regions
EPP/CCE: European People's Party Group in the Congress
SOC/G/PD: Group of Socialists, Greens and Progressive Democrats
ILDG: Independent Liberal and Democratic Group
ECR: European Conservatives and Reformists Group
NR: Members not belonging to a political group of the Congress

RECOMMENDATION 491 (2023)²

1. The Congress of Local and Regional Authorities refers to:

a. Article 1, paragraph 2 of the Committee of Ministers' Statutory Resolution CM/Res (2020)1 on the Congress of Local and Regional Authorities of the Council of Europe;

b. Chapter XIX of the Rules and Procedures of the Congress on the practical organisation of election observation missions;

c. The principles laid down in the European Charter of Local Self-Government (ETS No. 122) which was ratified by Bosnia and Herzegovina on 12 July 2002;

d. Congress Recommendation 432 (2019) on the elections of the Cantonal Assemblies in the Federation of Bosnia and Herzegovina (7 October 2018) and its explanatory memorandum;

e. The invitation by the Central Election Commission of Bosnia and Herzegovina, dated 6 July 2022, to observe general elections held in the country on 2 October 2022.

2. The Congress reiterates the fact that genuinely democratic local and regional elections are part of a process to establish and maintain democratic governance and that observation of grassroots elections is a key element in the Congress' role as guardian of democracy at local and regional level.

3. The Congress acknowledges that, overall, the legal framework in Bosnia and Herzegovina is conducive to holding democratic elections, with the exception of dispositions in breach of the European Convention on Human Rights. The Congress notes that recent amendments by the High Representative addressed some issues related to the integrity of the electoral process, despite being adopted shortly before the elections and on the Election Day which is contrary to the Venice Commission Code of Good Practice in Electoral Matters.

4. The Congress notes with satisfaction that:

a. the Election Day was overall conducted in an orderly fashion;

b. in order to reduce the possibility of electoral fraud, numerous practical improvements to the voting process were satisfactorily implemented in most polling stations such as the introduction of stamping of ballot papers and of a special procedure for assisted voting, revision of polling station set up to avoid voters taking photos of their ballots and/or family voting, and the ban of the practice to read a voter's name aloud;

c. electoral amendments introduced by the High Representative ahead of the elections increased the oversight and investigation powers of the Central Election Commission and, by clearly defining hate speech, contributed to a slightly less aggressive campaign environment;

d. polling station commissioners, to a large extent, were well informed of the Election Day procedures and received sufficient training;

e. an electronic application tool was developed for processing registration of out-of-country voters to prevent multiple registrations at the same address and the Central Voters Register was progressively cleaned of deceased voters.

5. At the same time, the Congress notes with concern the following issues:

a. the concurring organisation of State, entity and cantonal elections posed considerable challenges to the election administration and contributed to excessively focusing the campaign upon national politics which is detrimental to local democracy;

² Approved by the Chamber of Regions on 22 March 2023 and adopted by the Congress on 22 March 2023, 2nd Sitting (see Document CPR(2023)44-02, explanatory memorandum), rapporteur: Stewart DICKSON, United-Kingdom (R, ILDG).

b. the challenges in the appointment of polling station commissioners by political parties and the long-standing politicisation of the election administration, as well as the alleged practice of trading of seats, in particular at polling station level;

c. the campaign being marked by some instances of hate speech, an overall marginalisation of youth and women and the widespread polarised discourse by political parties focusing almost exclusively on ethnic matters and not offering voters programmes addressing cantonal issues;

d. the worrying situation of the media in Bosnia and Herzegovina, including the lack of transparency regarding ownership and political affiliations of local and national outlets, which led to limited and biased coverage of the campaign;

e. the alleged abuse of administrative resources by incumbents, insufficient reporting on cases of electoral corruption and lack of transparency and oversight over campaign and party finance;

f. the compromised secrecy of the vote, in particular in smaller polling stations, due to inadequate positioning of polling screens and set-up of polling booths and challenges related to the unfolding of ballot papers in front of ballot boxes;

g. the continuous challenges impacting voters' universal right to vote, in particular due to:

i. the lack of accessibility of polling stations and/or the font used on some ballot papers, which were not adapted to the needs of voters with disabilities or visual impairments and the elderly;

ii. the lack of awareness of polling station commissioners on the new requirements for assisted voting, which, in some instances, led to voters being refused the right to vote with assistance or others being assisted without proof of impairment;

h. the absence, in legislation and practice, of a "genuine" residence criterion for voters living *de facto* abroad who are allowed to vote in cantonal elections, which is not in line with Congress Resolution 369(2015).

6. In light of the above, the Congress invites the authorities of Bosnia and Herzegovina to:

a. strongly reconsider holding cantonal elections at the same time as national ones and rather to organise cantonal alongside municipal elections, to avoid cantonal elections being overshadowed by national polls and to contribute to the strengthening of local democracy;

b. revise the conditions of appointment and dismissal of polling stations commissioners in order to avoid trading of seats and contribute to the professionalisation and de-politicisation of the election administration;

c. establish effective sanctions and reduce timeframes for cases of hate speech, online and offline, and strengthen provisions to increase participation of youth and women in cantonal politics, through the implementation of an alternating placement system and stronger regulations regarding seat allocation;

d. fully implement existing media legislation including oversight and enforcement powers of bodies responsible for media monitoring. Consider revising Chapter 16 of the Election Law in particular, to ensure equal access of all political subjects to the media. Undertake measures to promote programme-based campaigns and to protect freedom of the media and journalists from political pressure;

e. further strengthen existing legislation on electoral corruption and misuse of public resources in order to guarantee a level playing field for all candidates and ensure that effective and more dissuasive sanctions are imposed;

f. address issues pertaining to the breach of the secrecy of the vote, in particular by improving inadequate polling station set-up in small polling stations and through reconsidering the placement of polling screens which do not ensure the secrecy of the vote;

g. improve accessibility of polling stations for all voters, in particular voters with disabilities and visual impairments, and carefully review and inform voters of the procedure of assisted voting;

h. complete efforts to render the Central Voters Register more accurate and address the issue of citizens residing *de facto* abroad and voting in cantonal elections.

7. The Congress calls on the Committee of Ministers, the Parliamentary Assembly and other relevant institutions of the Council of Europe to take account of this recommendation regarding the 2022 cantonal elections in Bosnia and Herzegovina and of the explanatory memorandum in their activities relating to this member State.

EXPLANATORY MEMORANDUM³

1. INTRODUCTION

1. On 4 May 2022, the Central Election Commission of Bosnia and Herzegovina (CEC) announced that general elections would be held on Sunday 2 October 2022, for cantonal, entity, and state levels of government. Following the invitation by the CEC of Bosnia and Herzegovina dated 6 July 2022, the Congress of Local and Regional Authorities of the Council of Europe deployed an onsite mission to observe the cantonal elections held on 2 October 2022, in all ten cantons of the Federation of Bosnia and Herzegovina. A Congress delegation was deployed to Bosnia and Herzegovina from 30 September to 3 October 2022. The mission, headed by Mr. Stewart DICKSON, United-Kingdom, (ILDG, R), consisted of 19 members from 17 countries. Cantonal elections were held on the same date as elections of the members of the Presidency and of the Parliamentary Assembly of Bosnia and Herzegovina, the House of Representatives of the Federation of Bosnia and Herzegovina, and of the members of the National Assembly and of the President of the Republika Srpska⁴.

2. The legal framework of Bosnia and Herzegovina guarantees the right to observe all stages of the election process at all levels of the election administration by civil society organisations, representatives of political subjects, and international observers.⁵ Observers are accredited by the CEC while party representatives are accredited by the Municipal and City Election Commissions (MECs). Overall, the CEC accredited 3 586 civil society and international observers while MECs accredited some 50 000 representatives of political subjects. No specific issue was noted in the process of accrediting observers. The Congress delegation acted independently of other observation missions deployed in the framework of these elections and only observed elections for the ten cantons, in accordance with the Congress mandate.⁶

3. On the Election Day, nine Congress teams were deployed to different cities, towns, and rural areas across the Federation of Bosnia and Herzegovina in which the cantonal elections were held. The Congress observers visited over 125 polling stations to observe the election procedures, from opening to counting. The delegation composition, the mission programme, and deployment plan are presented in the appendices of the present report.

4. The following report focuses specifically on issues arising out of exchanges held with Congress interlocutors during preliminary meetings organised in Sarajevo and Mostar and observations on the Election Day. The Congress delegation wishes to thank all the interlocutors who met the delegation for their open and constructive dialogue.

2. POLITICAL CONTEXT

5. Bosnia and Herzegovina (BiH) is a federal State divided in two entities, the Republika Srpska (RS) and the Federation of Bosnia and Herzegovina (FBiH), and one self-government unit, the District of Brčko, which was granted special status in 1999. Bosnia and Herzegovina's complex political system was established in the General Framework Agreement for Peace, also called Dayton Agreement, which was signed in 1995 and marked the end of the war. The Constitution of the federal State is an integral part of the Dayton Agreement⁷.

6. The political system of Bosnia and Herzegovina comprises three levels - the State, the two entities (FBiH, RS) and District of Brčko, and Municipalities and Cities. In addition, in the Federation of BiH, local self-government also comprises an intermediate level with ten cantons. The State of Bosnia and

³ Prepared with the contribution of Dr. Pavel PSEJA, Czech Republic, member of the Congress Group of Independent Experts.

⁴ National and entity-level elections took place in Republika Srpska but were not observed by Congress observers.

⁵ Chapter 17 of the Election Law. An unofficial consolidated and translated version of the Election Law including amendments until July 2022 can be found at https://www.te.gob.mx/vota_elections/page/download/16604

See also the CEC Handbook for election observers - 2022 General elections (August 2022), p77 available at: <https://www.izbori.ba/?Lang=6&CategoryID=1246>.

⁶ An international election observation mission constituted of members of the OSCE Parliamentary Assembly, the NATO Parliamentary Assembly, the Parliamentary Assembly of the Council of Europe, the European Parliament and OSCE/ODIHR, was deployed to observe the 2022 general elections. See the IEOM Statement of Preliminary Findings and Conclusions, Bosnia and Herzegovina, General Elections, 2 October 2022, available at <https://www.osce.org/odihr/elections/bih/527523>.

⁷ The General Framework Agreement for Peace in Bosnia and Herzegovina is available at <http://www.ohr.int/dayton-peace-agreement/>.

Herzegovina has a three-member rotating Presidency, including one Croat, one Bosniak and one Serb. The Presidency Chairperson rotates every eight months. The State and the FBiH both have bicameral parliaments constituted of two Chambers: the House of Representatives and the House of People. Republika Srpska has a unicameral parliament, the National Assembly of the RS.

7. The different levels of government are intertwined and nominations to the higher levels of government often depend on lower levels. For example, voters in the FBiH elect the members of the ten Cantonal Assemblies who, in turn, elect among themselves the members of the House of People of the FBiH. In the aftermath of the 2018 elections, dysfunctionality and blockages have dominated the political landscape at State and FBiH levels. The Government of the FBiH received a caretaker mandate since 2018 because of issues related to the appointment of members of the House of People. A change in Election Law has been discussed to avoid such blockages in the future.

8. The Dayton Agreement also established the presence of a High Representative, a position currently held by Mr Christian SCHMIDT, in charge of overseeing the civilian implementation of the Dayton Agreement⁸. The Office of the High Representative (OHR) holds extensive powers, including the possibility to independently amend legislation and remove officials at all levels of government, also called the “Bonn powers”⁹. While previous High Representatives were more hesitant to use the Bonn powers, Mr SCHMIDT has had recourse to these three times in relation to the 2022 elections (see below).

9. The Constitution of Bosnia and Herzegovina enshrined power sharing among three Constituent Peoples: Bosniaks, Croats, and Serbs. Citizens who do not wish to identify themselves with one of these three peoples or who belong to another ethnicity, constitute the group of “Others”¹⁰. All aspects of the administration of the country, including the distribution of positions and elected mandates, reflect the ethnic composition of Bosnia and Herzegovina. Various restrictions based on ethnicity or residency criteria have repeatedly been deemed discriminatory by the European Court of Human Rights (see below in the relevant international standard section). Congress interlocutors mentioned that the debate on the establishment of a more “civic” State is ongoing but unfruitful in Bosnia and Herzegovina. Hence, society remains segregated at all levels and in all sectors, from the administration to the education system, and ethnic groups don’t share a common vision for the country.

10. Traditionally, the cantons have mainly been led by two of the three ethnic-based parties, the Party of Democratic Action (SDA – five cantonal Prime Ministers) and the Croatian Democratic Union (HDZ – two cantonal Prime Ministers). The Alliance of Independent Social Democrats (SNSD, Serb party), while important nationally and in the RS, is not as represented at cantonal level in the FBiH. After the 2018 elections, non-ethnically affiliated or “civic” political parties have started gaining more support at cantonal level. For instance, the Sarajevo Canton was won in 2018 by a coalition of civic parties (Our Party, the Democratic Front and the Social Democratic Party).

11. The 2022 general elections were held in an environment of political deadlock at all levels of government and palpable disillusionment over the political establishment exacerbated by the refusal of EU candidate status¹¹, a growing secessionist trend in RS and the failed negotiations on constitutional and electoral law reforms. The main political parties, while having held power for many years, have failed to overcome their mutual disagreements and enliven dysfunctional state institutions both at national level, and in the Federation of Bosnia and Herzegovina. This situation leads to high emigration figures, predominantly in the younger generations. Through official appointments and control over state enterprises, some political parties have managed to capture state institutions and to

⁸ For an overview of the structure and mandate of the Office of High Representative, see <http://www.ohr.int/about-ohr/general-information/>.

⁹ See on this matter, Venice Commission, Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative (2005) available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2005\)004-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2005)004-e)

¹⁰ According to the last population census conducted in 2013, 96 539 persons (2.7 percent of the population) declared themselves as “others”.

¹¹ On 23 June 2022, the EU refused to grant Bosnia and Herzegovina EU candidate status because of the slow progress made on the 14 priorities for accession, including priority 1 on democratic elections. See EU Commission Opinion on Bosnia and Herzegovina’s application for membership of the European Union (2019) available at <https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/20190529-bosnia-and-herzegovina-opinion.pdf>.

establish vast patronage networks¹². The political context was additionally impacted by negotiations of the OHR on constitutional and electoral law reforms aiming at increasing transparency of the electoral process and unblocking the formation of government at entity and cantonal levels (see below).

3. ADMINISTRATIVE STRUCTURE AT CANTONAL LEVEL

12. The Federation of Bosnia and Herzegovina is constituted of ten cantons, which were established in the aftermath of the war in June 1994. The cantons represent an intermediary level of self-government between the 79 municipalities of FBiH and the Federation. Cantons were not established in Republika Srpska. According to the 2013 population census¹³, five cantons have Bosniak majorities while three have Croat majorities. The two remaining cantons are ethnically mixed.

13. Each canton has its own constitution, parliament (or Cantonal Assembly), and government, thus holding extensive powers and responsibilities in policymaking at local level, including in the fields of taxes, police, the judiciary and other public services. Cantons also share certain competences with the Federation and municipalities. The cantonal elections constitute the ten Cantonal Assemblies, altogether consisting of 289 councillors. Following the 2018 elections, the total representation of women in Cantonal Assemblies was 32.17%. Only three Cantonal Assemblies were in line with Article 20 of the Law on Gender Equality in BiH¹⁴ which prescribes that all levels of government are constituted of least 40% of women (Central Bosnia Canton and Zenica-Doboj Canton and Herzegovina-Neretva Canton). On the other hand, the Assembly of Canton 10 was constituted of only 12% of women¹⁵. Congress interlocutors expressed the need for women to be more involved in cantonal politics, as they often have a higher level of education, are more prepared to interact with the media and tend to focus more on change at the level of elections they run in¹⁶.

14. Each Cantonal Assembly establishes the executive branch of cantonal government, namely the Prime Minister, who is also a member of the Cantonal Assembly and has the competence to propose candidates for ministers. Before the 2022 elections, only the Canton of Bosnian-Podrinje-Goražde had a female cantonal Prime Minister. Cantonal Governments are confirmed by Cantonal Assemblies. Their confirmation can be blocked by Cantonal Assemblies, thus creating a long-term political deadlock at cantonal level. Since 2018, two cantons, namely Herzegovina-Neretva and Canton 10, were governed by caretaker governments, thus de facto denying the results of the 2018 elections.

15. In practice, the efficiency of cantonal governance is often marred by unclear and overlapping responsibilities among the three levels of government and the complexity of decision-making processes, leading to an overall lack of accountability, specifically noted in the last Congress Monitoring Report, adopted in 2019¹⁷. Created as a form of self-governance inherited from the war, the cantons have also been criticised in the past as redundant and faced attempts to be reformed or abolished.

16. The Congress delegation noted with concern that the national political deadlock also strongly impacts the cantonal level of self-government and refers to Congress Recommendation 442(2019) on Local and regional democracy in Bosnia and Herzegovina. Furthermore, as noted in 2018, the Congress delegation encourages the authorities, given the importance of competences of the cantons,

12 See Transparency International Corruption Index available at <https://www.transparency.org/en/cpi/2021/index/bih> and the 2022 EU Bosnia and Herzegovina Report (October 2022), "Corruption indicators further deteriorated and all levels of government show signs of political capture directly affecting the daily life of citizens", p. 17, available at https://neighbourhood-enlargement.ec.europa.eu/bosnia-and-herzegovina-report-2022_en.

13 Accurate data on population is critical in Bosnia and Herzegovina, as all official positions are distributed based on the ethnicity criteria. However, methodological and political conflicts have made the organisation of a post-war census complicated. A new census was organised in 2013 but its final results were only published in 2016. See Census of Population, Households and Dwellings In Bosnia And Herzegovina, Agency for Statistics of Bosnia and Herzegovina, June 2016, available at <https://web.archive.org/web/20171224103940/http://www.popis2013.ba/popis2013/doc/Popis2013prvolzdanje.pdf>.

14 See Law on Gender Equality, as amended in 2010, available at: https://www.qcfbih.gov.ba/wp-content/uploads/2014/01/ZoRS_32_10_H.pdf

15 See Maida ZAGORAC, Political participation of women in BiH — gender perspective of the results of the General Elections 2018, available at: <http://hcabl.org/wp-content/uploads/2019/02/Politicka-participacija-zena-u-BiH-Opsti-izbori-2018.pdf>

16 See also on this matter the interview of Samra FILIPOVIĆ-HADŽIABDIĆ, director of the BiH Agency for Gender Equality at the Ministry of Human Rights and Refugees, on Politicki : <https://politicki.ba/politika/samo-1666-posto-izabranih-u-drzavni-parlament-su-zene/26645>

17 CG37(2019)18, Local and regional democracy in Bosnia and Herzegovina (31 October 2019).

to ensure that cantonal elections are held together with local elections – and not with the general elections. This measure would strengthen of this tier of government and make it easier for the citizens to make an informed decision on the Election Day.

4. INTERNAL AND INTERNATIONAL FRAMEWORK

4.1 Domestic legal framework and electoral system

17. The elections in Bosnia and Herzegovina are primarily governed by the 1995 Constitution, as included in the Dayton Agreement, the 2001 Election Law as revised in 2016, and amendments imposed by the OHR in July 2022¹⁸. Moreover, there are several other legal provisions applicable to the elections, for example the 2012 Law on the Financing of Political Parties, the Law on Gender Equality, CEC regulations, and several Federation of Bosnia and Herzegovina laws that can be applied to some aspects of the electoral process.

18. Important amendments to the Election Law and to the Law on the Financing of Political Parties were introduced in 2016 and included a gender quota of at least 40 % of candidates from the underrepresented gender on candidate lists, compulsory training for Presidents and Vice-Presidents of Polling Station Committees (PSC) and a better definition of campaign finance irregularities.

19. Nevertheless, the existing Election Law remains significantly affected by ethnicity and residency-based restrictions. Primarily, only voters who declare themselves as belonging to one of the Constituent peoples (i.e., as Croats, Serbs, or Bosniaks), can run for election to the state and entity presidencies. However, both the European Court of Human Rights, and the Constitutional Court of Bosnia and Herzegovina ruled that such provisions are discriminatory and unconstitutional (see below). Until today, however, these judgments have not been addressed. While these restrictions primarily affect the federal and entity levels, cantonal politics are also impacted as these have led to institutional and political impasses in the past¹⁹.

20. Since May 2021, discussions on constitutional and electoral reform were held under the oversight of the Inter-Agency Working Group (IAWG), facilitated by the EU, the Venice Commission and the US.²⁰ In July 2022, after months of stalled negotiations, and rejection of the integrity package by the Parliament of Bosnia and Herzegovina, the High Representative used his “Bonn powers” to pass scaled down amendments to the Election Law²¹. These amendments defined hate speech²², reinforced the oversight role of the CEC and strengthened the integrity of the electoral process, by increasing fines in relation to campaign offenses and by banning the abuse of public resources and the impersonation of political parties to get PSC seats. Furthermore, the amendments clarified the release of funds to organise the elections, which had previously been blocked. Congress interlocutors predominately welcomed the amendments with regard to the integrity the electoral process, even if some criticised the short timeframe for adoption, their limited scope and the potential practical issues for the CEC.

21. The 289 members of Cantonal Assemblies of the FBiH are directly elected every four years, on the same day than federal and entity elections (Art. 13.11 of the Election Law). The number of members of

18 Office of the High Representative, Decision Enacting the Law on Amendments to the Election Law of Bosnia and Herzegovina, 27/07/2022, available at <http://www.ohr.int/decision-enacting-the-law-on-amendments-to-the-election-law-of-bosnia-and-herzegovina-7/>.

19 In its 2016 judgment, the Constitutional Court of Bosnia and Herzegovina declared unconstitutional provisions of the Election Law on the election of members of the FBiH House of People by Cantonal Assemblies and repealed these provisions (also known as the Ljubic case). “One of the provisions was that “each of the constituent peoples shall be allocated one seat in every canton”, independently from their demographic strength. Other unconstitutional provisions include those that define the number and ethnic belonging of the delegates in the House of People in the Parliament of the FBiH based on the census from 1991”. To solve possible deadlocks, in 2018, the CEC adopted a decision to fill the legal gap which would allow for the formation of a new government. This decision was later appealed to the Constitutional Court, but the appeal was rejected. See Jens WOELK and Maja SAHADŽIĆ, Cutting the Gordian Knot in Bosnia and Herzegovina (7 October 2022), available at: <https://verfassungsblog.de/cutting-the-gordian-knot-in-bosnia-and-herzegovina/>

20 For more information on the negotiation process see the “Bosnia and Herzegovina 2022 Report”, *Op.Cit.*

21 OHR, (27 July 2022), *Op.Cit.*

22 See definition of hate speech in the OHR amendments OHR, (27/07/2022), *Op.Cit.*

each Cantonal Assembly depends on the number of voters registered in the Central Voter Register in the relevant canton and varies between 21 to 35 members²³.

22. For cantonal elections, proportional open lists with preferential voting are used in multi-member constituencies (Art. 13 of the Election Law), and an electoral threshold of three percent applies for allocation of mandates to political subjects. Voters have the option to indicate a preference for any number of candidates on their chosen list or vote for the list as such without stating any preferences (Art. 13.5 of the Election Law). Mandates are allocated, using the Saint-Laguë formula, among candidates who received the highest number of votes, preferential vote included.

23. Cantonal Assemblies in turn elect among themselves members of the House of People of the Federation of Bosnia and Herzegovina, who are responsible for confirmation of the President of the FBiH, who in turn appoints the FBiH Government (Art. 9.A and 10.B of the Election Law). The legal framework regarding this indirect election was significantly modified by the High Representative in the evening of the Election Day²⁴. These changes mainly concerned the deadlines on establishing governments and set up a mechanism to avoid political deadlock in the future. As a result, the number of delegates to the House of People of the FBiH was increased by the High Representative's amendments from 17 to 23 per Constituent People²⁵.

4.2 Relevant international standards

24. The rights of citizens to vote – and to stand in elections – at periodic, genuine democratic elections are internationally recognised human rights, as stated in Article 21 of the Universal Declaration of Human Rights²⁶ and Article 25 of the United Nations Covenant on Civil and Political Rights²⁷. The right of all citizens to free elections is also guaranteed by Article 3 of the first Protocol²⁸ to the European Convention on Human Rights (ECHR)²⁹, which specifies that elections should be held at regular intervals, under conditions conducive to freedom of expression, and via secret ballot. Article 14 of the Convention asserts that this right must be enjoyed by all citizens, without discrimination.

25. Since 2009, the European Court of Human Rights took five decisions with regards to the elections in Bosnia and Herzegovina: *Sejdic and Finci* (2009), *Zornić* (2014), *Pilav* (2016), *Baraliija* (2019) and *Pudarić* (2020)³⁰. The Court ruled against the Government of Bosnia and Herzegovina mainly on breaches of Article 14 of the ECHR and of Protocol No. 12 of the ECHR on the prohibition of discrimination.

26. With respect to local and regional elections, Article 3.2 of the European Charter of Local Self-Government³¹ sets out that local and regional representatives should be elected by secret ballot on the basis of direct, equal, universal suffrage. The citizens' right to exercise their democratic choice is the foundation of political participation at local and regional level. This principle is also enshrined in the preamble to the Additional Protocol to the European Charter of Local Self-Government on the right to

23 In practice, Cantonal Assemblies have 20 to 25 members in cantons with less than 75 000 voters, 20 to 30 members in cantons with up to 200 000 voters, and 30 to 35 members in cantons having more than 200 000 voters. (Art 13.3 of the Election Law).

24 The introduction of these amendments minutes after the closing of polling stations on the Election Day created some confusion and surprise, including from the international community, as changing electoral laws on the Election Day is not in line with Venice Commission standards on the matter. By changing the composition of the House of People of the FBiH, the amendments tried to implement the Constitutional Court decisions, but created a situation where voters and candidates alike were not aware of the full picture during the campaign. Several national and international analysts, including members of the European Parliament, questioned the unprecedented timing of this decision. The legality of this decision was challenged in front of the Constitutional Court of Bosnia and Herzegovina, which rejected the appeal in December 2022, but a second appeal is still pending.

25 Office of the High Representative, Measures to improve Federation Functionality (2 October 2022) available at <http://www.ohr.int/measures-to-improve-federation-functionality/>.

26 <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

27 <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

28 The Additional Protocol to the European Convention on Human Rights (CETS No 009) is available at <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=009>.

29 The European Convention on Human Rights (CETS No 005) is available at <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=005>.

30 See ECtHR Bosnia and Herzegovina Press Country Profile (last updated July 2022), available at https://www.echr.coe.int/Documents/CP_Bosnia_and_Herzegovina_ENG.pdf.

31 The European Charter of Local Self-Government (CETS No 122) is available at <https://rm.coe.int/168007a088>.

participate in the affairs of a local authority³², which has not yet been ratified by Bosnia and Herzegovina.³³

27. The aim of Congress observation missions is to provide accurate and impartial assessments of electoral processes. These assessments are guided by Congress Resolutions 306 (2010)³⁴ and 274 (2008)³⁵ as well as the Venice Commission's Code of Good Practice in Electoral Matters³⁶. These documents delineate the different elements by which an election can be evaluated and outline the approach to be chosen by the Congress in its missions³⁷.

28. Genuine elections to establish democratic governance cannot be achieved without the prevailing of the rule of law and unless a wide range of other human rights and fundamental freedoms are guaranteed without discrimination. Consequently, the conclusions of observation reports are also informed by issue-specific resolutions, recommendations, and opinions adopted by the Congress and the Venice Commission which each address different aspects of the electoral process. The Congress specifically addressed the following subjects through the adoption of transversal reports on electoral lists and voters residing *de facto* abroad, criteria for standing in elections, the misuse of administrative resources, local voting rights, elections during major crisis situations, and the situation of independent and opposition candidates³⁸. The Congress also incorporates the thematic work of the Venice Commission into its reports, notably their standards concerning inter alia the use of technology, campaigns, dispute resolution, gender representation, persons with disabilities, national minorities, electoral systems, and the media³⁹.

4.3 Previous Congress election observation recommendations and reports

29. The Congress has previously observed elections in Bosnia and Herzegovina in 2020, 2018 and 2016. During its last mission to observe the local elections in 2020, the Congress delegation noted certain inconsistencies and shortcomings on the Election Day, and recommended improvements in particular on issues such as misuse of public resources⁴⁰, assignment and politicisation of Polling Station Commissions, the accuracy of voters lists and the practical organisation of voting⁴¹. Most of these recommendations were already made following the 2016 Congress mission to observe local elections. In addition thereto, in 2018, the Congress delegation recommended that cantonal elections should be held together with local rather than national elections in order to avoid cantonal elections to be overshadowed by national campaigns⁴².

30. Overall, the Congress delegation noted with satisfaction that the legal framework is conducive to holding regular elections and respects fundamental freedom, to the notable exceptions of dispositions on residency and ethnicity in breach of the European Convention on Human Rights. The delegation welcomed the Office of the High Representative's amendments to improve the integrity of the electoral process and to define hate speech but regretted that these amendments were imposed in the absence of a national consensus on genuine constitutional and election reform and shortly before the Election

32 The Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No 207) is available at <https://rm.coe.int/168008482a>.

33 The Congress worked closely with the authorities of Mostar to facilitate the organisation of elections in the city of Mostar, as no elections were held between 2009 and 2020 and the mayor had only a technical mandate without democratic legitimacy. See for more information, the European Court of Human Rights verdict on Baralija vs. Bosnia and Herzegovina verdict (2019), which concluded to a violation of Article 1 of Protocol 12 at: <https://hudoc.echr.coe.int/fre?i=002-12638> and the Congress webpage on cooperation activities in BiH at: <https://www.coe.int/fr/web/congress/cooperation-activities-bih-2022-2025>

34 Observation of local and regional elections – strategy and rules of the Congress – [Resolution 306 \(2010\)](#)

35 Congress policy in observing local and regional elections – [Resolution 274 \(2008\)](#)

36 [Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report](#)

37 This approach is in line with the OSCE Copenhagen Document and the UN Declaration of Principles for International Election Observation

38 All Congress transversal reports, resolutions and recommendations in the field of elections are available at : <https://www.coe.int/en/web/congress/transversal-reports-local-and-regional-elections>

39 All Venice Commission standards are available at: https://www.venice.coe.int/WebForms/pages/?p=01_01_Coe_electoral_standards

40 For detailed information on the misuse of administrative resources see the Council of Europe "Handbook on Local Government and Public Ethics Bosnia and Herzegovina" chapter 4.6 available at <https://rm.coe.int/handbook-bosnia-and-herzegovina-eng-word/1680a59b5b>.

41 See CPR36(2019)02, Information report on the local elections in Bosnia and Herzegovina (15 November 2020) and in Mostar (20 December 2020).

42 See CG-MON(2021)18-09, Report on the elections of the Cantonal Assemblies in the Federation of Bosnia and Herzegovina (7 October 2018).

Day and on Election Day, which is not in line with the Venice Commission Code of Good Practice on Electoral Matters.

5. ELECTION ADMINISTRATION

31. The election administration in Bosnia and Herzegovina has a three-tier structure, which is headed by the Central Election Commission of Bosnia and Herzegovina (CEC). On lower levels, the structure consists of 143 Municipal and City Election Commissions (MECs) and 5 903 Polling Station Commissions (PSCs)⁴³. All levels of the administration are required by law to be “independent and impartial in their work” and commissioners must step down in case of conflicts of interests (Art. 2.1 of the Election Law). In terms of composition, all election administration bodies are invited to respect the 40% gender quota (Art. 2.2 of the Election Law). All levels are required to be multi-ethnic, through a specific composition in the case of the CEC or by reflecting the 2013 population census in the relevant districts for MECs and PSCs (Art. 2.14 of the Election Law). Overall, the level of mistrust regarding the election administration remains very high⁴⁴.

32. The CEC is a permanent body composed of seven members appointed for a seven-year term⁴⁵. The CEC is responsible for the overall operation of all election management bodies in line with the respective legal framework as well as for registration of voters and candidates, for handling of complaints and for determining and verifying the results. CEC responsibilities were slightly extended in the July 2022 OHR and Election Day amendments to improve the integrity of the process and the counting procedure. CEC members are selected on the basis of ethnicity, and include two Croats, two Bosniaks, two Serbs and one representative of the “Others”. Members are appointed by the Commission for Selection and Nomination among legal or electoral experts who are not involved in the activities of a political party. The President is elected among the members of the CEC based on a rotating presidency so that one Croat, one Bosniak, one Serb and one representative of the “Others” serve alternatively as President, each of them once in seven years for a period of 21 months. The current President, Mr Suad ARNAUTOVIĆ, was elected on 30 March 2022. Only two members of the CEC are currently women.

33. MECs consist of three, five or seven members depending on the number of registered voters in the municipality⁴⁶. Members are permanent bodies appointed for seven-year terms by the respective municipal councils, subject to the approval of the CEC⁴⁷. MECs are responsible for the appointment and training of PSC members, the proper conduct of polling and counting as well as the compilation of the results. The work of the MECs is public.

34. PSCs represent the lowest level of election administration and are in charge of managing the voting and counting. PSCs are established by the CEC and can serve up to 1 000 voters. PSCs consist of three or five members depending on the number of voters registered in the respective constituency. PSC members are appointed on an ad-hoc basis by the respective MECs no later than thirty days before the Election Day. Registered candidates and lists, including independents, can nominate potential members who are then assigned through a lottery procedure to a PSC. No contestant can have more than one member and trading of seats or fictitious representation of a political subject is forbidden⁴⁸. Due to a shortfall in nominees by political subjects, MECs had to fill vacant seats with their own reserve lists (mostly civil servants), as provided by law⁴⁹. Congress interlocutors mentioned only 50% of seats being filled by political subjects, stating that reasons for this

43 These included 5 418 regular polling stations, 7 polling stations for in absentia voters for internally displaced voters, 105 polling stations for voting on tendered ballots, 352 mobile teams and 21 stations in diplomatic and consular offices.

44 The OSCE Mission to Bosnia and Herzegovina released a survey on the “Citizens’ perceptions, experiences and opinions of elections in Bosnia and Herzegovina” in July 2022. It stated that “The Central Election Commission is distrusted by 59.6 percent of respondents. 64.6 percent of respondents distrust municipal elections commissions and 64.4 percent distrust polling station commissions. [...] Only 23 percent of respondents believe that elections are fair or mostly fair” The survey is available at <https://www.osce.org/mission-to-bosnia-and-herzegovina/526729>.

45 For the CEC composition and mandate, see Chapter 2 of the Election Law.

46 For the 2022 elections, CEC interlocutors informed the Congress that 48.42% of MEC members were women.

47 On MEC composition and mandate, see Art. 2.12 and 2.13 of the Election Law.

48 OHR, (27/07/2022), *Op.Cit.*

49 See on this topic: Coalition Pod Lupom, A specific number of municipalities and cities are experiencing the problem to filling polling station committees available at <https://podlupom.org/en/press/news/coalition-pod-lupom-a-specific-number-of-municipalities-and-cities-are-experiencing-the-problem-to-filling-polling-station-committees/>.

low figure may have been the low daily allowance, increasing fear of prosecution and overall disinterest in electoral processes⁵⁰.

35. However, the professionalism of many PSCs seemed compromised by their politicisation, by allegations of trading of seats, which jeopardised the collegial supervision of PSCs⁵¹ and resignations of members shortly before Election Day, which left little time to provide relevant training to their replacements. The CEC informed the Congress delegation that trading of seats is very difficult to investigate⁵². Nevertheless, the CEC took four decisions to change the composition of PSCs knowing that the number of instances to be higher. However, some Congress interlocutors also noted some improvement on this issue, as less party appointees volunteered to serve as PSC members and were replaced by appointees from the MECs' reserve lists, which tended to act more independently. The prohibition of trading of seats included in the June 2022 amendments may also have contributed to a slight improvement of the situation.

36. Despite important budgetary and staff limitations⁵³, the CEC and lower-level bodies organised the elections in a timely and efficient manner. The CEC introduced improvements to the overall integrity of the voting process through the adoption of 11 by-laws on 4 May 2022. Information was regularly published online, and CEC sessions were public. In most cases, election commissions acted transparently and independently during the election preparations, and their members received comprehensive training by the CEC or relevant MECs.

37. The Congress delegation noted with satisfaction that the CEC and lower-level bodies took several measures to reduce the possibility of electoral fraud at all stages of the electoral process, from voters' registration to the Election Day procedures. The Congress delegation welcomed the electoral amendments introduced by the High Representative ahead of the elections, which increased the oversight and investigation powers of the Central Election Commission. Polling station commissioners, to a large extent, were aware of the election day procedures and received sufficient training on the respective regulations. The Congress delegation noted with concern the persisting issues regarding the appointment procedure of PSC members by political parties, the politicisation of the election administration, in particular at polling station level, and the alleged practice of trading of seats.

6. VOTER REGISTRATION

38. Citizens who are aged 18 or older on Election Day are eligible to vote in their municipality of residence except those who are convicted of a serious crime, including war crimes⁵⁴, and those who have been declared legally incapable by a court decision, including on the basis of intellectual or psychosocial disability.⁵⁵ Voter registration is passive and continuous, except for out-of-country voters, who must register separately.⁵⁶

39. For the 2022 elections, 3 368 666 voters were registered in the Central Voter Register (CVR) including 69 966 by-mail voters⁵⁷. The CVR is an electronic database maintained by the CEC (Art 3.3 of the Election Law). Voters lists were presented for public examination for one month, from 3 June until 3 July 2022. This allowed voters to verify their records online and at municipal Voter Registration Centres.

50 In principle, all PSC members must pass a test, but in practice, Congress interlocutors expressed concern that due to the limited number of candidates for PSC seats, MECs could not afford candidates to fail the test. See also Pod Lupom Coalition Presents Preliminary Report on the Long-term Observation of the 2022 General Elections, available at <https://podlupom.org/en/press/news/pod-lupom-coalition-presents-preliminary-report-on-the-long-term-observation-of-the-2022-general-elections/>.

51 Domestic Observer Coalition Pod Lupom recorded 55 cases of trade of seats. *Op. Cit.*

52 Post-election analysis by Domestic Observer Coalition Pod Lupom estimated that 747 cases were suspicious, which represent 17% of all PSC members. 43 cases were referred to the CEC. See the analysis at: <https://podlupom.org/press-kutak/vijesti/koalicija-pod-lupom-predstavila-rezultate-istrazivanja-transparentnosti-rada-birackih-odbora/>

53 The OHR used the "Bonn powers" in June 2022 to secure the late release of the funds for the elections, which had been blocked due to political obstruction. The OHR further amended the Electoral Law to avoid such blockages in the future. OHR, (27/07/2022), *Op.Cit.*

54 Art. 1.6 and 1.7 of the Election Law.

55 Restrictions of the right to vote based on mental disability are not in line with the Venice Commission Code of Good Practice in Electoral Matters on the Participation of People with Disabilities in Elections.

56 Art. 1.5 of the Election Law.

57 Central Election Commission of Bosnia and Herzegovina, Press Release, (26 August 2022) available at <https://www.izbori.ba/?Lang=3&CategoryID=64&Id=4192>.

40. Internally displaced persons (IDPs) could cast their vote either in the municipality of their temporary residence, or in the municipality where they had been registered before being displaced (Articles 1.5, 3.9 and 3.12 of the Election Law). Mobile voting at home was allowed for voters not able to come to the polling station but was also available in retirement homes or detention facilities.⁵⁸ Voters registered for out-of-country voting who were in the country on Election Day, or who turned 18 or changed permanent address after closing of the CVR could vote by tendered ballot⁵⁹ at special polling stations established in each municipality (Art 3.17 of the Election Law).

41. The CEC informed the Congress delegation that important efforts to clean the CVR of deceased voters were undertaken ahead of the elections. Hence, the CEC was able to remove thousands of voters from the CVR, leaving less than 450 of presumed dead persons on the CVR, which were clearly marked on the registers for PSC staff to verify on Election Day. The CEC also informed the delegation that out-of-country voter registration had been improved, to address issues related to voter ID fraud and tendered ballots. This active registration process is made electronically and requires submission of a proof of address to receive a postal ballot. Some Congress interlocutors raised concerns regarding the overall number of voters reaching more than 3.3M when the total population in Bosnia and Herzegovina, while difficult to estimate with up-to-date figures of the emigration flux and the total population lacking, is most likely lower.

42. The Congress delegation welcomed the continuous progress made to render voters list fraud less likely, including on tendered ballots and out-of-country registration, but noted with concern the high number of registered voters on electoral rolls. As already stated in the 2016, 2018 and 2020 Congress election observation reports, the delegation reaffirmed that the right of voters residing abroad to vote in local and cantonal elections is not in line with Congress Recommendation 369(2015) on Electoral lists and voters residing *de facto* abroad. The Congress highlights that a genuine connection between voters and their country of residence must exist to cast a ballot in local and regional elections.

7. CANDIDATE REGISTRATION

43. All citizens eligible to vote may run as candidates in cantonal elections.⁶⁰ However, some categories of state officials and civil servants, including the members of the police and armed forces, as well as diplomatic bodies are only allowed to run as candidates provided they resign or step down temporarily from their positions.⁶¹

44. Candidates for cantonal elections can be nominated by groups of voters or political entities. First, as required by law, the CEC certifies political entities to participate in the elections⁶². The second step of registration is the verification of candidate lists and coalitions by the CEC. The process of certification requires submission of a financial deposit and a proof of support signatures from voters. For cantonal elections, 500 supporting signatures are requested for registration in cantons of less than 100 000 registered voters or 1 000 signatures in cantons of more than 100 000 voters⁶³. Voters can only support one list (party or candidate) per contest. Current members of the Cantonal Assemblies running for re-election as well as political parties holding mandates in the House of Representative of BiH and/or in the House of Representatives of FBiH were exempted from collecting signatures (Art. 4.4. Paragraph 4 of the Election Law). The financial deposits necessary to certify registration can be reimbursed if a political entity reaches the threshold of 3 % of the valid votes cast (Art. 4.16 of the Election Law). According to CEC regulations, for cantonal elections the electoral deposits amounted to

⁵⁸ The CEC registered 14 222 voters for mobile voting in 141 municipalities.

⁵⁹ Tendered ballots refer to the procedure where a ballot paper is placed in an unmarked envelope which is itself placed in a bigger envelope containing the identity details of the voter and is cast in especially assigned polling stations. These ballots are also counted separately at the main counting centre in Sarajevo after verification of the voters' right to vote.

⁶⁰ Art. 1.4 of the Election Law.

⁶¹ Art. 1.8 of the Election Law.

⁶² The CEC published a list of all certified political subjects and candidates on its website. https://www.izbori.ba/Documents/Izbori_2022/pregled_ovjerenih_politickih_stranaka_i_nezavisnih_kandidata_za_ucesce_na_Opcim_izborima_2022.pdf.

⁶³ The CEC informed the delegation, that while the CEC was supposed to verify all the signatures, due to shortage of resources, they were only able to verify a 10% sample of support signatures for each subject.

BAM 13 000 (approx. €6 660) for political parties and BAM 7 000 (approx. €3 590) for independent candidates⁶⁴.

45. The candidate registration process lasted more than three months, from 6 May until 12 August 2022. 3 806 candidates from 172 political entities were registered for the 289 seats to fill in the cantonal elections. Depending on the canton, between 10 and 22 lists were registered with all major political parties of FBiH represented as well as independent candidates, locally relevant lists and smaller parties⁶⁵.

46. Congress interlocutors were overall satisfied with the integrity of the registration process and registration was completed within the legal timeframes and in a transparent manner. Some Congress interlocutors highlighted the very high number of lists, which in their opinion, could be due to the establishment of fictitious lists to be used in the context of trading of seats on PSCs in some areas.

47. The Congress delegation noted that, while the 40% gender quota was applied overall, no regulation governed the placement of women on the list (no “zipper” system) which, in practice, led to most women being placed last and limited their possibilities of participation in cantonal politics.

8. ELECTION CAMPAIGN

48. The official election campaign period, lasting for 30 days, started on 2 September and ended 24 hours before the Election Day when the silence period, prohibiting any election campaign activities including online activities, began. During the official campaign period the provisions of the Election Law apply, stipulating rules for equitable access to public places, facilities, and media by contestants for campaign purposes.⁶⁶ Hate speech is prohibited throughout the campaign period⁶⁷.

49. With regard to the campaign instruments, political subjects displayed posters and billboards and reached out to the voters through rallies, meetings, canvassing and distribution of leaflets. In addition, they extensively addressed potential voters online, through posts on social networks. Some Congress interlocutors expressed their satisfaction with regard to the return to pre-COVID campaigning methods which included more interactions with the voters.

50. Overall, the contestants did not express major concerns regarding their right to campaign without undue restrictions. The cantonal campaign environment was largely perceived as calm. Fundamental freedoms were respected. Cases of violence were rare but instances of pressure on or harassment of voters were reported by domestic observers⁶⁸. Some Congress interlocutors noted that a certain number of contestants had already started campaigning before the start of the official campaign.

51. At cantonal level, the campaign was low-profile and mainly overshadowed by national politics and ethnic rhetoric. A significant part of the political debate was focused on issues related to ethnicity, leaving little space to issues relevant at cantonal level. The cantonal issues were thus regularly neglected, and the high number of lists and candidates did not automatically translate into political programme-based alternatives. Transportation, public service delivery, and local investments were relevant campaign topics in some places, including in Sarajevo Canton. In some cantons, traditional political parties were in situation of “near monopolies” with very little opposition and no real need for campaigning and debating programmes. As a result, informed and balanced choice was limited for the voters, which is detrimental to local democracy.

64 See CEC Rulebook on application and conditions for certification of political entities to participate in the 2022 General Elections, p. 3-4 (May 2022) available at https://www.izbori.ba/Documents/Izbori_2022/Rulebook_on_certification_of_political_entities.pdf.

65 The CEC published the full list of registered candidates on its website: https://www.izbori.ba/Documents/Izbori_2022/politicki_subjekti/kandidatske_liste_opci_izbori_2022.pdf.

66 The Election Law differentiates between “campaign period” and “election period” with the latter beginning on the day when elections are announced and ending when election results are validated, in this case on 2 November 2022.

67 Prohibition of hate speech and the applicability of campaign regulations to social network platforms, were introduced by the OHR July amendments, which also specified cases that could be considered as abuse of public resources and tripled all fines in case of banned activities. For the full list of banned activities, see Article 19.9 of the Election Law as amended.

68 See Pod Lupom Coalition Presents Preliminary Report on the Long-term Observation of the 2022 General Elections, available at <https://podlupom.org/en/press/news/pod-lupom-coalition-presents-preliminary-report-on-the-long-term-observation-of-the-2022-general-elections/>.

52. Congress interlocutors also raised concerns regarding widespread misuse of public resources by incumbents in the weeks before but also during the official campaign. Allegations of electoral promises to offer services, gifts and financial rewards to voters or allegations of pressure on civil servants were also recorded by domestic observers⁶⁹. The CEC could not investigate most of the irregularities which took place before 2 September, as the Election Law was not applicable. As a result, it is alleged that incumbents used these resources to their promotion and had an undue advantage. Some cases were nonetheless investigated by the CEC on the basis of reports by domestic organisations.⁷⁰ Out of the 95 complaints received for campaigning before the official election period, the CEC issued 25 fines, going from BAM 1 000 to BAM 4 000 (approximately €500 to €2000)⁷¹.

53. The Congress delegation noted with satisfaction that following the OHR amendments, the campaign environment was slightly less aggressive than in previously observed elections. However, the delegation regretted that the campaign was still marked by instances of hate speech, an overall marginalisation of youth and women and the widespread polarised discourse by political parties focusing almost exclusively on ethnic matters and thus depriving voters of programmes addressing cantonal issues. Furthermore, it noted with concern the high number of alleged abuses of administrative resources by incumbents, the insufficient reporting on cases of corruption and the fact that sanctions were not dissuasive enough.

9. CAMPAIGN AND POLITICAL PARTY FINANCE

54. Campaign finance for cantonal elections is primarily regulated by the Election Law, the Law on Financing of Political Parties and CEC regulations. The CEC is responsible for the overall control of campaign financing, determines a ceiling of expenditures for campaign purposes⁷² and regulates donations.

55. Contestants are required to submit a financial report to the CEC at the moment of registration, covering three months before submission, and another one no later than thirty days after the publication of the results, including information on all revenues and expenditures from the day of application for certification until the certification of results⁷³. In January 2022, the CEC issued updated regulations and templates for political subjects, which clarified the rules on reporting (Art. 15.1 of the Election Law). By these regulations, contestants are also required to open a dedicated bank account, which is in line with GRECO recommendations, but has not yet been added to the permanent legislation⁷⁴. An interim report is not required. The CEC also investigates cases of non-compliance and pre-campaigning either ex-officio or based on complaints and can sanction political subjects.

56. The political parties and election campaigns are primarily financed from the contestants' own resources, party membership fees and donations by individuals and legal entities. An individual may donate up to BAM 10 000 (€5 200), a legal entity up to BAM 50 000 (€26 000), and a party member up

69 Transparency International BiH recorded that, "during the monitoring of pre-election activities from July 1 to October 1, its observers recorded over 2 215 cases of abuse of public resources for the purpose of promoting parties and candidates. The most common trend, as in previous years, was an increase in public spending before the elections." The full report is available at <https://transparentno.ba/2022/11/01/stranke-na-izbornu-kampanju-potrosile-115-miliona-km-ti-bih-zabiljezio-preko-2200-primjera-zloupotrebe-javnih-resursa-za-kampanju/>. See also Pod Lupom, Preliminary Report, *Op.Cit.*

70 See Transparency International BiH report on cases of misuse of public resources before the beginning of the official campaign at: <https://ti-bih.org/ti-bih-misuse-of-public-resources-for-the-election-campaign-is-still-dominant-a-map-of-pre-election-works-and-spending-is-also-presented/?lang=en>. See also Pod Lupom, Preliminary Report, *Op.Cit.*

71 See CEC summary document on instances of campaigning before the campaign:

https://www.izbori.ba/Documents/Izbori_2022/Prigovorilzalbe/9_Prigovori_na_placenu_kampanju_prije_pocetka_sluzbene_izborne_kampanje_krsenje_clana_16_14_stav_3_IZBiH_Opci_izbori_2022_g_19_09_1_1710.pdf

72 A political subject can spend up to BAM 0.2 for each registered voter in the relevant constituency for cantonal elections during the official campaign period (Art. 15.10 of the Election Law).

73 All candidates have to submit a report on their personal property situation. Furthermore, political parties are required to publish their annual financial reports on their websites and to audit the finances of their local branches. Political subjects are required to use specific bank accounts dedicated to the election campaign (Art. 6 of the Law on the Financing of Political Parties). In the last audit, out of 100 political subjects, only 11 complied with the law and 51 committed serious violations. See Sarajevo Times analysis on the sanctions decided by the CEC in 2022 at: <https://sarajevotimes.com/analysis-financing-of-political-parties-in-bosnia-and-herzegovina/>

74 The GRECO report noted the lack of homogenised legislation, workable for practitioners and political parties. It welcomed the CEC regulations, which solved important shortcomings, but regretted that the provisions applicable to political parties are currently dispersed and had not been consolidated within a single consistent piece of legislation. GRECO Second Addendum to the Second Compliance report on Bosnia and Herzegovina to the Third Evaluation Round (2022), available at: <https://rm.coe.int/third-evaluation-round-incriminations-ets-173-and-191-gpc-2-transparen/1680a7acc3>

to BAM 15 000 (€7 800) annually (Art. 6 of the Law on the Financing of Political Parties). Foreign, anonymous, and/or religious donations are prohibited. Only political parties holding seats in the Parliamentary Assembly of Bosnia and Herzegovina receive annual funding from the state budget, and those represented at entity levels receive funding from the respective entity budget (Art. 6, 7 and 10 of the Law on the Financing of Political Parties). Moreover, in the Federation of Bosnia and Herzegovina no direct public funding of election campaigns is available.

57. Overall, the campaign finance regulatory system does not guarantee full transparency and accountability and, despite recent improvements⁷⁵, including updated CEC regulations⁷⁶, it remains a critical issue. Several political parties have managed to circumvent campaign and party finance regulations, as the sanctions are not dissuasive enough to counter-balance the financial benefits for political parties⁷⁷. Congress interlocutors mentioned some issues such as the shortage of staff of the CEC and sanctions still not being dissuasive enough, even with the threefold increase imposed in the OHR July amendments⁷⁸. The lack of transparency of political parties and campaign financing, and unbalance in financial resources among contestants is not conducive to a level playing field between candidates⁷⁹. The Congress delegation was informed that the CEC was lacking auditors, which may lead to increased timeframes for verifications of reports, after the expected deadline for submission on 2 December 2022.

58. The Congress delegation noted with concern the logistical issues affecting the work of the CEC, including the lack of staff and resources dedicated to the audit of campaign and party financial reports. It also regretted the lack of transparency and accountability of the overall campaign and party finance legislation and oversight mechanism. The delegation noted that more dissuasive sanctions could be imposed to curb electoral corruption.

10. THE MEDIA

59. Freedom of expression is enshrined in Article 2 of the Constitution of Bosnia and Herzegovina and in the Constitution of the FBiH (Chapter 2, Article 1). Applicable legislation during electoral campaigns also includes the Election Law, the Law on the Public Service Broadcasting of BiH and of the FBiH and CEC regulations. Bosnia and Herzegovina ranked 67 out of 180 countries in the Reporters Without Borders Ranking 2022, which reflects a decrease in media freedom compared to previous years (2021 rank: 58 out of 180).

60. The media landscape of Bosnia and Herzegovina is strongly dominated by ethnic and political affiliations and highly fragmented with about 40 TV stations, 150 radio stations, several daily newspapers and news agencies, almost 200 magazines and other periodicals, as well as around 600 web outlets.⁸⁰ According to recent analysis, television remains the main source of political information⁸¹ for citizens of Bosnia and Herzegovina with the public broadcaster, Radio and Television of Bosnia and Herzegovina BHRT⁸² and the two entity-level broadcasters, Radio Television of

75 See for more details also the CoE Bosnia and Herzegovina Action Plan (2022-2025): <https://www.coe.int/en/web/programmes/bosnia-and-herzegovina>

76 See CEC Rulebook on application and conditions for certification of political entities to participate in the 2022 General Elections, *Op.Cit.* and CEC Instructions on the procedure for opening and using a special account for financing election campaign expenses (May 2022) available at: https://www.izbori.ba/Documents/2022/06/Izmjena_u_o_p_o_i_k_p_r_z_f_t_i_k_5_22-bos.pdf.

77 See on this matter, Sofja POPOVIC, "The lack of transparency in the financing of political parties remains a problem in BiH", European Western Balkans (31 October 2022), at: <https://europeanwesternbalkans.com/2022/10/31/the-lack-of-transparency-in-the-financing-of-political-parties-remains-a-problem-in-bih/>

78 The lack of personnel and resources had also been noted in the GRECO Second Addendum, *Ibid.*

79 For more information on the financing of political parties see the Council of Europe "Handbook on Local Government and Public Ethics Bosnia and Herzegovina" chapter 2.5, *Op.Cit.*

80 See the Country Profile of Bosnia and Herzegovina by Reporters Without Borders available at <https://rsf.org/en/country/bosnia-herzegovina>.

81 96% of households in Bosnia and Herzegovina own a television set and 87.1% of citizens indicate to use television as their main form of media. For further information see the 2021 Research Report of the Council of Europe Project "Media and information literacy: for human rights and more democracy project in Bosnia and Herzegovina" available at <https://rm.coe.int/adults-media-habits-in-bih-new-doc/1680a490e9>.

82 The public broadcaster BHRT has been in a difficult financial situation since years, which has led to its inability to pay salaries, providers and its accounts being blocked by the Tax Authority in early 2022 due to a € 9M outstanding debt. See 2022 EU Bosnia and Herzegovina Report, *Op.Cit.*

Republika Srpska RTRS and Federal Television FTV in the Federation of Bosnia and Herzegovina⁸³ and private broadcasters such as N1, OBN, Pink BiH, Hayat TV, TV1, Alternativna televizija, Al-Jazeera, etc., dominating the market in terms of audience⁸⁴. Popular print media such as *Oslobodjenje*, *Dnevni Avaz*, as well as weekly magazines such as *Slobodna Bosna* and *Dani* are also sources of political information. The Federal News Agency FENA is the government-owned national news agency in Bosnia and Herzegovina.

61. The large number of media outlets, however, does not imply factual pluralism of information and opinions and rather leads to a very competitive advertisement market, thus making financial sustainability difficult to attain. Congress interlocutors explicitly highlighted the need for a strengthened legal framework with regard to transparent media ownership and finances, in particular for online media outlets.⁸⁵ The resulting high dependency on public and private financing makes media much more susceptible to political pressure. Although defamation and libel are decriminalised, defamation cases against journalists as well as instances of hate speech and calls for violence are common to discourage media representatives from reporting about public issues⁸⁶. There are widespread practices of online and offline intimidation and harassment of journalists, predominantly women, who are oftentimes subject to verbal threats and attacks as well as occasional physical assault.⁸⁷ In addition, there is not enough appropriate police and judicial follow-up in cases of threats and violence, reinforcing an atmosphere of impunity⁸⁸.

62. During the official campaign period the provisions of the Election Law and CEC regulations apply, stipulating equitable access to the media by contestants for campaign purposes: the media are required to respect the principles of balance, fairness, and impartiality (Art 16.2 of the Election Law) and public broadcasting must grant three minutes of free airtime to each contestant (Art. 7 CEC Regulation). Moreover, paid public advertising and election campaigning in the media, including online media, are only allowed during this period. Contestants can purchase advertising time up to thirty minutes weekly for each public, and sixty minutes weekly for each private broadcaster⁸⁹. Congress interlocutors drew attention to the fact that Chapter 16 of the Election Law lacks clarity and would benefit from a complete revision. Currently, it does not provide specification on which media (State, entity or local) should address which campaign, leading to overlaps in reporting and staff and resources constraints. Hate speech is prohibited throughout the campaign period.

63. The Communications Regulatory Agency (CRA) regulates the broadcast media and is tasked with handling media-related complaints and determining sanctions for violations. However, as OSCE/ODIHR observers noted, the law does not provide clear deadlines for the resolution of media-related complaints, limiting the right to effective remedy before the Election Day⁹⁰. The CRA does not organise country-wide media monitoring during the campaign. The CRA is also impacted by staff and resources shortages, as well political deadlocks, as the Parliament did not appoint a new board for the 2018-2022 period.

83 For an analysis of the media landscape in Bosnia and Herzegovina see for example the 59th Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations (report period 16 October 2020 through 15 April 2021) in Chapter IX available at <http://www.ohr.int/59th-report-of-the-high-representative-for-implementation-of-the-peace-agreement-on-bosnia-and-herzegovina-to-the-secretary-general-of-the-united-nations/>.

84 N1 was removed from the air by the state-owned audio-visual content provider BH-Telekom, at the end of August 2022, in what the station called a politically motivated decision. See on this matter, See the IEOM Statement of Preliminary Findings and Conclusions, 2022, *Op.Cit.*, p15, footnote 66.

85 For more information on the ranking see <https://rsf.org/en/country/bosnia-herzegovina>.

86 See the analysis on the 2022 elections by Matteo MATRACCI from the Balkan Investigative Reporting Network available at <https://balkaninsight.com/2022/10/17/bosnias-contested-election-sparks-heated-rhetoric-online/>. See also the cases of hate speech and intolerance towards journalists, especially women, reporting on corruption as mentioned in the 2022 report on "Indicators of the level of media freedoms and safety of journalists in BiH 2021" by the Association BH Novinari available at <https://bhnovinari.ba/wp-content/uploads/2022/06/BiH-ENG-2021.pdf>.

87. According to Borka RUDIC, Secretary General of the Association of Bosnia and Herzegovina Journalists, political pressure as well as attacks on journalists and independent media increased by 40% in 2022 (total of 79 cases of attacks on journalists) compared to 2021. Also, verbal threats, death threats and hate speech increased by 137%. For further information see the press release by the Federal News Agency (FENA) available at <https://fena.ba/article/1301665/rudic-last-year-79-cases-of-attacks-against-journalists-in-bih-reprtd>.

88 See 2022 EU Bosnia and Herzegovina Report, *Op.Cit.*

89 Art. 16.14 of the Election Law and CEC Rulebook on media representation of political subjects in the period from the day of announcing the election to the day of the election (May 2022), available at https://www.izbori.ba/Documents/Izbori_2022/Pravilnik_o_medijском_predstavljanju-bos.pdf.

90 See IEOM Statement of Preliminary Findings and Conclusions, 2022, *Op.Cit.*

64. Media coverage of the 2022 cantonal elections was limited. This phenomenon was further encouraged by the fact that the local media environment is generally in poor condition, despite each canton owning a TV or radio channel⁹¹. Resultingly, social media has become a useful and crucial tool for candidates during political campaigns, also for cantonal elections⁹². One interlocutor was of the opinion that politicians purposefully chose social media, to avoid debate, to avoid being asked difficult questions. Congress interlocutors stressed the need for more obligations for traditional media to cover cantonal elections.

65. Several Congress interlocutors noted the absence of political debates based on programmes at cantonal level. From their experience, candidates either refused to participate in debates or did not appear when invited and/or appealed only to their own ethnic group. This reinforced the feeling of stagnation, the absence of shared vision for the country as well as the lack of perspective for the youth. The rhetoric of “Us versus Them” was still widely used by some political subjects on both online and traditional media⁹³. While many contestants used inflammatory and divisive rhetoric, their posts in social networks did not constitute hate speech. As was noted by several Congress observers, this progress could be linked to the June 2022 amendments, which clearly defined hate speech and increased fines in such cases.

66. As stated above (paragraph 53), the Congress delegation noted with satisfaction that the July 2022 OHR amendments, by clearly defining hate speech, contributed to a slightly less aggressive campaign environment. On the other hand, it regretted the unclear timeframes when addressing such cases and the absence of programme-based political debates. It also noted with concern the overall situation of the media in BiH, which is tainted with political blockages affecting BHRT and the CRA, threats to journalist, lack of transparency over media ownership as well as insufficient oversight and enforcement powers of the regulatory bodies, which could be improved by substantial revision of Chapter 16 of the Election Law.

11. COMPLAINTS AND APPEALS

67. Voters and political subjects may file election-related complaints with the MECs or the CEC, depending on the violation. The CEC has competence to adjudicate complaints on registrations of voters and candidates, misuse of public resources, threats to journalist, instances of hate speech, false impersonation on behalf of a political contestant and using means of communication to influence voters during the electoral silence. The CEC acts as the first instance to review most election disputes and appeals and decides on each complaint by simple majority vote⁹⁴. Any case can be referred to the public prosecutor if it contains elements of a criminal offence.

68. During the campaign, only voters and political subjects whose rights were violated can submit complaints and appeals. NGOs, including those observing the elections, do not possess the legal right to do so. However, the CEC has the power to initiate procedures ex-officio and has repeatedly done so, upon receiving domestic observers reports or hearing about allegations of violations. On Election Day, observers, contestants, MECs, and groups of at least fifty voters of a polling station may challenge the voting results and request a recount of votes in the station. The CEC can also order a MEC or PSC or counting centre to correct identified irregularities, as indicated in the Election Day OHR amendments.

69 Deadlines for submitting complaints are short and limited to 24 hours during the election period. Election commissions must adjudicate the complaint within 48 hours. An appeal against CEC decisions can be submitted within 48 hours of publication of a decision and the Appellate Division of the Court of Bosnia and Herzegovina must adjudicate the appeal in 72 hours.

91 See Marija ARNAUTOVIC, “Local Media in BiH: Financial Dependence and Political Influence”(2018), Balkan Diskurs, <https://balkandiskurs.com/en/2018/04/09/local-media-in-bih-financial-dependence-and-political-influence/>.

92 For an analysis of the possibilities and concerns presented by social media in electoral campaigns, see the 2017 study on the use of internet in electoral campaigns of the Committee of experts on media pluralism and transparency of media ownership (MSI-MED) of the Council of Europe (DGI(2017)11).

93 See the media monitoring analysis of the expert team deployed in the framework of the international observation mission, IEOM Statement of Preliminary Findings and Conclusions, 2022, *Op.Cit.* p15

94 Offences related to the media are forwarded to the Press Council of Bosnia and Herzegovina by the CEC. See Art. 6 of CEC “Instruction on procedures of adjudicating complaints and appeals submitted to the election commissions”, 2022, available at https://www.izbori.ba/Documents/Izbori_2022/Instruction_on_procedures_of_adjudicating_complaints_and_appeals.pdf.

70. Before the Election Day, the CEC received about 560 complaints and 38 appeals against MEC decisions. Of these, 403 were related to out-of-country voting and 59 to early campaigning⁹⁵. Some 35 challenged the appointment of the PSC members and false representation of political subjects at the polling stations, 32 cases were related to hate speech and 63 to the misuse of public resources. To improve transparency of the complaint and appeal process, the CEC livestreamed its session on Youtube and published on its website a regularly updated register of all complaints received and decisions taken.⁹⁶ The aftermaths of the counting led to many complaints and appeals being submitted to the CEC. Finally, the CEC sent 95 criminal cases to the prosecutor between 4 May 2022 and 15 December 2022, 51 of those were related to deceased voters being identified on the list of support signatures.

71. The Appellate Division reviewed over 350 appeals against CEC decisions and rejected all but seven. Congress interlocutors noted that the Appellate Court still does not hold public sessions nor publish decisions online.

72. The Congress delegation noted with satisfaction efforts made by the CEC to ensure timely and transparent handling of election-related complaints, as well as its commitment to open ex-officio procedures based on NGOs' reports and alleged irregularities during the campaign.

12. ELECTION DAY⁹⁷

73. On Election Day, nine teams of Congress observers were deployed in all ten cantons of the Federation of Bosnia and Herzegovina. Altogether, they observed electoral processes, including opening, voting, closing or counting in 126 polling stations⁹⁸. Opening of polling stations was conducted in line with regulations and did not pose any problems or irregularities, as observed by the Congress delegation. Congress observers did not witness any cases of violence or threats in or around polling stations and assessed the Election Day as overall orderly. They did not witness any issue in the few absentee and tendered ballots polling stations visited.

74. The delegation's evaluation of the election process was predominately positive, with most of the polling stations assessed in the questionnaire as "very good" or "good" and electoral procedures being largely respected. In polling stations visited by the Congress observers, there often was frequent attendance by both civic society and party observers but without any obvious undue interference with the election process and the work of PSCs. Several Congress interlocutors underlined the importance of international observers as a deterrent against fraud on the Election Day.

75. Overall, the delegation noted with satisfaction that the newly imposed CEC regulations and responsibilities, which aimed at improving the general integrity of the voting process, seem to have succeeded in making Election Day fraud less likely⁹⁹. Most of the members of PSCs seemed to be sufficiently trained to apply these new regulations, including the new set-up of polling stations, the banning of the practice to read the voter's name aloud¹⁰⁰ and the certification of ballots with a special stamp and signature of the PSC member. Signing and stamping four ballots per voter, while a lengthy process, seemed to be mostly done in line with the CEC instructions, although some observers witnessed small quantities of ballots being stamped in advance.

76. Furthermore, in past elections, Congress observers had noted issues related to the abuse of assisted voting. Changes made to reduce the abuse of assisted voting by requesting proof of

95 See the IEOM Statement of Preliminary Findings and Conclusions, 2022, *Op.Cit.*

96 See information of the CEC on objections and appeals, available at <https://www.izbori.ba/Default.aspx?Lang=3&CategoryID=1179&PodmId=1191>.

97 Congress delegation members assess the conduct of elections based on a standardised election day questionnaire, which is filled out for every observation by Congress teams. The questionnaire covers all areas and aspects of the election day from the conduct of opening, voting, counting and closing procedures and include questions on the persons present in the polling station, the atmosphere outside and inside the polling station, election material, transparency, potential irregularities, official complaints and a general assessment.

98 However, since the ballots for the cantonal elections were counted last in the counting procedure the Congress observers were unable to observe the entire counting process.

99 CEC regulations on voting procedures addressed several recommendations by international observers and all of Pod Lupom's 14 recommendations to reduce fraud on the Election Day.

100 A few Congress observers witnessed party representatives having copies of lists of voters and being told the name of voters by PSC members. Domestic observation coalition Pod Lupom noted on the Election Day that "Up to ten cases where the name and surname of a voter were read aloud during their identification were registered at every fifth polling station. More than ten cases of this type of irregularity were registered at 31 polling stations." See Pod Lupom, Preliminary Report, *Op.Cit.*

impairment and recording it in the logbook seem to have been partly successful in curbing this practice. The Congress delegation noted with concern a few instances of voter's assistant ID not being checked, or voters being refused the right to vote when they had no medical proof of impairment.

77. Nevertheless, some irregularities appeared to be of recurrent nature, namely family/group voting (noted in 16 polling stations)¹⁰¹, inadequate layout of the station, usually owed to their small size (noted in 20 polling stations), or names of voters being shared with party representatives. Occasionally, there were cases of voters queueing to vote inside the polling station, which made it feel overcrowded. Besides, Congress observers regretted the lack of accessibility and ramps for disabled voters in many polling stations as well as the small font used on ballot papers for cantonal elections, which was not adapted to voters with visual or cognitive impairments.

78. The CEC measures to curb vote-buying by having voters take photos of their ballots, have resulted in a different set-up of polling stations. Specifically, the positioning of the polling booths to face the PSC members hindered the taking of pictures of ballots. However, the new setup allowed for limited secrecy of the vote, especially in smaller polling stations, which constituted a substantial issue. This represented a breach of the right to vote in secret even if it was applied in an attempt to eliminate the chances of vote-buying. Furthermore, secrecy of vote was also compromised by voters folding their ballots outside of the polling booth, in front of the ballot boxes, which several Congress teams observed.

79. In addition, on a few instances on the Election Day, Congress observers noted that PSC members were not informed of the political affiliation of the party representatives, which led to more than the allowed one observer being present in the premises at the same time. This constitutes an issue that could easily be addressed by authorities to avoid the presence of unauthorised persons in the polling stations¹⁰²

80. Overall, on irregularities during the Election Day, 143 complaints for irregularities were delivered to the CEC which transferred the great majority to the relevant MECs and three to the public prosecutor¹⁰³. These related mainly to assisted voting, presence of unauthorised persons in polling stations, and undue influence on voters' choice.

81. Regarding closing and counting procedures, Congress observers noted with concern the practical complications due to large size of ballots and the possibility for preferential votes but did not observe major irregularities or mathematical errors¹⁰⁴. After the Election Day, 126 requests for recounts were submitted to the CEC and 32 objections to the determination of results. On 10 October, the CEC also called for a full recount of the election of the President of Republika Srpska as well as the recount of all elections in 45 polling stations of the FBiH¹⁰⁵. The OHR Election Day amendments gave the possibility to the CEC to order ex-officio the counting centres to take measures to eliminate the identified irregularities, which was not the case previously and led to some misunderstandings.

101 Domestic observation coalition Pod Lupom findings are in line with Congress observations, as they "registered up to ten cases of family voting at every other polling station in the country. More than ten cases of family voting were registered at 11 polling stations". *Op.Cit.*

102 With the exception of international observers, only one observer or representative per organisation can be represented at every polling station (Art. 17.2 of the Election Law).

103 Full report on violations on Election Day is available on CEC website at: https://www.izbori.ba/Documents/Izbori_2022/Prigovorilzalbe/4_Povrede_na_birackim_mjestima_na_dan_izbora_nadleznost_OIK_1_1710.pdf

104 This finding differs from the finding of the IEOM which assessed the counting negatively in 36 of the 168 polling stations observed, mostly due to procedural irregularities, which indicates the PSC members' insufficient understanding of the procedures. They observed issues with the protocols, the sealing of voters list and stamps and the presence of unauthorized persons interfering with counting. See Parliamentary Assembly of the Council of Europe, Election Observation Report, Observation of the general elections in Bosnia and Herzegovina, 17 November 2022. Available at: <https://pace.coe.int/en/files/31426>

105 Data on appeals and complaints available on the CEC website at: <https://www.izbori.ba/?Lang=6&CategoryId=1215&Tag=500> ,

13. TURNOUT, ELECTION RESULTS AND POST-ELECTION PERIOD

82. Due to the high number of recounts, the CEC only published the final results on 2 November 2022¹⁰⁶. The electoral turnout in the Federation of Bosnia and Herzegovina was 50.06 %¹⁰⁷, with quite a high share of invalid votes (6.59 %). There were substantial differences across cantons, with the highest turnout recorded in the Canton Bosnian-Podrinje Goražde (65.14 %), the lowest in the Canton Una-Sana (38.24 %). Overall turnout was approximately 1.2 % lower than in the 2018 cantonal elections. The proportion of tendered ballots varied greatly between cantons, ranging from 0.42% in West-Herzegovina Canton to 6.9% in Canton 10.

83. As regards the election results, the Bosniak Party SDA continues to be the most successful party in six out of the ten cantons (Central Bosnia, Tuzla, Zenica-Doboj, Una-Sana, Sarajevo, Bosnian-Podrinje Goražde¹⁰⁸). The HDZ BiH won absolute majority in the cantons of West Herzegovina and Posavina and relative majority in Herzegovina-Neretva¹⁰⁹). The Croatian National Shift (HNP) came first again in Canton 10 (18.78 %), that it previously led. The elections in all cantons were competitive, with a high number of parties getting seats in Cantonal Assemblies, which consequently will be more fragmented. Discussions on ruling coalitions have been under way since the announcement of results.¹¹⁰

84. In total, close to 31.5%¹¹¹ of elected cantonal councillors are women, which is slightly less than after the 2018 elections and still not in line with the Law on Gender Equality, which prescribes 40% of women at all levels of government. The Herzegovina-Neretva Canton, which stood out for reaching near parity with 47% of women after 2018, is now constituted of only 33% of women. The Sarajevo and Zenica-Doboj Canton have now 40% of female councillors¹¹².

85. Nominations to all levels of government are intertwined and some limitations exist regarding multiple mandates, which led to many cantonal governments not being established as of the end of January 2023. The OHR Election Day amendments shortened deadlines for the formation of government at Federation level, which forced Cantonal Assemblies to elect their members to the House of People of the FBiH before 2 December 2022. Political negotiations between the main parties and active deal-making for securing seats in the House of People overshadowed the role of the newly elected councillors at cantonal level. In addition, uncertainty regarding the nominations of members of the Government of the FBiH and of BiH have led to confusion regarding the leadership of Cantonal Assemblies, with several Cantonal councillors being considered for higher positions in which case they would have to resign from their cantonal mandates.

86. The Congress delegation welcomed the announcement of results within the legal timeframes but noted with concern the low representation of women in some Cantonal Assemblies. It also regretted that issues related to the House of People, intense coalition-building talks and delayed national-level appointments resulted in most cantons still being led by former administrations since the Election Day.

106 In the aftermaths of the preliminary announcement of results the week following the Election Day, confusion and tensions were high especially regarding the presidential elections in Republika Srpska with both contenders claiming victory. The role and impartiality of the CEC was questioned repeatedly by some political parties. 2 November 2022 was the final day to publish the results and finalise all appeals.

107 Official results by the CEC are available at https://www.izbori.ba/Rezultati_izbora/?resId=32&langId=1#/7/0/0/0/0.

108 Cantons are ranked according to the election results in the descending order, from 33.4 % in Central Bosnia to 15.17 % in Bosnian-Podrinje Goražde. *Op.Cit.*

109 Except in Posavina, HDZ BiH ran in broad coalitions of 6 (Herzegovina-Neretva), respectively 4 (West Herzegovina) parties, with the respective results of 63.26 %, 52.71 %, and 32.6 % *Op.Cit.*

110 In respective cantons, from 6 to 13 parties and coalitions gained seats. *Op.Cit.*

111 This figure was available as of 20 January 2023 based on information published on Cantonal Assemblies' website, but some potential resignations of candidates also elected at federal or entity levels were still pending. The 40% gender requirement was far from achieved at the level of the House of Representatives of the BiH, with only 16.7% of women elected members. See interview of Ms Samra FILIPOVIĆ-HADŽIABDIĆ, director of the BiH Agency for Gender Equality at the Ministry of Human Rights and Refugees <https://politicki.ba/politika/samo-1666-posto-izabranih-u-drzavni-parlament-su-zene/26645>

112 These figures was available, as of 20 January 2023, on the Cantonal Assemblies' website, for Sarajevo: <https://skupstina.ks.gov.ba/sastav/zastupnici%20> and Zenica-Doboj: <https://www.zdk.ba/skupstina>

14. CONCLUSIONS

87. Overall the Congress delegation observed cantonal elections, which were managed in an orderly and satisfactorily manner by the CEC as well as lower levels of election administration. The delegation welcomed the numerous improvements implemented by the CEC and MECs to improve integrity and transparency at all stages of the electoral process.

88. Despite these clear improvements, the 2022 general elections remained challenging for voters and the administration alike, with several votes of national importance taking place on the same day. In comparison to previous elections, some elements of progress are clearly identifiable during the pre-election period including inter alia, hate speech regulation, amendments to address electoral fraud and efforts to make the CVR as accurate as possible.¹¹³

89. However, the Congress delegation regrets that once again the campaign did not offer voters enough balanced debates and programmes to make a fully informed decision at cantonal level, regardless of their ethnic affiliation. Additional effort could be devoted to solving some long-standing issues such as the misuse of public resources, out-of-country voting, the worrying situation of the media, in order to allow for a more fair and open voting process. In that regard, special attention should be awarded to efforts which address the current underrepresentation of women in local and regional politics. Only when addressing these issues and when presenting the citizens of Bosnia and Herzegovina with clear political alternatives and programmes at cantonal level will their trust in the electoral processes and interest and willingness to engage in politics in cantons be restored.

90. On Election Day, the Congress observers acknowledged the practical improvements implemented by the election administration to strengthen the integrity of voting. However, certain measures implemented to eliminate the prospects of vote-buying, namely rearrangement of the position of polling booths, substantially affected the secrecy of voting and should be reconsidered. The Congress delegation recommends pursuing efforts in curbing additional outstanding issues that were observed, such as family/group voting, issues with assisted voting and inaccessibility of polling stations could in order to ensure equal and secret suffrage for all voters. The Congress delegation also invites the authorities to consider reviewing the composition and appointment procedure of PSC members, which, despite their overall professionalism, still constituted the “weakest link” in the election administration and contributed to the irregularities and discrepancies noted during recounts.

91. Finally, the Congress delegation reiterates a special and very strong emphasis on its earlier recommendation that, contrary to the existing practices, the cantonal elections should be held at the same time as the local elections, or on different dates from the general elections, in order to avoid the campaign and elections being overshadowed by issues and topics of State and entity levels. Together with more clarity regarding the competencies of the cantons, this measure would contribute to the strengthening of this tier of government and make it easier for the citizens to make an informed decision on issues that are closest to them on Election Days in the future.

¹¹³ For details, see the press release of the Congress delegation in appendix.

APPENDIX I

CONGRESS ELECTION OBSERVATION MISSION
Cantonal Elections in Bosnia and Herzegovina – 2 October 2022
29 September – 3 October 2022
FINAL PROGRAMME

Thursday 29 September 2022

Arrival of the Congress Delegation in Sarajevo

Friday 30 September 2022

08:00 – 08:30	Congress internal briefing by the Secretariat <i>Venue: Hotel Holiday, Sarajevo, Room Una</i>
08:45 – 09:30	Briefing by Ms. Bojana URUMOVA , Head of the Council of Europe Office in Sarajevo <i>Venue: Hotel Holiday, Sarajevo, Room Una</i>
09:45 – 10:30	Meeting with the diplomatic corps in Sarajevo and representatives from countries represented in the Congress delegation <ul style="list-style-type: none"> • Ms. Helen FLEWKER, First Secretary Political, British Embassy <i>Venue: Hotel Holiday, Sarajevo, Room Una</i>
10:30 – 12:30	IEOM joint briefings with OSCE/ODIHR Core Team and delegations of the OSCE Parliamentary Assembly, the Parliamentary Assembly of the Council of Europe (PACE), the NATO Parliamentary Assembly and the European Parliament <i>Venue: Hotel Holiday, Sarajevo</i>
13:30 – 14:30	Meeting with members of the Central Election Commission (CEC) of Bosnia and Herzegovina <ul style="list-style-type: none"> • Dr. Suad ARNAUTOVIĆ, President • Dr. Irena HADŽIABDIĆ, member • Dr. Ahmet ŠANTIĆ, member • Mr. Vlado ROGIĆ, member • Mr. Jovan KALABA, member • Ms. Vanja BJELICA-PRUTINA, member <i>Venue: BiH Parliamentary Assembly, Trg Bosne i Hercegovine 1, Sarajevo</i>
15.00 – 18.00	Briefing for international observers by the Central Election Commission of Bosnia and Herzegovina <i>Venue: Hall of the BiH Parliamentary Assembly, Trg Bosne i Hercegovine 1, Sarajevo</i>
18:15 – 18:55	Congress technical briefing with the Delegation's members <i>Venue: Hotel Holiday, Sarajevo, Room Una</i>
19.00 – 19.30	Congress technical briefing with drivers and junior interpreters <i>Venue: Hotel Holiday, Sarajevo, Room Una</i>

Saturday, 1 October 2022

08:30 - 09:00 Congress internal briefing by the Secretariat

09:00 -10:30 Panel Discussion with Media Representatives

- Regulatory Communication Agency of Bosnia and Herzegovina, **Ms. Amela ODOBAŠIĆ**, Assistant Director
- Press Council of Bosnia and Herzegovina, **Ms. Maida BAHTO-KESTENDŽIĆ**, Project Coordinator
- BH Novinari – Association of Journalists of Bosnia and Herzegovina; **Ms. Borka RUDIĆ**, Secretary General
- Radio and Television of Bosnia and Herzegovina (*public*), **Mr. Dejan PETROVIĆ**, Editor of the News Programme
- Radio and Television of the Federation of Bosnia and Herzegovina (*public*), **Mr. Željko TICA**, Editor of the News Programme
- N1 TV (*private*), **Ms. Tina JELIN-DIZDAR**, journalist
- Balkan Investigative Report Network (*press*), **Mr. Denis DŽIDIĆ**, Executive Director and Editor

Venue: Hotel Holiday, Sarajevo, Room Una

10:45-12:00 Panel Discussion with NGOs/INGOs

- Forum of Tuzla Citizens, **Mr. Vehid ŠEHIĆ**, President and board member of the domestic election observation Coalition Pod Lupom
- Center for Investigative Reporting, **Ms. Leila BIČAKČIĆ**, Executive Director
- National Democratic Institute, **Mr. Nenad SIMOVIĆ**, Resident Country Director
- International Foundation for Electoral Systems (IFES), **Mr. Nermin NIŠIĆ**, Country Director
- International Republican Institute, **Ms. Amila KARAČIĆ**, Deputy Director

Venue: Hotel Holiday, Sarajevo, Room Una

12:30 – 13:00 Briefing with the OSCE/ODIHR Sarajevo long-term observers

Venue: Hotel Holiday, Sarajevo

14:30 – 15:00 Meeting with representatives and candidates of the SDA Stranka demokratske akcije (Party of Democratic Action) running in the elections for the Cantonal Assembly of Sarajevo

- **Mr. Faruk SELMANOVIĆ**, candidate number 6 on the SDA list
- **Mr. Kerim BALIĆ**, President of the Youth Association of the SDA
- **Mr. Ismet BEĆAC**, Media Adviser for the SDA

Venue: Hotel Holiday, Sarajevo, Room Una

15:05 – 15:35 Meeting with representatives and candidates of the Četvorka Coalition (SDP-Socijaldemokratska partija and NiP - Narod i Pravda) running in the elections for the Cantonal Assembly of Sarajevo

- **Mr. Haris BASIC**, Deputy Mayor of Sarajevo, NiP
- **Mr. Muhamed HASANOVIC**, member of the cantonal electoral board of SDP

Venue: Hotel Holiday, Sarajevo, Room Una

Programme for teams deployed outside of Sarajevo:

12:00 – 13:00	Departure of four Congress teams in remote regions (cf. “Deployment plan”)
16:00 – 16:30	For the team deployed to Mostar : meeting with Mr. Slaven ZELJKO , President of the Mostar City Board of the HDZ- Hrvatska demokratska zajednica (Croatian Democratic Union) and head of the HDZ list in the elections for the Herzegovina-Neretva Canton <i>Venue: Hotel Mepas, Mostar, Room Lady</i>
16:35 – 17:05	For the team deployed to Mostar : meeting with Ms Dragana MURATOVIĆ , candidate number 31 on the independent list “Stay here Together for our Mostar” running in the elections for the Herzegovina-Neretva Canton <i>Venue: Hotel Mepas, Mostar, Room Lady</i>
17:10 – 17:40	For the team deployed to Mostar : meeting Mr. Arman ZALIHIĆ , President of the main board of the SDP- Socijaldemokratska partija (Social Democratic Party) in Mostar, and number 3 on the SDP list running in the elections for the Herzegovina-Neretva Canton <i>Venue: Hotel Mepas, Mostar, Room Lady</i>

Sunday, 2 October 2022 – Election Day

06:30	Deployment of 9 Congress’ teams to the polling stations (cf. “Deployment plan”)
23:00	Late night de-briefing <i>Venue: Hotel Holiday, Sarajevo</i>

Monday, 3 October 2022

Various times	Departure of some members of the Congress Delegation
11:30 – 12:30	Media briefing to present preliminary conclusions of the Congress Observation Mission with Mr. Stewart DICKSON , Head of Delegation <i>Venue: Hotel Holiday, Sarajevo, Room Una</i>
14:30 – 15:30	Press Conference to present preliminary conclusions of the OSCE PA, PACE, NATO PA OSCE/ODIHR and European Parliament International Election Observation mission <i>Venue: Hotel Holiday, Sarajevo, Room Holiday</i>

Delegation

Congress members

Mr Stewart DICKSON, United-Kingdom (ILDG, R), Congress Spokesperson on Observation of Local and Regional Elections, Head of Delegation/Rapporteur.

Ms Kirsten Morild Vincent ANDERSEN (SOC/G/PD, R), Denmark

Mr Cemal BAS (EPP/CCE, L), Türkiye

Mr Jean-Paul BASTIN (EPP/CCE, L), Belgium

Ms Majlinda BUFI (SOC/G/PD, R), Albania

Ms Jacqueline FEHR (SOC/G/PD, R), Switzerland

Mr Josef FREY (SOC/G/PD, R), Germany

Ms Cecilia FRIDERICS (ECR, L), Hungary

Ms Tanja JOONA (ILDG, L), Finland

Mr Jimmy MOLONEY (ILDG, L), Ireland

Mr Jorge SEQUEIRA (SOC/G/PD, R), Portugal

Mr Artur TUSINSKI (NR, L), Poland

Ms Sevdia UGREKHELIDZE (EPP/CCE, L), Georgia

Ms Juliia VUSENKO (EPP/CCE, R), Ukraine

Expert

Mr Pavel PSEJA, Member of the Group of Independent Experts of the Congress (Czech Republic)

Congress Secretariat

Ms Renate ZIKMUND, Head of Department

Ms Stephanie POIREL, Head of Division

Mme Mathilde GIRARDI, Election Observation Officer

Mme Martine ROUDOLFF, Assistant, Local and Regional Election Observation

APPENDIX II

CONGRESS ELECTION OBSERVATION MISSION
2 October 2022 General Elections in Bosnia and Herzegovina
DEPLOYMENT PLAN

Congress teams	Composition of the Congress teams	Saturday night	Area of Deployment
Team 1	Mr Pavel PSEJA Mr Artur TUSINSKI Interpreter: Mr Jasmin PAVICA Driver: Muamer SARAJKIĆ	HOTEL SWISS PLUS Ulica 502. viteške brdske brigade 74 77000 BIHAĆ Tel: +387 61 338 866 info@hotel-swissplus.com	Bihać (4.45 hours from Sarajevo) Canton Una-Sana
Team 2	Ms Kirsten Morild Vincent ANDERSEN Mr Stewart DICKSON Interpreter: Ms Hana ŠKARIĆ Driver: Ajdin AVDAGIĆ	HOTEL JELENA Bulevar mira 5, Brčko 76100 BRČKO Tel +387 49 232-850 recepcija@hotel-jelena.com	Orašje (3.40 hours from Sarajevo) and Brčko (0.30 hours from Orašje) Canton Posavina Brčko district
Team 3	Ms Sevdia UGREKHELIDZE Ms Julija VUSENKO Interpreter: Ms Vildana BAJRICA Driver: Nusret PAŠIĆ	HOTEL BACCHUS Drinova Međa bb 80101 LIVNO Tel: +387 34 204-726 hotelbacchus2@gmail.com	Livno (3.00 hours from Sarajevo) Canton 10
Team 4	Ms Majlinda BUFI Mr Jimmy MOLONEY Interpreter: Ms Amina ŠATROVIĆ Driver: Haris AKSALIĆ	Hotel Holiday Sarajevo	Široki Brijeg (2.40 hours from Sarajevo) Canton West Herzegovina
Team 5	Mr Cemal BAS Ms Tanja JOONA Interpreter: Ms Alma KULDIJA Driver: Hamza OKANOVIĆ	Hotel Holiday Sarajevo	Tuzla (2.30 hours from Sarajevo) Canton Tuzla
Team 6	Mr Jean-Paul BASTIN Ms Mathilde GIRARDI Ms Stephanie POIREL Interpreter Ms Đana MERČEP Driver: Nasuf HIDOVIĆ	HOTEL MEPAS Kneza Višeslava b.b 88000 MOSTAR Tel: +387 (0) 36 382 095 / +387 (0) 36 382 000 prodaja@mepas-hotel.ba	Mostar (2.20 hours from Sarajevo) Canton Herzegovina- Neretva
Team 7	Mr Josef FREY Ms Cecilia FRIDERICS Interpreter: Ms Irena MEDIĆ Driver: Mustafa JARAMAZ	Hotel Holiday Sarajevo	Travnik (1.40 hours from Sarajevo) Canton Central Bosnia

Team 8	Ms Jacqueline FEHR Ms Martine ROUDOLFF Interpreter: Ms Senada BRATIĆ Driver: Amar SADZAK	Hotel Holiday Sarajevo	Sarajevo and Goražde (1.45 hours from Sarajevo) Canton Sarajevo Canton Bosnian Podrinje
Team 9	Mr Jorge SEQUEIRA Ms Renate ZIKMUND Interpreter: Ms Irma JAŠAREVIĆ Driver: Aida OMEROVIĆ	Hotel Holiday Sarajevo	Zenica (1.00 hour from Sarajevo) Canton Zenica-Doboj

APPENDIX III

NEWS 2022

Bosnia and Herzegovina: Congress delegation welcomes more transparent procedures but calls for cantonal/local elections to be held on different dates from general elections

ELECTIONS BOSNIA AND HERZEGOVINA 3 OCTOBER 2022

A delegation of the Congress of Local and Regional Authorities of the Council of Europe, composed of 19 participants from 17 countries, was deployed as part of an election observation mission in the 10 cantons of the Federation of Bosnia and Herzegovina and in the Brčko district to observe the elections of 2 October 2022 in some 110 polling stations.

In its preliminary conclusions, the delegation, led by Stewart Dickson (UK, ILDG), found that election day was generally orderly. Despite the problems faced by political parties in appointing election officials, the polling station commissions were aware of the procedures and had received sufficient training – which is essential given the complexity of the electoral system and procedures in this country.

Congress observers welcomed the fact that some recommendations of the Congress have been followed, in particular that of no longer reading out loud the names of voters presenting themselves at the PECs. In addition, in order to prevent the photographing of ballot papers - and therefore vote buying or family voting - the voting booths were, for the first time, positioned differently, contributing to more transparency and helping to avoid use of mobile phones. However, in many small polling stations the new arrangement seriously hampered the secrecy of the vote.

With regard to the quality of the voter lists, the measures taken by the Central Election Commission to "clean up" the lists and remove deceased voters, as well as the electronic application tool for out-of-country voting in order to prevent multiple registration of voters at the same address is a positive development. The same applies to the establishment of a security stamp to prevent the circulation of falsified ballots. However, the "assisted voting" procedure for voters with visual impairment, as well as the accessibility of polling stations for the elderly and disabled, need to be reviewed before the next elections.

Overall, the delegation found that the Central Election Commission of Bosnia and Herzegovina has made many efforts to increase the transparency of procedures and to make electoral management more accessible to citizens. Moreover, the electoral amendments introduced by the High Representative concerning hate speech seem to have contributed to a slightly less aggressive campaign climate, even if the sanctions in the event of irregularities and abuses should be issued quicker to protect candidates running for office, notably female candidates.

Observers also pointed out related issues such as the misuse of administrative resources, the lack of transparency regarding private media ownership, and the overregulation of public media unlike social media, which is growing in importance, as well as the influence of political parties that define themselves by ethnicity and do not offer voters any content beyond that.

The observers expressed their agreement with the Central Election Commission in view of a modification of the law in order to professionalise the recruitment of the members of the commissions working in the polling stations and to limit the political parties to their role of election observers. In addition, they reiterated the recommendation of the Congress to organise the cantonal elections at the same time as the local elections, on different dates from the general elections, in order to avoid that they are overshadowed by the presidential and parliamentary ballots.