



GONG

**FINAL REPORT ON PRESIDENTIAL ELECTIONS
2009/2010**

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GENERAL INFORMATION

By Government of the Republic of Croatia's decree, on October 30th 2009, elections for the President of the Republic of Croatia were announced. The first round of elections was held on Sunday, December 27th, while the second round was held on January 19th 2010. 4,495,233 citizens had the right to participate in elections as voters. 1,975,909 voters voted in the first round, i.e. 43.96% of voters. Since none of the candidates won more than 50% of voters' votes, a second round of elections was held and two candidates who won the most votes entered: Milan Bandic and Ivo Josipovic. 2,253,570 voters voted in the second round, i.e. 50.13%. The winner of the second round, Ivo Josipovic, gained 1,229,385 votes, i.e. 60.26%, while Milan Bandic won 883,222 i.e. 39.74%.

In the Republic of Croatia, 6,550 polling stations were open at which 4,088,798 voters could have fulfill their voting rights, while there were 250 polling stations abroad at which 406,435 voters could have voted. As far as voting abroad is concerned, the largest number of polling stations was set up in the area of Bosnia and Herzegovina, a total of 124. The list of all polling stations was available at the State Election Commission's official web site (hereinafter SEC) www.izbori.hr, and the same polling stations were assigned for the second round as well.

The elections were organized and implemented by SEC and City and Municipal Councils, while the overall process was monitored by SEC.

GONG'S GENERAL ASSESSMENT

Elections were organized and implemented in a correct manner. A progress in most of the institutions' work was noted, except in the case of the Ministry of Public Administration which, by its actions in these elections, made a step backward. The electoral process wasn't completely transparent because of the regulation of election campaign financing is lacking, and also, the inadequacy of election regulation was noted in relation to media conduct and candidates during campaigning.

Pre-election period was characterized by **doubts** about election implementation that are mostly **recurrent** in the last few years – **the issues of updating the voters' list abroad, implementation of regulations on election campaign financing, media obligations**. Once again, the need to change and improve regulations (technical implementation of elections, updating the voters' list, campaign financing, media obligations, informing and educating citizens, adjustment of the rest of the laws) with the aim of raising transparency and legitimacy. The existence of these issues is a direct consequence of the fact that stakeholders show interest in elections only or mostly in election-time period which is resulting in repeating the same problems and issues on every elections.

Elections were **mostly held in a democratic atmosphere** which made possible for voters to fulfill their voting rights, and election participants were largely informed on their rights and obligations.

Because the regulations are lacking, SEC had to interpret some elements of the electoral procedure and election implementation *ad hoc* and had to give direct instructions to lower election commissions. On these elections SEC had a more active role in the electoral process in a sense of regulating the electoral process in detail and raising standards, which, in GONG's opinion, **contributed to the quality of the electoral process**.

However, neither SEC nor the Ministry of Public Administration acted visibly or systematically in the area of voters' education on voters' lists and other aspects of the electoral process, which influenced the realization of voters' rights of some of the voters', especially the ones who voted or intended to vote outside their place of residence. In relation to this, the Ministry of Public Administration denied the possibility of issuing certificates for voting outside the place of residence in between two rounds because of which part of the voters couldn't fulfill their voting rights although this was possible during the 2000 and 2005 Presidential Elections.

The election campaign was focused on a series of different subjects that had no relation to the President's direct authorities and because of poor media campaign regulation and the fact that regulatory bodies don't dispose with concrete tools for sanctioning, the campaign, at times, overstepped the bounds of good taste.

The regularity of election campaign financing was **hard to follow**, and based on information that GONG and Transparency International Croatia (hereinafter TIH) presented, it can be concluded that **most of the candidates did not abide by positive legal regulations and adopted democratic standards**, and detailed financial reports were mostly absent.

The general impression is that a complete revision and editing of electoral legislative is needed in all segments in order for elections to be fair and in accordance with the highest international standards.

LEGAL FRAMEWORK

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

- The Constitution of the Republic of Croatia, OG, No. 41/01
- Constitutional Law on the Constitutional Court – consolidated text, OG, No. 49/02
- The Law on the Election of the President of the Republic of Croatia, OG, No. 22/92, 42/92, 71/97
- The Republic of Croatia Constitutional Court's Decision U-I-2495/2002 dated May 11th 2004, OG, No. 69/04, 99/04
- Law on Voters' Lists, OG, No. 19/07
- Law on Financing Election Campaign Publicity for the Election of the President of the Republic of Croatia, OG, No. 105/04
- Law on Financing Political Parties, Independent Lists and Candidates, OG, No. 1/07
- Law on the Republic of Croatia's State Election Commission, OG, No. 19/07
- Criminal Code, OG, No. 10/97, 27/98, 50/00, 129/00, 51/01, 111/03, 190/03, 105/04, 84/05, 71/06, 110/07, 152/08
- Mandatory State Election Commission Instructions: sequence of electoral actions and deadlines, forms for candidacy procedure, on the rights and obligations of observers and of the manner in which the bodies implementing elections for president should be observed, on voting of voters who are in service in Croatia's Armed Forces, on voters who are part of a crew of a maritime ship or riverboat under the Croatian flag, on voters who are deprived of freedom, on the voting of voters with physical disabilities, illiterate voters and voters who can't access the polling station, on the way in which the polling station should be organized, on forms for election implementation.

Presidential elections are regulated with several laws and a series of SEC's mandatory instructions. Due to the 1992 Law being outdated, numerous situations remained vague or imprecise which opened the way for various legal explanations. In certain situations, SEC had to take up an arbiter

role and, for the election stakeholders' case, had to make ad hoc instructions and regulation interpretations, on which details are stated in the report's remainder.

ADMINISTRATING AND IMPLEMENTING ELECTIONS

State Election Commission (SEC)

SEC is a permanent and the highest body for election implementation in Croatia. It is made of permanent members that aren't political party members and are appointed by the Croatian Parliament to a mandate of 8 years. At the beginning of 2007, the Croatian Parliament, in accordance with the Law, appointed 6 members from the lines of prominent jurists (3 members were the ruling party's proposal, 3 were the opposition's proposal) and 3 members – the president and vice-president from the lines of Supreme Court judges. The Supreme Court President is by position also the SEC's President, while two vice-presidents are being elected, via Supreme Court President's proposal, on a general assembly of the Republic of Croatia's Supreme Court. SEC has 9 members in total.

SEC gave 8 mandatory instructions¹, and besides that, during and after the elections, it issued a total of 42 public announcements in regard to the sequence of electoral actions, the procedure of candidacy, the transparency of election campaign publicity, the regulation of the media campaign, election day and turnout, reports on early and unofficial election results, repeating elections, the number of voters and statements on objection decisions, which all shows a more active SEC's approach to elections than with previous elections.

Some of SEC's decisions and activities:

- Authentication of signature validity upon submitting candidacies was, for the first time, being done electronically and double signatures were eliminated.
- For the first time were the blind and partially sighted able to vote personally using the translation of the ballot to Braille letter, the ballot and the matrix for voting which represents a major progress in exercising voters' rights.
- On several occasions, SEC demanded that the Ministry of Public Administration make possible for the voters who would not be in their places of residence in the second round, and have failed to register by December 12th for voting outside their places of residence, to vote anyway.
- SEC forbade the airing of candidate Bandic's video, based on previous decisions by the Constitutional Court.
- SEC assessed that raising funds for financing election campaigns in a way which doesn't assure unconditional determination of the donor's identity (which was the case with donating funds via audiotex machine) and inappropriate giving of financial donations by the

¹ <http://www.izbori.hr/izbori/izbori09predsjednik.nsf/>

candidates to the voters and their families in a period from election announcement till Election Day, was inadmissible.

- SEC published forms for early and final financial reports, which wasn't the case on local elections 2009.

SEC's sessions were open to the public, and GONG attended most of the sessions to which it was invited. SEC answered inquiries made by political parties, candidates, media, NGOs and citizens, and most of the information were also available on SEC's internet page www.izbori.hr. SEC also published on its internet pages an educative brochure for voters "Basic Electoral Alphabet", but without the possibility for its wider distribution, i.e. accessibility to voters without internet access. It is important to point out that these elections also were without a systematic, comprehensive campaign for informing and educating voters, which was also pointed out by the OSCE's Limited Election Observation Mission.

After elections, SEC published results by polling stations, however, the accessibility and searching the results was somewhat difficult due to the fact that they weren't browse-friendly, i.e. the fact that it was needed to consult several different documents in order to find a certain polling station and its results (for towns that had more than one polling station).²

During the course of its work in previous years, SEC interpreted its authorities in a very limited manner. Because of this, it was surprising that SEC, by request of media houses, gave an oral instruction that the election silence on E-Day lasts until 7 p.m. although it is proscribed by Law that the election silence lasts "on E-Day". Nevertheless, SEC itself abode to the Law and did not announce any information on election results up until midnight.

With regard to work conditions, work scope, legal framework by which many things were not regulated, strong objecting by certain candidates to some of SEC's decisions (related to campaign financing, forbidding video airing...) we can assess that SEC organized and implemented elections in a correct and transparent manner, setting higher standards. There are numerous challenges facing SEC in the forthcoming period, in which it should be more engaged and established as an independent, expert and professional body that drives and implements electoral reform and raises the level of education, trust and citizens' participation in the electoral process. It is expected that SEC acts proactively even in the election-free period.

City and municipality election commissions and election boards

In accordance with laws, the Presidential Elections are organized and implemented by SEC, city (GIP) and municipality (OIP) election commissions and by election boards. An additional level of bodies, such as county election commissions, is not anticipated, so GIP headquarters had a coordinative role towards lower bodies. GONG cooperated with GIPs, OIPs as well as with most of the election boards correctly. In solving problems that occurred on some polling stations, GONG found understanding and help of election committees and most of the election boards.

² www.izbori.hr, Presidential elections 2009, results by polling station

SEC also made a Reminder for Work of Election Boards in Croatia and Reminder for Work of Election Boards Abroad. Instructions for presidents and deputies of city election committees – county centers were held who then further educated city and municipality election committees, in some place, with SEC's help. Election boards' presidents and their deputies were educated by GIP and OIP members. It was noticed that election boards had a better quality of work and education in polling stations in Bosnia and Herzegovina compared to previous elections.

The work of election boards was assessed as positive and correct by GONG observers, with exceptions of a smaller number of polling stations that weren't properly regulated and at which election boards weren't familiar with the procedure or were breaching it.

Despite the noted progress, it is needed, in a sense of strengthening the professionalism and competence of lower election-implementation bodies, to work on their education in a more systematic manner.

Ministry of Public Administration (MPA)

The newly established MPA inherited the Central State Administration Office (SDUU) and so it took over all the authorities in regard to implementing the Law on Voters' Lists (OG No. 19/07), including the voting procedures outside the place of residence, but also giving opinions and explanations on, for example, implementing the Law on Financing Political Parties, Independent Lists and Candidates (OG, No. 1/07).

As with previous elections, these elections also made actual the **problem of the so called fictive residences**, i.e. voters who don't actually reside in the Republic of Croatia because of which voters' lists have an unrealistic number of voters. Additionally, a certain number of deceased voters in the so called diaspora voters' lists are a problem. It is commendable that the Ministry of Foreign Affairs and European Integration (MVPEI) together with the diplomatic-consular representations (DKP) of the Republic of Croatia in Bosnia and Herzegovina as well as with the City Office for Administration of the City of Zagreb approached the deletion of a certain number of deceased voters in Bosnia and Herzegovina. However, the said problem needs to be resolved systematically.

In November, MPA performed a preparation of voters' lists for election implementation by sending circular letter to lower bodies. Additionally, the citizens were able to, as before, check their data in the voters' lists on MPA's internet pages and by sending an SMS via T-mobile and VIP operators (with the standard SMS price).

Informing the public on voters' lists by MPA was timely, but not systematic and insufficient. The MPA, with the aim of educating and informing citizens, published on its web page a brochure on the way and the deadlines for checking the voters' lists and voting outside place of residence. However, they failed to do a comprehensive education and to systematically inform voters which is further proven by a large number of voters that addressed GONG with their questions. Furthermore, according to information that GONG received from the citizens, administration offices were acquainted with the procedure for voting outside place of residence.

However, MPA's conduct in regard to not making possible the issuing of certificates in between two rounds of elections for voting outside the place of residence remains inexplicable. Despite GONG's

public appeals and public and SEC's demands to make voting possible to voters who will be outside their places of residence in the second round, but who failed to register until December 12th for voting outside the place of residence, the MPA didn't allow it and so a certain number of voters remained deprived of their Constitutional voter's right. We would like to remind that on the 2000 and 2005 Presidential Elections, after GONG's demands, the MPA (then the Central State Administration Office) made possible for voters to register for voting outside place of residence just a few days before round two, while the legal stipulations were identical to ones today.

On Presidential Elections 2009/2010, the MPA stated that there is a legal obstacle because the voters' lists, according to the new Law on Voters' lists (OG No. 19/07), Article 28. "The voter's list must be concluded and submitted for validation at least 8 days before the day designated for holding elections."

According to Article 24 of the Law on Voters' Lists (OG No. 19/92) that was valid in 2000 and 2005, "The authorized body concludes the voters' list and submits it for validation to the voter's list committee at least 8 days before the day designated for holding elections."

It is visible from the afore-mentioned that on the 2000 and the 2005 Presidential Elections as well as on 2009/2010 Presidential Elections, a substantially identical norm was applied, however, on these elections there was no will by the MPA to make it possible for voters to vote outside their places of residence in the second round, which we believe to be a major step backwards.

GONG received a significant number of reactions of voters who were unsatisfied with the complicated and slow procedure of the temporary enlisting in the voters' list during which voters had to send requests for validation to one and then submit their certificates to another office, even though the central administration offices are networked and the procedure can be very simply shortened. The said should certainly be done during the first changes of the Law on voters' lists. Also, it isn't logical that the registration procedure for voting abroad is simpler than the temporary enlisting in voters' lists within the Republic of Croatia. Additionally, GONG referred **several inquiries to the MPA regarding voters' list management and information on voting outside place of residence:**

1. How many persons are registered for voting outside place of residence within Croatia for the first and second round of 2009/2010 Presidential Elections?
2. How many persons were previously registered for voting abroad in the first and second round of 2009/2010 Presidential Elections, and by specific country in which the elections will be held?

GONG received a negative reply to both inquiries, i.e. the required information was not submitted to us.

City Office for Administration of the City of Zagreb submitted, on GONG's request, information on the number of deceased voters who have been erased from voters' lists for the so-called diaspora. According to the provided information, in the period from January 1st 2008 till November 8th 2009, 24,365 persons for whom it is believed they are deceased have been erased from the voters' lists for the so-called diaspora.

GONG also requested the MPA **information on the provider for informatics services for voters' lists**. Namely, the Government of the Republic of Croatia, in January 2009, adopted a Conclusion by which informatics services are trusted to the company APIS Ltd. (Information Systems and Information Technologies Support Agency – owned by the state and the City of Zagreb) which disposes with a larger scope of knowledge and capacity and is authorized for informatics support in managing voters' lists for the City of Zagreb and several other counties in Croatia. However, according to the information that GONG has, informatics support to MPA is still being provided by the MCS Company from Cakovec.³

Namely, the MCS Company provided the MPA (i.e. the Central State Administration Office) with informatics services for the past several years and there were serious suspicions that the company got the job without a public tender. Therefore, **GONG requested a copy of the contract between the MPA and MCS on the provision of informatics services for the MPA**. To this request, GONG received a reply in which it was stated that the MPA does not have a contract with the MCS Company, but with APIS and so it remains unclear in accordance to which procedure did the MCS Company previously get the job for providing informatics services for the MPA.

GONG requested the MPA for a copy of the contract with APIS, however, the request was denied because, allegedly, intellectual property was in question and the contract isn't public. In the time this report was written⁴, the subject was in appeal phase.

During the course of monitoring MPA's work and the work of institutions competent for voters' lists for the so-called diaspora and for issuing compliance for certificate issuing on E-Day, the City Office for Administration of the City of Zagreb, the impression is given that the MPA doesn't have enough understanding of the work and the needs of the City Office. The City Office, in cooperation with APIS, offered safe informatic solutions that would improve and speed up certificate issuing procedures and they even resisted the offered informatic solutions.

The stated data and assessments of MPA's work are worrisome because they arouse suspicion whether there is a real will with the MPA to solve the said problems, to set new and better standards regarding election implementation, in relation to the MPA's jurisdiction, and to use all the accessible informatic solutions which would contribute to the informatization of public administration. Subsequently, the concern that similar problems will also arise on next elections is justified. Poor practice of the MPA on presidential elections is also represented by its opinion in regard to lack of implementation of the Law on Financing Political Parties, Independent Lists and Candidates (OG No. 01/07) with independent candidates on presidential elections. By this kind of MPA's interpretation, party candidates are put in a different position than the independent candidates because the aforementioned Law is implemented with political parties during the entire year. Besides, the said Law, although lacking itself, still provides the legal background for a significantly better insurance of election campaign financing transparency than the Law on Financing Election Campaign Publicity for the President of the Republic of Croatia.

³ Article on T-Portal: <http://www.tportal.hr/vijesti/hrvatska/48676/Gdje-je-kraj-muljanju-s-popisom-biraca.html>

⁴ February 2010

The MPA's viewpoint was as follows:

*"...Starting with the fact that election campaign financing for the President of the Republic of Croatia is regulated by a special Law (Law on Financing Election Campaign Publicity for the President of the Republic of Croatia), and which does not refer to implementation of some other Law nor the Law on Financing Political Parties, Independent Lists and Candidates, it does not clearly state that the aforementioned Law is to be applied to election campaign financing for the President of the Republic of Croatia in issues which are not otherwise regulated by a special Law, **it is the opinion of this Ministry that the Law on Financing Political Parties, Independent Lists and Candidates does not apply to financing of independent candidates for the election of the President of the Republic of Croatia.**"*

The Ministry of Foreign Affairs and European Integration and (MVPEI) and diplomatic-consular representations (DKP) of the Republic of Croatia

For the second time the MVPEI and DKP acted according to the new Law on Voters' Lists, i.e. these were the second elections at which they implemented the procedure of previous registration of voters who are voting outside their places of residence. Additionally, the DKPs were in charge of issuing certificates for voting on E-Day and for concluding and validating the List for Voting from Polling Station after the Voting Was Finished. Also, the task of MVPEI and DKPs was to inform and educate voters outside the Republic of Croatia on the possibility of previous registration.

The MVPEI was very open to cooperation with GONG, trying to fulfill its jurisdictions as transparent and professional as it could. On MVPEI's internet pages instructions on previous registration procedure were published, and the MVPEI additionally educated the DKPs on elections and their jurisdictions. Still, as well as with other electoral process segments, a more systematic education of voters on the possibility of previous registration is needed.

Checking the implementation of previous registration abroad

Voters who reside in the Republic of Croatia, and on E-Day find themselves abroad or spend a larger time abroad, as well as voters who changed their residences abroad or who intended to vote in places outside their residences abroad, could have previously registered with the DKP. Previous registration could have been completed by phone, fax, e-mail or by coming personally to the DKPs 14 days prior to elections.

GONG performed a check whether the proscribed procedure during previous registration is being respected and checked the education and professionalism of DKPs' officials, as well as the accessibility of information on previous registration to citizens. During the period for previous registration GONG answered to inquiries of citizens' who wanted to previously register and asked them to inform on any kind of problems or irregularities during registration. The previous registration process, according to the experience of more than a 100 voters, passed without major difficulties, while the DKPs officials were familiar with the procedure.

Along with a systematic education of election boards, the education of DKPs staff is no less important. For this purpose, a permanent cooperation and conformity of state institutions that

should implement educations of DKPs employees, and especially that of the MVPEI and the MPA employees, is needed.

ELECTION CAMPAIGN AND THE MEDIA

In the legally anticipated deadline until November 16th 2009, SEC received 21 candidacy proposals, and two potential candidates submitted the election material but dropped out of candidacy before SEC decided on their legitimacy.

On November 18th 2009, SEC announced a legitimate official list of 12 candidates for President of the Republic of Croatia, in this order:

1. Milan Bandić

Independent candidate

2. prof. dr. sc. Andrija Hebrang

Croatian Democratic Union – HDZ

3. prof. dr. sc. Ivo Josipović

Croatian Social-Democratic Party – SDP

4. Josip Jurčević

Independent candidate

5. Damir Kajin

Istrian Democratic Assembly – IDS

6. Boris Mikšić

Independent candidate

7. prof. dr. sc. Dragan Primorac

Independent candidate

8. prof. dr. sc. Vesna Pusić

Croatian People's Party- Liberal Democrats– HNS

9. Vesna Škare Ožbolt

Independent candidate

10. prof. dr. sc. Miroslav Tuđman

Independent candidate

11. Nadan Vidosević

Independent candidate

12. Slavko Vukšić, ing.

Democratic Party of Slavonia Plain– Slavonia Plain.

SEC rejected 9 candidacies that didn't have the legally determined number of signatures or were untimely. For the candidacy to be legitimate, one had to collect a minimum of 10,000 signatures, and each voter had the right to support with their signature only one candidate. **For the first time the signature legitimacy was being checked electronically** while submitting candidacies for presidential elections and double signatures were eliminated.

One of the longest official election campaigns started on November 19th 2009 at midnight by declaring candidacies, and it lasted until December 25th 2009 at 24:00.

Legal stipulations from Articles 13 and 14 of the Law on the Election of the President of the Republic of Croatia (OG No. 22/92, 42/92, 71/97) that speak of candidate's right to representing their programs and the right to campaign publicity, and also proscribe media obligations towards candidates, were mostly fulfilled and the voters could inform themselves on candidates' programs via media. SEC called upon all TV and radio broadcasters that in the time of election publicity to make possible for all the candidates for the President of the Republic of Croatia to represent and explain their programs under equal conditions and equal time span.

Candidates' objections during first round were mostly regarding statements that in a certain media not all candidates were given equal space and representing possibility that is granted to them by Law. One such objection referred to Nova TV when the candidates: Josip Jurcevic, Damir Kajin, Slavko Vuksic, Boris Miksic and Vesna Skare Ozbolt and citizens' Organization Libertas warned SEC about unequal approach in representing presidential candidates on Nova TV in face-off shows that were announced for December 10th, 17th and 23rd 2009. SEC called upon all media, and so on Nova TV also, to abide by legal stipulations, i.e. that they are obliged to make possible to all presidential candidates to not just represent their election programs under equal conditions, but also to participate in the announced face-offs with other candidates. Such viewpoint SEC already expressed earlier in relation to the program announced for November 20th 2009, by the HRT.

It is important to emphasize that the existing competent institutions, like SEC and the Council for Electronic Media, could have just point out, with their warnings, to unequal position of certain candidates in the campaign, without the possibility to sanction.

However, SEC did decide to ban the airing of candidate Milan Bandić's video after it received a letter from Ivo Josipović's election headquarters who demanded the banning of the airing of one of candidate Milan Bandić's video.

SEC concluded that in the questionable video, the words of a presidential candidate were taken out their comprehensive expression, and by that were taken out of context in which they were spoken, without the person's compliance. Also, it was assessed that extracting specific words out of the context of the sentence, by which its meaning is being significantly changed, is inadequate and illicit in all cases where there is no compliance from the person whose expression is being used and the stated represents violation of the allowed and correct way of election publicity. Opposite to this, the **Council for Electronic Media found no basis for banning the video.**

The banning of the video provoked intensive opposition by Milan Bandić's headquarters as by part of the public. SEC referred to present practice in elections and to the Constitutional Court's decisions in similar cases.⁵ The Constitutional Court determined that inexistence of objective standards isn't SEC's fault, but the legislator's. Because of this, but also numerous other oversights in election legislation in the Republic of Croatia, the Constitutional Court decided to, within its constitutional

⁵ Constitutional Court of the Republic of Croatia's Decisions number: U-I-2495/2002 dated May 11th 2004, 99/04 – corr. of Constitutional Court's Decision and 44/06; Supervision of Constitutionality and Legality of Election for President of the Republic of Croatia number: U-VII-64395/2009 dated December 15th 2009.

jurisdiction of monitoring constitutionality and legality fulfillment, refer a special report to the Croatian Parliament in the forthcoming period.⁶

Also, SEC received a complaint from presidential candidate Ivo Josipovic's headquarters in which it is stated that on January 8th, in early evening hours, according to citizens' reports, "the citizens are receiving in their mailboxes **candidate Milan Bandic's publicity material**" and that in a copy of a leaflet "a photography, signature, web address and Ivo Josipovic's campaign logo are being used with the claim that Ivo Josipovic stated something he didn't and the **voters are being deceived in this way and a false message is being sent to them.**" Furthermore, it is stated that "the photograph, campaign logo and candidate Ivo Josipovic's web address are being used without his consent. At the same time, candidate Ivo Josipovic's signature on that leaflet is forged which is a criminal offence."⁷ In its statement, **Milan Bandic's headquarters claims that they did not make the leaflet nor order its creation** and that there are no evidence based on which any kind of connection between the questionable leaflet and presidential candidate Milan Bandic's Election Headquarters would be visible. Milan Bandic's Election Headquarters assessed that Ivo Josipovic's statements were tedious and deliberately fabricated insinuations so that even during election silence election publicity would be continued. SEC evaluated the said case as a violation of the allowed and correct way of election publicity regardless of who made and distributed the leaflet, with the opinion that the use of photography, signature, web address and publicity logo without the candidate's consent bring voters to a misconception that the election material comes from a certain candidate.⁸

Once again, as with all previous elections, the problem of imprecise and incomplete stipulations of the legal framework for media coverage of the elections and the campaign was re-opened, but also the vagueness regarding what's allowed and what isn't in the campaign; subsequently, candidates' need weren't met, but neither were the voters' needs to be informed in a quality manner so that they could make a an informed decision while choosing the candidate.

Campaign content was in some cases more suitable for parliamentary or even local elections, i.e. sometimes the content had no relation to constitutional jurisdiction of the president. Second year journalism students from University of Zagreb's Faculty of Political Science as a part of their Political Communication Course, and in association with GONG, made an analysis of **paid ads**⁹ (posters and video ads) of the seven presidential candidates (Milan Bandic, Andrija Hebrang, Ivo Josipovic, Damir Kajin, Dragan Primorac, Vesna Pusić and Nadan Vidosevic), as well as an **analysis of newspaper articles pertaining to the candidates**. Paid ad analysis included campaign posters from the wider Zagreb area and video ads shown on national television stations. Analysis of newspaper articles included all those that mentioned one or more candidates, published in Zagreb editions of Jutarnji list, Vecernji list, Slobodna Dalmacija and Novi list. Since there are no initiatives that systematically monitor political advertising in Croatia (such as **AdWatch** or **Factcheck**) this initiative tried to

⁶ Constitutional Court's letter to applicant Milan Bandic, U-VII/111/2010

⁷ www.izbori.hr, announcements

⁸ Ibid.

⁹ More about the analysis findings can be found at: <http://www.gong.hr/news.aspx?newsID=3339&pageID=191>

determine the level of awareness of political ads, as well as some general trends in advertising. On the other hand, through newspaper article analysis it tried to determine candidates' representation in daily papers, and identify some general trends in reports on candidates. Since this analysis was done by students rather than experts, some smaller discrepancies were possible; however, the analysis was conducted under the mentorship of Marijana Grbesa, PhD, and it reliably showed advertising and marketing trends of these elections.

Between December 3rd and 16th, the **printed media** devoted most their attention to Milan Bandic, who appeared in 67 articles, which is much more than the other candidates. Ivo Josipovic appeared in 46 articles, Nadan Vidosevic in 33, Vesna Pusic in 29, Dragan Primorac in 34, Andrija Hebrang in 30, while Damir Kajin appeared in only 19 articles. The primary focus of **video ads** were programs and general values that the candidates stand for, with the dominant one being a combination of the person as a source and a guarantee of credibility and emotional arguments (for example, Milan Bandic expressed enthusiasm and hope in his video ads, Ivo Josipovic disappointment and rage). Nadan Vidosevic and Ivo Josipovic used logical and factual arguments. Ivo Josipovic's music video, that featured many famous Croatian singers, was the only atmospheric video, as well as the only video of its kind in these elections. In the video ads the candidates appeared both as political dignitaries and as „one of us“. The themes that were mostly used were bad economic state, unemployment, savings, the position of pensioners and students, and corruption. One note of interest is that one general value that appeared in all the candidates' videos is *justice*. High on the level of values, after justice, was *fairness*. Milan Bandic is the only one who stood for work ethics in his videos.

GONG asked the **Council for Electronic Media** whether they oversee the media during the presidential election campaign, and if they do, how, and when will the public be notified of those results. The Council replied that they continuously monitor publishers and, if they spot any wrongdoing, they notify the public immediately. The Council sent out the following notifications to the publishers and the media:

- Recommendation of practice during election campaign.
- Concern about possible irregularities in regard to the choice of sequence of representing presidential candidates.
- Repeated recommendation of practice during election campaign.

NOVA TV received an admonition for running a program called „The Election Race“ on December 10th and 12th with disregard to the Electronic Media Act, which says that during the election campaigns publishers must enable all the candidates to publicize under the same conditions.

Croatian Bishops Conference published a message prior to presidential elections inviting all citizens to vote, while reminding the parishioners of some fundamental principles that can help them in their judgment of the candidates and their programs. However, one week prior to the elections the cardinal Josip Bozanic had an official audience with the candidate Milan Bandic, which can be construed as a clear support for this candidate. Mufi Shevko ef. Omerbasic, the president of the **Meshihat of the Islamic Community in Croatia**, also gave an official audience to the candidate Milan Bandic a few days prior to the second round of elections.

Such activities done by the **Church and Meshihat of the Islamic Community in Croatia during the election campaign represent intervening in election campaign**, and such a practice is not appropriate for democratic and secular countries.

Election debates

For the first round of the election HTV1 ran two debates of all the candidates, NOVA TV one. For the second round of the elections HTV1 again ran two debates of the remaining candidates, Josipovic and Bandic; NOVA TV, RTL and Croatian radio 1 ran one each.

Debates represent the most interesting part of election campaigns and give the citizens a chance to further inform themselves on the candidates, their programs and positions on certain topics. The voters find them interesting, and the media uses them for analysis, in so doing keeping the public's focus on some relevant topics and contributing to the seriousness of the election process. However, it is a shame that some of the media kept their focus on repeating the same questions that the candidates themselves raised, most of which had no direct relation to the function of the President, thereby shifting the focus away from messages from the candidates on concrete plans within their presidential jurisdiction.

Election silence violations

Election silence begins the day before the elections and ends at midnight on Election Day. In order to enable the media to publish exit polls and first unofficial results SEC gave an oral recommendation to end the silence at 7 PM. SEC adhered to the law and didn't publish any information pertaining to the election prior to midnight.

During the election silence in the first round of elections citizens called in to report that campaign materials were dropped in the mail boxes, and campaign posters were being put up in some places. Most reports received pertaining to election silence violations concerned candidates Bandic, Primorac and Vidosevic.

During the election silence in the second round of elections GONG also received **reports of election silence violations** that showed that the election silence was mostly violated by the candidate Milan Bandic, especially in the Zagreb area, although there were also reports from other parts of Croatia (Osijek, Split, Bjelovar...). The reports mostly pertained to handing out of leaflets and text messaging. Similar reports, although more sparse, also came about the candidate Josipovic.

The aforementioned violations weren't sanctioned because the law doesn't provide sanctions for election silence violations.

In Zagreb and the surrounding area (Zagreb county) many citizens received unstamped letters in which the candidate Milan Bandic addresses them as craftsmen, unemployed or disabled, and invites them to give him their vote. This presents a **violation of the Secrecy of Personal Information Act** and GONG invited the Agency for Protection of Personal Information to investigate how the candidate came about the citizens' personal information. The same thing happened at the 2009 local elections when Milan Bandic was a mayoral candidate.

ELECTION CAMPAIGN FINANCING

The financing of election campaigns is inadequately regulated for all elections. Even though a law entitled Law on Financing Political Parties, Independent Lists and Candidates (OG No. 01/07) was passed, the State Audit Office and the Ministry of Public Administration found that this law doesn't apply to independent candidates in the presidential election because of the Law on Financing Election Campaign Publicity for the Election of the President of the Republic of Croatia (OG No. 105/04). This Law has only 7 articles and is of cosmetic nature; it also doesn't provide any sanctions for violations.

GONG and Transparency International Croatia (TIH) on November 19th 2009 invited all the candidates to, in accordance with the law:

1. publish the amounts they plan to spend in the campaign as soon as possible;
2. publish and deliver to SEC preliminary reports on amount and source of funding, along with the donors' names, no later than 7 days before the election;
3. publish and deliver to SEC reports on amount and source of funding, as well as the structure of campaign expenses, no later than 15 days after the first round of elections.

The media, especially the national TV stations, radio stations and newspapers, were invited to publish the cost of advertising as well as the amount each candidate spent in the campaign, in order to serve the higher goal of transparency.

All the candidates delivered to SEC their preliminary reports on amounts and source of funding. SEC also invited the two candidates to deliver the preliminary reports 7 days before the second round of elections, and the candidates complied. SEC published the full reports on each candidate's amount and source of funding in the presidential election campaign within 8 days of receiving them in the Official Gazette, the website www.izbori.hr and other means of public communication.

According to the data the candidates submitted to SEC, they all together spent 49,330,668.88 KN, which is almost **double the amount spent in the 2005 presidential elections** (24,039,070.48 KN):

- Bandic – 15,278,984.26 KN
- Josipovic – 8,950,325.05 KN
- Vidosevic – 6,823,266.69 KN
- Hebrang – 6,379,846.83 KN
- Primorac – 3,853,407.92 KN
- Mikšić – 3,247,163.00 KN
- Pusic – 1,977,725.89 KN
- Skare Ozbolt – 1,057,345.37 KN
- Tudjman – 1,000,279.71 KN
- Kajin – 590,624.16 KN
- Jurcevic – 171,700.00 KN.

All the candidates for the President of Croatia that receive at least 10% of the votes cast have the right to equal reimbursement of the election campaign costs. The funds for reimbursement come

from the state budget's election financing funds, and the amount of 250,000.00 KN was set by the Government of Croatia. In accordance, four candidates met the criteria and received the reimbursement: Andrija Hebrang and Nadan Vidosevic 250,000.00 KN each, and Ivo Josipovic and Milan Bandic 500,000.00 KN each, since they were also in the second round of elections.

Even with a quality legal framework it is very **difficult to monitor the transparency of election campaign financing**, and when the legal framework is weak, such as it is in Croatia, it is especially difficult. The existing legislature didn't enable an oversight of financial reports and therefore the candidates could report amounts knowing that no institution will be looking into them.

This situation goes directly against the fight against corruption that all the parties and candidates claimed they stood for, which goes to show a discrepancy between words and actions of the political elites.

The filed reports show an unusual case of the candidate Milan Bandic not covering all the campaign costs; there is a lack of 6.66 million kn to cover all the campaign expenses he reported. At the time of this report being written it is unknown whether all the expenses of candidate Bandic were covered, or how.

What follows is some of the examples of **poor practice that isn't in accordance with the legislation and international standards of elections**¹⁰:

- Listing of anonymous contributors (Bandic and Vidosevic);
- Accepting a contribution from a foreign national in an excess of 2 million kuna (Primorac);
- Unknown real source of funds contributed by political parties (Hebrang and Josipovic);
- Inadequate reports on funds received and spent by almost all the candidates.

GONG and TIH attempted to monitor the value of advertising on TV and in the papers, without calculating other costs, such as:

- advertising on national and local radio stations, local TV stations, in Bosnia and Herzegovina and on the internet,
- office overhead (rent, utilities, phone, postage),
- cost of design, layout, printing and acquiring promotional material,
- rally organization (cost of stage, PA, space, performers),
- travel costs,
- work contracts,
- volunteer costs.

The amount of advertising was tracked in the period between the official start of the campaign, November 19th 2009, and January 10th 2010, by MEDIApuls agency who tracked the amount and duration of video ads on **4 national TV stations, and tracked the printed ads in all the daily papers (13), weeklies, biweeklies and monthlies (49)**. It should be noted that the amount shown is gross value of the ad space, **without taking into account additional commercial discounts** for quantity and payments in advance.

¹⁰ OESS Office for Democratic Institutions and Human Rights <http://www.osce.org/odihr/>

Also, **ad donations given by companies or other subjects were not taken into account** while calculating the ad values. Such ads and discounts should have been reported as contributions in the reports. **VAT costs, if any existed, also weren't included** in the estimation of advertising value.

A few days before the elections, on December 23rd, GONG and TIH held a press conference presenting the Agency's estimation of ad costs in election campaign ending with **December 20th¹¹**.

CANDIDATE	TOTAL
MILAN BANDIC	5,275,338.00 KN
DRAGAN PRIMORAC	4,176,064.00 KN
NADAN VIDOSEVIC	2,800,924.00 KN
ANDRIJA HEBRANG	1,833,881.00 KN
IVO JOSIPOVIC	1,792,131.00 KN
VESNA PUSIĆ	236,921.00 KN
VESNA ŠKARE OŽBOLT	121,485.00 KN
DAMIR KAJIN	62,937.00 KN
MIROSLAV TUĐMAN	51,077.00 KN
BORIS MIKŠIĆ	31,053.00 KN
JOSIP JURČEVIĆ	20,144.00 KN

Before the 2nd round of elections, on January 7th 2010, GONG and TIH presented the ad values for the two candidates, ending with **January 3rd 2010¹²**.

CANDIDATE	TOTAL
MILAN BANDIC	9.589.142,60 KN
IVO JOSIPOVIC	3.937.365,20 KN

¹¹ In more detail at <http://www.gong.hr/news.aspx?newsID=3111&pageID=191>

¹² In more detail at <http://www.gong.hr/news.aspx?newsID=3264&pageID=191>

On January 29th 2010 GONG and TIH presented the **final estimations of advertising costs** in the campaign for all the candidates. In order to get a complete amount of actual campaign costs, the aforementioned campaign costs¹³ need to be added to the ad costs.

CANDIDATE	TOTAL
MILAN BANDIC	12,840,922.00 KN
IVO JOSIPOVIC	6,449,953.80 KN
DRAGAN PRIMORAC	5,276,427.40 KN
NADAN VIDOSEVIC	4,120,440.16 KN
ANDRIJA HEBRANG	3,730,713.40 KN
VESNA PUSIĆ	352,519.00 KN
MIROSLAV TUĐMAN	282,581.00 KN
DAMIR KAJIN	206,011.20 KN
VESNA ŠKARE OŽBOLT	174,296.00 KN
BORIS MIKŠIĆ	140,510.00 KN
JOSIP JURČEVIĆ	60,431.00 KN
SLAVKO VUKŠIĆ	35,044.00 KN

This data shows a discrepancy between the reported campaign costs of some candidates and the amount they spent on ads alone.

GONG, along with TIH, reacted about receiving **anonymous contributions via automated voice machines and text messages**¹⁴. It was pointed out that **anonymous contributions received in any form, including phone and text messaging, are illegal**. SEC too reacted, saying that a ban on anonymous contributions exists in Croatian legislation, even though it doesn't specifically regulate the presidential elections. A warning also went out reminding that the **use of governmental offices, cars and office supplies is forbidden**, and that usage of official phones for giving contributions to certain presidential candidates should be investigated. However, one of the worst poor practice examples is the one of **handing out cash to voters directly prior to the elections**, which the media reported on. This case was about the candidate Bandic giving 50 Catholic families 500 Kuna each in Banja Luka. Several days later his campaign headquarters **denounced the media reports**, saying that

¹³ In more detail at <http://www.gong.hr/news.aspx?newsID=3335&pageID=191>

¹⁴ <http://www.gong.hr/news.aspx?newsID=2901&pageID=191>

the candidate Bandic, with the mediation of the Banja Luka diocese, donated humanitarian packages to 50 destitute families for Christmas. They also said that the packages won't be funded by the election funds, but rather by a group of Zagreb businesses, at Milan Bandic's urging. SEC found **donations to voters by presidential candidates during the election race to be inappropriate** because of the possible suspicion that the aid given isn't purely humanitarian.

COURSE OF THE ELECTION

GONG observed both rounds of presidential elections in Croatia on a statistically chosen sample of 10% of polling stations, in Bosnia and Herzegovina with 11 mobile teams, and also in the United States, France, Germany and Switzerland. GONG bases its Election Day reports on reports from its observers and non-anonymous citizens.

The first round of elections passed in accordance with procedures, with only a minor number of critical situations. A progress in the work of election boards in Bosnia and Herzegovina was noted. Calls from citizens were mostly about them not knowing how to vote outside their place of residence, voters' lists problems and election silence violations.

Even though the observers found the boards' work to be very good, there were reports from a smaller number of voting places about the boards not knowing the procedure or not following it (ballots not being shuffled and facing down, voting without documents, not knowing the procedure about observers at the polling stations). Election boards' and SEC's cooperation with GONG was very good.

Crowds were recorded at polling stations in Bosnia and Herzegovina, which was caused by the voting form procedure. A certain number of voters weren't in the voters' lists even though they had a sole place of residence there. Their applications were forwarded to the consulate or a city office and, since those applications were processed slowly, a number of voters were unable to vote.

GONG also received a large number of calls from citizens, mostly concerning the voting of sick and reporting election silence violations, but there were also more calls, when compared to 2007 parliamentary elections, about voters' lists problems (voters not being on them and two cases of deceased being in them). The largest portion of calls was about voting outside their places of residence since the citizens didn't know that the deadline for this application has passed; it should be noted that the citizens weren't adequately informed about how to exercise their right to vote outside their places of residence, which caused a portion of the voters to lose their right to vote.

The second round of elections also passed peacefully and in accordance with procedures. Election boards were professional. Reports about election silence violations done by both candidates, and withholding of rights of a number of voters, marked the second round.

Observers reported the work of election committees to be very good, with some exceptions. Observers also reported a higher voter turnout in Bosnia and Herzegovina, which caused voting stations to be crowded, especially in Grude and Mostar. Still, the elections there passed peacefully and the boards did their jobs professionally. Some problems that occurred were caused by inadequate polling station locations and as a result of flooding.

GONG received a certain number of calls and e-mails from citizens who were outraged with the fact that they weren't able to vote. This was caused by voters' lists problems, problems with people in hospitals and nursing homes not being able to vote, and inability to vote outside their places of residence because of a missed application deadline (December 12th 2009). Seeing as the relevant institutions didn't do enough to inform the citizens of the said deadline, a number of voters couldn't exercise their voting rights.

In addition, a certain number of calls and e-mails concerned the fact that a leaflet against Ivo Josipovic was handed out during Mass, and that priests suggested a vote against him.

Also, a smaller number of citizens called in to report election silence violations by the media (OTV, Osijek and Vinkovci TV, Radio Marija, Bosnia and Herzegovina satellite station „Lijepa naša“).

Both rounds of presidential elections were organized and carried out well by SEC and election committees. An improvement in election organization abroad was noted. The repeated problems (voters' lists problems, registration for voting outside the place of residence) are the Ministry of Public Administration's fault, and also the fault of the legislative body who allows the same problems to be repeated in every election by not addressing them.

ANNOUNCEMENT OF THE RESULTS

SEC published the final result of the presidential election on January 14th 2010. According to the announced results, Ivo Josipovic won with 60.26 % of the votes, and Milan Bandic received 39.74 % of the votes cast.

Of the total 4,495,528 voters in the voters registry, 2,253,570 (50.13 %) voted. There were 2,222,607 (98.64%) valid ballots, and 30,547 (1.36%) invalid ones.

There was no appeal to SEC concerning the published results.

SEC published the results by polling stations, for which GONG advocated, but it was very hard to browse the results on their website www.izbori.hr (*more on that in the section on SEC's work*).

PROTECTION OF ELECTORAL LAW

Objections to election process actions are submitted to SEC by the candidates, political parties or 5% of the voters within 48 hours of the action happening. Law on Presidential Elections gives a legal remedy (result annulment) only in cases when the irregularity affected the election outcome. The Constitutional Court is the appellate body for SEC's decisions regarding objections, and it deals with appeals within 48 hours. It is also the only body with jurisdiction over constitutionality and legality of the elections, for which there is no deadline.

In the candidacy stage SEC received 5 objections from persons who filed their candidacy for the president of Croatia without collecting enough voters' signatures. All of these objections were dismissed as unfounded.

In the election stage, SEC handled several petitions and claims that formally weren't objections but, due to lack of legal regulation, SEC was the only body the candidates could address for protection of their voting rights. For example, during the second round of the election campaign SEC was deciding

on candidate Josipovic's petition regarding a leaflet that compared the candidates' religious beliefs and patriotism, and it invited both the candidates to run an honest and fair campaign. Additionally, SEC, at candidate Josipovic's request, banned the media stations from running a video approved by the candidate Bandic in which parts of Josipovic's speeches were used without his approval and out of context. Citing previous good practice in campaigns, SEC concluded that the TV video was formed in an inadmissible way, therefore representing a violation of admissible campaign advertising. However, other than Constitutional court decisions¹⁵ there is no document, law or SEC recommendation that determines what is an admissible form of campaign advertising, and the legal basis for banning the aforementioned TV video remains dubious, which goes to show an added need for campaign regulation.

Constitutional Court took under advisement one petition for oversight of constitutionality and legality of presidential elections by a presidential candidate who was warning them about unequal conditions of election campaign publicity. Her petition wasn't rejected until after the second round of elections.

GONG'S RECOMMENDATIONS

GONG, as always, at the end of the report gives concrete recommendations for improvement of the electoral process and legislation.¹⁶ Unfortunately, most of these recommendations are the same ones we have been repeating after every election, for over 10 years.

- A complete **professionalization of SEC** is necessary. By this we mean that it is necessary to have members whose job would solely be to work as SEC employees in order for elections to be organized and conducted in accordance with international standards, but also to fulfill other legal duties in times between elections (informing the voters, candidates and media, improvement of election legislation, drafting of expert publication, analytical reporting and publishing all the information pertaining to the elections) and other duties that SEC should take into its jurisdiction (active monitoring of election campaign publicity and sanctioning of inadmissible messages and actions; jurisdiction over election campaign funding both during and after the elections). In addition, due to the complexity of the electoral process, other professions beside the legal one should be included.
- **A system of education of lower bodies that implement the elections** by SEC is needed at times when there are no elections.
- Given the fact that the political parties are directly interested in fair and transparent elections, **the parties should name their representatives for election committees** in order to control each other during the electoral process.

¹⁵ Constitutional court decisions numbers: U-I-2495/2002 from 5-11-2004., 99/04. - ispr. odluke Ustavnog suda i 44/06; Oversight of constitutionality and legality of presidential election number: U-VII-64395/2009 from 12-15-2009.

Constitutional court memo to petitioner Milan Bandic, U-VII/111/2010

¹⁶ Other recommendations can be found in election reports and in special recommendation documents at www.gong.hr

- All the institutions involved in election organization and implementation should utilize modern informatic possibilities to ensure easier election implementation and easier exercise of voting rights for voters.
- **An easier procedure for voting outside the place of residence would be useful**, especially for voters in Croatia.
- **Improvement of the legal framework for election campaign funding** is necessary for making the elections to be more transparent, as well as making the parties and the candidates publish detailed financial reports; sanctions for using public resources in the campaign are needed as well.
- **A detailed prescription of rules, content, obligations and rights of candidates and the media** during the election campaign is necessary, with a distinction between privately and publicly owned media with regard to the different functions they perform. The prescriptions should honor **equal access to the media** for all the candidates, which don't only mean equal air-time, as international recommendations on candidates' representation also speak off.
- **Modification of the Law on Residence** is necessary to put an end to fictitious residences of voters who don't in fact live in Croatia, creating an unrealistic number of voters.
- In the so-called diaspora voters' lists, meaning Croatian citizens without residency in Croatia, there are still a **large number of deceased** persons and a systematic erasure of such persons is needed in order to minimize election manipulation.
- Since the Constitutional Court nullified some of the articles in the Law on the Election for the President of the Republic of Croatia that regulate the **protection of election rights** in April 2004, deeming them unconstitutional, the law should be harmonized with the Constitutional Court's Decision number U-I /2495/2002.
- It would be useful if the **appropriate bodies conducted additional education of political party members and candidates** on democratic standards and the protection of their rights in the electoral process.
- **Consolidation of all electoral legislation into a single codex** would lead to unification of technical procedural rules with the goal of simpler organization and implementation of the elections.