



THE ROLE OF SOCIAL MEDIA IN ELECTORAL PROCESS

Guidelines for election stakeholders





Dr. Suad Arnautović

THE ROLE OF SOCIAL MEDIA IN ELECTORAL PROCESS – GUIDELINES FOR ELECTION STAKEHOLDERS –

Sarajevo, November 2020

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Publisher: Central Election Commission of Bosnia and Herzegovina,
Danijela Ozme 7, 71000 Sarajevo, Telephone: 033/251 300,
Fax: 033/251 329, e-mail: kontakt@izbori.ba,
Web page: www.izbori.ba

For publisher: Željko Bakalar, President

Author / Editor: Dr. Suad Arnautović

Preparation of publication: Goran Mišković

Reviewer: Peter Wolf, IDEA Int. Stockholm

Translation: “Agencija Language Lab”, Vilsonovo šetalište 10, Sarajevo

Responsible person: Alisa Uzunović

DTP: Grafomark d.o.o. Laktaši

Printed by: Jelena Milinčić

For the printing company/circulation 320 kom.

CIP - Katalogizacija u publikaciji
Nacionalna i univerzitetska biblioteka
Bosne i Hercegovine, Sarajevo

316.774:004]:342.8(497.6)

ARNAUTOVIĆ, Suad

The role of social media in electoral process : guidelines for election stakeholders / Suad Arnautović. - Sarajevo : Centralna izborna komisija Bosne i Hercegovine = Central Election Commission of Bosnia and Herzegovina, 2020. - 121 str. : ilustr. ; 25 cm

Prijevod djela: Uloga društvenih medija u izbornom procesu. - About the author: str. 118-122]. - Bibliografija: str. 116-117 ; bibliografske i druge bilješke uz tekst.

ISBN 978-9958-555-60-2

COBISS.BH-ID 41601030

Pursuant to the conclusion rendered at the 60th session, dated October 2nd 2020, the Central Election Commission of Bosnia and Herzegovina approved the publication “The role of social media in election process – Guidelines for election stakeholders”.

The terms written in one gender pertain to both genders, without discrimination of any gender.

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Contents

Foreword of the President of the Central Election Commission of BiH	4
Foreword of the Council of Europe representative	6
1. INTRODUCTION - SOCIAL MEDIA AND ELECTIONS - IS A NORMATIVE FRAMEWORK NEEDED TO REGULATE DIGITAL CAMPAIGNING DURING THE OFFICIAL DURATION OF THE ELECTION CAMPAIGN IN BOSNIA AND HERZEGOVINA?	7
2. IMPORTANCE OF SOCIAL MEDIA IN ELECTORAL PROCESS	9
3. THE NOTION OF SOCIAL NETWORKS.....	14
4. FIVE MISCONCEPTIONS ABOUT SOCIAL MEDIA IN THE ELECTIONS	15
5. TYPES OF SOCIAL NETWORKS	16
5.1 Facebook	16
5.2 Twitter	17
5.3 Instagram	17
5.4 YouTube.....	17
5.5 Vimeo.....	18
5.6 Snapchat.....	18
5.7 Tik-Tok	18
5.8 Blogs (on all platforms, including WordPress)	18
5.9 LinkedIn	19
5.10 Google+	19
5.11 Text messaging through mobile phones	19
5.11.1 Viber	20
5.11.2 WhatsApp	20
5.11.3 Signal.....	20
5.11.4 Telegram	21
5.12 Social media monitoring software.....	21
6. SOCIAL NETWORKS IN ELECTORAL PROCESS.....	22
7. INTERNATIONAL EXPERIENCE	26
7.1 Guidelines for Reviewing a Legal Framework for Elections (OSCE/ODIHR)	26
7.1.1 Equal treatment and access to media	26
8. SOCIAL MEDIA USE IN ELECTIONS	31
8.1 Case law of the Court of Bosnia and Herzegovina	31
8.2 (Mis)use of social networks in BiH– the Court of BiH’s case law	39
9. CONCLUSION.....	95
10. GUIDELINES FOR ELECTORAL STAKEHOLDERS	97
11. ANNEXES	103
Annex 1 – Overview of the most popular social networks in the world	103
Annex 2 – Social networks: 5 ways to use it in a smart way	103
Annex 3 – Framework Election Code of Ethics for Election Stakeholders Participating in 2020 Local Elections	106
12. LITERATURE	116
13. ABOUT THE AUTHOR.....	118
14. THE ROLE OF SOCIAL MEDIA IN ELECTORAL PROCESS – GUIDELINES FOR ELECTION STAKEHOLDERS	123

Foreword of the President of the Central Election Commission of BiH

The publication ‘The Role of Social Media in Electoral Process – Guidelines for Election Stakeholders’ is the first such publication of the Central Election Commission of BiH and it regulates or attempts to direct election stakeholders towards regular and legal use of social media in the electoral process.

The issue of social media use in electoral process is not defined under the Election Law of Bosnia and Herzegovina or any other law. However, Chapter 7 ‘Rules of Conduct in the Election Campaign’ does not allow the candidates and supporters of political parties, lists of independent candidates, lists of members of national minorities and coalitions, independent candidates and their supporters, and election administration officials or those otherwise hired in the election administration to use language which may provoke or incite someone to violence or spread hatred, or to publish or use pictures, symbols, audio and video recordings, SMS messages, Internet communications or any other materials that may have such effect.

This is a broad legal definition of what we, election administration members, refer to as ‘hate speech’. According to this provision, all the above actors in electoral process are forbidden to convey the ‘hate speech’ via various tools, including internet communication, meaning, by using, in the broadest sense, social networks in the electoral process. In this context, we hope that this publication will be of use to all election participants and stakeholders, including political parties, i.e. political entities, including all the above political actors, and political party supporters, candidates, lists of independent candidates, lists of members of national minorities, in the case of local elections, coalitions, independent candidates and their supporters, election administration officials or those otherwise hired in the election administration. This publication may help them obtain better and more comprehensive understanding of the importance of social media in electoral process, as well as the path and direction the legal use of social media should take in the election period and in election campaign.

This publication, we may say ‘arrives at the right time’ as COVID-19 pandemic outbreak and subsequently imposed ‘lockdown’ have opened another dimension of social relations and caused the need for maintaining the democratic processes by using the social media in the environment where one must adhere to social distance and when the election stakeholders are unable to use traditional election campaign forms to reach, influence and communicate with the voters, or traditional campaign activities such as ‘door to door’ activities, GOTV activities (‘Get out the vote’) etc. The 2020 Local Elections in BiH showed that in such situations social media offer a wide range of possible applications. Therefore, it is very important that we initiate, step by step, adoption of primary and secondary legislation that will draw an exact line between the use and abuse of social

media in electoral process. As stated in this publication, threat of social media abuse looms largest in the field of information, accurate and true information on one hand, and disinformation on the other hand, that is, releasing the fake news, opening 'fake social media accounts' as well as using false presentation, and maintaining 'false communication'. This publication is the first step that may help roll things in that direction.

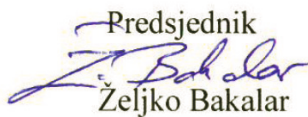
Therefore, when it comes to Bosnia and Herzegovina, we are still at an early stage of that process, but hopefully this publication will be of a great use to all participants in elections in Bosnia and Herzegovina, as well as the analysts, media, various commentators, and all who are interested in the role of social media in electoral process.

I would like to emphasise one more thing. In the Chapter 16 of the BiH Election Law, 'Media in the Election Campaign', Article 16.14 stipulates that no conduct of a paid election campaign shall be allowed by way of electronic and printed media, or any form of paid public advertising, so this provision, in terms of decision-making by the BiH Election Commission, is applied when sanctioning political entities who use paid advertising via their Facebook accounts or other social media, and applications like You Tube channel, before the official beginning of election campaign. In that regard, and in the context of BiH Central Election Commission's experience, in particular when it comes to 2020 Local Elections, until the day we were preparing this publication for printing, 58 decisions were rendered on sanctioning of political entities on these grounds. The Court of Bosnia and Herzegovina sustained 14 decisions, whereas in 3 cases it quashed decisions of the BiH Central Commission and remanded the cases to the Commission for review of a decision.

All actors in electoral process will benefit from these case law experiences of Bosnia and Herzegovina, and some of the cases are referred to in this publication.

I would like to once again extend my gratitude to the Council of Europe for financial support in printing and publishing this document.

Sarajevo, November 30, 2020

Predsjednik

Željko Bakalar

Foreword of the Council of Europe representative

The Role of Social Media in Electoral Process – Guidelines for Election Stakeholders

The right to free and fair elections is guaranteed under the Convention for the Protection Human Rights and Fundamental Freedoms. It is a fundamental right and a democratic safeguard against any abuse of political power. Citizens must be able to choose freely between the different political options without fear of repression.

The last decades have seen the emergence of new ways of communicating that have gradually led to a new way of practicing politics and leading electoral campaigns (online advertising and meetings, automated campaigning, profiling and targeting people etc.). Social media and digital platforms have taken more places in citizens' lives. The technological evolution, linking more and more people, but more recently even objects, has meant that social networks live by our side from the start until the end of each day.

In a democratic society, the role of a social media leads to constant new interrogations in the light of our rapidly evolving societies. New challenges for democracy and for the integrity of the electoral processes also arise, notably, as concerns the role of social media during the electoral campaign, and in particular in the period of silence before the election day, and for other essential issues in democratic societies, such as combatting hate speech, fighting all sorts of discrimination and gender-biased stereotypes and ensuring that citizens have access to fact-based and objective information.

The purpose of this handbook is to assist electoral stakeholders to better consider the issue of these new interactive technologies in Bosnia and Herzegovina and the Directorate General of Democracy of the Council of Europe is glad to support through its Electoral Laboratory (Eleclab) and Division of Elections and Civil Society all stakeholders' efforts to making the electoral processes in Bosnia and Herzegovina more fair, inclusive, integral and transparent.

*Snežana Samardžić-Marković,
Director General of Democracy, Council of Europe*

dent candidates and 71 independent candidates (national minorities). The electoral process in Bosnia and Herzegovina is managed by 143 municipal and city election commissions with a total of 563 members, and approximately 5.800 polling stations with a total of about 60,000 members and alternates are activated on the Election Day. All of them use social networks in one way or another, both for professional purposes and in private communication. This all speaks to the importance of the use of social networks and new technologies in general in the electoral process. Therefore, we hope that this publication will be useful to all stakeholders in the electoral process in Bosnia and Herzegovina.

Examples of case law regarding the (ab)use of social networks in the electoral process are a special part of the publication. Here we particularly think of the premature election campaign and paid i.e. sponsored advertising via social networks before the start of the official election campaign.²

Some examples of how and at what time social networks should not be used may be useful to candidates and political entities for the purpose of promoting candidates and political entities. A special segment of the use of social networks in the election campaigning refers to the non-regulation of so-called *hate speech*, i.e. inflammatory speech that could provoke or incite someone to use force.

* * *

² At this this publication was being prepared, a coalition of NGO's "Pod lupom" published the second preliminary report on the long-term observation of the Local Elections in Bosnia and Herzegovina. Cases of early social media campaigns have been noted in the reports. For more information visit <https://podlupom.org/v2/bs/clanak/konacni-izvjestaj-2014/124>.

2. IMPORTANCE OF SOCIAL MEDIA IN ELECTORAL PROCESS

As of October 2020, more than half of all people on the Earth use social networks. Some recent data shows that 4.14 billion people across the planet use the social networks today, equating to almost 53 percent of the total global population. In other words, it means that number of people using social networks in the world today exceeds the number of people who do not use social networks. This figure is all the more impressive when we consider that most media outlets limit the use of their platforms to persons over 13 years of age. In fact, the latest figures show that nearly two-thirds (68 percent) of the world's total "eligible" population now uses social media. The number of users worldwide has grown by more than 12 percent over the past 12 months, and on average more than million people have started using social media every day for the first time since this period last year. In the period from July to September 2020, more than 180 million people started using social media for the first time, which means that there were on average almost 2 million new users of social networks every day.

With more than 450 million new users since October 2019 it means almost 14 new users every second, which suggests that the number of users today is growing even faster than it was in the same period last year. A typical social media user has a registered account on almost 9 different social network platforms and spends on average of close to 2 hours and 22 minutes using social media each day.³

Therefore, it is not difficult to conclude that the development of social media has accelerated enormously in the recent years. Examples of the use of social media in the electoral process, especially in the campaign, are countless, starting with the Japanese parliamentary elections in 2013, when the use of social media in elections was highlighted for the first time in the Japanese history; in the United Kingdom during the 2015 elections; during the 2014 Indian elections, the 2016 and 2020 US presidential elections, the Brexit campaign in the UK, the EU elections in May 2019, etc.

With the appearance of the COVID-19 pandemic, the role of social networks in general, particularly during the electoral process, became extremely important.

The election administration also increasingly relies on social media in election cycles, but the danger that social media is being used to spread hate speech, misinformation and rumours is constantly being emphasised.

The Guidelines for the Use of Social Networks in the Electoral Process in Bosnia and Herzegovina, which should ideally be signed by all stakeholders of the electoral process in BiH, is offered in this document as the support to the intention of stopping or at least reducing and limiting the abuse of social networks. This applies in particular to

³ <https://datareportal.com/social-media-users>

political parties, candidates, political commentators and other commentators on social networks (bloggers), who accept the principles set out in these Guidelines.

It should be immediately underlined that the content of these Guidelines is not a Law, but should be a binding agreement for the signatories who accept it in good faith (*bona fide*) with the ultimate goal of implementing the wishes of those who represent the majority in our society and who really want to regulate the public space filled by the social networks during the election campaign.

Online social media has begun to play an increasingly prominent role in the ways we communicate over the last few years. The means by which information is created and consumed have changed radically with the emergence of new and exciting digital platforms such as Facebook, Twitter, YouTube and WordPress,. Unidirectional data output from “official sources” has given way to communication that is generated individually or collectively and shared by network users who thus become active transmitters of information as well as those passive users.

At the same time, the public (citizens) increasingly expects and demands that official national bodies, public companies, agencies and institutions, and especially political parties have an active presence on social networks and expects the information available to that public to be presented and distributed through the social platform that is most accessible to the average citizen. In this respect, election management bodies are no exception and it is unquestionable that they must respond to the changing demands of the public, especially voters and civil society, if they wish to remain relevant and efficient in their mission. That is why it is very important that election management bodies apply new technologies in their practice, because not only can they gain a lot, but also can learn a lot about how to successfully apply social media tools to their daily activities, especially those activities prescribed by the law and regulations during the election campaign, on the Election Day and in the post-election period.

Therefore, this publication is intended, among other things, to inform BiH election management bodies about ways in which social media can become accustomed to increasing voter turnout, enhancing communication, engaging the electorate and improving transparency and trust throughout the election cycle.

Furthermore, social media is playing an increasingly important role in the field of voter information. Therefore, the election management bodies need to use social networks to get their message out to every voter they are responsible for, especially young people, as there is no need to additionally stress that young voters are the de facto “digital generation” i.e. that they are especially active on social networks. Therefore, social media is a particularly useful tool in the efforts that election management bodies must

make in terms of voter education.⁴ In the digital age, social networks have the potential to become an extremely valuable and effective tool for the benefit of election management bodies, political parties and especially for voter education.⁵

A special social danger, especially during the electoral process, is the abuse of social networks by placement of fake news, offensive comments through fake profiles and network colloquially called “human bots”. Common to all abuses is realisation of some kind of benefit, namely: direct, financial, by increasing the number of followers of an influencer or a political candidate along with the sale of advertisements on the sites or indirectly, financial or material gain in the race for each vote, using services for sale of followers/fans to whom candidate and his/her program is “sold”.

A special direction is the conscious placement of disinformation as well as the omission of important information for the public (misinformation).⁶ Experience to date indicates that, for example, the use of social networks in political campaigns has advanced tremendously in the last ten years, with the Facebook being the most relevant. It is common to use the Facebook *fan page* as the official profile of the candidate, but a number of fake profiles are also created, and are usually used to run a negative campaign, i.e. to degrade political opponents. In this context, the role of “*human bots*” or “*internet agents*”, as some call them, is to share, like, dislike and publish comments in accordance with the communication strategy of their political option, i.e. the campaign on social networks. There is not a single post on portals and social networks today, regardless of whether it is a political position or the opposition, which goes without a significant number of comments from the “*bots*” of individual political entities. This is an attempt to create public opinion, affirmative or negative, about a political entity, i.e. a political program and/or a candidate.

A more recent phenomenon is the sudden “birth” of new portals in the election year, election period or just before the start of the election campaign. A significant number of such portals have no records of ownership and editorial board (*impressum*), i.e.

⁴ The BiH Central Election Commission has at its 67th session held on October 15, 2020 adopted the “Voter Education Strategy in Bosnia and Herzegovina 2020-2023” as well as accompanying Action Plan. It is first time that the BiH CEC has adopted this type of document.

⁵ <https://www.idea.int/sites/default/files/publications/social-media-guide-for-electoral-management-bodies.pdf>

⁶ Two similar terms in English language, which have different meanings, have to be differentiated here: **Misinformation** and **Disinformation**. **Misinformation** –could be described with the phrase false information that is spread without the sender having a conscious intention to deceive the recipients of that information. On the other hand, the term **disinformation** –could be described as false information that is deliberately and methodically disseminated, for example about a country’s military power or plans, that another country’s government or intelligence agency is knowingly disseminating in order to gain a tactical advantage in the field of political subversion. Also, this term is more generally used to mean “intentionally misleading or biased information; manipulated narrative or facts; propaganda.” More information available at: <https://www.dictionary.com/e/misinformation-vs-disinformation-get-informed-on-the-difference/>. Visited on 19.10.2020 at 11:50 hours.

the location of the portal, etc. The purpose of such portals is, on one hand, to generate profit through advertising, and on the other hand, political influence in accordance with the political affiliation of the portal's founders. These “anonymous” portals are connected to several different Facebook pages and thus form the so-called “*party digital teams*”.

The content of these portals in rough outlines could be situated in two groups, namely those that simply download texts, photos, videos and audio recordings of other portals and media outlets, with or without their own comments, and those portals that predominantly place “*fake news*” and misinformation, i.e. “deliberately misleading or biased information” as well as spins, in order to interest their visitors and propagandise them.

Unfortunately, there is still neither clear normative-legal regulation nor precise clarifications on what web portals should and should not publish, especially during the election campaign. Chapter 7 and Chapter 16, i.e. Article 16.14 of the BiH Election Law have partially filled this gap, but there is still room to specify and to define these areas in more detail through the election legislation. Namely, the rules laid down in Chapter 16 of the BiH Election Law for electronic media are a good pattern and basis for a more detailed regulation of behaviour on the social networks and the Internet in general.

One of these issues is the framework regulation of the use of new IT technologies in the electoral process, particularly in the election campaign, which serve as tools by which political parties communicate with their members, sympathisers and supporters (digital campaign). Namely, there are a number of possibilities related to the activities of party digital teams in using techniques for “handling” the electorate, such as connecting “anonymous” portals that are linked to several different Facebook pages via social networks, then using Instagram profiles, YouTube channels, Twitter accounts, closed Facebook groups, using several communication channels or mobile applications (Viber, Slack, Telegram, WhatsApp, Signal, Snapchat, etc.) with which you can invite your electorate to share audio and video, files and even to connect with other applications, etc. All of this necessitates the need to regulate online behaviour during the election period and election campaign.

Also, there are more open questions to which we do not have answers yet. For example, the question of whether a party e-mail delivering mail or, for example, a newsletter not only to the party nomenclature, but also to the general population, listing current party activities, documents and statements of party officials and members, can be considered a public official document freely available to any citizen or an internal protected document intended only for a narrow circle of party members? Namely, in the first case the election management body could react to content that *prima facie* violates the law and sanction such activity during the election campaign, while in the second case such a reaction would probably be questionable.

Social networks are extremely suitable for creating websites of party leaders. There, the pages on the social network Facebook are in the lead, as it is the case in Bosnia and Herzegovina. However, especially lately, Twitter and Instagram have become increasingly popular media in BiH. At the beginning of the development of social networks in BiH, political leaders in BiH did not understand the political significance, and especially the spread of party ideology, which social networks have, both directly and indirectly. The situation is entirely different today and it is perceptible that the party leaders and champions at all levels of party organisation regularly refresh their Facebook, Twitter and Instagram accounts and communicate more and more directly with their membership, supporters, sympathisers and citizens in general.

3. THE NOTION OF SOCIAL NETWORKS

Generally speaking social media are essentially understood to be web or mobile-based platforms that allow for two-way interactions through user-generated content (UGC) and communication. Social media are therefore not media that originate only from one source or are broadcast from a static website. Rather, they are media on specific platforms designed to allow users to create ('generate') content and to interact with the information and its source.⁷

Although social media rely on the internet as the medium, it is very important to emphasise that not all internet/web pages may be considered the social media by default. There are web pages that do not provide option for an interaction with the audience, whereas others allow users only to post their comments as a reaction to individually available public content such as directed and controlled discussions.

There is a wide and diverse range of social media platforms today. Among the most popular are:: Facebook, Facebook Messenger, Skype, Twitter, Instagram, WhatsApp, QQ, Qzone, WeChat, Google+, Tumblr, Viber, Baidu Tieba, Line, Sina Weibo, V Kontakte, Snapchat ...

Blog platforms: LinkedIn, Imgur, YouTube, Vimeo, Reddit, Quora ...

⁷ <https://www.idea.int/sites/default/files/publications/guidelines-for-the-development-of-a-social-media-code-of-conduct-for-elections.pdf>

4. FIVE MISCONCEPTIONS ABOUT SOCIAL MEDIA IN THE ELECTIONS

Previous experiences of using social media have rounded out some fundamental misconceptions regarding their role and manner of use:

The first misconception is that social media is free. Social media costs a lot because it takes up a lot of your time. And, time is money. If you spend a lot of time chatting and endlessly surfing the web, you will lose valuable time that you could have used quite concretely in performing useful tasks that will bring you money or some other benefit.

The second misconception is that you have to be on every social platform. NO. You just need to be where your voters are, so it is very important that you analyze your electorate, segmentize it and, in line with the results obtained, exercise the influence through appropriate social networks.

The third misconception is that social networks are broadcast channels. NO. Social networks are interactive channels. They require two-way communication.

The fourth misconception is that you have to follow the posts on your profiles (profile) several times a day. NO. You need to follow your posts consistently and continuously.

The fifth misconception. Social networks are great for recruiting new voters. Non-social networks are great for strengthening connections with your existing voters. Strengthen the link with your electorate that supported you in the last election.

5. TYPES OF SOCIAL NETWORKS

Currently very popular platform include, but are not limited to, Facebook, Twitter, Instagram, YouTube, Bambuser, Vimeo, Blogs, Flickr, LinkedIn and Google+. Other popular platforms in selected countries or regions are Cloob (Iran), Orkut (Brazil, India), Cyworld (Korea), Friendster (Southeast Asia), Grono.net (Poland), hi5 (parts of Asia, Middle Africa and Latin America), mixi (Japan), Spaces (Russia) and Sina Weibo (continental China). In addition to these platforms, there are various “dashboards” designed to consolidate social networks, media messages and posts on various platforms (for example Threadsy, HootSuite and Buffer) and software programs that help monitor the discussion on social networks (for example, Tweetdeck and Meltwater Buzz).

Certainly, we refer to those social networks whose primary purpose is the exchange of audiovisual content and information, and not telephony and chat, such as Viber, WhatsApp, Signal or Telegram. In some parts of the world, there are social networks that are not even known in our country, such as the Chinese QQ or the Russian Vkontakte, which have 900 and 600 million users, respectively. We emphasize this only to better understand the concept of virtual social networking and its limits that still exist. Namely, although the Internet is a supra-territorial category, certain barriers such as language, culture and the like are still being transferred from the real world to the virtual, both at the global level and at the micro level. So, if your constituency does not include Wuhan or Moscow, let's forget QQ or Vkontakte and dedicate ourselves to the networks in which your potential voters move, and those in Bosnia and Herzegovina in a concrete and practically usable sense are reduced to Facebook, Instagram, Twitter and YouTube.⁸

Facebook continues to be the world's most widely used digital platform, but there are now six social media platforms that have more than one billion active users a month. Four of these six platforms are owned by Facebook. Based on publicly available data by 16 July 2020, a total of 16 social media platforms have more than 300 million active users per month (see Annex 1).⁹

5.1 Facebook

Facebook was launched in 2004 and immediately became the world's leading social network. Individuals or organizations can create a Facebook profile open to all users or may restrict access to their page to only selected “friends” or selected members. Facebook requires real identities to be used, but there are many examples of pages created

⁸ Brochure “Tko se boji twittera još” - <http://infohouse.ba/doc/brosura-hbs.pdf>

⁹ <https://datareportal.com/social-media-users>

under pseudonyms. Facebook is known for being easy to use, for a large number of current users and for the ability to quickly send data through the networks.¹⁰

5.2 Twitter

Twitter was created in 2006, as a micro-blogging platform where people can post messages or “Tweets” up to 140 characters long. While unregistered users can follow tweets, only registered users (who can remain anonymous) can generate tweets. Messages can be shared with followers and “re-tweeted” (re-posted by others). If a topic is popular and often shared, it is considered to be in trend. Hashtags (#) are used to track conversations. Twitter allows you to disseminate short messages to a large audience in a short amount of time, but Twitter does not offer the service of downloading or backing up accounts, so using a third-party platform requires backing up or archiving.¹¹

5.3 Instagram

One of the most popular social networks Instagram was created in 2010 and was named by merging the two words “instant camera” and “telegram”. Instagram is a social network where the focus is on photos. This application offers various possibilities, and one of them is a new search tool that makes it easier to search for images using keywords and hashtags (#). Instagram was sold to Facebook for \$ 1 billion in 2012. Since then, the number of users of this application has been constantly growing. The current value of Instagram is estimated at more than \$ 100 billion. Creating profiles (accounts) is free on this application. Instagram allows users to record, process and share their experiences with friends, acquaintances and followers. Using this app will come in very handy to those who want to connect with as many followers as possible.

5.4 YouTube

YouTube was created in February 2005. It is a video hosting platform to which users can upload, view and share videos. The user must register to upload a video, but unregistered users can also view all published videos. Links to YouTube can be run from other social platforms, such as Facebook and Twitter. YouTube is currently the most popular available video sharing platform.¹²

¹⁰ <https://www.idea.int/sites/default/files/publications/social-media-guide-for-electoral-management-bodies.pdf>

¹¹ <https://www.idea.int/sites/default/files/publications/social-media-guide-for-electoral-management-bodies.pdf>

¹² <https://www.idea.int/sites/default/files/publications/social-media-guide-for-electoral-management-bodies.pdf>

5.5 Vimeo

Vimeo is a video hosting site adapted for short movies and high definition broadcasts. Unlike YouTube, videos posted on Vimeo are available for download.¹³

5.6 Snapchat

Snapchat is an application that was launched in 2011 and is used by about 100 million people today. This app allows you to send your photos (snaps) and videos that disappear (are deleted) ten seconds after being viewed by the person receiving them. You can add text and drawings to snaps and videos before sending them to friends. Also, Snapchat gives you the ability to post a “story”, i.e. a 24-hour collection of photos and videos that you can broadcast to anyone or limit it to only those who follow you.

5.7 Tik-Tok

Tik Tok is a destination for videos created by mobile smartphones. These videos can then be designed with special effects, filters, music, etc. Very easy to create personalized videos. When you record a video, you can pause and re-record as many times as you want. Integrated video editing tools allow you to easily crop, cut, merge and copy videos without leaving the app.

5.8 Blogs (on all platforms, including WordPress)

Blogs are virtual spaces where individuals or a group of users express their opinions or regularly provide information. Terms like “blogger” (blog author), “blogging” (the action of writing and posting a blog) and “blogosphere” (the world of blogging) are common on this social network. Blogs can be made interactive by allowing the reader to ask questions to the blogger or to other readers or to post their comments, thus creating a conversation or discussion about a particular topic. Blog websites can be linked to other social networks and are mostly hosted on specific websites that can be individually designed. Maintaining a blog can require both time and resources, but the benefits of a blog include the ability to educate and to encourage discussion about specific topics. Bloggers often present topics and discuss different opinions and are not always considered an accurate source of news or facts, which largely depends on the blogger.¹⁴

¹³ <https://www.idea.int/sites/default/files/publications/social-media-guide-for-electoral-management-bodies.pdf>

¹⁴ <https://www.idea.int/sites/default/files/publications/social-media-guide-for-electoral-management-bodies.pdf>

5.9 LinkedIn

LinkedIn is a platform for social networking of professionals. There are a number of user packages, from a free personal profile to a CEO profile that is available for a monthly fee. LinkedIn allows you to share data and to join groups based on interest or expertise through calls and allows users to post links to their networks regarding upcoming events and news. In addition, company or project profiles allow registered LinkedIn users to view products and services and follow the company or organization to stay informed about the news.¹⁵

5.10 Google+

Google+ is a social networking project launched in January 2012 for users over the age of 13. Google+ allows users to group their relationships to tailor information to specific groups (friends, co-workers, family, etc.). Google+ is the host of chat and has a video call feature, and both can be used between two people or in groups. It also allows users to search for areas of interest, with regular updates for these selected groups. Photo and video sharing is also possible, and organizations or companies can set up profiles and share posts. Google+ requires individuals to use their real identity to open an account, and the users can download copies of their account (including all posts and interactions) through Google Archiving.¹⁶

5.11 Text messaging through mobile phones

Sending information via SMS or text messages is becoming increasingly popular in areas where internet connectivity is weak. Although SMS does not allow the same level of interaction as social networks, it can be a useful way to disseminate important information in certain areas that are not covered by the Internet. Mobile phone numbers can be collected in person at party events (by registration or through voluntary registration surveys), through the website or directly by party members, supporters and sympathizers who provide their phone numbers to the local party leadership. Then it is necessary to form a telephone list that will be used both for sending SMS and for forming internal Viber or WhatsApp groups in areas where internet communication works. Once SMS messages are sent, it is important that both the recipient and the sender of the SMS messages respond within a reasonable time, i.e. that two-way communication is established. There are simple options for rejecting SMS and MMS messages if the user decides to turn off receiving messages from the party, i.e. the sender. The choice to reject should al-

¹⁵ <https://www.idea.int/sites/default/files/publications/social-media-guide-for-electoral-management-bodies.pdf>

¹⁶ <https://www.idea.int/sites/default/files/publications/social-media-guide-for-electoral-management-bodies.pdf>

ways be respected. SMS desktop systems are software packages that allow users to send SMS messages from a PC via a built-in modem or connected phone. Desktop platforms can often be downloaded for free.¹⁷

5.11.1 Viber¹⁸

Smartphone application that has become quite widespread on our market in a very short period of time. Viber allows you to call and send SMS/MMS messages to anyone in any country (anywhere in the world) completely free of charge, and the only condition is that your smartphone is connected to the Internet and that the person you are calling also has the application installed and Internet access enabled. Viber is one of the most popular applications for free messages and calls on smartphones and has its own version for computers. The Viber application offers you free calls (regular and video calls), chat with the addition of a “smiley”, sending photos and videos from your computer.

5.11.2 WhatsApp

WhatsApp is a messaging application created in 2009. WhatsApp started as an alternative to SMS. WhatsApp is used by more than two billion people in over 180 countries. WhatsApp is free and offers easy, secure and reliable correspondence and calling, available on smartphones anywhere in the world. WhatsApp got its name from a play on words from the phrase What’s Up? WhatsApp is the most used app after Facebook and YouTube in the world and in 2014 Facebook bought the WhatsApp mobile app.

5.11.3 Signal

The signal application is widely known (maybe not so much in our country) as the safest and most private way of communication that anyone can recommend to you today. The idea of this app’s creator with the artistic name *Moxie Marlinspike* is for Signal to replace the current SMS app, so you almost don’t notice you are using it. It works the same on Android and on the iPhone. Messages sent and received via Signal go, of course, over the Internet and are encrypted with strong end-to-end encryption. Signal has everything that every messenger should have: text messages, individual and group calls, sharing of multimedia and other data between contacts, all that with state-of-the-art encryption.

¹⁷ <https://www.idea.int/sites/default/files/publications/social-media-guide-for-electoral-management-bodies.pdf>

¹⁸ <https://tehton.covermagazin.com/?p=7108> 26.11.2020. u 16.24

5.11.4 Telegram¹⁹

Telegram is a messenger application which, although not so represented in our country, is certainly one of the most used messenger applications in the world with over 100 million downloads. Unlike other popular apps like Messenger, Viber and WhatsApp - Telegram has built its brand focusing on being an *alternative option*, and its popularity has grown thanks to several good features such as secret chat.

The Secret Chat option on Telegram combines end-to-end encryption options, screenshot protection and a self-destruct timer. So, in addition to having a secret chat that is encrypted, you can be sure that each image you share will disappear after a given time.

5.12 Social media monitoring software

There are various software programs, i.e. dashboard applications (TweetDeck, Meltwater buzz, Sprout, HootSuite) that have been developed to help individuals and organizations manage posts, track users and monitor discussions on social platforms and beyond. Some of these are advertised as “the fastest and the easiest media monitoring tool on the market”.

The main features of these programs include the ability of centralized incoming mail information sending and receiving, posting information on all platforms through a centralized tool, creating target audience list, analyzing statistics on user platforms, monitoring discussions by using keywords and preparing reports on social media and media use.²⁰

¹⁹ <https://www.netokracija.com/aplikacije-za-privatne-razgovore-144741> 26.11.2020. at 16.39 hours

²⁰ <https://www.idea.int/sites/default/files/publications/social-media-guide-for-electoral-management-bodies.pdf>

6. SOCIAL NETWORKS IN ELECTORAL PROCESS

Election management bodies have noticed increasing reliance on social media during the electoral process. As we have already pointed out, this was especially evident after the outbreak of the COVID-19 pandemic in early 2020. Platforms such as Zoom, Skype or Office 365 have suddenly come into the limelight due to all the possibilities of audio and video communication in large groups. With all the advantages of the digital world, especially remote audio-visual communication and work in large groups (e.g. the Zoom platform that the BiH Central Election Commission used for preparation and during the 2020 Local Elections), it is necessary to keep in mind the risk because of the possibility of social media being misused to spread hate speech, disinformation and rumors.

That is why it is very important that the election legislation, and subsequently the election management bodies, clearly define the unacceptable content related to the elections, which are disseminated through the social networks, particularly during the election period and during the election campaign. Such issues may, in addition to being addressed by the law and regulations, be the content of a special code of conduct for political entities, candidates, sympathizers and supporters of political entities on social media during the election period and during the election campaign. Content not related to the elections will not necessarily be the subject of that code. However, it should always be borne in mind that any content coming from political parties can always be linked to the elections and election campaign of that political entity, because we must not forget the old political marketing rule that “campaigning never ends”.

Free, fair and credible elections are based on free and equal access to information. This principle implies the responsibility to promote the free and equal dissemination of information to the public. This involves a commitment to reporting the truth and to not knowingly publishing, posting or disseminating false or purposely misleading information. At the same time, it must be acknowledged that commentary on social media can include the expression of personal opinions. In such cases, it is important to clarify that a statement is an opinion.²¹

Unfortunately, social media is often used to spread hate speech. This type of speech is always harmful, but can be especially dangerous in post-conflict societies. When regulating this type of speech, it is important to develop a clear and comprehensive definition of hate speech. It is crucial, however, to find the right balance because too broad a definition risks violating the right to free opinion, the right to freedom of speech.

²¹ <https://www.idea.int/sites/default/files/publications/guidelines-for-the-development-of-a-social-media-code-of-conduct-for-elections.pdf>

One direction for defining hate speech is Article 20 (2) of the International Covenant on Civil and Political Rights, which reads as follows:

“Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”²²

Many countries have expressed reservations about Article 20(2), claiming that it is either overly restrictive or that it does not go far enough. Belgium, Denmark, Finland, Iceland and the United States have all entered reservations to Article 20(2), mainly because they feel that it discourages citizens from engaging in legitimate democratic debate.²³

One of the media’s key roles throughout an electoral cycle is to serve as a forum for public discussion. In order to ensure that discussions and debates are productive and useful, it is important to establish and maintain civility. In this way, contributors are free to express their views in a safe space. Without civility, the forum becomes dominated by certain speakers who will skew the representation of public opinion on certain topic.²⁴

Various electoral contexts have their own unique customs and norms. In some countries, the day (or days) immediately prior to the Election Day is (or are) considered a media blackout period. During such times, media are prohibited from covering campaigning and other election-related activities. Election silence is a period in which candidates and parties are prohibited from campaigning, as it is the case in Bosnia and Herzegovina. Therefore it is every important to regulate activities on social networks for that period.²⁵

It is not unusual for public commentators to receive requests from well-known personalities or entities to endorse them or otherwise feature them in their programming. These kinds of requests are also possible in the realm of social media, where “likes” or other such favorable responses “smiley” can be interpreted as an endorsement. It is important for electoral actors and political commentators to disclose such requests, so that the public is aware of potential bias.²⁶

²² The International Covenant on Civil and Political Rights (1966) and Optional Protocol (1966 and 1989) See more on this in Textbook Ibrahimagić, O., Seizović, Z., Arnautović, S., *Politički sistem Bosne i Hercegovine*, Volume I, Sarajevo, 2010, pages. 68-76.
<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

²³ <https://www.idea.int/sites/default/files/publications/guidelines-for-the-development-of-a-social-media-code-of-conduct-for-elections.pdf>

²⁴ <https://www.idea.int/sites/default/files/publications/guidelines-for-the-development-of-a-social-media-code-of-conduct-for-elections.pdf>

²⁵ <https://www.idea.int/sites/default/files/publications/guidelines-for-the-development-of-a-social-media-code-of-conduct-for-elections.pdf>

²⁶ <https://www.idea.int/sites/default/files/publications/guidelines-for-the-development-of-a-social-media-code-of-conduct-for-elections.pdf>

A special issue is how social media is treated in relation to some laws or norms. For example:

- Is every activity of candidates and parties considered as advertising in the context of elections?
- Are the posts of party supporters and candidates on social networks considered advertisements?
- Are tweets or similar posts considered advertisements and are they subject to regulation?²⁷

One part of the web activities of election management bodies is adequate media coverage of the website. This section should also include short informative brochures with relevant statistics, information on press conferences, press releases, etc. In order to facilitate the work of journalists and other participants who disseminate such information through social networks, media sites, it is also useful for election management bodies to disseminate information through their own accounts on social networks or to gather material adapted to social networks so that others can easily share it via their networks.

Election management bodies and other participants in the electoral process may also consider the use of multimedia posts. It is important to consider how to handle the taking and sharing of photos and videos during the election cycle, especially inside and outside polling stations on the Election Day. So the question is to what extent to allow polling stations to be photographed and videotaped.

Citizens' understanding and perception of the electoral process, activities of the election management bodies and the procedures that take place are crucial for the success of the elections. One of the main ways in which election management bodies can provide the electorate with access to relevant information that will improve its understanding of the electoral process and strengthen relations with the electorate and electoral participants is "maintaining open, two-way communication." It has never been easier to realize such "two-way communication" than through well-planned and strategic use of social media.

Election management bodies are crucial to ensuring that the electoral process is conducted efficiently, legitimately and credibly. It entails independence, impartiality and integrity of the election management body and its staff, as well as their transparency, ef-

²⁷ <https://www.idea.int/sites/default/files/publications/guidelines-for-the-development-of-a-social-media-code-of-conduct-for-elections.pdf>

iciency and professionalism. New tools and platforms provided by social media can play an important role in helping these bodies adhere to these principles and, combined with traditional forms of information dissemination, help these bodies to educate the public about their role and electoral processes in general.

An important advantage of social media is the ability to interact with the electorate through an open discussion on social networks. When there is a need for rapid data sharing, the election management body can directly share it with the existing group on social networks which in turn can share the information within its respective networks.

Social media provides a valuable means by which election management bodies can make up for more traditional means of communication with the electorate. Direct channels of communication between election management bodies and the electorate have long been recognized as key to the successful operation of these bodies.

Social media enables election management bodies to widely disseminate all their events and other activities, thereby encouraging greater public participation in understanding what election management bodies are doing.

There are various ways in which social media can assist election management bodies in exchanging information and gathering valuable insights into issues discussed by the electorate.

7. INTERNATIONAL EXPERIENCE

7.1 Guidelines for Reviewing a Legal Framework for Elections (OSCE/ODIHR)²⁸

7.1.1 Equal treatment and access to media

Regulating the media during elections can be a complex issue due to the need to strike a balance between the right of voters to receive information, the right of candidates and political parties to convey political messages and the right of the media to exercise freedom of expression. Voters have the right to receive information from candidates and political parties in order to effectively exercise their right to vote. The right of voters to “to seek, receive and impart information and ideas of all kinds, regard less of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”²⁹, is particularly applicable during elections. The assessment of media regulations must always take into account the fundamental right of voters to receive information.

Candidates and political parties also have the right to communicate their political messages, campaign platforms and views on the issues to voters. This can be done in a variety of media formats and through different ways of communication and coverage. It is important that candidates and political parties “have an equal opportunity to inform voters about their policies and not face discrimination in getting media access”.³⁰

The media have the right to inform the public about the election campaign and to express opinions. The media have the right to cover the candidates, political parties, campaign issues, the work of the election administration, problems and incidents arising during the campaign, events on the Election Day and the announcement of election results. The rights of the media must be considered, as well as the rights of voters and candidates and political parties during elections. The assessment of legal provisions for media regulation requires consideration of the provisions in their totality without undue focus on a single provision, due to the number of fundamental rights involved. Further, this is an evolving area of legal regulation and the reviewer should consider the most recent decisions of treaty bodies and the ECtHR when assessing legal provisions for media regulation during elections. This evolution in media regulation is also impacted by the increased use of the Internet and new media technologies in elections.

Paragraphs 7.6 and 7.8 of the 1990 OSCE Copenhagen Document (which is part of Annex 3 of the Dayton Peace Agreement) concisely summarize the standards for

²⁸ <https://www.osce.org/files/f/documents/f/8/104573.pdf>

²⁹ “International Covenant on Civil and Political Rights”, UN General Assembly, December 16, 1966, Article 49.

³⁰ Handbook on Media Monitoring for Election Observation Missions (Warsaw: OSCE Office for Democratic Institutions and Human Rights, 2012.), page 14.

equal treatment and access to the media. Paragraph 7.6 demands that the government provides political parties and organizations with “the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities provide political parties and organizations with “the necessary legal guarantees to enable them to compete with each other on the basis of equal treatment before the law and by the authorities.” Paragraph 7.8 sets forth that government must provide “that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process.” Regulations on equal treatment and access can be challenging because some countries require strict equality of access, while others allow fair access versus strict equality. “Equitable access means fair and non-discriminatory access allocated according to objective criteria for measuring overall levels of support”.³¹

The challenge for legislators lies in establishing objective criteria to measure overall levels of support. Some countries have used the results of past elections as a measurement criterion. Other countries use the number of candidates present in the existing elections as a criterion for measurement, based on the view that the existing level of support is expressed through the possibility of presenting candidates for the elections. Regardless of the approach chosen in a country’s legislation, any formula for an equitable special approach must be carefully assessed in the light of the obligation to ensure equal treatment in the approach of political competitors who meet the established support threshold based on objective criteria.

The legal framework of a country should contain these guarantees and clearly define the process for their timely implementation before and during elections. The process of determining a formula or schedule for equal access to the media for a given election, whether the approach is strict equality or equitable, should be understandable and objectively applicable. Also, the different status of state-owned public media - funded by all taxpayers - and private media, which may have greater discretion within the framework of election campaigns, should be taken into account. One practice that can ensure compliance with this standard is to require that the main political parties, i.e. those that had a certain minimum number of votes in previous elections or that at the current elections have proved minimum level of support according to an assessment based on objective criteria, have the right for free time on state radio and television on a regular basis, and not just during election periods. A legal framework stipulating that such political parties are guaranteed a fixed number of minutes of broadcasting per month can ensure that

³¹ See “Joint Statement on the Media and Elections”, the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information, May 15, 2009.

this practice is met. During election campaigns, political parties and candidates should be given additional free time to communicate the information about their candidacies. Free airtime or free space in the print media is usually allocated on an equal or fair basis during election periods and according to an established formula that can be applied objectively. Objective application can be made possible through a law setting a minimum broadcast time to be allocated to political parties and candidates. Allocated broadcasting time must be sufficient to ensure that voters receive information from candidates and political parties so that they can effectively exercise their right to vote and that political parties and candidates are able to compete effectively in elections.³²

When assessing or drafting equal access legal provisions, regulations governing the media coverage of activities of candidates in power, in the context of election campaigns, may be an additional area for analysis. Persons exercising certain powers in government attract more media attention. Providing media space for the activities of policy makers, including the election period, is natural and necessary to ensure public access to information. At the same time, although those in power generally have greater media exposure, the media should report on government activities in a balanced and critical manner and be guided by the principle of the level of information in choosing the material to be broadcast.

The issue of paid political advertising can also be an area that is difficult to regulate because the rights to receive and provide information and the right to freedom of expression are clearly applicable.³³ Therefore, any prohibition or restriction of paid political advertising must be carefully defined in order to respect the right to freedom of expression. In cases where paid political marketing is allowed, there should be a guarantee of equal treatment and access. Inequality occurs if the legal framework does not provide the same commercial rates for such advertising to all political parties and candidates and that the allocation of time and location for advertising activities is done according to similar conditions. If paid political advertising is allowed, it should be offered to all political parties and candidates at commercial prices for such advertising services and under similar conditions. Moreover, paid political advertising

³² However, analysts should be aware that in countries with particularly liberal party registration regimes, there may be hundreds of registered parties and that many of them may choose to run in elections. In such an environment, the process of strict equality of all participants in elections can lead to media coverage becoming incoherent or impossible, even if the media apply the approach in the best faith. In such situations, certain mechanisms for identifying “major political interests”, which will receive preferential treatment based on broader political support, can be a solution to apply equal treatment and to address inefficiencies, as well as to provide quality information to voters. Private media are in a better position to address such circumstances, as the cost of advertising is likely to be a limiting factor for political parties with less voter influence.

³³ See *TV Vest As & Rogaland Pensjonistparti vs. Norway*, no. 21132/05, 11. 12. 2008.; *Vereingegen Tierfabriken Schweiz (VgT) vs Switzerland* (no. 2) [GC], no. 32772/02, 30. 6. 2009. See also *Bowman vs. UK* [GC], no. 24839/94, 10. 2. 1998.

should be identified as such and should not in any way be hidden in the form of news or coverage.³⁴

Equal treatment and access to the media, whether on a strictly equal or fair basis, may be regulated by media law or public information law instead of primary election law. In addition, the law may prescribe only some general paragraphs on equal or fair treatment and access and may delegate authority to the competent authority to prescribe the details of implementation, such as a central election body or a special media commission. Whether the issue is regulated by law or an administrative act, media monitoring is recommended to ensure that they are respected. In addition, procedures should be laid down under which political parties or candidates may seek redress before an administrative body or court for violating the provisions on equal or fair treatment and access, as well as obtaining an order allocating additional time to a party or candidate, if necessary to correct a breach of the provisions. The standard of equal treatment and access to the media is compromised if state-owned or state-controlled media have the opportunity to favour a particular political party or candidate in news, political shows, forums or editorial comments. Biased broadcasting or acting in the state media should be prohibited, and the responsible authorities should be obliged to respond immediately in cases of violations.

Democratic elections are not possible where the legal framework restricts or prohibits freedom of speech and expression during the campaign. It is important that the legal framework protects free political expression and speech. The law should not impose criminal sanctions for speech that constitutes “defamation” or “insult” to election participants.³⁵ In addition, regardless of the source, the legal framework must not prohibit the cancellation of a candidacy or imprisonment for defaming another candidate or political party. Freedom of speech is the foundation of democracy. The European Court of Human Rights has clearly stated this principle:

“(...) freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and the self-realization of individuals....it is not only applicable to “information” and “ideas” that are positively accepted or considered not offensive or insignificant, but also to those that are offensive, shocking, or disturbing. Such are the demands of pluralism, tolerance and broad views.

³⁴ See “Recommendation No. R (99) 15 of the Committee of Ministers to Member States of the Council of Europe on Measures Concerning Media Coverage of Election Campaigns”, Council of Europe, 9. 9. 1999. See also Media Monitoring for Election Observation Missions, note 48.

³⁵ Representatives of international and regional institutions for freedom of expression recommended the repeal of all criminal defamation laws. See “International Mechanisms for Promoting Freedom of Expression, Joint Declaration”, United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, and OAS Special Rapporteur on Freedom of Expression, 10. 12. 2002.

Without that, there is no democratic society. As set out in Article 10, this freedom is subject to exceptions which, however, should be strictly defined and the need for any restrictions must be justified.

The Court recalls that the limitations of acceptable criticism are broader with regard to politicians acting in their public capacity than with regard to individuals and private persons because politicians are inevitably, and in full knowledge, subject to close scrutiny of their words and actions by journalists and the public. Politicians must possess a greater degree of tolerance especially when they themselves make public statements that are subject to criticism.”³⁶

The ability of voters, candidates and political parties to freely and openly exchange political views is crucial. Any restriction on freedom of expression and speech prevents strong and dynamic campaigns that are essential for electoral processes in a democratic society. Any restriction of the freedom of political speech is contrary to international human rights law, unless such a restriction is exclusively necessary in a given democratic society and is established by Article 10 of the European Convention on Human Rights.³⁷ In addition, such a restriction often violates the guarantees of freedom of speech enshrined in the country’s constitution. This standard, however, is not applicable to the prohibition of inflammatory speech that aims to incite other persons to commit violence or to incite hatred on ethnic grounds.

³⁶ See judgments of the European Court for Human Rights in cases *Koprivica vs. Montenegro*, no. 41158/09, 22. 11. 2011., *Mizzi vs. Malta*, no. 17320/10, 22. 11. 2011; as well as earlier cases *Jerusalem vs. Austria*, no. 26958/95, 27. 2. 2001 and *A. vs. UK*, no. 35373/97, 17. 1. 2002. The court ruled that the protection of political speech is so sacred that it is literally not subject to criminal prosecution when it comes to defamation.

³⁷ See judgments of the European Court for Human Rights in cases *Koprivica vs. Montenegro*, no. 41158/09, 22. 11. 2011., *Mizzi vs. Malta*, no. 17320/10, 22. 11. 2011; as well as earlier cases *Jerusalem vs. Austria*, no. 26958/95, 27. 2. 2001 and *A. vs. UK*, no. 35373/97, 17. 1. 2002. The court ruled that the protection of political speech is so sacred that it is literally not subject to criminal prosecution when it comes to defamation.

8. SOCIAL MEDIA USE IN ELECTIONS

8.1 Case law of the Court of Bosnia and Herzegovina

The case law is the law where the sources of law are court decisions (court cases). When it comes to the case law of the Court of Bosnia and Herzegovina, dozens of court decisions rendered upon complaints lodged with regard to decisions of the Central Election Commission of BiH, especially in the recent election cycles, have been compiled and may be of immense use to the legislator to expand the existing or, even develop a brand new normative framework which will govern, more closely, the actions of political entities on social media in electoral process. It can be done by enacting the new law on political parties or by amending the existing Election Law of Bosnia and Herzegovina. Eventually, it is possible to enact a separate law or a bylaw governing the conduct of political entities on social media during election campaign. In the text below we will present an overview of legal norms and examples of case law regarding the use of the social media in electoral process in Bosnia and Herzegovina.

Chapter 7 of Election Law of Bosnia and Herzegovina sets out the Rules of Conduct in the Election Campaign for political entities i.e. political parties, coalitions, the lists of independent candidates, and independent candidates.³⁸

This chapter, *inter alia*, stipulates that the candidates and supporters of political parties, lists of independent candidates, lists of members of national minorities and coalitions, as well as independent candidates and their supporters, and election administration officials or those otherwise hired in the election administration are not allowed to use language which may provoke or incite someone to violence or spread hatred, or to publish or use pictures, symbols, **audio and video recordings, SMS messages, Internet communications** (emphasized by S.A.) or any other materials that could have such effect.³⁹

The BiH Election Law stipulated the fines for violation of these provisions, ranging from 1.000,00 KM to 10.000,00 KM⁴⁰, with the possibility of imposing a penalty on political entity if its supporter commits violations. The fines stipulated for the candidates range from 1.000,00 KM to 5.000,00 KM.⁴¹

However, the fact that the BiH Election Law does not precisely define the ‘hate speech’ has given rise to issues for the BiH Central Election Commission in practice. This requires an intervention of the legislator.

³⁸ Article 7.1 of the BiH Election Law

³⁹ Article 7.3, paragraph (1), item 7) of the BiH Election Law

⁴⁰ Article 19.9 of the BiH Election Law

⁴¹ Article 19.9, paragraph (4) of the BiH Election Law

In addition, BiH Election Law stipulates that in the period commencing twenty-four (24) hours prior to opening of the polling stations, and until they close, political parties, coalitions, list of independent candidates and candidates on the lists of members of national minorities and independent candidates are prohibited from engaging in public political activity, which includes, but is not limited to, among other things, using megaphones or other outdoor loudspeakers for the purpose of influencing voters. These means or devices include means that can deliver audio, video or textual contents, and include but are not limited to the radio and TV program, printed media, the Internet, SMS-messages or video messages delivered over the mobile phones etc.⁴²

The issue which rises in practice when it comes to the procedure of addressing complaints lodged due to publications of the texts and images targeted to influence the voters is that, in the most cases, the BiH Central Election Commission is not able to establish with certainty the fact that presented evidences were published within the critical time of election silence, nor it can be established with certainty who published the said material, as certain internet domains (Internet domain name) are beyond the jurisdiction of BiH, which may hinder the process of establishing the accountable political entities and persons who should receive penalty. This leaves this are insufficiently regulated and there are not examples of good practice currently that may enable successful management of administrative procedures against forbidden actions in electoral process that are performed via social and online media, and we may conclude, unfortunately, that this is a grey zone of a kind, i.e. the legal vacuum.

Notwithstanding this, the BiH Central Election Commission has recently imposed several penalties due to the violation of the provisions referred to in Article 16.14 of the BiH Election Law. These decisions have, to a large extent, been sustained by the Appellate Division of the Court of Bosnia and Herzegovina authorised to act upon complaints filed on decisions of the BiH Central Election Commission. Among other things, the Court of Bosnia and Herzegovina has established:

- „...Above all, this Panel finds it beyond dispute that the text accompanied with photos, published with the very purpose to influence the voters and how they vote, on the day of voting no less, which is stipulated as forbidden under the provision of the quoted article

...This, in particular, if we consider the nature of social networks, and thus the Facebook accounts. Namely, Facebook is an internet social network which is accessible to a huge number of citizens and has an enormous number of users and is used for promotion, advertising and invitations. Considering this undeniable fact, the complaint indicates, in a justified manner, that disputed content (text),

⁴² Article 7.4., paragraph (1), item 3, and paragraph (2) of the BiH Election Law

posted on the private profile of D.S., was intended for broader public, specifically, the voters, with the purpose of influencing the voters and how they vote, especially considering it was posted on the Election Day, October 7, 2018, and such conduct is not allowed for political parties, coalitions, lists of independent candidates, independent candidates and candidates on the lists of members of national minorities under the Article 7.4, paragraph 1, item 3 of the BiH Election Law ...⁴³

XXXXX

- *„...Namely, interpretation provided by the Central Election Commission is correct and accepted by this Panel, and it indicates that provision of the Article 7.4, of the BiH Election Law is formulated broadly and therefore does not distinguish between the voters meaning those who are supporters or members of a certain political party and those who are not. Therefore sending SMSs to the voters, regardless of their status in the party in the period when it is not allowed, constitutes a violation of the provisions of the Article 7.4, of the BiH Election Law and the rules of conduct set out in it....*

... Furthermore, the Panel cannot accept as grounded the complaint which emphasizes that this is an allowed manner of communication by political party, considering that it is precisely the sending of SMSs (texting) which is defined as one of the forbidden forms of communication with the voters in the 24-hour period preceding the opening of polling stations until they are closed....⁴⁴

XXXXX

- *„...As understood by the Appellate Panel, statement given to the journalists, which was published at klix.ba internet portal, although released within the period of election silence during the Election Day, does not constitute a political activity or influence on voters to vote for a particular political entity and its candidate, but only a personal view on the current political situation and subjective expectations for addressing the problem in the future...“⁴⁵*

It should be noted that the media in BiH shall cover election activities in a just, professional and competent manner, consistently respecting the journalists' code of conduct and generally accepted democratic rules and principles, especially the basic principle of freedom of expression.⁴⁶

⁴³ The Explanatory Notes of Decision of the Appellate Division of the Court of BiH: S1 3 IŽ 030831 18 IŽ, dated Oct 29, 2018

⁴⁴ Rationale of the Decision of Appellate Division of the Court of BiH no: S1 3 IŽ 030829 18 IŽ dated October 29.10. 2018

⁴⁵ Decision of Appellate Division of the Court of BiH no: S1 3 IŽ 030880 18 IŽ dated October 30 2018

⁴⁶ Article 16.1 of the BiH Election Law of Bosnia and Herzegovina

The Election Law of Bosnia and Herzegovina also stipulates the period of election silence. No media coverage of any political and electoral campaign activity shall take place in the whole territory of BiH during the period beginning twenty-four (24) hours prior to the opening of the polling stations. The campaign silence period continues until the close of polling stations.⁴⁷

No conduct of a paid election campaign is allowed by way of electronic and printed media, or any form of paid public advertising, except for the holding of internal gatherings of authorities and statutory bodies of the political entities, within the period between the day when elections are announced and the day of official start of the election campaign. No conduct of an election campaign is allowed by way of electronic and printed media where the contents are stereotype and offensive against men and/or women or which encourages any stereotype and offensive behaviour on the grounds of gender or any humiliating i.e. debasing attitude towards the members of other genders.⁴⁸

However, violations of these rules occur often in practice. Therefore, the BiH Central Election Commission imposed several sanctions due to the violations of these provisions of the BiH Election Law.

In the text below we will present several court cases that were specific in terms of (mis)use of social media, meaning internet communication for election purposes.

BiH Election Law stipulates very precisely the matters of imposing fines and penalties due to the use of ‘hate speech’.

The BiH Central Election Commission has powers to impose the following sanctions:

- 1. fine which does not exceed the amount of 10.000 convertible marks;**
- 2. removal of the names of candidates from the list of candidates if established that the candidate is personally responsible for the violation;**
- 3. revocation or cancellation of certification of political party, coalition, list of independent candidates or an independent candidate.**

Article 7.3 of the BiH Election Law stipulates that the candidates and supporters of political parties, lists of independent candidates, lists of members of national minorities and coalitions, as well as independent candidates and their supporters, and election administration officials or those otherwise hired in the election administration are not allowed to use language which may provoke or incite someone to violence or spread hatred, or to publish or use pictures, symbols, audio and video recordings, SMS messages, Internet communications (emphasized by S.A.) or any other materials that could have

⁴⁷ Article 16.11 of the BiH Election Law of Bosnia and Herzegovina

⁴⁸ Article 16.14, paragraph (3) of the BiH Election Law of Bosnia and Herzegovina

such effect. This pertains to the period of election campaign which starts 30 days prior to the Election Day.

The BiH Central Election Commission adopts conclusions, at its sessions, on initiating the procedure upon receiving complaint or ex officio, and after the completion of procedure decides whether the law was violated.

With regard the BiH Central Election Commission's practice in exercising the above mentioned powers, we present several examples, as follows:

2004

Election Council for complaints and appeals revoked the candidacy of Lj.K. (SDS) for the Mayor of Banja Luka and imposed a fine amounting to 10.000 KM. The Court of BiH sustained the decision.

It was established that Lj.K. issued a public call to lynch certain journalists and media (speech which may incite violence).

2006

Vojislav Šešelj of SRS, election campaign rally in Teslić and fine amounting to 10.000 KM. The outdoor loudspeaker was used in playing songs that may have provoked fear. The Court of BiH sustained the decision of BiH Central Election Commission.

2008

V.P, candidate of Serbian Progressive Party (*Srpska napredna stranka*) for the member of the Municipal Assembly of Bosanska Gradiška/Gradiška. The candidacy of V.P was revoked and he received the fine amounting to 10.000 KM. The Court of BiH sustained the decision. The owner of RTV VIKOM played hate-inducing video spots on its internet page.

2010

At its 58th session, the BiH Central Election Commission adopted a decision which established the following:

(1) Political party *BOSS-Bosanska stranka – Mirnes Ajanović*, is responsible for the following – that A.M, the candidate of the said political party, running for the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina, during his appearance in TV show debate „Odgovorite ljudima“ of the Federal Radio and Television (FTV), on September 15, 2010, used the language that may incite violence or hate (comparison of B.B with R.K), thus violating the rules of conduct in election campaign in Article 7.3., paragraph (1) item 7) of the BiH Election Law. This is why it was imposed with the fine, pursuant to the provision of the Article 6.7., item 1 and by applying the Article 19.9 of the same law:

- fine amounting to 7.000,00 KM

(2) A.M, the candidate of the political party *BOSS - Bosanska stranka - Mirnes Ajanović*, for the House of Representatives of the Parliamentary Assembly of BiH, is held accountable for using the language that may incite violence or hate, during his appearance in TV show debate „Odgovorate ljudima“ of the Federal Radio and Television (FTV), on September 15, 2010, thus violating the rules of conduct in election campaign referred to in Article 7.3., paragraph (1) item 7) of the BiH Election Law. Therefore, the said candidate received the fine, pursuant to the provision of the Article 6.7., item 1 and by applying the Article 19.9 of the same law:

- fine amounting to 3.000,00 KM

The Court of BiH sustained decision.

2012

- According to what was reported by “SENS” agency and accompanying photography where P.B. is dressed in military uniform with the text „Special Unit Ravens/*Postrojba posebne namjene GAVRANI*” and an image of the raven and coat of arms in the form of checkerboard or chequy (šahovnica) in the centre of insignia, and the text in the left corner “With Brotnjo in war and in peace/ Uz Brotnjo i u ratu i u miru”. CEC BiH assessed this was an initiative and launched liability action. According to Decision made at 61st session of the CEC BiH dated October 2nd 2012, HKDU received a fine amounting to 3.000,00 KM, and P.B. in the amount of 1.000,00 KM.

At the central rally, V.P. used the language that may incite violence and spread of hate. He invited his supporters to forcefully remove the elected mayor/head of municipality if their candidate fails to win. According to Decision made at 60th session of the CEC BiH dated September 30th 2012, dr. Vojislav Šešelj of SRS received the fine in the amount of 10.000,00 KM, and the name of V.P. was removed from the list and he received the fine in the amount of 5.000,00 KM.

2014

- At the session held October 5 2014, BiH Central Election Commission adopted a decision which established that D.T., the candidate of Socialist Party (*Socijalistička partija*) for the House of Representatives of the Parliamentary Assembly of BiH at 2014 General Elections, election unit 3B and he Socialist Party are held accountable for the violation of the provisions referred to in Article 7.3, paragraph (1), item 7) of the BiH Election Law.

The following penalty is imposed - the name of D.T. was removed from the list of the candidates of the Socialist Party for the House of Representatives of the Parliamen-

tary Assembly of BiH at 2014 General Elections, election unit 3B, and he received the fine in the amount of 1.000 KM.

In parallel, Socialist Party received the fine in the amount of 5.000 KM. The Court of BiH sustained decision.

- At the session held October 8 2014, BiH Central Election Commission adopted a decision which established that S.V., the candidate of the Democratic Progress Party (*Partija demokratskog progresna*) for the National Assembly of Republika Srpska at 2014 General Elections, election unit 9, and the Democratic Progress Party, were responsible for violation of provision referred to in 7.3, paragraph (1), item 7) of BiH Election Law, and received the following sanctions:

a) The name of S.V. is to be removed from the list of candidates of the Democratic Progress Party for the National Assembly of Republika Srpska at 2014 General Elections, election unit 9, and is to receive the fine in the amount of 3.000 KM.

b) Democratic Progress Party is sentenced to fine in the amount of 6.000KM.

The appeal filed regarding the removal of S.V. from the list of candidates was successful before the Court of BiH. Therefore, the remaining penalties were fines imposed on the candidate and his political party.

2016

- CEC BiH imposed a fine on “BPS SEFER HALILOVIĆ” in the amount of 5.000,00 KM. S.H., the president of the party used the hate speech at an election campaign rally in Novi Grad Sarajevo Municipality, on September 26, 2016. The Court of BiH’s Decision no: S1 3 024037 16 iž dated February 7, 2017, appeal was partially successful and decision of CEC BiH was amended in terms of the fine, and the fine in the amount of 1.000,00 KM. was imposed instead of 5.000,00 KM.

- By acting ex officio, CEC BiH imposed the fine on political party “United Srpska/ Ujedinjena Srpska” in the amount of 3.000,00 KM. S.N., the president of the party, during his appearance in the TV show “Kontekst” broadcasted by TV Aljazeera used the hate speech, together with M.S., the deputy of SDP BiH.

- By acting ex officio, CEC BiH imposed the fine on Serbian Progressive Party (*Srpska napredna stranka*) in the amount of 6.000,00 KM. During an election campaign rally of Serbian Progressive Party, V.P. addressed the participants in the capacity as guest and insulted Ms A.P. using improper language.

2018

- At its 54th session held September 25, 2018, the BiH Central Election Commission adopted a decision establishing that political entity *DF-GS Željko Komšić: BiH POBJEDUJE* was held accountable because A.Dž., the candidate of this political entity, used language that may provoke violence or spread hate. Therefore, political entity *DF-GS Željko Komšić: BiH POBJEDUJE*, was fined with 1.000,00 KM and A.Dž. was fined with 3.000,00 KM.

Under Decision of the Court of BiH no: S1 3 Iž 030580 18 Iž dated October 2, 2018, an appeal is dismissed as frivolous.

- Decision of CEC BiH made at its 54th session, dated September 25 2018, establishing that *Savez za pobjedu* is held accountable because V.G., the candidate of this political entity, used the language which may incite violence or hate, and therefore *Savez za pobjedu* was fined with the 5.000,00 KM whereas V.G. received the fine in the amount of 3.000,00 KM.

The Court of BiH's Decision no: S1 3 Iž 030576 18 Iž dated October 3 2018, under which appeal filed by V.G. is partially successful, and decision of the CEC BiH is amended in terms of the amount of the fine and the fine in the amount of 3.000,00 KM is imposed instead of 5.000,00 KM; The Court of BiH's Decision no: S1 3 Iž 030579 18 Iž dated October 2, 2018, under which appeal filed by *Savez za pobjedu* is partially successful and decision of the CEC BiH is amended in terms of the amount of the fine. Therefore, the fine in the amount of 5.000,00 KM is imposed instead of 7.000,00 KM;

- Decision of CEC BiH rendered at its 60th session, dated October 4, 2018, establishing that M.D. used the speech which may incite violence or hate, at an election campaign rally in Bileća. Therefore, political entity SNSD was fined with 7.000, 00 KM and i M.D. received the fine in the amount of 5.000,00 KM.

No appeal was filed. According to the Treasury's records, M.D. paid 5.000,00 KM on October 5, 2018, and SNSD paid 7.000,00 KM on October 9, 2018.

- Decision of CEC BiH rendered at its 65th session, dated October 11, 2018 establishing that *SDS Lista* is held accountable because D.M., the candidate of this political entity, used the speech which may incite violence or hate (hate speech). Therefore, *SDS Lista* and D.M. were fined with 2.000,00 KM respectively.

The Court of BiH's Decision no: S1 3 Iž 030738 18 Iž dated October 16, 2018, under which appeal filed by *SDS Lista* is partially successful, and decision of the CEC BiH is amended in terms of the amount of the fine. Therefore, the fine in the amount of 2.000,00 KM is imposed instead of 4.000,00 KM;

The Court of BiH's Decision no: S1 3 IŽ 030736 18 IŽ dated October 16, 2018, dismissing appeal filed by D.M as frivolous.

- Decision of CEC BiH rendered at its 70th session, dated October 22, 2018 establishing that *SDA* party is responsible because B.I. used hate speech at an election campaign rally. Therefore, *SDA BiH* party is fined with 5.000,00 KM.

The Court of BiH's Decision amended the amount of fine into 3000, 00 KM.

- Decision of CEC BiH rendered at its 70th session, dated October 22, 2018 establishing that *DF-Građanski savez Željko Komšić* is found accountable because it allowed the hate and violence inducing placard to be displayed at an election campaign rally and therefore this political entity is fined with placed 7.000,00 KM.

The Court of BiH's Decision amended the amount of fine into 5000, 00 KM.

8.2 (Mis)use of social networks in BiH- the Court of BiH's case law

Case 1- Independent candidate (M.H)

Pursuant to Article 6.6, paragraph (1), item 1, and regarding the Article 16.14 (3), and Article 7.2 (2) of the Election Law of Bosnia and Herzegovina (Official Gazette of BiH, nos. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08, 32/10) acting in the ex officio procedure initiated to establish the violation of the articles 16.14 (3) and 7.2. (2) of the BiH Election Law by M.H., _____ Zenica, independent candidate for the Mayor of Zenica, BiH Central Election Commission at its 57th session held September 21 2012, passed

DECISION

It is found that M.H., independent candidate for the Mayor of Zenica is accountable for displaying the pictures and video clips with pornographic content during election campaign and thus acting in contravention to provisions of the articles 16.14, paragraph (3) and 7.2, paragraph (2) BiH Election Law and shall be forbidden the following, under the Article 6.7, item 3 of the BiH Election Law:

Display the pictures and video clips with pornographic content in election campaign and is ordered to immediately remove the said pictures and content from the internet page www.gradzenica.info, no later than three hours from the receipt of decision, and

His certification for participation in 2012 Local Elections will be revoked.

Rationale

By deciding *ex officio*, the BiH Central Election Commission has established, by accessing the internet page www.gradzenica.info, that it contains the images and video clips of pornographic content. After checking, it was established that M.H. is the owner of the said internet page which, among other things, contains adult images and video clips.

After having accessed the adult images and video clips on the web page owned by M.H., independent candidate for the Mayor of Zenica, the BiH Central Election Commission, pursuant to the Article 6.2, paragraph (2) of the Election Law of Bosnia and Herzegovina and by virtue of act no. 05-1-07-5-1040/12 dated September 19 2012, initiated *ex officio* procedure, in line with the Article 126 of the Law on Administrative Procedure (Official Gazette of BiH, nos. 29/02, 12/04, 88/07 and 93/09), which, *inter alia*, stipulates that facts and circumstances are to be established, prior to rendering the decision, that are of relevance for the decision, and that parties are to be enabled to exercise and protect their rights and legal interests, and requested from M.H. to enter a plea with regard to adult images and video clips at his web page, within 24 hours from the receipt of the aforementioned act, within the context of the provision of Article 7.2, paragraph (2) of the BiH Election Law.

In his plea, M.H. stated it was a common practice to play the porn movies in the movie theatres and cinemas, to buy it in the shops or rent in the video stores and that, according to the positive laws of Bosnia and Herzegovina, this type of movies is only a genre. He further stated that the BiH Central Election Commission concludes that ‘adult content’ on his internet page violates no regulation of Bosnia and Herzegovina nor is its content offensive for any gender.

The provision of Article 7.2, paragraph (2) of the BiH Election Law (second sentence) stipulates that BiH Central Commission shall forbid the posting, printing and dissemination of notices, placards, posters or other materials, which are used for the purpose of election campaigning by political parties, coalitions, list of independent candidates, or independent candidates, on which women or men are presented in stereotype and offensive or debasing ways and shall order the political party, coalition, list of independent candidates, or independent candidate to remove the posted materials.

The BiH Central Election Commission analysed adult photos and video clips posted on the web page owned by M.H. and found that their content was pornographic, and the character of the content was offensive and degrading in the election campaign period. The provision of Article 1.1a, item 6) of BiH Election Law sets forth that election campaign mean actions and procedures in the period established by this Law within which a political entity communicates to the voters and the public, as prescribed by the Law,

what are their programs and who their candidates for the forthcoming elections are.

The provisions of the Article 7 of the BiH Election Law set forth the rules of conduct of political entities in the election campaign and based on these rules political entities are allowed to gain support from the voters, and communicate to the voters and public the information about their programmes and candidates for the upcoming elections.

The BiH Central Election Commission perceives the posting of pornographic images and video clips by M.H., who fully admitted doing it, as offensive and degrading actions in the period of election campaign. These are not the actions that BiH Election Law set forth as actions through which political entity communicates its programme for the upcoming elections to the voters and the public. There is no rational justification for these contents to be used in the election campaign.

Illegal actions of M.H. are reflected in the fact that by posting the pornographic images and video clips at his internet page, in the period of election campaign, he acted contrary to the provisions of Article 16.14 paragraph (3) and Article 7.2, paragraph (2) of the BiH Election Law, i.e. he failed to act in compliance with the rules of conduct of political entities in election campaign, set forth in Chapter 7 of BiH Election Law.

When deciding on the sanction to be imposed, the BiH Central Election Commission considered all circumstances and found no mitigating conditions. The CEC BiH deemed as aggravating circumstances the fact that M.H., by posting pornographic images and video clips during election campaign, opted for a very improper and vulgar manner of gaining voters' support, and made the said content available to all, even to the minors.

Case 1- Decision rendered by the Court of BiH – Independent candidate (M.H)

The Court of Bosnia and Herzegovina rendered the decision on dismissal of appeal filed in the case of social media use.

Under the decision of the BiH Central Election Commission no: 05-1-07-5-1040/12 dated September 21, 2012, M.H, independent candidate for the Mayor of Zenica was found accountable for posing the pornographic images and video clips during election campaign, thus acting contrary to the provisions of Article 16.14 paragraph (3) and Article 7.2, paragraph (2) of the BiH Election Law, and pursuant to the Article 6.7, item 3 of the BiH Election Law:

M.H. received a ban to post the pornographic images and video clips in election campaign and was ordered to remove it from the web page www.gradzenica.info immediately, and no later than three hours from the receipt of the decision, and

His certification for participation in 2012 Local Elections was revoked.

The appellant filed timely complaint claiming that electronic medium www.gradzenica.info was located in Federal Republic of Germany and included the link ‘for adults’ which lead the visitors to the ad trailers of legal websites that promoted the legal products of these companies. Further on, appellant stated that the allegations of the BiH Central Election Commission that disputed content was available to the minors were untrue as it was protected in line with the regulations. Also, the appellant claimed that the rationale of disputed decision failed to show, in any way, that the BiH Central Election Commission established that he acted, in election campaign, contrary to the provisions of the Article 16.14 paragraph (3) of the BiH Election Law in any other way than the claim that he was the owner of electronic medium in Federal Republic of Germany which hosted the links that provide an access to the ‘adult content’. The appellant believes that the BiH Central Election Commission arrived to erroneous conclusion that Article 16.14, paragraph (3) of the BiH Election Law was violated and makes motion to the Appellate Division of the Court of Bosnia and Herzegovina to annul the point b) of disputed decision.

The Appellate Managing Panel of the Court of Bosnia and Herzegovina deems that conclusion of the BiH Central Election Commission was accurate and legal as the BiH Central Election Commission applied substantive law on accurately established factual state, more specifically, provision of the Article 16.14, paragraph (3), Article 7.2, paragraph (2) and Article 1.1a, item 6 of the BiH Election Law (‘Official Gazette of BiH’ no: 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08 and 32/10). The provision of the Article 16.14 paragraph (3) of the BiH Election Law, stipulates that no conduct of an election campaign is allowed by way of electronic and printed media where the contents are stereotype and offensive against men and/or women or which encourages any stereotype and offensive behaviour on the grounds of gender or any humiliating i.e. debasing attitude towards the members of other genders.

As viewed by the Appellate Division of this Court, posting the pornographic images and video clips during an election campaign and conveying the said message to the voters, is not an action or procedure set forth in the law to be used by political entity to communicate its programme for the upcoming elections to the voters; therefore actions of the appellant in the election campaign period were in contravention to the provisions of the Article 16.14, paragraph (3), Article 7.2, paragraph (2) and Article 1.1a, item 6 of the BiH Election Law. Under the regular application of Article 6.7, item 2 of the BiH Election Law, it may be required to remove the name of the candidate from the list of candidates due to such violations. Truth be told, by virtue of Article 6.7, item 3 of the BiH Election Law, disputed decision annulled certification of appellant as independent candidate for participation in 2012 Local Elections, but the ramifications for the appellant remained

same – preventing an appellant to run for the Mayor of Zenica in 2020 Local Elections in the capacity as independent candidate. In the court's view, certification of political entity may be revoked only if the procedure establishes that the said political entity is registered illegally, which is not the case here. The meaning of the provision of the Article 16.14, paragraph (3) of the BiH Election Law is that any inappropriate running of election campaign via electronic and printed media is forbidden and especially the one that may be offensive or degrading towards the members of other genders.

Also, as viewed by the Appellate Panel, and contrary to what was claimed by an appellant, the ownership over the web page where adult images and video clips of explicitly pornographic content were posted was irrelevant, because within the meaning of the provision of the Article 16.14, paragraph (3) of the BiH Election Law, the only relevant matter was who ran inappropriate election campaign via electronic and printed media, i.e. the campaign run in the manner contrary to the law, such as in this specific case. The running of election campaign includes actions and procedures, allowed under the law, and used by political entities to inform the voters and public about their programmes and candidates for the upcoming elections.

In addition, by posting the pornographic images and video clips on the said web page, an appellant has allowed access to every person, minor and adult, to browse the said images and video clips as the said web page was set up in such a manner that anybody, even a minor person, could click on the said pornographic content, because there were no mechanisms in place to prevent minors from doing it.

Case 2 – Complaint filed by an Alliance of Independent Social Democrats (*Savez nezavisnih socijademokrata*) - SNSD

Pursuant to Article 6.6 paragraph (1) of the Election Law of Bosnia and Herzegovina (Official Gazette of BiH, nos. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08 and 32/10, 18/13, 7/14 and 31/16) and acting upon the complaint of the political entity Alliance of Independent Social Democrats (*Savez nezavisnih socijademokrata*) – SNSD, in the procedure of determining the violation of the provisions of the Article 7.4, paragraph (1) of the Election Law of Bosnia and Herzegovina by D.S, the candidate of the political entity the candidate of the Democratic Progress Party (*Partija demokratskog progressa*) for the National Assembly of Republika, the Central Election Commission of Bosnia and Herzegovina has at its 69th session held on October 18, 2018 p a s s e d

DECISION

The complaints of the political entity Alliance of Independent Social Democrats - SNSD are dismissed as frivolous.

Rationale

On October 7, 2018 at 09:42 hours and 11:57 hours, the Central Election Commission of Bosnia and Herzegovina received, via fax machine, the complaints of political entity the Alliance of Independent Social Democrats – SNSD pertaining to violation of the provisions of the Article 7.4, paragraph (1), item 3) of the Election Law of Bosnia and Herzegovina by D.S, the candidate of the political entity Democratic Progress Party for the National Assembly.

The complainant stated that on October 7, 2018, D.S, the candidate of the political entity Democratic Progress Party for the RS National Assembly, posted on his Facebook profile the photos with the messages targeted to influence voters and that this action, according to the allegations of the complainant, constitutes promotion of his former political activities, and promotion of the political entity Democratic Progress Party and its candidates on the list.

The BiH Central Election Commission, pursuant to the Article of 6.3, paragraph (2) of the Election Law of Bosnia and Herzegovina, sent the above complaints to the political entity Democratic Progress Party and to D.S, the candidate of the political entity Democratic Progress Party for the RS National Assembly to enter their pleas.

The political entity Democratic Progress Party, in its plea entered on October 16, 2018 regarding the complaint, stated that political entity Democratic Progress Party and its candidate D.S fully dismiss the allegations stated in the complaint, and that the Facebook profile of its candidate D.S was his personal social media and could not, in any way, be associated with the term ‘public political activities.’ Further on, Democratic Progress Party claims that D.S did not, in any way perform or participate in any political activity, and that the posts he made on his personal Facebook profile were, in fact, just an invitation extended to his friends to cast their votes and they did not constitute any suggestion to his friends on how to vote. In addition, Democratic Progress Party claims that candidate D.S did not, in any manner, commit the violation of the provision of the Article 7.4 paragraph (1), item 3) of the BiH Election Law as he did not participate in any public activity in any capacity, nor did he influence the voters, but solely used his personal Facebook profile to invite his friends to vote. Based on all the above, political entity Democratic Progress Party makes a motion for dismissal of the complaint of the political entity the Alliance of Independent Social Democrats – SNSD as frivolous.

D.S, the candidate of the political entity Democratic Progress Party for the National

Assembly, in his plea entered on October 16, 2018, states that he fully dismisses the allegations, and that his Facebook profile, where disputed images with the messages were posted, is his personal social media account and cannot be, in any way, associated with the term ‘public political activities.’ D.S further states that he did not perform or participate in any public activity on October 7, 2018, and that disputed posts were solely invitations extended to his friends to go and vote, with no suggestions made whom to vote for.

Considering that it was established that the said complaint was based on the same factual situation, as well as the legal foundation, and that the Central Election Commission of Bosnia and Herzegovina (CEC BiH) had subject-matter jurisdiction (*jurisdiction ratione materiae*) in addressing the said complaints, CEC BiH passed the conclusion no: 01-1-07-5-1033-8/18 dated October 18, 2018 on initiating one procedure.

The provision of Article 7.4 paragraph (1), item 3 of the BiH of the Election Law stipulates that in the period commencing twenty-four (24) hours prior to opening of the polling stations, and lasting until they close, political parties, coalitions, list of independent candidates and candidates on the lists of members of national minorities and independent candidates are prohibited from engaging in public political activity, which includes but is not limited to: using national and international means of communication intended to influence voters.

Considering the existing evidence in the case file (photos with the messages on the Facebook profile of user D.S), the BiH Central Election Commission assessed that the photos with messages in its entirety and separately, do not constitute a message, suggestion or invitation to voters to vote for the political entity Democratic Progress Party, or for D.S, the candidate for the member of RS National Assembly, meaning that the photo with messages does not constitute violation of the provision of the Article 7.4 paragraph (1), item 3) of the BiH Election Law.

Case 2 - Decision rendered by the Court of BiH –appeal of the Alliance of Independent Social Democrats – SNSD

The Panell of the Appellate Division of the Court of Bosnia and Herzegovina, comprised of the judge Sreto Crnjak, in the capacity as Chairman of the Panel, Dinka Bešliagić-Čovrk and Vesna Trifunović, in the capacity as Panel members, deciding upon appeal filed by Alliance of Independent Social Democrats - SNSD headquartered in Banja Luja, address: Petra Kočića no. 5, against the Decision of the BiH Central Election Commission, no: 05-1-07-5-1033-9/18 dated October 18, 2018, passed

DECISION

The appeal is successful, therefore Decision of the BiH Central Election Commission, no: 05-1-07-5-1033-9/18 dated October 18, 2018 is quashed and the case is remanded to the Commission for review of a decision.

Rationale

Under Decision of the BiH Central Election Commission, number and date referred to above, the complaints filed by the Alliance of Independent Social Democrats – SNSD on October 7, 2018 were dismissed as frivolous.

The BiH Central Election Commission had, previously, under the conclusion dated October 18, 2018, passed the decision on merging two complaints dated October 7, 2018, filed by political entity the Alliance of Independent Social Democrats – SNSD, and it was decided, in paragraph 2, that a single procedure will be initiated on the grounds of the filed complaints.

SNSD had, in line with the Chapter 6 of the BiH Election Law, filed a complaint with the CEC BiH against the political entity Democratic Progress Party (PDP) - Mladen Ivanić due to violation by D.S. of the Article 7.4 paragraph (1) item 3 of the BiH Election Law.

CEC BiH passed decision dismissing the complaints of SNSD (both complaints filed October 7, 2018). CEC BiH deemed that the photos with messages, posted at the Facebook profile of D.S., in its entirety and separately, do not constitute a message, suggestion or invitation to voters to vote for the Democratic Progress Party, or for D.S, the candidate for the member of RS National Assembly, explaining that the posting of the said photos did not violate the provision of the Article 7.4 paragraph (1), item 3) of the BiH Election Law.

The complainant disputes such decision of the BiH Central Election Commission due to CEC BiH having established the factual situation erroneously and incompletely and due to the violations of BiH Election Law. The complainant emphasises that CEC BiH failed to accurately establish the factual situation in its disputed decision, given that on October 7, 2018 D.S posted the text with photos on his Facebook profile, aiming to influence voters and considering that the posted text constitutes the message, suggestion or an invitation to voters regarding how to vote. The text: ‘I voted for Vukota, Ivanić and my fellow candidates on the list of PDP, number 5 thinks of you’ constitutes the violation of the provision of the Article 7.4 paragraph (1), item 3) of the BiH Election Law. Having in mind the provision of the aforementioned article, which explicitly stipulates what forms of conduct are forbidden for political entities and their candidates 24 hour

prior to the opening of polling stations, the issues arises as to how did CEC BiH examine and evaluate the evidence and what evidence did it examine to reach the decision on complaint. It is beyond doubt that the posted text constitutes an indirect invitation to vote for Vukota, Ivanić and the candidates on the list of PDP. After all, if we consider that regular work, activities and election campaign constitute political activity, it is apparent that posts made by D.S on his personal Facebook profile represent the violation of the provisions of the Article 7.4, paragraph (1), and item 3 of the BiH Election Law. This in particular because the BiH Election Law clearly stipulates the actions that constitute election campaign, and the period for taking such actions. The motion is made to the Court of BiH to admit the appeal, quash the decision of CEC BiH and remand the case for review of decision.

The respond to an appeal was provided with the motion to dismiss an appeal as frivolous. This due to the fact that CEC BiH established that disputed photos with messages did not constitute the violation of Election Law but rather, an invitation to the voters to exercise their democratic right and head to polls in as large as possible numbers.

By examining the disputed decision within the allegations in appeal, the Appellate Division Panel of the Court of Bosnia and Herzegovina reached conclusion that appeal was merited.

Decision of the BiH Central Election Commission dismissing the complaint of SNSD pertaining to the violation of the Article 7.4, paragraph 1, item 3 of the BiH Election Law is irregular and illegal.

The provision of the Article 7.4, paragraph 1, item 3 of the BiH Election Law stipulates, *inter alia*, that in the period commencing twenty-four (24) hours prior to opening of the polling stations, and until they close, political parties, coalitions, list of independent candidates and candidates on the lists of members of national minorities and independent candidates are not allowed to (...) 3. use national and international means of communication intended to influence voters in public political activity. The paragraph 2 stipulates that the means of communication referred to in point 3) of the paragraph (1) of this article include means that can deliver audio, video or textual contents, printed media, the Internet, SMS-messages or video messages delivered via the mobile phones etc.

One may conclude from the Rationale of the Decision passed by CEC BiH that it failed to identify the content that could have represent an invitation, suggestions or message to voters on how to vote, meaning that the post was intended to influence voters, after having assessed the posted photos with messages in its entirety and separately.

Contrary to such a finding on the part of CEC BiH, this Panel reached conclusion that the posted content is in direct contravention to the Article 7.4, paragraph (1), item 3 of the BiH Election Law.

Above all, this Panel finds it is beyond any doubt that the text with the photo was posted for an exact purpose of influencing the voters, and how they vote, and was posted on the Election Day no less, which is not allowed under the provision of the quoted article.

This is especially relevant having in mind the nature of social media, including the Facebook accounts. Specifically, Facebook is an internet based social network which is accessible to a vast number of citizens and has a huge number of users, thus it has been used for promotion, advertising and reaching out. Considering this undeniable fact, an appeal has merit in claiming that disputed text posted on the private Facebook profile of D.S was intended for broader public, specifically, for voters, aiming to influence them and how they vote. Further on, the post was made on the Election Day, October 7 2018, no less, and such behaviour, within the meaning of Article 7.4, paragraph (1), item 3 of the BiH Election Law is not allowed for political parties, coalitions, lists of independent candidates and independent candidates, and candidates on the lists of members of national minorities.

Considering the aforementioned, the Panel has reached conclusion that assessment made by CEC BiH with regard to the photos with messages, posted by the candidate of political entity the Democratic Progress Party (PDP) is not in compliance with the quoted provision of the BIH Election Law and therefore the said provision has not been adequately applied.

CEC BiH must establish, in the new procedure, and new analysis of the text, whether the violation of Article 7.4, paragraph (1), item 3 of the BiH Election Law occurred and pass the regular and legal decision, taking into account the presented objections and remarks .

Taking into account, as viewed by this Panel, that the quashed decision of the Central Election Commission of Bosnia and Herzegovina is irregular and illegal, and appeal is merited, the said appeal is to be sustained, by virtue of Article 8.1, paragraph 1 of the Law on Administrative Procedure of Bosnia and Herzegovina (Official Gazette of BiH, nos. 19/02 to 74/10), the decision of CEC BiH is to be quashed and irregularities violating the election law are to be redressed.

Case 3 A-SDA Party of Democratic Activity (*Stranka demokratske aktivnosti*)

Pursuant to Article 6.2, Article 6.7 paragraph (1), item (1) and Article 19.9, paragraph (1) of the Election Law of Bosnia and Herzegovina (Official Gazette of BiH, nos. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08 and 32/10, 18/13, 7/14, 31/16 and 41/20) and Article 114, with regard to the articles 115 and 116 of the Law on Administrative Procedure (Official Gazette of BiH, nos. 29/02, 12/04, 88/07, 93/09, 41/3 and 53/16) and Article 16.14, paragraph (3) of the Election Law of Bosnia and Herzegovina, and acting ex officio in the case of violation of the BiH Election Law by the political entity A-SDA Party of Democratic Activity (code 00882), the Central Election Commission of Bosnia and Herzegovina has at its 65th session held on October 14, 2020 p a s s e d

DECISION

(1) Political entity A-SDA Party of Democratic Activity (code 00882), is found accountable because S.Š., the candidate of this political entity, ran the paid (sponsored) election campaign via social media Facebook and Instagram prior to the official start of election campaign and is therefore:

- fined with 1.000,00 KM (in letters: one thousand convertible marks)

(2) The pecuniary penalty referred to in paragraph (1) of decision hereof shall be paid within eight days from the day of the entry into force of decision hereof and payment is to be effectuated to the account of the Ministry of Finance and Treasury of BiH.

Rationale

On September 18, 2020, the Central Election Commission of Bosnia and Herzegovina received an information (hereinafter: a written submission) from Transparency International of Bosnia and Herzegovina, via postal service, stating that S.Š., the candidate of the political entity A-SDA Party of Democratic Activity for the Mayor of Zavidovići Municipality, ran the paid (sponsored) election campaign via social networks Facebook and Instagram. Thus the political party acted in contravention to the provisions of Article 16.14, paragraph (3) of the Election Law of Bosnia and Herzegovina. The information was accompanied by the recordings of sponsored posts.

Having in mind the provision of Article 6.2, paragraph (1) of the Election Law of Bosnia and Herzegovina, the Central Election Commission of Bosnia and Herzegovina had in the procedure of examining the formal statutory requirements of the submission determined that it is admissible, but that it was submitted by an unauthorized person wherefore, within the meaning of Article 6.2, paragraphs (2) and (3) of the Election Law of Bosnia and Herzegovina, the present submission was

assessed as an initiative for initiating proceedings and the proceedings were conducted ex officio.

Acting under the said initiative, the BiH Central Election Commission, upon receipt and in line with the legal procedure, under the act: 05-1-07-5-883-2/20 dated September 21, 2020, submitted the initiative to the political entity A-SDA Party of Democratic Action to enter its plea, and for its candidate S.Š to enter a separate plea as well regarding the allegations in the submission, within 24 hours from receipt of initiative.

The political entity A-SDA Party of Democratic Activity and its candidate S.Š failed to enter a plea regarding the said initiative.

The provision of the Article 16.14, paragraph (3) of the Election Law of Bosnia and Herzegovina stipulates, *inter alia*, that ‘no conduct of a paid election campaign shall be allowed by way of electronic and printed media, or any form of paid public advertising, except for the holding of internal gatherings of authorities and statutory bodies of the political entities, within the period between the day when elections are announced and the day of official start of the election campaign.’

The Article 1.1a, paragraph (1), item 6) of the Election Law of Bosnia and Herzegovina stipulates that election campaign shall mean actions and procedures in the period set forth in this Law within which a political entity informs the voters and the public about their programs and candidates for the forthcoming elections in the manner laid down by law.

The provision of the Article 2, paragraph (1), item a) of the Rulebook on media coverage of political entities from the day elections are announced until the Election Day (‘Official Gazette of BiH’, no. 29/18) sets forth that the election campaign is the period of 30 days prior the Election Day in which a political entity in a manner established by the law informs the constituents and the public about its program and candidates for the forthcoming elections, and point f) states that political advertising means broadcast of advertisements, public calls, video spots and any other type of political entity’s promotion and point g) that public advertising means advertising through media, billboards, posters, Internet, leaflets, bizz boards and any other type of public advertising available to the voters and the public.

After having examined an entire case file and received Facebook and Instagram screenshots, the BiH Central Election Commission found political entity A-SDA Party of Democratic Activity accountable for violation of Article 16.14, paragraph (3) of the BiH Election Law as S.Š, the candidate of this political entity ran a sponsored election campaign prior to the official start of election campaign, using the Facebook and Instagram social networks.

Specifically, the disputed Facebook post included information that the post was sponsored, which was an irrefutable evidence of running the paid election campaign.

Also, having in mind the quoted legal provisions and screenshots of social media posts, it is an irrefutable fact that, in the said case, sponsored election campaign was run prior to the official start of election campaign, where S.Š, the candidate of the political entity A-SDA Party of Democratic Activity informed the voters and public about his candidacy for the Mayor of Zavidovići Municipality.

Also, having in mind the quoted provisions and screenshots of social media posts, it is an irrefutable fact that in this specific case sponsored election campaign was run before the official start of election campaign in the way that S.Š, the candidate of the political entity A-SDA Party of Democratic Activity informed voters and public about his candidacy for the Mayor of Zavidovići Municipality.

The political entity A-SDA Party of Democratic Activity is accountable because S.Š was suggested as candidate by this political entity, and as such certified for participation in 2020 Local Elections, as candidate for the Mayor of Zavidovići Municipality.

When determining the amount of fine, the BiH Central Election Commission decided to impose the fine in the minimum amount, within the meaning of the Article 19.9., paragraph (1) of the BiH Election Law, as it deemed it proportionate to the offense and viewed that imposed fine would fulfil the purpose of sanction.

Based on the aforementioned, and diligent and careful assessment of each evidence, and all evidences together, based on separate assessment of posts made by S.Š, who violated an explicit ban on such activities, the BiH Central Election Commission, pursuant to the Article 6.7, paragraph (1), item 1) and Article 19.9, paragraph (1), item t) of the BiH Election Law, rendered decision as stated in the enacting clause of decision.

Case 3- No appeal was filed to the BiH CEC's decision.

Case 4 - Democratic Front (*Demokratska Fronta*) (M.L)

Pursuant to Article 6.2, Article 6.7, paragraph (1), point 1) and Article 19.9, paragraph (1), point t) of the Election Law of Bosnia and Herzegovina ('Official Gazette of BiH', nos. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08, 32/10, 18/13, 7/14, 31/16 and 41/20) and Article 114, with regard to the articles 115 and 116 of the Law on Administrative Procedure (Official Gazette of BiH, nos. 29/02, 12/04, 88/07, 93/09, 41/3 and 53/16), and Article 16.14, paragraph (3) of the Election Law of Bosnia and Herzegovina, and acting ex officio in the case of violation of the BiH Election Law by political entity Democratic Front (code

01698), the Central Election Commission of Bosnia and Herzegovina has, at its 71st session, held on October 29, 2020 passed

DECISION

(1) The political entity Democratic Front (code 01698), is found accountable because M.L., the candidate of this political party for the Goražde City Council, ran the sponsored election campaign on her Facebook profile, prior to the official start of election campaign, therefore, she shall receive:

- fine in the amount of 1.000,00 KM (in letters: one thousand convertible marks)

(2) The fine referred to in paragraph (1) of this Decision shall be paid within eight days from the day this Decision becomes final to the account of the Ministry of Finance and Treasury of BiH.

Rationale

The Central Election Commission of Bosnia and Herzegovina has on October 5, 2020 received an information (hereinafter: the submission) from Transparency International Bosnia and Herzegovina via postal service stating that M.L., the candidate of Democratic Front for the Goražde City Council, ran a paid (sponsored) election campaign on the social network Facebook and hence had the political party acted contrary to the provisions of Article 16.14, paragraph (3) of the Election Law of Bosnia and Herzegovina. A screenshot of the sponsored post was attached to the information.

Having in mind the provision of Article 6.2, paragraph (1) of the Election Law of Bosnia and Herzegovina, the Central Election Commission of Bosnia and Herzegovina had in the procedure of examining the formal statutory requirements of the submission determined that it is admissible, but that it was submitted by an unauthorized person wherefore, within the meaning of Article 6.2, paragraphs (2) and (3) of the Election Law of Bosnia and Herzegovina, the present submission was assessed as an initiative for initiating proceedings and the proceedings were conducted ex officio.

Acting upon the given initiative, the Central Election Commission of BiH has, following its receipt and in accordance with the legal procedure, submitted the initiative to the above political entity by an act number: 05-1-07-5-1055-2/20 of October 14, 2020 for a response, also requesting a separate response (plea) to the assertions in the complaint by its candidate M.L. within 24 hours following receipt of the notification.

Within the deadline given, the political entity Democratic Front had, on October 2, 2020, electronically submitted responses to the aforementioned initiative stating that the PR Department and Central Election Team of Democratic Front are the sole admin-

istrators of Democratic Fronts Facebook web page and that they manage and control all the posts. In addition, they stated that other Facebook web pages that are, in any way, titled Democratic Front, are not under their control.

They also stated that candidate M.L had, in no way, notified the Secretariat about the paid 'sponsorship of the said posts on the aforementioned web page, but they have learned after contacting her that the candidate did sponsor the post for the period of 5 days in the amount of USD 5.00 (8,25KM) and was not aware it was banned, however she did not repeat this action.' Further on, they stated that this should be deemed as her official response given that the candidate was not able to provide written response in the given deadline.

The provision of the Article 16.14, paragraph (3) of the Election Law of Bosnia and Herzegovina, *inter alia*, sets forth that "no conduct of a paid election campaign shall be allowed by way of electronic and printed media, or any form of paid public advertising, except for the holding of internal gatherings of authorities and statutory bodies of the political entities, within the period between the day when elections are announced and the day of official start of the election campaign."

Article 1.1a, paragraph (1), point 6) of the Election Law of Bosnia and Herzegovina sets forth that the election campaign means actions and procedures in the period established by this Law within which a political subject informs the voters and the public, as set forth in the Law, about their programs and candidates for the forthcoming elections.

The provision of Article 2, paragraph (1), point a) of Rulebook on media coverage of political entities from the day elections are announced until the Election Day (Official Gazette of BiH, number 29/18) sets forth that the election campaign is the period of 30 days prior the Election Day in which a political entity, in a manner established by the law, informs the constituents and the public about its program and candidates for the forthcoming elections, and point f) states that political advertising means broadcast of advertisements, public calls, video spots and any other type of political entity's promotion and point g) that public advertising means advertising through media, billboards, posters, Internet, leaflets, bizz boards and any other type of public advertising available to the voters and the public.

By examining the complete case file and the submitted Facebook social network screenshot, the Central Election Commission of Bosnia and Herzegovina established that political entity Democratic Front was responsible for violating Article 16.14 paragraph (3) of the Election Law of Bosnia and Herzegovina, because M L., candidate of this political entity, had conducted paid election campaign on her Facebook profile before the official start of the election campaign.

In this particular case, the disputed Facebook post stated that it was sponsored, which constitutes an indisputable proof of paid election campaigning.

Also, having in mind the cited legal provisions as well as the text of mentioned post, which *inter alia* refers to the candidacy of M.L. for Goražde City councillor, an indisputable fact arises that in this case the paid election campaign was conducted where M.L., the candidate of Democratic Front, informed the voters and the public about her candidacy for Goražde City councillor at 2020 Local Elections, stating ‘Be with me to the end.’

The accountability of Democratic Front stems from the fact that M.L. was proposed by this political entity as a candidate and as such was certified to run for Goražde City councillor at 2020 Local Elections.

When determining the amount of the fine, the Central Election Commission of Bosnia and Herzegovina imposed a fine in the minimum amount in terms of Article 19.9, paragraph (1) of the Election Law of Bosnia and Herzegovina because it considers the fine to be appropriate to the offence committed and that the fined imposed will attain the purpose of punishment.

Based on the foregoing, and conscientious and careful assessment of each existing evidence separately, and all evidence together and particularly by assessing the disputed post of M.L., which was contrary to the explicit legal prohibition, the Central Election Commission of Bosnia and Herzegovina has, based on Article 6.7, paragraph (1), point 1) and Article 19.9, paragraph (1), point t) of the Election Law of Bosnia and Herzegovina, decided as in the enacting clause of decision.

Case 4 - Decision rendered by the Court of BiH Democratic Front (M.L)

In the case of the Court of Bosnia and Herzegovina, number: S1 3 LŽ 038660 20 lž of November 9, 2020, the Court of Bosnia and Herzegovina has rendered a

D E C I S I O N

The appeal is dismissed.

Under the Decision of the BiH Central Election Commission, number and date given in the introduction, it is determined that political entity Democratic Front (code 01698) is held accountable because M.L., candidate of this political party for the Goražde City Council, ran a paid election campaign on her Facebook account before the official start of the election campaign, and therefore, by virtue of provision of Article 19.9, paragraph 1, item t) of BiH Election Law, received a fine in the amount of 1.000,00 KM (BAM) due to violation of the provision 16.4., paragraph 3 of the same law.

Democratic Front filed timely appeal on the matter of fact regarding the aforementioned decision and due to erroneous application of substantive law, with proposal for appeal to be upheld and case remanded to the CEC BiH for review of decision. The erroneous establishment of facts is reflected in the fact that administrator of the web page, and not of the account (profile) as erroneously referred to in disputed decision, is a physical person M.L., who is not authorised to manage election campaign of Democratic Front, and in the fact that an appellant had, in no capacity whatsoever, ran the paid election campaign via Facebook web page before the official start of election campaign. The appellant cannot control all Facebook web pages that in any way include or refer to the name of Democratic Front party as Facebook is the platform where any individual can launch the web page under any name and publish any possible content. Further on, it stressed that the Central Election Team of Democratic Front, on its 2nd session held September 7, 2020, adopted the guidelines that clearly state that all municipal/city organisations and candidates must inform the Secretariat of the Party about all manners of public advertising and that public advertising is allowed only from October 16, 2020. It deems that CEC BiH should have considered that in BiH, the Facebook web page is not defined as medium, that Democratic Front did not, in any capacity, conduct the paid campaign in the period from announcement of elections to the day of official start of election campaign, that web page administrator whose name is M.L., who violated Article 19.9, paragraph 1, item t) of BiH Election Law can be deemed as supporter of this political entity, but that Article 19.9, paragraph 2 does not provide for sanctioning of political entity in the event that its supporter commits an offence referred to in paragraph 1, item t) of the BiH Election Law.

The BiH Central Election made motion for dismissal of appeal as frivolous in its response to appeal.

After having examined the decision on appeal in the context of assertions made in appeal, the Appellate Division Panel of the Court of BiH reached the following conclusion:

Appeal is not merited.

According to the documents and files, it is apparent that that the BiH Central Election Commission (hereinafter: CEC BiH), within the meaning of Article 6.2, paragraph 2 and 3 of the BiH Election Law viewed the submission received from Transparency International BiH on October 5, 2020, as initiative to initiate the procedure and conducted it ex officio.

According to the documents, files and evidences included in the files, major facts were determined that indicate that provision of Article 16.14, paragraph 3 of the BiH Election Law was violated as the political party perfumed paid political advertising prior

to the official start of election campaign where M.L., the candidate of this party for the Goražde City Council ran the paid election campaign on her Facebook account, prior to the official beginning of election campaign.

The provision of the Article 16.14, paragraph (3) of the Election Law of Bosnia and Herzegovina, *inter alia*, sets forth that no conduct of a paid election campaign shall be allowed by way of electronic and printed media, or any form of paid public advertising, except for the holding of internal gatherings of authorities and statutory bodies of the political entities, within the period between the day when elections are announced and the day of official start of the election campaign.

The provision of Article 2, paragraph (1), point a) of Rulebook on media coverage of political entities from the day elections are announced until the Election Day (Official Gazette of BiH, number 29/18) sets forth that the election campaign is the period of 30 days prior the Election Day in which a political entity in a manner established by the law informs the constituents and the public about its program and candidates for the forthcoming elections, and point f) states that political advertising means broadcast of advertisements, public calls, video spots and any other type of political entity's promotion and point g) that public advertising means advertising through media, billboards, posters, Internet, leaflets, bizz boards and any other type of public advertising available to the voters and the public.

After having examined the case file and submitted Facebook screenshot, this Panel reached conclusion that it is irrefutable fact, which was indicated by Transparency International BiH in its submission dated October 5 2020, that disputed Facebook post stated it was sponsored, which indicates the paid election campaigning. The wording of the said post, which refers to the candidacy of M.L. for the Goražde City Council, indicates indisputable fact that the said candidate acted on behalf of political entity Democratic Front for the purpose of informing the voters and public about her candidacy for the Goražde City Council at 2020 Local Elections, stating 'Be with me to the end', hence carrying out self-promotion.

As viewed by the Appellate Panel, the assertions made in appeal that administrator of the web page, and not the account (profile), whose name is M.L., is physical person who is not authorised to manage election campaign of Democratic Front are irrelevant. This is due to the fact that the Facebook post, in addition to the name of the candidate M.L., also featured the logo of political entity, indicating the sponsored post. The accountability of Democratic Front stems from the fact that M.L. was proposed by this political entity as a candidate and as such was certified to run for Goražde City councillor at 2020 Local Elections.

Having in mind that CEC BiH passed Decision on Calling and Administering 2020

Local Elections, no: 05-1-07-1-393-1/20 dated May 7, 2020, the Appellate Panel deems that such posts constitute promotion of political entity.

By analogous application of the provision of the Article 7.1, paragraph 1, item 3 of the BH Election Law, governing the rules of conduct in election campaign, this Panel reached conclusion that printing and distribution of placards, posters and other material related to the election campaign within the election period are the actions that are forbidden in the period from announcement of elections until the day of official start of election campaign.

Considering the aforementioned, as viewed by this Panel, the disputed decision of the BiH Central Election Commission is regular and legal, and appeal is frivolous therefore, by applying the provisions of the Article 81, paragraph 1 of the Law on Administrative Disputes of Bosnia and Herzegovina (Official Gazette of BiH, no. 19/02, 88/007, 83/08 and 74/10), appeal is to be dismissed.

Case 5- People and Justice (K.H) (loc. Narod i Pravda)

Pursuant to Article 6.6 paragraph (1), Article 6.7, paragraph (1), point 1) and Article 19.9, paragraph (1), point t) of the Election Law of Bosnia and Herzegovina (Official Gazette of BiH, nos. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08, 32/10, 18/13, 7/14, 31/16 and 41/20) and acting upon the complaint of the political entity Movement for Modern and Active Krajina - POMAK, in the procedure of determining the violation of Article 16.14, paragraph (3) of the Election Law of Bosnia and Herzegovina by the political entity People and Justice (code 02317), the Central Election Commission of Bosnia and Herzegovina has at its 65th session held on October 14, 2020 passed

DECISION

(1) The political entity People and Justice (code 02317) is found accountable for K.H., the candidate of this political entity for the Mayor of the City of Bihać, conducting a paid election campaign on the social network Facebook before the official start of the election campaign.

- pecuniary fine in the amount of 1.000 KM (one thousand convertible marks)

(2) The fine referred to in paragraph (1) of this Decision shall be paid within eight days from the day this Decision becomes final to the account of the Ministry of Finance and Treasury of BiH.

Rationale

The Central Election Commission of Bosnia and Herzegovina had on September 21, 2020 received a complaint via e-mail pokret.pomak@gmail.com from the Movement for Modern and Active Krajina – POMAK, which read that the candidate of PEOPLE AND JUSTICE for the Mayor of the City of Bihać has led a paid election campaign on the social network Facebook, and hence had the political party acted contrary to the provisions of Article 16.14, paragraph (3) of the Election Law of Bosnia and Herzegovina. A video of the sponsored post was attached to the complaint.

The complaint is admissible, submitted by an authorized person and timely.

Acting upon the complaint, the Central Election Commission of BiH has, following its receipt and in accordance with the legal procedure, submitted the complaint to the political entity People and Justice by an act number: 05-1-07-5-976 / 20 of September 24, 2020 for a response, also requesting a separate response to the assertions in the complaint by its candidate K.H. within 24 hours following receipt of the notification.

Within the deadline given, the People and Justice and the candidate K.H had on September 26, 2020 electronically submitted responses to the aforementioned complaint by which they rejected the assertions in the complaint, stating that the activities concerned are undertaken exclusively as regular activity in line with the Party Statute and that they are not contrary to the BiH Election Law.

Article 16.14, paragraph (3) of the Election Law of Bosnia and Herzegovina, *inter alia*, sets forth that “no conduct of a paid election campaign shall be allowed by way of electronic and printed media, or any form of paid public advertising, except for the holding of internal gatherings of authorities and statutory bodies of the political entities, within the period between the day when elections are announced and the day of official start of the election campaign.”

Article 1.1a, paragraph (1), point 6) of the Election Law of Bosnia and Herzegovina sets forth that the election campaign means actions and procedures in the period established by this Law within which a political subject informs the voters and the public, as prescribed by the Law, about their programs and candidates for the forthcoming elections.

Article 2, paragraph (1), point a) of Rulebook on media coverage of political entities from the day elections are announced until the Election Day (Official Gazette of BiH, number 29/18) sets forth that the election campaign is the period of 30 days prior the Election Day in which a political entity in a manner established by the law informs the constituents and the public about its program and

candidates for the forthcoming elections, and point f) states that political advertising means broadcast of advertisements, public calls, video spots and any other type of political entity's promotion and point g) that public advertising means advertising through media, billboards, posters, Internet, leaflets, bizz boards and any other type of public advertising available to the voters and the public.

By inspecting the complete case file and the submitted screenshot from the social network Facebook, the Central Election Commission of Bosnia and Herzegovina determined that the political entity People and Justice is responsible for violating Article 16.14 paragraph (3) of the Election Law of Bosnia and Herzegovina, because K.H., the candidate of this political entity, had conducted paid election campaign on the social network Facebook before the official start of the election campaign.

In this particular case, the disputed Facebook post stated that it was sponsored, which is an indisputable proof of paid election campaigning.

Also, having in mind the cited legal provisions as well as the video of the mentioned post on the social network, an indisputable fact arises that in this case the paid election campaign was conducted before the official start of the election campaign where K.H., candidate of the political entity People and Justice informed the public about his candidacy for mayor of the City of Bihać.

The accountability of the political entity People and Justice is based on the fact that K.H. was proposed by this political entity as a candidate and as such was certified to participate in the 2020 Local Elections for the Mayor of the City of Bihać.

When determining the amount of the fine, the Central Election Commission of Bosnia and Herzegovina imposed a fine in the minimum amount in terms of Article 19.9, paragraph (1) of the Election Law of Bosnia and Herzegovina because it considers the fine to be appropriate to the offence committed and that the fined imposed will attain the purpose of punishment.

Based on the foregoing, and conscientious and careful assessment of each existing evidence separately, and all evidence together and particularly by assessing the disputed post of Hrnjić Kemal in a manner contrary to the explicit legal prohibition, the Central Election Commission of Bosnia and Herzegovina has based on Article 19.9, paragraph (1), point t) of the Election Law of Bosnia and Herzegovina decided as in the operative part of the decision.

Case 5- People and Justice – No appeal was filed to the BiH CEC's decision.

Case 6 – Independent Bosnian-Herzegovinian List (H.M) (loc. *Nezavisna bosanskohercegovačka lista*)

Pursuant to Article 6.2, Article 6.7, paragraph (1), point 1) and Article 19.9, paragraph (1), point t) of the Election Law of Bosnia and Herzegovina (Official Gazette of BiH, nos. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37 / 08, 32/10, 18/13, 7/14, 31/16 and 41/20) and Article 114, and in connection with Articles 115 and 116 of the Law on Administrative Procedure (Official Gazette of BiH, nos. 29/02, 12/04, 88/07, 93/09, 41/3 and 53/16) and Article 16.14, paragraph (3) of the Election Law of Bosnia and Herzegovina, acting ex officio, in the case of violation of the Election Law of Bosnia and Herzegovina by the political entity the Independent Bosnian-Herzegovinian List (code 02328), the Central Election Commission of Bosnia and Herzegovina has at its 70th session, held on October 28, 2020, passed

DECISION

(1) The political entity Independent Bosnian-Herzegovinian List (code 02328) is found accountable for H.M., the candidate of this political entity for the Mayor of Zavidovići Municipality, conducting a paid election campaign on the social network Facebook before the official start of the election campaign, thus imposing

- pecuniary fine in the amount of 1.000 KM (one thousand convertible marks)

(2) The fine referred to in paragraph (1) of this Decision shall be paid within eight days from the day this Decision becomes final to the account of the Ministry of Finance and Treasury of BiH.

Rationale

The Central Election Commission of Bosnia and Herzegovina has on September 30, 2020 received an information (hereinafter: the submission) from Transparency International Bosnia and Herzegovina via the e-mail address Transparency.International@europe.com stating that the candidate of the Independent Bosnian-Herzegovinian List for the Mayor of Zavidovići Municipality, H.M., conducted a paid election campaign on the social network Facebook, and hence had the political party acted contrary to the provisions of Article 16.14, paragraph (3) of the Election Law of Bosnia and Herzegovina. A video of the sponsored post was attached to the information.

Having in mind the provision of Article 6.2, paragraph (1) of the Election Law of Bosnia and Herzegovina, the Central Election Commission of Bosnia and Herzegovina had in the procedure of examining the formal statutory requirements of the submission determined that it is admissible, but that it was submitted by an unauthorized person

wherefore, within the meaning of Article 6.2, paragraphs (2) and (3) of the Election Law of Bosnia and Herzegovina, the present submission was assessed as an initiative for initiating proceedings and the proceedings were conducted *ex officio*.

Acting upon the given initiative, the Central Election Commission of BiH has, following its receipt and in accordance with the legal procedure, submitted the initiative to the political entity Independent Bosnian-Herzegovinian List by an act number: 05-1-07-5-992-2/20 of October 1, 2020 for a response, also requesting a separate response to the assertions in the complaint by its candidate H.M., within 24 hours following receipt of the notification.

Within the deadline given, the Independent Bosnian-Herzegovinian List and its candidate for the Mayor of Zavidovići Municipality H.M. had on October 2, 2020 electronically submitted responses to the aforementioned initiative by which they rejected the assertions in the initiative.

The candidate H.M. claims that he did not purchase seats on the polling stations from any political entity or participate in political activities other than those he performs as a municipal mayor, and that he did not conduct, either personally or as a candidate, any politically paid advertising and promotion, as well as that continuous promotion of the municipal administrative body is done from false profiles by known persons. In this particular case, he claims that individuals, who misinform the public from the Facebook profile “Informer”, S.S., H.Ć.H, and others, are behind the fake Facebook page called NBL.

The political entity, in its response, claims that it respects the provisions of the Election Law of BiH and does not make any promotions of the political entity or the candidate. It states that the attachment to the submission is from a fake profile, that several fake profiles are being used to discredit the personality and dignity of the candidate H.M., and that they do not have a profile on Facebook.

Article 16.14, paragraph (3) of the Election Law of Bosnia and Herzegovina, *inter alia*, sets forth that “no conduct of a paid election campaign shall be allowed by way of electronic and printed media, or any form of paid public advertising, except for the holding of internal gatherings of authorities and statutory bodies of the political entities, within the period between the day when elections are announced and the day of official start of the election campaign.”

Article 1.1a, paragraph (1), point 6) of the Election Law of Bosnia and Herzegovina sets forth that the election campaign means actions and procedures in the period established by this Law within which a political subject informs the voters and the public, as prescribed by the Law, about their programs and candidates for the forthcoming elections.

Article 2, paragraph (1), point a) of Rulebook on media coverage of political entities from the day elections are announced until the Election Day (Official Gazette of BiH, number 29/18) sets forth that the election campaign is the period of 30 days prior the Election Day in which a political entity in a manner established by the law informs the constituents and the public about its program and

candidates for the forthcoming elections, and point f) states that political advertising means broadcast of advertisements, public calls, video spots and any other type of political entity's promotion and point g) that public advertising means advertising through media, billboards, posters, Internet, leaflets, bizz boards and any other type of public advertising available to the voters and the public.

By inspecting the complete case file and the submitted screenshot from the social network Facebook, the Central Election Commission of Bosnia and Herzegovina determined that the political entity Independent Bosnian-Herzegovinian List is responsible for violating Article 16.14 paragraph (3) of the Election Law of Bosnia and Herzegovina, because H.M., the candidate of this political entity, had conducted paid election campaign on the social network Facebook before the official start of the election campaign.

In this particular case, the disputed Facebook post stated that it was sponsored, which is an indisputable proof of paid election campaigning.

Also, having in mind the cited legal provisions as well as the screenshot of the mentioned post on the social network, an indisputable fact arises that in this case the paid election campaign was conducted before the official start of the election campaign where H.M., candidate of the political entity Independent Bosnian-Herzegovinian List informed the public about his candidacy for Mayor of Zavidovići Municipality.

The accountability of the political entity Independent Bosnian-Herzegovinian List is based on the fact that H.M. was proposed by this political entity as a candidate and as such was certified to participate in the 2020 Local Elections for the Mayor of Zavidovići Municipality.

When determining the amount of the fine, the Central Election Commission of Bosnia and Herzegovina imposed a fine in the minimum amount in terms of Article 19.9, paragraph (1) of the Election Law of Bosnia and Herzegovina because it considers the fine to be appropriate to the offence committed and that the fined imposed will attain the purpose of punishment.

Based on the foregoing, and conscientious and careful assessment of each existing evidence separately, and all evidence together and particularly by assessing the disputed post of H.M. in a manner contrary to the explicit legal prohibition, the Central Election Commission of Bosnia and Herzegovina has based on Article 6.7, paragraph (1), point 1)

and Article 19.9, paragraph (1), point t) of the Election Law of Bosnia and Herzegovina decided as in the operative part of the decision.

Case 6 – Decision rendered by the Court of BiH – Independent Bosnian-Herzegovinian List (H.M.)

In the case of the Court of Bosnia and Herzegovina, number: S1 3 lž 038595 20 LŽ OF November 4, 2020 the Court of Bosnia and Herzegovina has rendered a

DECISION

The appeal is dismissed.

It was determined, by the decision of the Central Election Commission of Bosnia and Herzegovina, the number and date given in the introduction, that the political entity Independent Bosnian-Herzegovinian List (code 02328) was responsible for H.M., candidate for the mayor of this political entity, conducting a paid election campaign on Facebook before the official start of the election campaign, for which a pecuniary fine in the amount of 1.000 KM was imposed, which will be paid to the account of the Ministry of Finance and Treasury of BiH within 8 days from the day on which the decision becomes final.

The political party filed an appeal against this decision in a timely manner, stating that the sponsored post and promotion of the nominated mayor for the municipality was done from a false profile called the Independent Bosnian-Herzegovinian List. The name of this fake profile generated in _____ is not the same as the name of the party, the content on the profile is illiterate, there are cheap posts and it is more than obvious that it is a hoax. Based on the observations made by the party commissioner about this problem they opened their own NBL profile_____ on October 16, 2020 as the only real profile for promoting candidates. They suggest that all submitted posts from the false profile be taken into account and, to assess the situation based on sentence formulation, sanction the person responsible for damaging the party's reputation, stating that the mentioned political entity does not violate the law.

In response to the appeal, the Central Election Commission of Bosnia and Herzegovina proposed that the Court dismiss the appeal as unfounded because the assertions that the paid election campaign before the official start of the campaign was conducted from a false profile are unacceptable.

The appeal is unfounded.

All the facts relevant for determining the responsibility of a political entity for violation of the Election Law were thus determined, and relate to the fact that the post on

the social network is an action directed to acquainting the voters with the program and the candidate, that it was done before the official start of the campaign and that it is a sponsored post, therefore, a paid campaign. This is contrary to Article 16.14, paragraph 3 of the Election Law of Bosnia and Herzegovina, so the appealed decision has by correctly applying the said provision determined the responsibility of the political entity for violation of legal provisions by its candidate and imposed a fine on the political entity pursuant to Article 6.7, paragraph 1, point 1 and Article 19.9, paragraph 1 of the cited law.

The assertions in the appeal that there is no responsibility of the appellant as a political entity because the posting was made from a false profile are unfounded. First of all, the posting was done from the profile on the social network that belongs to their candidate. Furthermore, the content published promotes the party and the candidate, so assertions in the appeal that its damages reputation and discredits the party and the candidate are unacceptable.

When determining the amount of the fine, the Central Election Commission of Bosnia and Herzegovina assessed that the minimum fine was appropriate to the offense committed and that it would achieve the purpose of punishment, in which way all the circumstances relevant to determining the amount of the fine were assessed.

In view of the above, in the opinion of this Panel, the contested Decision of the Central Election Commission of BiH is correct and lawful, and the appeal is unfounded, so by applying Article 81, paragraph 1 of the Law on Administrative Disputes of Bosnia and Herzegovina (Official Gazette of BiH, no 19/02, 88/07, 83/08 and 74/10), it had to be dismissed.

Case 7 – Social Democrats of Bosnia and Herzegovina (loc. *Socijaldemokrate Bosne i Hercegovine*)

Pursuant to Article 6.2, Article 6.7, paragraph (1), point 1) and Article 19.9, paragraph (1), point t) of the Election Law of Bosnia and Herzegovina (Official Gazette of BiH, nos. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37 / 08, 32/10, 18/13, 7/14, 31/16 and 41/20) and Article 114, and in connection with Articles 115 and 116 of the Law on Administrative Procedure (Official Gazette of BiH, nos. 29/02, 12/04, 88/07, 93/09, 41/3 and 53/16) and Article 16.14, paragraph (3) of the Election Law of Bosnia and Herzegovina, acting ex officio, in the case of violation of the Election Law of Bosnia and Herzegovina by a political entity the Social Democrats of Bosnia and Herzegovina SDBiH (code 02711), the Central Election Commission of Bosnia and Herzegovina has at its 71st session, held on October 29, 2020, passed

DECISION

(1) The political entity Social Democrats of Bosnia and Herzegovina SDBiH (code 02711) is found accountable for SDBiH Zenica conducting on behalf of this political entity a paid election campaign on the social network Facebook before the official start of the election campaign, thus imposing

- fine in the amount of 1.000 KM (one thousand convertible marks)

(2) The fine referred to in paragraph (1) of this Decision shall be paid within eight days from the day this Decision becomes final to the account of the Ministry of Finance and Treasury of BiH.

Rationale

The Central Election Commission of Bosnia and Herzegovina has on October 5, 2020 received an information (hereinafter: the submission) from Transparency International Bosnia and Herzegovina stating that the Social Democrats of Bosnia and Herzegovina SDBiH conducted a paid election campaign on the social network Facebook, and that hence had this political entity acted contrary to the provisions of Article 16.14, paragraph (3) of the Election Law of Bosnia and Herzegovina. Screenshot (video) of the sponsored post was attached to the information.

Having in mind the provision of Article 6.2, paragraph (1) of the Election Law of Bosnia and Herzegovina, the Central Election Commission of Bosnia and Herzegovina had in the procedure of examining the formal statutory requirements of the submission determined that it is admissible, but that it was submitted by an unauthorized person wherefore, within the meaning of Article 6.2, paragraphs (2) and (3) of the Election Law of Bosnia and Herzegovina, the present submission was assessed as an initiative for initiating proceedings and the proceedings were conducted ex officio.

Acting upon the given initiative, the Central Election Commission of BiH has, following its receipt and in accordance with the legal procedure, submitted the initiative to the political entity Social Democrats of Bosnia and Herzegovina SDBiH by an act number: 05-1-07-5-1143-2/20 of October 13, 2020 for a response within 24 hours following receipt of the notification.

Within the deadline given, the political entity Social Democrats of Bosnia and Herzegovina SDBiH had on October 16, 2020 electronically submitted responses to the aforementioned initiative stating the video submitted is not paid promotion of election campaign, elections, candidates, list, program or anything else related to the forthcoming elections. It states that the sponsored invitation to a meeting is not promotional in nature, but exclusively an invitation for the internal meeting of the Youth Forum of

SDBiH Zenica as an internal form of organization in line with the Statute of SDBiH. Furthermore it states that youth of other political options were invited to the meeting, and that a person, who is not member of SDBiH, can be member of the Youth Forum.

Public political advertising cannot be treated as an invitation to an internal event, because the invitation was sent to all political entities in the city, and not to the youth of other political entities. In addition, the invitation to the internal meeting also includes the promotion of the ideas of a political entity whose focus is on young people. Logo of the political entity is also visible on the invitation to the internal event, which clearly indicates the mentioned political entity, and the submitted evidence (sponsored announcement) clearly shows that it was the period before the official start of the election campaign.

Article 16.14, paragraph (3) of the Election Law of Bosnia and Herzegovina, *inter alia*, sets forth that “no conduct of a paid election campaign shall be allowed by way of electronic and printed media, or any form of paid public advertising, except for the holding of internal gatherings of authorities and statutory bodies of the political entities, within the period between the day when elections are announced and the day of official start of the election campaign.”

Article 1.1a, paragraph (1), point 6) of the Election Law of Bosnia and Herzegovina sets forth that the election campaign means actions and procedures in the period established by this Law within which a political subject informs the voters and the public, as prescribed by the Law, about their programs and candidates for the forthcoming elections.

Article 2, paragraph (1), point a) of Rulebook on media coverage of political entities from the day elections are announced until the Election Day (Official Gazette of BiH, number 29/18) sets forth that the election campaign is the period of 30 days prior the Election Day in which a political entity in a manner established by the law informs the constituents and the public about its program and

candidates for the forthcoming elections, and point f) states that political advertising means broadcast of advertisements, public calls, video spots and any other type of political entity’s promotion and point g) that public advertising means advertising through media, billboards, posters, Internet, leaflets, bizz boards and any other type of public advertising available to the voters and the public.

By inspecting the complete case file and the submitted screenshot from the social network Facebook, the Central Election Commission of Bosnia and Herzegovina determined that the political entity Social Democrats of Bosnia and Herzegovina SDBiH is responsible for violating Article 16.14 paragraph (3) of the Election Law of Bosnia and

Herzegovina, because SDBiH Zenica, had conducted paid election campaign on the social network Facebook before the official start of the election campaign on behalf of this political entity.

In this particular case, the disputed Facebook post stated that it was sponsored, which is an indisputable proof of paid election campaigning.

Also, having in mind the cited legal provisions as well as the screenshots of the mentioned post on the social network, an indisputable fact arises that in this case the paid election campaign was conducted before the official start of the election campaign where SDBiH Zenica and Youth Forum SDBiH had on behalf of the political entity Social Democrats of Bosnia and Herzegovina SDBiH informed the public and the voters about its program for the forthcoming elections.

In addition, according to the SDBiH Statute, the SDBiH Youth Forum is an internal form of organization. Accordingly, the responsibility of the political entity Social Democrats of Bosnia and Herzegovina SDBiH is based on the fact that the Youth Forum SDBiH Zenica is part of the said political entity and as such certified to participate in the 2020 Local Election.

When determining the amount of the fine, the Central Election Commission of Bosnia and Herzegovina has as a mitigating circumstance taken into account confession of this political entity that it did paid advertising for what reason a minimum fine was imposed in terms of Article 19.9, paragraph (1) of the Election Law of Bosnia and Herzegovina.

Therefore the BiH Central Election Commission considers the fine to be appropriate to the offence committed and that the fined imposed will attain the purpose of punishment.

Based on the foregoing, and conscientious and careful assessment of each existing evidence separately, and all evidence together and particularly by assessing the disputed post of SDBiH Zenica on behalf of the political entity Social Democrats SDBiH in a manner contrary to the explicit legal prohibition, the Central Election Commission of Bosnia and Herzegovina has based on Article 6.7, paragraph (1), point 1) and Article 19.9, paragraph (1), point t) of the Election Law of Bosnia and Herzegovina decided as in the operative part of the decision.

Case 7 – Decision rendered by the Court of BiH – Social Democrats of Bosnia and Herzegovina

In the case of the Court of Bosnia and Herzegovina, number: S1 3 LŽ 038657 20 lž of November 11, 2020 the Court of Bosnia and Herzegovina has rendered a

DECISION

The appeal is dismissed.

The appellant, political party Social Democrats of Bosnia and Herzegovina, was imposed a pecuniary fine in the amount of 1.000 KM for violating Article 16.14, paragraph (3) of the BiH Election Law by the decision of the Central Election Commission of Bosnia and Herzegovina, the number and date given in the introduction. The aforementioned decision determined responsibility of the political party for SDBiH Zenica conducting paid election on the social network Facebook before the official start of the campaign on behalf of this political entity.

The political party Social Democrats of Bosnia and Herzegovina timely filed an appeal against the said decision for erroneously or incompletely determined facts. First of all, they believe that in terms of Article 6, paragraph 2 of the Election Law of BiH the submission of Transparency International Bosnia and Herzegovina is untimely, so they propose that it be rejected, which the Central Election Commission failed to assess in its decision. The appellant further points out that the contested decision is illegal, as it believes that sponsored invitation to the meeting is in no way promotional in nature for the purpose of election campaigning and public advertising, but exclusively an invitation for the internal meeting of the Youth Forum of SDBiH Zenica as an internal form of organization in line with the Statute of SDBiH. Furthermore it states that youth of other political options were invited to the meeting, noting it is not paid promotion of election campaign, elections, candidates, list, program or anything else related to the forthcoming elections. The decision of the Central Election Commission of BiH states that the invitation in question was sent to all political entities in the city, which is not true. The invitation was sent to the youth of the city of Zenica, regardless of political affiliation, to attend an internal meeting in order to exchange ideas. It was also stated that the invitation promotes the ideas of the political entity, with which the appellant disagreed, as the disputed announcement did not in any way promote the political entity. Following the above, it considers that Article 16.14 paragraph 3 of the Election Law of Bosnia and Herzegovina was not violated, but rather that it was observed, which is why it proposes that the appeal be upheld and the disputed decision revoked, i.e. that the political entity SDBiH be exempted from paying the fine.

In response to the appeal, the Central Election Commission of Bosnia and Herzegovina proposed that the Court should reject the present appeal as unfounded.

According to the papers before the Court, the Transparency International Bosnia and Herzegovina informed the BiH Central Election Commission on October 12, 2020 that the political entity SDBiH paid for a sponsored announcement in the electronic media - the social network Facebook, and considering this initiative the BiH CEC initiated the procedure *ex officio*. The BiH Central Election Commission assessed the information from Transparency International BiH as an initiative to initiate proceedings in order to protect the election process as a public interest, and pursuant to Article 115, paragraph 1 of the Law on Administrative Procedure had conducted the procedure *ex officio*. Therefore, the appellant's assertions that the submission of Transparency International BiH is untimely within the meaning of Article 6.2 of the BiH Election Law are unfounded, considering that the procedure was instituted and conducted by the BiH Central Election Commission *ex officio*.

Furthermore, after assessing the assertions from the response of SDBiH, and inspecting the screenshot of the post on the social network Facebook, the Central Election Commission of BiH determined the fact that a paid election campaign was conducted before the official start of the election campaign, because in this particular case the disputed Facebook post is marked as sponsored, which is clear proof of paid election campaign.

All the facts relevant for determining the responsibility of a political entity for violation of the Election Law were thus determined, and relate to the fact that the post on the social network is an action directed to acquainting the voters with the program, that it was done before the official start of the campaign and that it is a sponsored post, therefore, a paid campaign. This, according to the Court's conclusion, is contrary to Article 16.14, paragraph 3 of the Election Law of Bosnia and Herzegovina, so the appealed decision has by correctly applying the said provision determined the responsibility of the political entity for violation of legal provisions, reasonably imposing a pecuniary fine by application of Article 6.7, paragraph 1, point 1 and Article 19.9, paragraph 1, point t) of the cited law.

When determining the amount of the fine, the Central Election Commission of Bosnia and Herzegovina assessed that the minimum fine was appropriate to the offense committed and that it would achieve the purpose of punishment, in which way all the circumstances relevant to determining the amount of the fine were assessed.

In view of the above, in the opinion of this Panel, the contested Decision of the Central Election Commission of BiH is correct and lawful, and the appeal is unfounded, so by applying Article 81, paragraph 1 of the Law on Administrative Disputes of Bosnia and Herzegovina (Official Gazette of BiH, no 19/02, 88/07, 83/08 and 74/10), it had to be dismissed.

Case 8 - SDA – Party of Democratic Action (loc. *Stranka demokratske akcije*) (S.M)

Pursuant to Article 6.6, paragraph (1), Article 6.7, paragraph (1), point 1) and Article 19.9, paragraph (1), point t) of the Election Law of Bosnia and Herzegovina (Official Gazette of BiH, nos. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37 / 08, 32/10, 18/13, 7/14, 31/16 and 41/20) acting upon complaint of the political entity Movement for Modern and Active Krajina – POMAK in the procedure of determining violation of Article 16.14, paragraph (3) of the Election Law of Bosnia and Herzegovina by the political entity Party of Democratic Action (code 00090), the Central Election Commission of Bosnia and Herzegovina has at its 65th session, held on October 14, 2020, passed

DECISION

(1) The political entity SDA-Party of Democratic Action (code 00090) is found accountable for S.M., the candidate of this political entity for the Mayor of the City of Bihać and SDA City Board Bihać, conducting a paid election campaign on the social network Facebook before the official start of the election campaign, thus imposing

- fine in the amount of 1.000 KM (one thousand convertible marks)

(2) The fine referred to in paragraph (1) of this Decision shall be paid within eight days from the day this Decision becomes final to the account of the Ministry of Finance and Treasury of BiH.

Rationale

The Central Election Commission of Bosnia and Herzegovina had on September 21, 2020 received a complaint via e-mail pokret.pomak@gmail.com from the Movement for Modern and Active Krajina – POMAK, which read that the candidate of SDA-Party of Democratic Action for the Mayor of the City of Bihać and SDA City Board Bihać has led a paid election campaign on the social network Facebook, and hence had the political party acted contrary to the provisions of Article 16.14, paragraph (3) of the Election Law of Bosnia and Herzegovina. A screenshot the sponsored posts was attached to the complaint.

The complaint is admissible, submitted by an authorized person and timely.

Acting upon the complaint within the meaning of Article 6.3, paragraph 2) of the BiH Election Law, the Central Election Commission of BiH has, following its receipt and in accordance with the legal procedure, submitted the complaint to the political entity SDA-Party of Democratic Action by an act number: 0505-1-07-5-976/20 of September 24, 2020 for a response, also requesting a separate response to the assertions in the complaint by its candidate Samir S.M. within 24 hours following receipt of the notification.

Within the deadline given, the SDA-Party of Democratic Action, Municipal Board of the Party of Democratic Action Bihać and candidate S.M had on September 26, 2020 electronically submitted responses to the aforementioned complaint by which they rejected the assertions in the complaint, stating that the activities concerned are undertaken exclusively under rule of the law principle and observation of the constitutional order of Bosnia and Herzegovina, and that they are not contrary to the BiH Election Law.

Article 16.14, paragraph (3) of the Election Law of Bosnia and Herzegovina, *inter alia*, sets forth that “no conduct of a paid election campaign shall be allowed by way of electronic and printed media, or any form of paid public advertising, except for the holding of internal gatherings of authorities and statutory bodies of the political entities, within the period between the day when elections are announced and the day of official start of the election campaign.”

Article 1.1a, paragraph (1), point 6) of the Election Law of Bosnia and Herzegovina sets forth that the election campaign means actions and procedures in the period established by this Law within which a political subject informs the voters and the public, as prescribed by the Law, about their programs and candidates for the forthcoming elections.

Article 2, paragraph (1), point a) of Rulebook on media coverage of political entities from the day elections are announced until the Election Day (Official Gazette of BiH, number 29/18) sets forth that the election campaign is the period of 30 days prior the Election Day in which a political entity in a manner established by the law informs the constituents and the public about its program and candidates for the forthcoming elections, and point f) states that political advertising means broadcast of advertisements, public calls, video spots and any other type of political entity’s promotion and point g) that public advertising means advertising through media, billboards, posters, Internet, leaflets, bizz boards and any other type of public advertising available to the voters and the public.

By inspecting the complete case file and the submitted screenshot from the social network Facebook, the Central Election Commission of Bosnia and Herzegovina determined that the political entity SDA-Party of Democratic Action is responsible for violating Article 16.14 paragraph (3) of the Election Law of Bosnia and Herzegovina, because S.M., candidate of this political entity, had conducted paid election campaign on the social network Facebook before the official start of the election campaign.

In this particular case, the disputed Facebook post stated that it was sponsored, which is an indisputable proof of paid election campaigning.

Also, having in mind the cited legal provisions as well as the screenshot of mentioned posts on the social networks, an indisputable fact arises that in this case the paid election campaign was conducted before the official start of the election campaign where S.M., candidate of the political entity SDA-Party of Democratic Action informed the voters and the public about his candidacy for mayor of the City of Bihać and the SDA City Board Bihać.

The accountability of the political entity SDA-Party of Democratic Action is based on the fact that S.M. was proposed by this political entity as a candidate and as such was certified to participate in the 2020 Local Elections for the Mayor of the City of Bihać.

When determining the amount of the fine, the Central Election Commission of Bosnia and Herzegovina imposed a fine in the minimum amount in terms of Article 19.9, paragraph (1) of the Election Law of Bosnia and Herzegovina because it considers the fine to be appropriate to the offence committed and that the fined imposed will attain the purpose of punishment.

Based on the foregoing, and conscientious and careful assessment of each existing evidence separately, and all evidence together and particularly by assessing the disputed post of S.M. in a manner contrary to the explicit legal prohibition, the Central Election Commission of Bosnia and Herzegovina has based on Article 6.7, paragraph (1), point 1) and Article 19.9, paragraph (1), point t) of the Election Law of Bosnia and Herzegovina decided as in the operative part of the decision.

Case 8 – Decision rendered by the Court of BiH – Party of Democratic Action (S.M.)

In the case of the Court of Bosnia and Herzegovina, number: S1 3 lž 037831 20 LŽ of October 22, 2020 the Court of Bosnia and Herzegovina has rendered a

DECISION

The appeal is upheld, the Decision of the Central Election Commission number 05-1-07-5-1026/20 of October 14, 2020 annulled and the case is returned to the BiH Central Election Commission for reconsideration.

Rationale

Political entity Party of Democratic Action-SDA was imposed a pecuniary fine in the amount of 1.000 KM by the decision of the Central Election Commission of Bosnia and Herzegovina, the number and date given in the introduction, based on determined responsibility for S.M., candidate of this political entity for the mayor of the City of Bihać

and the SDA City Board Bihać conducting paid election on the social network Facebook before its official start.

In the rationale of the disputed decision the Central Election Commission states that by acting upon complaint filed by the Movement for Modern and Active Krajina – POMAK it has determined violation of Article 16.14, paragraph (3) of the BiH Election Law, since the inspection of case file and submitted screenshots revealed that S.M., candidate of SDA for the mayor of the City of Bihać had conducted a paid election campaign on Facebook before the official start of the election campaign.

The appeal is founded.

In the present case, the Appellate Panel has by inspecting the complaint determined that it was filed on September 21, 2020 by the Movement for Modern and Active Krajina - POMAK, and the reason for the submission was observed violation of the Election Law under Chapter 16, Article 16.14 committed by S.M., a candidate for Mayor of the City of Bihać on behalf of the SDA. The observed breaches of the law were committed on September 3, 2020 and according to the assertions in the complaint on September 21, 2020.

The provisions of Article 6.2 paragraph 1 of the Election Law of BiH prescribe that any voter and any political entity whose right established by this law, is violated, may file a complaint with the election commission not later than within 48 hours, or within 24 hours in the election period after the violation occurred, unless otherwise specified by this Law.

The complaint is submitted on the form prescribed by the BiH CEC and it contains a brief description of the violation and attachments that confirm the assertions in the complaint. It must be signed by the complainant. The third paragraph of the said article stipulates that the BiH CEC determines the procedural instructions for adjudication of complaints submitted to election commissions. The fourth paragraph stipulates that a complaint submitted by an unauthorized person pursuant to Article 6.2 of this Law, or an incomplete or untimely complaint, shall be rejected.

According to the understanding of the Appellate Panel, after receiving the complaint, the BiH CEC was obliged to check the timeliness of the submitted complaint before determining the merits of the assertions in the complaint regarding violation of Article 16.14 paragraph 3 of the BiH Election Law, as prescribed by Article 6.2 paragraph 41 of the BiH Election Law. Subsequently it should be determined if it is timely and submitted by an authorized person in order to adjudicate it by applying Article 6.3 of the Election Law of BiH.

It is apparent from the papers before the Court that the complainant submitted 2 attachments from which it is evident that it is the personal profile of the candidate of the Party

of Democratic Action for Mayor of the City of Bihać – S.M., in the period before the official start of the campaign, as well as that these are sponsored or paid ads. However, both submitted attachments lack dates from which the date of the disputed posts would be visible.

The well-founded complaint indicates that the BiH CEC did not pay enough attention to the timeliness of the submitted complaint, i.e. to the dates of posts in relation to the fact that the complaint was only made on September 21, 2020. Namely, viewing the evidence submitted to the Court, as attachments to the CEC's response, the Panel determined that two posts were recorded on Facebook, but one dating from September 3, 2020 and the other dating from September 14, 2020. However, both submitted posts do not contain the terms "sponsored" or "paid advertisement" in their description. The posts containing the above descriptive terms, on the other hand, do not contain dates of publication, as a result of which it was impossible to determine on the basis of which evidence and submitted screenshots had the Central Election Commission determined that the submitted complaint was timely.

Consequently, failing to give clear and correct reasons on assessment of timeliness of the complaint, in the opinion of the Appellate Panel, the CEC BiH made a decision that is not correct because the procedure did not correctly determine all decisive facts that indicate the timeliness of the complaint. The Appellate Panel notes that the complaint itself states that the violation was committed on September 21, 2020 i.e. on the same day when the complaint was filed.

The BiH Central Election Commission had sweepingly considered this fact, stating in the response submitted to the Court that the complaint was timely for the simple reason that it was submitted on the same day as the violation was committed, without having any evidence of the time of the violation and without submitting such evidence to the Court in order to assess the merits of the appeal. In addition to all the above facts, the appellant also makes the post of September 19, 2020 not disputed; however, the CEC does not submit any material evidence to the Court for this post either, on the basis of which the timeliness of the complaint could be assessed. The appellant points to all the above-mentioned grounds.

Namely, after the Appellate Panel inspected the photocopy of the attachments submitted with the complaint, it concluded that only two attachments had the time and date of publication indicated, on September 3, 2020 at 22:01 hours and September 14, 2020 at 15:39 hours, however, as stated above, none of the posts contained any indication that they were paid advertisements. The other attachments do not indicate the date and time when the violation was committed, so it cannot be concluded in what way did the BiH CEC BiH determine that it was a paid advertisement on the Facebook page of S.M. on September 3, 2020 and September 21, 2020.

Therefore, this Panel determined that the appeal alleging irregularities of the disputed decision in terms of proper assessment of the timeliness of the filed complaint are well-founded.

Therefore, the Appellate Panel assessed the disputed decision as incorrect and illegal, annulled it and returned the case to the BiH CEC for reconsideration by applying the provision of Article 81, paragraphs 1 and 2 in conjunction with Article 37, paragraph 3 of the Law on Administrative Disputes of BiH (Official Gazette of BiH, No. 19/02 to 74/10).

Case 9 - SDA – Party of Democratic Action (A.H)

Pursuant to Article 6.6, paragraph (1), Article 6.7, paragraph (1), point 1) and Article 19.9, paragraph (1), point t) of the Election Law of Bosnia and Herzegovina (Official Gazette of BiH, nos. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37 / 08, 32/10, 18/13, 7/14, 31/16 and 41/20) acting upon complaint of the political entity Social Democrats of Bosnia and Herzegovina in the procedure of determining violation of Article 16.14, paragraph (3) of the Election Law of Bosnia and Herzegovina by the political entity SDA- Party of Democratic Action (code 00090), the Central Election Commission of Bosnia and Herzegovina has at its 65th session, held on October 14, 2020, passed

DECISION

(1) The political entity SDA-Party of Democratic Action (code 00090) is found accountable for A.H., candidate of this political entity for the Municipal Council Lukavac, conducting a paid election campaign on the social network Facebook before the official start of the election campaign, thus imposing

- pecuniary fine in the amount of 1.000 KM (one thousand convertible marks)

(2) The fine referred to in paragraph (1) of this Decision shall be paid within eight days from the day this Decision becomes final to the account of the Ministry of Finance and Treasury of BiH.

Rationale

The Central Election Commission of Bosnia and Herzegovina had on September 29, 2020 received a complaint by post from the political entity Social Democrats of Bosnia and Herzegovina SDBIH, which read that the candidate of SDA-Party of Democratic Action for the Municipal Council Lukavac has led a paid election campaign on the social network Facebook, and hence had the political party acted contrary to the provisions of Article 16.14, paragraph (3) of the Election Law of Bosnia and Herzegovina. A screenshot of the sponsored post was attached to the complaint.

The complaint is admissible, submitted by an authorized person and timely.

Acting upon the complaint the Central Election Commission of BiH has, in accordance with the legal procedure, submitted the complaint to the political entity SDA-Party of Democratic Action by an act number: 05-1-07-5-993/20 of September 30, 2020 for a response, also requesting a separate response to the assertions in the complaint by its candidate Samir S.M. within 24 hours following receipt of the notification.

Within the deadline given, the SDA-Party of Democratic Action and candidate A.H. had on October 1, 2020 electronically submitted responses to the aforementioned complaint by which they rejected the assertions in the complaint, stating that complaint is not timely, that complainant's assertions are unfounded, and that candidate A.H. has on his own initiative and without political entity's consent published an ad on the social network Facebook, which the political entity SDA did not pay. The candidate of political entity A.H. in his response states that at the time the Facebook page was created he was unaware of violating the BiH Election Law by sponsoring candidacy announcement. Furthermore, he assumed all the responsibility, releasing the political entity SDA of any responsibility.

Article 16.14, paragraph (3) of the Election Law of Bosnia and Herzegovina, *inter alia*, sets forth that “no conduct of a paid election campaign shall be allowed by way of electronic and printed media, or any form of paid public advertising, except for the holding of internal gatherings of authorities and statutory bodies of the political entities, within the period between the day when elections are announced and the day of official start of the election campaign.”

Article 1.1a, paragraph (1), point 6) of the Election Law of Bosnia and Herzegovina sets forth that the election campaign means actions and procedures in the period established by this Law within which a political subject informs the voters and the public, as prescribed by the Law, about their programs and candidates for the forthcoming elections.

Article 2, paragraph (1), point a) of Rulebook on media coverage of political entities from the day elections are announced until the Election Day (Official Gazette of BiH, number 29/18) sets forth that the election campaign is the period of 30 days prior the Election Day in which a political entity in a manner established by the law informs the constituents and the public about its program and candidates for the forthcoming elections, and point f) states that political advertising means broadcast of advertisements, public calls, video spots and any other type of political entity's promotion and point g) that public advertising means advertising through media, billboards, posters, Internet, leaflets, bizz boards and any other type of public advertising available to the voters and the public.

By inspecting the complete case file and the submitted screenshot from the social network Facebook, the Central Election Commission of Bosnia and Herzegovina determined that the political entity SDA-Party of Democratic Action is responsible for violating Article 16.14 paragraph (3) of the Election Law of Bosnia and Herzegovina, because A.H., candidate of this political entity, had conducted paid election campaign on the social network Facebook before the official start of the election campaign.

In this particular case, the disputed Facebook post stated that it was sponsored, which is an indisputable proof of paid election campaigning.

Also, having in mind the cited legal provisions as well as the screenshot of mentioned post on the social networks, an indisputable fact arises that in this case the paid election campaign was conducted before the official start of the election campaign where A.H., candidate of the political entity SDA-Party of Democratic Action informed the voters and the public about his candidacy for the Municipal Council Lukavac.

The accountability of the political entity SDA-Party of Democratic Action is based on the fact that A.H. was proposed by this political entity as a candidate and as such was certified to participate in the 2020 Local Elections for the Municipal Council Lukavac.

When determining the amount of the fine, the Central Election Commission of Bosnia and Herzegovina imposed a fine in the minimum amount in terms of Article 19.9, paragraph (1) of the Election Law of Bosnia and Herzegovina because it considers the fine to be appropriate to the offence committed and that the fined imposed will attain the purpose of punishment.

Based on the foregoing, and conscientious and careful assessment of each existing evidence separately, and all evidence together and particularly by assessing the disputed post of A.H. in a manner contrary to the explicit legal prohibition, the Central Election Commission of Bosnia and Herzegovina has based on Article 6.7, paragraph (1), point 1) and Article 19.9, paragraph (1), point t) of the Election Law of Bosnia and Herzegovina decided as in the operative part of the decision.

Case 9 – Decision rendered by the Court of BiH – Party of Democratic Action (A.H.)

In the case of the Court of Bosnia and Herzegovina, number: S1 3 lž 037831 20 LŽ of October 26, 2020 the Court of Bosnia and Herzegovina has rendered a

DECISION

The appeal is upheld, the Decision of the Central Election Commission number 05-1-07-5-993/20 of October 14, 2020 annulled and the case is returned to the BiH Central Election Commission for reconsideration.

Rationale

Political entity Party of Democratic Action-SDA was imposed a pecuniary fine in the amount of 1.000 KM by the decision of the Central Election Commission of Bosnia and Herzegovina, the number and date given in the introduction, based on determined responsibility for A.H., candidate of this political entity for the Municipal Assembly of Lukavac conducting paid election on the social network Facebook before its official start by application of Article 16.4, paragraph 3 and Article 19.9, paragraph 1, point t) of the BiH Election Law.

The appellant timely filed an appeal against this decision for violation of the rules of practice, erroneously and incompletely determined facts and misapplication of substantive law. He considers that the contested decision is illegal because the complaint is untimely as it was submitted after the deadline prescribed by the provision of Article 6.2, paragraph 1 of the BiH Election Law. As this is an election period, in terms of Article 1.1 paragraph 12) of the BiH Election Law, that deadline is 24 hours from the violation committed. Therefore, the BiH CEC should have rejected the submitted complaint as untimely. Furthermore, he points out that when assessing the responsibility of the political party the BiH CEC did not fully determine the facts for the alleged violation of Article 16.4, paragraph 3 of the BiH Election Law. He proposes that the Appellate Division of the Court of BiH fully uphold the appeal, annul the disputed decision, i.e. put it out of force, or uphold the appeal, annul the decision and return the case to the CEC for reconsideration.

The Central Election Commission of Bosnia and Herzegovina submitted to this court a response to the appeal in which it proposed that the appeal be rejected as unfounded.

The appeal is unfounded.

In the present case, the Appellate Panel, having inspected the complaint, determined that it was filed on September 29, 2020 by Municipal Board SDBIH, signed by

M.J., and the reason for submission were observed violations of the Election Law from Chapter 16, Article 16.12, 16.14 and 16.15 committed by A.H., candidate of SDA for the Municipal Council Lukavac from August 21, 2020 to date.

The provisions of Article 6.2 paragraph 1 of the Election Law of BiH prescribe that any voter and any political entity whose right established by this law, is violated, may file a complaint with the election commission not later than within 48 hours, or within 24 hours in the election period after the violation occurred, unless otherwise specified by this Law.

The complaint is submitted on the form prescribed by the BiH CEC and it contains a brief description of the violation and attachments that confirm the assertions in the complaint. It must be signed by the complainant. The third paragraph of the said article stipulates that the BiH CEC determines the procedural instructions for adjudication of complaints submitted to election commissions. The fourth paragraph stipulates that a complaint submitted by an unauthorized person pursuant to Article 6.2 of this Law, or an incomplete or untimely complaint, shall be rejected.

According to the understanding of the Appellate Panel, after receiving the complaint, the BiH CEC was obliged to check the timeliness of the submitted complaint before determining the merits of the assertions in the complaint regarding violation of Article 16.14 paragraph 3 of the BiH Election Law, as prescribed by Article 6.2 paragraph 41 of the BiH Election Law. Subsequently it should be determined if it is timely and submitted by an authorized person in order to adjudicate it by applying Article 6.3 of the Election Law of BiH.

It is apparent from the papers before the Court that the complainant submitted 4 attachments proving that the ad was paid. That name and last name of the candidate and his number of the list were given, and two attachments containing name and last name of the candidate and the bodies for which he runs. Substantially the complaint indicates that the BiH CEC did not pay enough attention to the fact that the breach of the law occurred on August 21, 2020 and that the complaint was submitted on September 29, 2020. Consequently, failing to give clear and correct reasons on assessment of timeliness of the complaint, in the opinion of the Appellate Panel, the CEC BiH made a decision that is not correct because the procedure did not correctly determine all decisive facts that indicate the timeliness of the complaint. The Appellate Panel notes that the complaint itself states that the violation was committed on August 21, 2020 and the words to date are given. The issue of the existence of continuity of the violation by A.H., could be accepted only in the situation that the complainant proves it because it is a decisive fact in assessing the timeliness of the submitted complaint, about which the CEC BiH did not give sufficiently elaborated reasons. The appellant points out the above grounds in the complaint.

Namely, after the Appellate Panel inspected the photocopy of the attachments submitted with the complaint, it concluded that only attachment 2 had the time and date of publication indicated, on August 21, 2020 at 14:24 hours. The other attachments (1,3,4) do not indicate the date and time when the violation was committed, so it cannot be concluded in what way did the BiH CEC BiH determine that it was a paid advertisement on the Facebook page of A.H. as of August 21, 2020 to the day complaint was submitted September 29, 2020.

Therefore, this Panel determined that the appeal alleging irregularities of the disputed decision in terms of proper assessment of the timeliness of the filed complaint are well-founded.

In this particular case, it is an indisputable that A.H, the SDA candidate for the Municipal Council Lukavac, had on August 21, 2020 on Facebook network published content that by inspection of submitted screenshot were marked as “sponsored” or “paid ad”, which was not disputed even by the candidate of the political party. In his response he confirmed assertion of the complainant stating that at the time the Facebook page was created he was unaware of violating the BiH Election Law by sponsoring candidacy announcement, as well as that he assumes all the responsibility, releasing the political entity SDA of any responsibility.

Thus, the Appellate Panel assessed the disputed decision of the BiH CEC no.: 05-1-07-1-998/20 of October 1, 2020 as incorrect and illegal, annulled it and returned the case to the BiH CEC for reconsideration by applying the provision of Article 81, paragraphs 1 and 2 in conjunction with Article 37, paragraph 3 of the Law on Administrative Disputes of BiH (Official Gazette of BiH, No. 19/02 to 74/10).

Case 10 – Alliance of Independent Social Democrats – SNSD – Milorad Dodik (S.R)

Pursuant to Article 6.2, Article 6.7, paragraph (1), point 1) and Article 19.9, paragraph (1), point t) of the Election Law of Bosnia and Herzegovina (Official Gazette of BiH, nos. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37 / 08, 32/10, 18/13, 7/14, 31/16 and 41/20) and Article 114, and in connection with Articles 115 and 116 of the Law on Administrative Procedure (Official Gazette of BiH, nos. 29/02, 12/04, 88/07, 93/09, 41/3 and 53/16) and Article 16.14, paragraph (3) of the Election Law of Bosnia and Herzegovina, acting ex officio, in the case of violation of the Election Law of Bosnia and Herzegovina by a political entity Alliance of Independent Social Democrats – SNSD – Milorad Dodik (code 00515), the Central Election Commission of Bosnia and Herzegovina has at its 72nd session, held on November 03, 2020, passed

DECISION

(1) The political entity Alliance of Independent Social Democrats – SNSD – Milorad Dodik (code 00515) is found accountable for S.R. president of the Main Election Headquarters for the 2020 Local Elections of this political party conducting a paid election campaign on the social network Facebook before the official start of the election campaign, thus imposing

- fine in the amount of 1.000 KM (one thousand convertible marks)

(2) The fine referred to in paragraph (1) of this Decision shall be paid within eight days from the day this Decision becomes final to the account of the Ministry of Finance and Treasury of BiH.

Rationale

The Central Election Commission of Bosnia and Herzegovina has on October 12, 2020 received an information (hereinafter: the submission) from Transparency International Bosnia and Herzegovina by post stating that S.R., candidate of Alliance of Independent Social Democrats had paid sponsored posts in the electronic media via the social network Facebook, and that hence had this political entity acted contrary to the provisions of Article 16.14, paragraph (3) of the Election Law of Bosnia and Herzegovina. Screenshot of sponsored posts was attached to the information.

Having in mind the provision of Article 6.2, paragraph (1) of the Election Law of Bosnia and Herzegovina, the Central Election Commission of Bosnia and Herzegovina had in the procedure of examining the formal statutory requirements of the submission determined that it is admissible, but that it was submitted by an unauthorized person wherefore, within the meaning of Article 6.2, paragraphs (2) and (3) of the Election Law of Bosnia and Herzegovina, the present submission was assessed as an initiative for initiating proceedings and the proceedings were conducted ex officio.

Acting upon the given initiative, the Central Election Commission of BiH has, following its receipt and in accordance with the legal procedure, submitted the initiative to the political entity Alliance of Independent Social Democrats – SNSD- Milorad Dodik by an act number: 05-1-07-5-1131-2/20 of October 13, 2020 for a response within 24 hours following receipt of the notification.

Within the deadline given, the political entity Alliance of Independent Social Democrats – SNSD- Milorad Dodik had on October 16, 2020 electronically submitted responses to the aforementioned initiative stating that the information/complaint submitted by Transparency International Bosnia and Herzegovina was not submitted on legally prescribed form. Furthermore, they point out that the person concerned is not candidate

at the forthcoming 2020 Local Elections, but the president of the Main SNSD Election Headquarters for the 2020 Local Elections. In this regard, they state that when the official website of the S.R.-S.R. is opened it is evident that it is a private page of the person concerned, that it was not opened for the purpose of promoting activities for the upcoming 2020 Local Elections. They also submitted a photo / screenshot from the Facebook page of S.R. and they point out that the Alliance of Independent Social Democrats - SNSD - Milorad Dodik did not pay advertising on any Facebook page or other social network for the upcoming 2020 Local Elections.

Article 16.14, paragraph (3) of the Election Law of Bosnia and Herzegovina, *inter alia*, sets forth that “no conduct of a paid election campaign shall be allowed by way of electronic and printed media, or any form of paid public advertising, except for the holding of internal gatherings of authorities and statutory bodies of the political entities, within the period between the day when elections are announced and the day of official start of the election campaign.”

Article 1.1a, paragraph (1), point 6) of the Election Law of Bosnia and Herzegovina sets forth that the election campaign means actions and procedures in the period established by this Law within which a political subject informs the voters and the public, as prescribed by the Law, about their programs and candidates for the forthcoming elections.

Article 2, paragraph (1), point a) of Rulebook on media coverage of political entities from the day elections are announced until the Election Day (Official Gazette of BiH, number 29/18) sets forth that the election campaign is the period of 30 days prior the Election Day in which a political entity in a manner established by the law informs the constituents and the public about its program and candidates for the forthcoming elections, and point f) states that political advertising means broadcast of advertisements, public calls, video spots and any other type of political entity's promotion and point g) that public advertising means advertising through media, billboards, posters, Internet, leaflets, bizz boards and any other type of public advertising available to the voters and the public.

By inspecting the complete case file and the submitted screenshots from the social network Facebook, the Central Election Commission of Bosnia and Herzegovina determined that the political entity Alliance of Independent Social Democrats - SNSD - Milorad Dodik is responsible for violating Article 16.14 paragraph (3) of the Election Law of Bosnia and Herzegovina, because S.R. president of the Main SNSD Election Headquarters for the 2020 Local Elections had conducted paid election campaign on the social network Facebook before the official start of the election campaign..

In this particular case, the disputed Facebook post stated that it was sponsored, which is indisputable proof of paid election campaigning.

Also, having in mind the cited legal provisions as well as the screenshots of the mentioned posts on the social networks, an indisputable fact arises that in this case the paid election campaign was conducted before the official start of the election campaign where S.R., president of the Main SNSD Election Headquarters for the 2020 Local Elections had paid for preparation and publication on the social network Facebook. Namely, the post on the social network Facebook being paid by a member of a political party does not release the political party from responsibility, especially having in mind that in the specific case S.R. is the president of the Main SNSD Election Headquarters for the 2020 Local Elections and as such actively participates in the operations of this political party, as well as in achieving the goals and tasks set out in the statute.

The accountability of the political entity Alliance of Independent Social Democratic-SNSD-Milorad Dodik is based on the fact that S.R. is the president of the Main SNSD Election Headquarters for the 2020 Local Elections.

When determining the amount of the fine, the Central Election Commission of Bosnia and Herzegovina imposed a fine in the minimum amount in terms of Article 19.9, paragraph (1) of the Election Law of Bosnia and Herzegovina because it considers the fine to be appropriate to the offence committed and that the fine imposed will attain the purpose of punishment.

Based on the foregoing, and conscientious and careful assessment of each existing evidence separately, and all evidence together and particularly by assessing the disputed post of Srđan Rajčević in a manner contrary to the explicit legal prohibition, the Central Election Commission of Bosnia and Herzegovina has based on Article 6.7, paragraph (1), point 1) and Article 19.9, paragraph (1), point t) of the Election Law of Bosnia and Herzegovina decided as in the operative part of the decision.

Case 10 – Decision rendered by the Court of BiH – Alliance of Independent Social Democrats – SNSD – Milorad Dodik (S.R.)

In the case of the Court of Bosnia and Herzegovina, number: S1 3 lž 038692 20 LŽ of November 11, 2020 the Court of Bosnia and Herzegovina has rendered a

DECISION

The appeal of the Alliance of Independent Social Democrats – SNSD – Milorad Dodik is upheld, and the Decision of the Central Election Commission number 065-1-07-5-1123/20 of November 3, 2020 annulled.

Rationale

Political entity Alliance of Independent Social Democrats – SNSD – Milorad Dodik was found responsible by the decision of the Central Election Commission of Bosnia and Herzegovina, the number and date given in the introduction, for S.R. president of the Main SNSD Election Headquarters for the 2020 Local Elections conducting paid election on the social network Facebook before official of election campaign, and was thus imposed a pecuniary fine in the amount of 1.000 KM (one thousand convertible marks).

According to Article 16.14, paragraph (3) of the Election Law of Bosnia and Herzegovina (Official Gazette of BiH, nos.: 23/01 to 32/10) “No conduct of a paid election campaign shall be allowed by way of electronic and printed media, or any form of paid public advertising, except for the holding of internal gatherings of authorities and statutory bodies of the political entities, within the period between the day when elections are announced and the day of official start of the election campaign.”

According to the case file the BiH Central Election Commission has determined that the political party Alliance of Independent Social Democrats - SNSD - Milorad Dodik is responsible for violating Article 16.14 paragraph 3 of the Election Law of Bosnia and Herzegovina (Election Law) because S.Rs, president of the Main Election Headquarters for 2020 Local Elections had conducted paid election campaign on the social network Facebook before the official start of the election campaign because in this particular case, the disputed Facebook post stated that it was sponsored, which is an indisputable proof of the paid election campaign. Furthermore, the name of the political entity Alliance of Independent Social Democrats was next to the picture of S.R., which is why, according to the BiH Central Election Commission, the complainant’s assertions that the “S.R.” Facebook page is not institutionally or financially connected with the Alliance of Independent Social Democrats SDSD - Milorad Dodik are unfounded.

In the opinion of the Appellate Panel of this Court, the Central Election Commission of Bosnia and Herzegovina drew a wrong conclusion on existence on decisive facts and has wrongly applied substantive law when the Alliance of Independent Social Democrats - SDSD - Milorad Dodik was found responsible for violations of Article 16.14 paragraph 3 of the Election Law of Bosnia and Herzegovina and a fine imposed.

In this particular case, the decisive fact is that Mr. S.R. is not a candidate in the 2020 Local Elections and that the announcement on the basis of which the disputed decision of the Central Election Commission was made, was posted on his personal Facebook page, and not the official page of the Alliance of Independent Social Democrat. - SDSD - Milorad Dodik.

Namely, the meaning of the provision of Article 16.14 paragraph 3 of the Election Law of Bosnia and Herzegovina is prohibited conduct of a public election campaign

before the official start of the election campaign to political parties, independent candidates, coalitions and candidates of political parties and coalitions. S.R. is not a candidate in the 2020 Local Elections, so the political entity Alliance of Independent Social Democrats - SDS - Milorad Dodik, could not have violated the provisions of Article 16.14, paragraph 3 of the Election Law of Bosnia and Herzegovina by his invitation to follow a Facebook page, i.e. by promotion of the Facebook page, because it is neither media representation, i.e. advertising of the political entity Alliance of Independent Social Democrats - SDS - Milorad Dodik nor representation of the candidate of that political entity. It is irrelevant that S.R. is the president of the Main SNDS Election Headquarters for the 2020 Local Elections and that the logo of the said party is in the background of his photo.

For the stated reason, the Appellate Panel orders that the disputed decision of the Central Election Commission in Bosnia and Herzegovina is incorrect and illegal and the appeal is founded.

Case 11 – Cantonal Independent List (loc. Županijska neovisna lista)

Pursuant to Article 6.6, paragraph (1), Article 6.7, paragraph (1), point 1) and Article 19.9, paragraph (1), point t) of the Election Law of Bosnia and Herzegovina (Official Gazette of BiH, nos. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37 / 08, 32/10, 18/13, 7/14, 31/16 and 41/20) **acting upon complaint** of the political party HDZ BiH – Croatian Democratic Union of BiH in the procedure of determining violation of Article 16.14, paragraph (3) of the Election Law of Bosnia and Herzegovina by the political entity Cantonal Independent List (code 02322), the Central Election Commission of Bosnia and Herzegovina has at its 65th session, held on October 14, 2020, passed

DECISION

(1) The political entity Cantonal Independent List (code 02322) is found accountable for conducting a paid election campaign on its Facebook profile before the official start of the election campaign, thus imposing

- fine in the amount of 1.000 KM (one thousand convertible marks)

(2) The fine referred to in paragraph (1) of this Decision shall be paid within eight days from the day this Decision becomes final to the account of the Ministry of Finance and Treasury of BiH.

Rationale

The Central Election Commission of Bosnia and Herzegovina had on September 24, 2020 received a complaint via e-mail from the political entity HDZ BiH – Croatian

Democratic Union of BiH – POMAK, which read that the political party Cantonal Independent List has led a paid election campaign on the social network Facebook, and that hence had this political party acted contrary to the provisions of Article 16.14, paragraph (3) of the Election Law of Bosnia and Herzegovina. A screenshot of the sponsored post was attached to the complaint.

The complaint is admissible, submitted by an authorized person and timely.

The Central Election Commission of BiH has in line with Article 6.3, paragraph (2) of the BiH Election Law submitted the complaint to the aforementioned political party by an act number: 05-1-07-5-981/20 of September 28, 2020 for a response within 24 hours following receipt of the notification.

Within the deadline given, the political party Cantonal Independent List had on September 29, 2020 electronically submitted response to the complaint stating that after they had noticed mentioned oversight they warned the person responsible for the Facebook page that it paid political advertising is not allowed in this period, where after the oversight was corrected. Furthermore, the complaint stated that this political party is relatively new, operating on the territory of Canton 10.

Also, the Central Election Commission of Bosnia and Herzegovina had on September 28, 2020 received an e-mail from G.T., stating that he was hired as a graphic designer by the Cantonal Independent List, as well as that he created and maintained their Facebook page, and for the purpose of testing and preparing for the elections he had mistakenly, and not by mistake of the Cantonal Independent List, clicked on “Promote Ads”. He also states that after the mistake was noticed, he was warned by the president of the Cantonal Independent List, and he blocked the budget for the ad. He paid a modest \$ 0.98 (BAM 1.64) for the ad and it was shown dozens of times with a total of 11 engagements before it was blocked.

Article 16.14, paragraph (3) of the Election Law of Bosnia and Herzegovina, *inter alia*, sets forth that “no conduct of a paid election campaign shall be allowed by way of electronic and printed media, or any form of paid public advertising, except for the holding of internal gatherings of authorities and statutory bodies of the political entities, within the period between the day when elections are announced and the day of official start of the election campaign.”

Article 1.1a, paragraph (1), point 6) of the Election Law of Bosnia and Herzegovina sets forth that the election campaign means actions and procedures in the period established by this Law within which a political subject informs the voters and the public, as prescribed by the Law, about their programs and candidates for the forthcoming elections.

Article 2, paragraph (1), point a) of Rulebook on media coverage of political entities from the day elections are announced until the Election Day (Official Gazette of BiH, number 29/18) sets forth that the election campaign is the period of 30 days prior the Election Day in which a political entity in a manner established by the law informs the constituents and the public about its program and candidates for the forthcoming elections, and point f) states that political advertising means broadcast of advertisements, public calls, video spots and any other type of political entity's promotion and point g) that public advertising means advertising through media, billboards, posters, Internet, leaflets, bizz boards and any other type of public advertising available to the voters and the public.

By inspecting the complete case file and the submitted screenshot from the social network Facebook, the Central Election Commission of Bosnia and Herzegovina determined that the political party Cantonal Independent List is responsible for violating Article 16.14 paragraph (3) of the Election Law of Bosnia and Herzegovina, because it had conducted paid election campaign on its Facebook profile before the official start of the election campaign.

In this particular case, the disputed Facebook post stated that it was sponsored, which is indisputable proof of paid election campaigning.

Also, having in mind the cited legal provisions as well as the fact that the political party presented its candidates' lists in the post, an indisputable fact arises that in this case the paid election campaign was conducted before the official start of the election campaign where political party Cantonal Independent List had informed the voters and the public about its program and candidates for the upcoming elections.

The responsibility of this political party is not diminished by the fact that "after it was noticed that the post was sponsored, they warned the person responsible for the Facebook page", as well as the fact that "the graphic designer clicked to promote the ad by mistake" since it is a party that is certified to participate in the 2020 Local Elections and as a certified political party should be familiar with the rules of the electoral process.

When determining the amount of the fine, the Central Election Commission of Bosnia and Herzegovina has as a mitigating circumstance taken into account confession of this political entity that it did paid advertising for what reason a minimum fine was imposed in terms of Article 19.9, paragraph (1) of the Election Law of Bosnia and Herzegovina.

Therefore the BiH Central Election Commission considers the fine to be appropriate to the offence committed and that the fined imposed will attain the purpose of punishment.

Based on the foregoing, and conscientious and careful assessment of each existing evidence separately, and all evidence together and particularly by assessing the disputed post of political party Cantonal Independent List in a manner contrary to the explicit legal prohibition, the Central Election Commission of Bosnia and Herzegovina has based on Article 6.7, paragraph (1), point 1) and Article 19.9, paragraph (1), point t) of the Election Law of Bosnia and Herzegovina decided as in the operative part of the decision.

Case 11 – Cantonal Independent List – No appeal was filed to the BiH CEC's decision

Case 12 – Democratic Front – Civil Alliance (A.P)

Pursuant to Article 6.2, Article 6.7, paragraph (1), point 1) and Article 19.9, paragraph (1), point t) of the Election Law of Bosnia and Herzegovina (Official Gazette of BiH, nos. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37 / 08, 32/10, 18/13, 7/14, 31/16 and 41/20) and Article 114, and in connection with Articles 115 and 116 of the Law on Administrative Procedure (Official Gazette of BiH, nos. 29/02, 12/04, 88/07, 93/09, 41/3 and 53/16) and Article 7.3, paragraph (1), point 7) of the Election Law of Bosnia and Herzegovina, acting ex officio, in the case of violation of the Election Law of Bosnia and Herzegovina by a political entity Democratic Front – Civil Alliance (code 02930), the Central Election Commission of Bosnia and Herzegovina has at its 58th session, held on November 29, 2020, passed

DECISION

1) The political entity Democratic Front – Civil Alliance (code 02930) is found accountable for A.P., candidate of this political entity, had on August 23, 2020 on her Facebook profile used language which could provoke or incite someone to violence or spread hatred, thus imposing

- pecuniary fine in the amount of 1.500 KM (one thousand five hundred convertible marks) to be paid by members of this coalition Democratic Front and Civil Alliance, in the amount of 750 KM each.

(2) It is determined that A.P., candidate of political entity Democratic Front – Civil Alliance for the mayor of Novo Sarajevo Municipality had on August 23, 2020 on her Facebook profile used language which could provoke or incite someone to violence or spread hatred, thus imposing:

- pecuniary fine in the amount of 3.000 KM (three thousand convertible marks)

(3) The fine referred to in paragraphs (1) and (2) of this Decision shall be paid within eight days from the day this Decision becomes final to the account of the Ministry of Finance and Treasury of BiH.

Rationale

The Central Election Commission of Bosnia and Herzegovina had on August 27, 2020 received a complaint (hereinafter: the submission) from the Organizing Committee of the BiH Pride Parade via e-mail, stating that the A.P. published a status on her Facebook profile called the Pride Parade a parade of shame, which was reported by certain media.

Furthermore, the submission states that the A.P. finally and definitely opposes the acceptance of LGBTIQ persons, and that she pointed out that LGBTIQ persons cannot be classified into a normal pattern of behavior, and that they find the candidate's rhetoric unacceptable and that such a publicly presented view contributes to spreading of hate speech and intolerance towards LGBTIQ persons.

Having in mind the provision of Article 6.2, paragraph (1) of the Election Law of Bosnia and Herzegovina, the Central Election Commission of Bosnia and Herzegovina had in the procedure of examining the formal statutory requirements of the submission determined that it is admissible, but that it was submitted by an unauthorized person wherefore, within the meaning of Article 6.2, paragraphs (2) and (3) of the Election Law of Bosnia and Herzegovina, the present submission was assessed as an initiative for initiating proceedings and the proceedings were conducted ex officio.

Acting upon the given initiative, the Central Election Commission of BiH has, following its receipt and in accordance with the legal procedure, submitted the initiative to the political entity by an act number: 05-1-07-5-772-2/20 of September 4, 2020 for a response, also requesting a separate response to the assertions in the complaint by its candidate A.P., within 24 hours following receipt of the notification.

Within the deadline given, the political entity had on September 8, 2020, electronically submitted response to the aforementioned initiative stating that the action has no contact points with the policies of this political entity, amongst which the fight for right of all marginalized groups, LGBTIQ community included, takes a significant place. Furthermore, the political entity apologized for the reckless and unprovoked speech of their member.

Considering that the response of A.P., candidate of the political entity Democratic Front-Civil Alliance, was not submitted within the given deadline, the Central Election Commission of BiH, had by act number: 05-1-07-5-772-4 /20 of September 14, 202 again requested a response from the candidate A.P within 24 hours following receipt of the notification.

On September 15, 2020 the candidate A.P. submitted the response stating that the action has no contact points with the policies of the political entity whose candidate she

is, amongst which the fight for right of all marginalized groups, LGBTIQ community included, takes a significant place. Furthermore, she stated that she in no way finds endangerment of the rights of LGBTIQ population justified.

Article 7.3, paragraph (1), point 7 of the BiH Election Law sets forth that “candidates and supporters of political parties, lists of independent candidates, list of members of national minorities and coalitions, as well as independent candidates and their supporters, and election administration officials or those otherwise hired in the election administration are not allowed to:

- use language which could provoke or incite someone to violence or spread hatred, or to publish or use pictures, symbols, audio and video recordings, SMS messages, Internet communications or any other materials that could have such effect.”

By inspecting the complete case file, status from the Facebook profile and an article from the daily newspaper “Oslobodjenje” from August 24, 2020 the Central Election Commission of Bosnia and Herzegovina found that the political entity Democratic Front-Civil Alliance and its candidate A.P. were responsible for violating Article 7.3 paragraph (1), point 7) of the Election Law of Bosnia and Herzegovina, because the Central Election Commission of Bosnia and Herzegovina assessed A.P. statement on her Facebook profile as language which could provoke or incite someone to violence or spread hatred towards LGBTIQ persons.

The responsibility of this political entity and its candidate is based on the fact that A.P. is a candidate for the Mayor of Novo Sarajevo Municipality, which carries special weight given that as a candidate she is a public figure whose words are transmitted through the media, and as such become available to the general public.

Namely, at time the political entity Democratic Front-Civil Alliance submitted the application for certification, the authorized representative of this political entity, as well as its candidate A.P., had in accordance with Article 1.13 of the Election Law of Bosnia and Herzegovina signed statements that they will fully comply with the General Framework Agreement for Peace in Bosnia and Herzegovina.

Annex 6 of the General Framework Agreement for Peace in Bosnia and Herzegovina - Agreement on Human Rights guarantees fundamental rights and freedoms, including the enjoyment of rights and freedoms without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, which indicates that the candidate A.P. with her action had violated the basic rights and freedoms, i.e. orientation of the LGBTIQ population.

Although the Election Law of Bosnia and Herzegovina does not contain a definition

of hate speech, in deciding this type of legal matter, the Central Election Commission of Bosnia and Herzegovina also considered the Recommendations of the Committee of Ministers of the Council of Europe on Hate Speech which underlines that the hate speech entails all types of hate speech expressions that disseminate or incite, promote or justify racial, sexual, religious, etc....., as well as other forms of hate based on intolerance, including intolerance expressed as an aggressive threat and hostility.

According to her statement in the post on her Facebook profile, the mentioned candidate unequivocally intended to spread hate speech with her messages, and such expression can cause a negative consequence for certain group, in this case members of the LGBTIQ population, and create contempt and hostility towards them may cause a feeling of fear. Furthermore, public expression of non-acceptance of that group in our society can also cause violence against the individual and the group.

With her statement posted on her Facebook profile, the candidate unequivocally intended to spread hate speech through her messages, and such expression can cause a negative consequence for a certain group, in this case members of the LGBTIQ population, and create contempt and hostility towards them, which can cause a feeling of fear amongst the LGBTIQ population. Furthermore, public expression of non-acceptance of that group in our society can also cause violence against the individual and the group.

The post on A.P's Facebook profile expressed intolerance and it is prohibited behavior, because it can, due to the expressed hostility, ultimately encourage violence against the LGBTIQ population. In addition to having the character of belittling and insult, hate speech intimidates an individual or a group.

Therefore, such behavior cannot be tolerated in the election campaign, but also outside the official period of 30 days of the election campaign. Namely, Bosnia and Herzegovina is a suitable ground for the spread of hatred, especially on religious, national and even gender grounds. In this particular case, the rules were violated via Internet communication, and given that Facebook is an Internet network that is accessible to a huge number of people and has a large number of users, its use cannot be limited and assessed exclusively in 30 days of the election campaign. Such a narrow interpretation of the law would allow candidates to freely use hate speech until the official start of the campaign period (30 days until the Election Day) and only when the election campaign officially begins to take care of their speech and public appearance so as not to be sanctioned. The Central Election Commission of Bosnia and Herzegovina has the responsibility to prevent these phenomena and not to allow such speech to all certified political entities and their candidates

Assessing that the A.P's written speech has the character of an intense negative emotion of frightening and disturbing expression about the non-acceptance of the LG-

BTIQ population that she calls “shame parade”, and the fact that this speech publicly, through social networks provokes hatred towards individuals or groups aimed at propagating intolerance towards others, the Election Commission of Bosnia and Herzegovina could not help but to assess that this statement both encourages and justifies an attack on sexual orientation and discriminates against members of that group, which is inadmissible in today’s society.

When determining the amount of the fine, the Central Election Commission of Bosnia and Herzegovina has taken into account severity of the breach in relation to rights and freedoms guaranteed under the General Framework Agreement for Peace in Bosnia and Herzegovina, to others and different, and has taken into account response and apology made by the political entity Democratic Front-Civil Alliance as a mitigating circumstance, and finds that the fine imposed is appropriate to the offence committed.

Based on the foregoing, and conscientious and careful assessment of each existing evidence separately, and all evidence together and particularly by assessing the disputed post of A.P. in the given context, in a manner contrary to the explicit legal prohibition, the Central Election Commission of Bosnia and Herzegovina has based on Article 6.7, paragraph (1), point 1) and Article 19.9, paragraph (1), point j) and Article 19.9, paragraph (4) of the Election Law of Bosnia and Herzegovina decided as in the operative part of the decision.

Case 12 – Decision rendered by the Court of BiH – Democratic Front – Civil Alliance (A.P)

In the case of the Court of Bosnia and Herzegovina, number: S1 3 LŽ 037139 20 LŽ of October 15, 2020 the Court of Bosnia and Herzegovina has rendered a

DECISION

The appeal is upheld, the Decision of the Central Election Commission number 05-1-07-5-986/20 of September 29, 2020 annulled.

Rationale

It was determined by the Decision of the Central Election Commission of Bosnia and Herzegovina, number and date given in the introduction, that the political entity Democratic Front – Civil Alliance (code 02930) is responsible for A.P., candidate of this political entity, using on August 23, 2020 on her Facebook profile language which could provoke or incite someone to violence or spread hatred, imposing pecuniary fine in the amount of 1,500 KM to be paid by members of this coalition Democratic Front and Civil Alliance, in the amount of 750 KM each. Second paragraph determined that A.P., candi-

date of political entity Democratic Front – Civil Alliance for the mayor of Novo Sarajevo Municipality had on August 23, 2020 on her Facebook profile used language which could provoke or incite someone to violence or spread hatred, imposing fine in the amount of 3.000 KM in line with Article 6.7, paragraph 1, point i and Article 19.9, paragraph 1, point j and paragraph 4.

The appeal is founded

Article 7.3, paragraph (1), point 7 of the BiH Election Law sets forth that candidates and supporters of political parties, lists of independent candidates, list of members of national minorities and coalitions, as well as independent candidates and their supporters, and election administration officials or those otherwise hired in the election administration are not allowed to use language which could provoke or incite someone to violence or spread hatred, or to publish or use pictures, symbols, audio and video recordings, SMS messages, Internet communications or any other materials that could have such effect.

The appellant rightly points out in the appeal that the CEC BiH incorrectly applied the provision of Article 7.3, paragraph 1, point 7 of the Election Law of BiH, ignoring that the provision is part of Chapter 7 of the Election Law which regulates the rules of conduct in the election campaign.

The election campaign starts on October 16, 2020 and lasts 30 days, and the disputed Facebook status of A.P. was published on August 23, 2020, and an article in the daily newspapers “Oslobodjenje” August 28, 2020. This fact alone is sufficient to establish the illegality of the disputed decision in that part as well, because the provision that could not be applied was applied, having in mind, as it has already been stated, and that it is only applied during the election campaign.

The CEC BiH erroneously believes that it could apply said provision to the rules of conduct made outside the election campaign period, because the norm is determined by the content, it has grammatical and logical meaning, but it is also determined by the goal of the law or other act and has a nomotechnical definition, which means that it determines both the place and the chapter in which it is located. Therefore, the authorization of the CEC BiH from Article 6.7 of the BiH Election Law in the specific case of the Election Law of BiH can be observed only in relation to the period of the election campaign, i.e. violation of the rules of conduct in the election campaign.

This means that the content of the post on the complainant’s Facebook status could not be assessed in terms of Article 7.3, paragraph (1), point 7) of the BiH Election Law. Namely, taking into account the period of its publication, the Appellate Panel concludes that the appellant acted as a citizen on her Facebook profile, i.e. the content of the post

was made on her personal behalf and in a statement given to the BiH CEC she distanced herself from the collective position of the political entity whose candidate she is. Time of status publication, August 23, 2020, points to the conclusion that it is still not politically marked, given that according to the Instruction on deadlines and order of electoral activities for the 2020 Local Elections, Article 2, point 2-Submission of candidates' lists, it is prescribed that the final verification of candidate lists is done by September 11, 2020, and are published by October 1, 2020. From the moment it is announced that someone is on the candidates' list, that person has a higher degree of responsibility and is known to the public.

The decisive fact for accepting the appeal is that the BiH CEC, by its decision, examined the stated violation from the aspect of prohibited speech (hate speech) in the period when the election campaign did not start. Therefore, according to the Appellate Panel, there can be neither violation of the election campaign in this case, nor election responsibility, because that period, as prescribed by the Election Law, did not begin at the time post was published.

This fact alone, in addition to all the above reasons, is sufficient to establish the illegality of the contested decision, because provisions were applied that could not have been applied.

However, it should be noted that this does not mean that this court found that the BiH CEC incorrectly established the facts related to the prohibited speech, which are contained in the disputed Facebook status of the appellant. This only means that the BiH CEC could not determine the existence of this violation outside the election campaign period by applying the provisions governing the rules of conduct during the election campaign.

However, this court, deciding on appeals, is bound by the limits set by the CEC itself in its decision, so as to examine the existence of the violation with which the appellant is charged and proper sentencing.

The responsibility of the political entity Democratic Front-Civil Alliance is exclusively based on the responsibility of its candidate, the Appellate Panel of the Court of BiH in the procedure determined that as there is no responsibility of the candidate, thus making the decision in the first paragraph in which the political entity was found responsible and imposed a fine illegal.

For all the above reasons, this Panel did not consider the other grounds of appeal, finding that they did not influence a different decision in this legal matter.

9. CONCLUSION

- Based on the above discussion and presented court cases, one may conclude beyond any doubt that the matter of the used of social media in electoral process in Bosnia and Herzegovina remains to be an unexplored area. Therefore, it is necessary to continue analysing the legal environment, cases and case law, both with regard of the actions of political entities, and the procedures initiated by the BiH Central Election Commission and Appellate Division of the Court of BiH.

Also, conclusion can be made that legal framework for actions of political entities, on one hand, and actions of the BiH Central Commission on the other hand, remains to be somewhat vague and insufficient, and does not address or respond to the new challenges posed by online political i.e. digital campaign which is ran on internet through a plethora of social platforms and other forms of modern digital political communication.

This is why there needs to be a comprehensive discussion in BiH society about the role of political entities on social networks. These discussions and necessary legal and political analyses should result in drafting new and amending the existing regulations in order to complete the legal framework governing the actions of political entities, election management bodies and judicial institutions with regard to actions of political entities on social networks and in particular in the context of digital election campaigning.

- Also, the information presented indicate the need for enacting the new Law on Political Parties in Bosnia and Herzegovina, which should comprise the rules that must guarantee and increase the controllability of political campaigns, prevent deceit or fraud, and harshly sanction release of fake news and ensure that it can be established what are the sources of paid political advertising on social network.

- Political advertising and digital micro-targeting also must receive special attention from society, especially in the context of embarrassing the values of European election legacy i.e. ensuring free and fair elections.

New digital technologies and use of social networks by political stakeholders represents a new challenge for democracy in general, and more so for the environment in Bosnia and Herzegovina, because it changes the way political parties communicate with the voters, and the way political campaigns are ran. It also heavily influences the electoral will of voters and their behaviours in elections. On the other hand, election management bodies stress the need for more precise and comprehensive regulations in this area.

- The European Union is discussing and preparing the Digital Service Act Package and European Democracy Action Plan which, among other things, aim to govern the area of online political advertising. Bosnia and Herzegovina must not exhibit tardiness in this respect. The relevant state bodies of Bosnia and Herzegovina need to engage and

actively monitor the process of adoption of the package of these laws and react promptly by enacting local regulations harmonised with the solutions adopted within the European Union. In this regard it is essential to achieve an interoperability of databases and exchange of ideas, and that relevant institutions of Bosnia and Herzegovina take uniform positions.

- Special attention should be given to suppressing misinformation and fake news on online platforms. In this context it is needed to raise awareness n detrimental effect of misinforming the public and using fake news that, in some cases, can have terrible ramifications.

Having in mind the EU Code of Practice on Disinformation, it is preferable to adopt a similar act in Bosnia and Herzegovina as well. One of the measures in such a Code could be commitment to the highest level of transparency in political advertising and communication. In BiH, such a document could be titled the ‘Code of conduct on Social networks in Election Campaign Period’.

- Special attention in BiH should be given to data protection on social networks (online). At the level of European Union - the General Data Protection Regulation – GDPR – and local Personal Data Protection Law („Official Gazette of BiH, no: 49/06, 76/11 i 89/11) are the foundation for improving the solutions in the area of digital election campaigning. The major progress should be achieved in consistent application of individual consent for collection and processing of personal data, imposing the limits for political entities in terms of digital micro-targeting.

- In the end, discussion above and examples from the practice of BiH Central Election Commission and Appellate Division of the Court of BiH require urgent legal definition of the ‘the hate speech’ in election legislation of BiH. No form of ‘hate speech’ is to be tolerated, regardless if it is launched offline or online. In the context of this study, an insulting, violent or menacing speech or online post expressing prejudice or hate towards the individuals or a group can be perceived as a physical, psychological or status threat, which is based on religion, sexual orientation, origin, social status, education, position in society or residence or some other characteristic gender, is not allowed in democratic society and cannot be masked under the term ‘freedom of expression’.

Statuses and posts on the network (online) that use ‘hate speech’ are, as such, meant to humiliate and abuse another person. Also, using crude and derogatory language based on someone’s actual or alleged affiliation to a certain social group, meaning if the person is attacked on the basis of characteristics such as race, ethnicity, religion, nationality, gender, disability, sexual orientation or gender identity, requires a zero tolerance from election management bodies and application of decisive measures against those how use ‘hate speech’ in general, and especially in electoral process.

10. GUIDELINES FOR ELECTORAL STAKEHOLDERS

1. A campaign on your principles, ideals, program and candidates can be conducted every day, but the BiH Election Law does not allow for conduct of a paid election campaign before the official start of the election campaign. Therefore, it is necessary to refrain from paid campaigns both through social networks and through all other forms of paid advertising.
2. Maintaining and refreshing the official website of a political entity in the 21st century is an elemental requirement and *conditio sine qua non* of modern political communication between a political entity and its electorate. Therefore, pay maximum attention to the development, maintenance and updating of your website.
3. Electronic mail is the basis of modern communication and transmission of official information, delivery and receipt of official documents, press releases, giving binding instructions to party branches, membership, supporters and sympathisers. Therefore, be sure to form your mailing list and to communicate from the official e-mail address with your membership, party branch managers, caucuses of parliamentary and municipal/city assembly/council members, organizational forms within the party and other key decision makers in the party. In doing so, structure the official mailing addresses so that they are simply named and directed toward receiving only those mails that are meant to be sent to that address.
4. Regularly check for spam or junk mail, and turn on the latest antivirus programs to protect against viruses and spam mail.
5. The selection of social networks through which you want to reach your voters, sympathisers, sponsors and donors is diverse. The moment you choose channels of communication with your potential electorate through verified networks, be consistent and constantly refresh that channel. It is not necessary to have an account on all networks; it is enough to be on the ones that lead you to your target group.
6. Before making strategic decisions about important program goals and decisions, use the possibilities of public opinion polls through web surveys. With all the limitations and possible mistakes, it will still allow you to get feedback from the population you are addressing. It is very important that the survey questionnaire is worded according to scientific methodological requirements.

The easiest and fastest way to create your own survey is to use Google tools, e.g. docs.google.com, workspace.google, etc. Unlike traditional surveys, online surveys significantly shorten the time required to identify the target group of respondents, collection of responses and their statistical analysis. Response rate is relatively high, and random sampling can be selected in a quality manner so that each member of population has equal chance to be selected. They are easy and quick to compile, easily accessible and allow much-needed anonymity of respondents.

How to structure a simple online survey?

When preparing an online survey, you can use several types of questions. For example:

A= One of the answers offered

(Offer- one question and 4-5 answers as an option “none of the above”)

B=Multiple choice

(The respondent can choose more than one option)

C= YES/NO questions

(Very useful type of questions and answers)

D=Free text

(Use this when you want the respondent to type free text in the answer field. Limit the number of letters/characters that can be entered, for example to 100 characters.)

E=Answer by numbering

(Use numeric input when you want an answer expressed by a number. You can use two variants, an integer or a number with a decimal point. For example: What should be the amount of VAT in BiH?)

F= Scaling. This is the type of question that can help you evaluate some of the statements or attitudes. After the question is asked, it is necessary to define some statements and place them in rows, and then give grades in columns.

For example:

What methods and techniques of running our election campaign do you like?

	Very	Moderately	Not at all
• Billboards	O	O	O
• Posters	O	O	O
• TV spot	O	O	O
• Radio jingle	O	O	O
• Door to door	O	O	O
• Street stand	O	O	O
• Distribution of leaflets, flags, badges, T-shirts in the streets and at the malls	O	O	O
• Video recordings on Facebook and News portals	O	O	O
• E-mail through mailing list	O	O	O
• Direct mail	O	O	O
• Panel discussions	O	O	O
• Coffee with candidate	O	O	O

• Our candidates strolling the main city streets	O	O	O
• Facebook fan page	O	O	O
• Use of social networks	O	O	O

G Ranking. With this technique the voters have to prioritise some options on their own. Ranking options must be defined by you, and software should allow you to move options and adjust them according to the stated intention of the respondents.

For example:

Prioritise:

	Adoption of new BiH Constitution
	Reduction of VAT rate
	Prohibition to build mini hydropower plants
	Adoption of the Law on same-sex marriages
	Prohibition of financing of the parties from budget, etc.

H Multiple open answers.

(Questions like these are useful when you want respondents to express their views on multiple questions in a free, narrative form.)

For examples: Please answer the following questions:

1. What is your opinion about our party program?	
2. What do you think about our party leader?	
3. What do you resent most about our party?	
4. How do you see our party in the future?	

These are just examples to illustrate. Remember that social networks offer you a wide range of opportunities to survey your target groups. The final design of the survey will depend on the goals you want to achieve. Sometimes your goal will be to get answers to only 2-3 questions in a short period of time, and sometimes your intention will be to get answers to more direct questions about the party's program, candidates and policies. Be sure to keep the questions short and concise. It is very important that you avoid *bias* when asking questions, i.e. leading the respondents to an answer that suits your political affiliation. Also, take into account the sample size. In online surveys, it is possible for one person to fill out multiple questionnaires which can distort the real picture of the attitudes of the population you are researching.

7. On the platforms you use, on your official website and in your public political discourse, condemn any form of hate speech. Stay away from those who use hate speech on social media.
8. Protect the personal information of your members and other social network

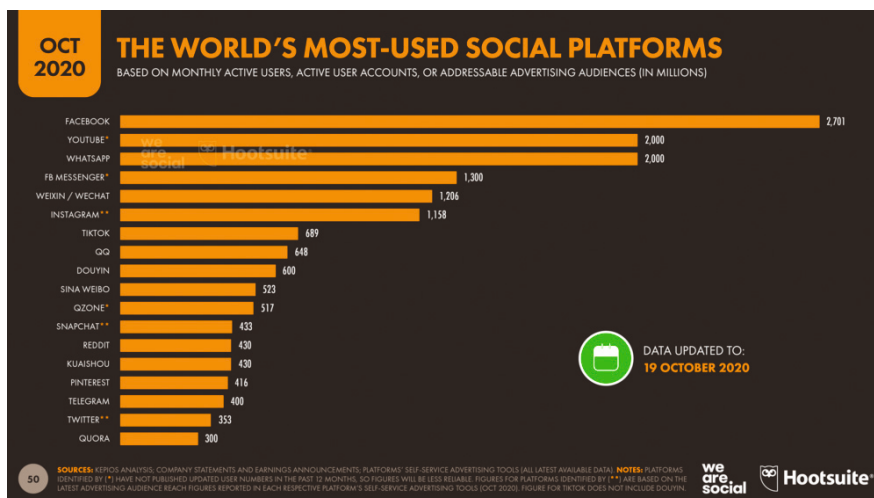
users. If you process the data of your member or sympathiser, you require personal consent to process the data. Warn him/her that using his/her data without explicit consent is illegal.

9. Pay due attention to the function of your website. Remember that this is your communication channel with your membership and supporters, but also your window to the world. Your site will also be visited by those who are your political opponents. One of the important levers of your activity on the site is interactivity, which means that you should provide a forum for discussion, blog or give the option for commenting your policies.
10. Political parties and independent candidates should ensure that media have unhindered access to official sources of information about the candidates for public functions and to not face inadequate barriers for sharing of such information and idea.
11. Political entities have special obligation to undertake fast and efficient measures to prevent, protect, process and sanction attacks, threats, intimidations, and harassing online and offline, of journalists and other media professionals including their property and families during the election process especially where state actors are involved or may be involved. This measure is especially needed when it comes to female journalists and members of marginalised groups.
12. Political parties and candidates need to be transparent including the media, regarding their income and expenditures in electoral process.

ANNEXES

11. ANNEXES

Annex 1 – Overview of the most popular social networks in the world⁴⁹



This annex indicates that Facebook social platform had the largest number of users in October 2020, followed by Youtube and Whatsapp.

Annex 2 – Social networks: 5 ways to use it in a smart way⁵⁰

The way we communicate today is different from how we used to do it. Normally, the communication differs from the way our elder family members or acquaintances communicated. We live in the time of the 4th industrial revolution when internet and networks we connect to play a very important role in development, both of an individual and a society in general. The new jobs are created that require new expertise, we use the words that did not exist 27 years ago, and we can't do things without the internet. To summarise, everything is online and there is already a saying: *if you are not online, it's like you don't exist*.

Social networks are the fastest growing industry in the world

Everybody uses social networks on their mobile phones today and can probably name at least two networks. We use them to connect with other people every day.

⁴⁹ <https://datareportal.com/social-media-users>, visited, downloaded and adapted, Nov 24 2020 at 17:11 h

⁵⁰ https://ec.europa.eu/croatia/education/social-media-5-ways-how-to-use-it-properly_hr, visited, downloaded and adapted September 21, 2020 at 16:00

Facebook

The biggest social network in the world with 2.2 billion active users in total. This medium supports various content formats out of which we most commonly use photos, video content and links. Private Facebook profiles are intended for physical persons whereas Facebook web pages are meant for legal (business) entities, products and services, celebrities etc. Facebook groups connect users around the same topic in the closed communication or communication open to public.

Instagram

One of the largest social networks in the world, which is based on visual experience, and its basic content formats are photos and videos. You can have Instagram profile, which is intended for physical persons and can be locked and unlocked, and Instagram business account which is intended for business users, media, celebrities, etc.

Instagram's specific feature is *Instagram Story*, which enables content sharing – the content is deleted after 24 hours, but you can save it if you want. The *hashtags* are important element of content sharing on Instagram as they connect the content into a sort of an archive 'tagged' by the same hashtag. The hashtag on social networks represents the word which is preceded by # mark hence representing a certain term which can be searched or browsed. By browsing a certain hashtag we can see an entire published content featuring the said hashtag, for example #DigitalniSvijet.

Twitter

Although it has more than 255 million of active users globally, Twitter is the least used social media platform in BiH. The Tweet length is limited to 280 characters with spaces, and you can accompany text with photos, links, videos and gifs...However, it quite differs from other social media platforms. It is characterised by rapid information exchange and it is not uncommon for the content you post to be 'lost' and 'swept away' by other content in the 'feed' (space or area on social media platforms which features posts of other users).

There are also **LinkedIn, YouTube, Pinterest, Snapchat, Tumblr, TikTok...** In addition, there are messaging apps: **Messenger, WhatsApp, Viber, Skype, Telegram...**

Netiquette – online etiquette or online rules of conduct

Being online and able to voice your comment wherever and whenever you want – does not mean that you must and can tell just anything.

As in real life, you should adhere to some rules of conduct. E.g. law is one rule; etiquette is another, culture, ethics etc. However, there are rules of conduct in virtual, online world, internet ethics– **Netiquette**.

According to the Netiquette, one should consider the following:

- Do not use uppercase letters unless you are very angry, as uppercase looks like you are shouting
- Do not use profanities, do not insult other people, lie, threat or be violent
- Avoid engaging in gossiping and discussions that aim to gossip someone, but rather, try to make someone's day by posting an interesting content
- Write one large message rather than writing several smaller messages that then keep coming every two seconds
- Do not post online things you would not share with/show to all people in the world
- When you want to comment actual, trending things you saw or read, first check whether you know all the facts and read an entire news piece or watch the video until the end
- Do not post online things you would never tell someone in person
- Respect the privacy of other people, do not post personal data (yours and especially those of other persons)
- When you post content including other people, ask yourself would you like if someone posted something that includes you, and first ask permission
- Do not copy or download the content without permission and reference to the author, because there is a Law on Copyright and Related Rights which protects the copyrights.

In addition to these basic rules of conduct, you should pay attention that the photos you post are not blurred or that your hands are not shaky while you are taking a video.

Five ways of using the social networks smartly

What is the reason to use social networks actively in the first place? There are five reasons for it.

1. Build connections

The foundation of existence of all social networks is, as their name suggests, connecting. We are all on social networks. Different people work at different places. Meet people, expand your connections, communicate in a polite manner and engage in experience sharing. You never know when any of them may help you with the next employment or career building.

2. Transfer and share knowledge

The social media platforms give you an opportunity to talk about what you do and to show it. Connect with the groups of people that work in the niches of your interest. Share your knowledge with them, post the content and showcase your expertise in specific areas, thus profiling yourself as professional.

3. Educate yourself

You can shape all the places you regularly visit via your social media the way you like. Instead of an endless, exhausting stream of information, you can opt to follow specific web pages or profiles that you find inspirational, amusing, where you can learn something new, or inform yourself about the topics you are interested in.

4. Explore

Social networks are an excellent place for exploring. They may not be like Google, but social networks are the place where you can find a lot of answers to different questions especially if you browse the hashtags on Instagram.

5. Keep in touch

The social networks make it much easier to reconnect with old friends or school-mates. You maintain relations with some people solely online, with other people you have to arrange seeing them offline, you see some people often, you fall in love with some people, in other cases you just like their statuses. It is all ok, as long as you adhere to several above rules.

Annex 3 – Framework Election Code of Ethics for Election Stakeholders Participating in 2020 Local Elections

Political entities who, pursuant to the BiH Election Law, are certified for participation in 2020 Local Elections, on their own free will, confirmed by the signatures of their authorised representatives, endorsed and signed, in the City/Municipality XY, on the day XY 2020

Election Code of Ethics ⁵¹

of political entities participating in 2020 Local Elections

City/Municipality XY

For the purpose of promoting free and fair 2020 local elections, political entities certified for participation in 2020 Local Elections, have agreed, in the City/Municipality, to adhere to the principles of: legality; democracy; accountability; integrity and transparency; freedom of exercising election rights; mutual respect and political dialogue culture.

⁵¹ According to the OSCE Mission to BiH's statement dated October 15 2020, this Code is signed by political entities (see <https://www.osce.org/bs/mission-to-bosnia-and-herzegovina/467406>), and the statement dated November 18, 2020 says that this Code was signed by political entities in the City of Mostar (see <https://www.osce.org/bs/mission-to-bosnia-and-herzegovina/470856>)

In line with the said principles, political entities especially commit themselves to the following:

During an election campaign

1. Compliance with all the regulations and rules governing electoral process in BiH.
2. Respecting the voters' right to vote freely in line with their political beliefs, and refraining from the use of any pressure or activity that may influence the free voting.
3. Respecting the right of other political entities to freely present their programmes and ideas. In that sense, political entities, in particular, undertake commitment not to remove or destroy the promotional material of other participants in election campaign.
4. Not to insult or demean anyone based on their race, gender, religious affiliation, ethnicity, political affiliations and other characteristics.
5. Not to use 'hate speech'. The 'hate speech' within the meaning of this Code represents all forms of expression that spread, incite, encourage or justify racial hatred, xenophobia, anti-Semitism, or other forms of hate based on intolerance.
6. Not to misuse public function and public funds and resources.
7. Not to hinder free work of media and journalists and not to abuse media especially social media and platforms, in the course of campaign.
8. Not to abuse the current epidemiological situation to gain advantage in conducting promotional and other pre-election activities.

In electoral process

9. Not to hinder the work of election officials, and in particular, not to abuse functions in polling station committees.

After elections

10. Upon the announcement of election results, political entities shall remove all promotional materials, and in particular, the placards.

With regard to this document

11. Political entities are committed to inform their members and supports about this Code and its principles and publish it on their respective web pages.

12. Each signatory shall ensure that all election activities of the candidate of specific political entity will follow the said principles and political entity is to condemn any behaviour which constitutes the violation of the principles.

Political entities take commitment to comply with this Code of the day of placing its signature.

Political entities- signatories:

ENTITY

SIGNATURE AND DATE

Prepared by the OSCE Mission to BiH, October 2020.

Annex 4 – Internet security – protect your data⁵²

Being without the internet today is almost unthinkable. We need the Internet to do our job, we find important information on it, and we have fun and communicate with others. But we often forget the various dangers from which we must protect ourselves. From insecure passwords to fake messages that collect information about us - the better we understand the Internet and this technology, the easier we will protect ourselves.

The Internet is a system that allows different devices to communicate with each other, or exchange data. In order for all these devices to understand each other, there are also different protocols through which certain data travels and a common programming “language” through which devices recognize data. We also need to understand the language of the internet to help protect ourselves.

Phishing – Internet scam

Another name for this scam is online identity theft. This type of fraudster will ask for information such as account number, username, password, credit card number and PIN, and give you compelling reasons why they need it, such as security system upgrades, account and order verification, fraud protection, tax refunds or account recovery and the like. In addition, the message they will send you will have all the features of the bank from which you usually receive various information. However, your bank will never ask for your PIN or any of such sensitive personal information. If you are not completely sure of the authenticity of such messages, it is safest to call the bank and ask if they needed you.

Spam – junk mail

Any e-mail that is sent to too many addresses at once, without the consent of the

⁵² https://ec.europa.eu/croatia/safety_on_internet_protect_your_personal_data_hr, visited, downloaded and adapted 21.09.2020 at 16:40 hours

owner of that address, and which contains an advertising message - is called spam. Most email browsers already have automated separation of spam messages from others, so you won't see them all. However, if a spam does enter your email inbox, see if you can unsubscribe from the recipient list. At the bottom of majority of such messages, you should find a link to auto-unsubscribe, and once you unsubscribe, you should no longer receive messages from that sender.

GDPR – General Data Protection Regulation

General Data Protection Regulation is a new regulation on the protection of privacy and personal data, which applies in all 27 EU Member States. The GDPR affects all organizations that use EU citizens' personal data, even if they do not do business in the European Union.

Its main goal is to reduce the misuse of personal data, which includes name and surname, personal card number, address, credit card and health card data, biometric data, genetic data, IP addresses, cookies in the browser and the like.

IP address – address of your device on the Internet

Every device that connects to the Internet has its own unique name, or IP address, a kind of ID card. The IP address changes depending on the network through which you access the Internet (network at work, at home, in the library, etc.). However, certain personal information can be found out based on the IP address, such as the city from which you connect to the Internet, the zip code and the Internet server through which you connect.

The Internet service provider sees at all times who accessed the Internet, from which device and when, even which website was accessed. The provider is obliged to submit this information to the police or other legal authorities upon request. Owners of websites / various services / games and similar media that we access also have access to our IP addresses. However, they most often use them only as statistics on the general traffic on their pages.

Who to protect ourselves on the Internet?

Do not allow others to see or learn your personal information. Pay attention to passwords, make them complex, and don't use one for multiple accounts. Do not leave your devices (smartphone or computer) unattended and avoid public computers. Don't click on all the links; make sure the links you want to click on come from trusted sources. Do not log in to accounts through social networks and do not accept friendships on social networks lightly. Report any scam.

Annex 5 – What is the power of social networks in the electoral process in BiH?⁵³

The campaign social networks have been already going on, although it has not officially started. The Central Election Commission of BiH has no mechanisms to sanction this type of advertising outside the legally prescribed period of 30 days before the election.

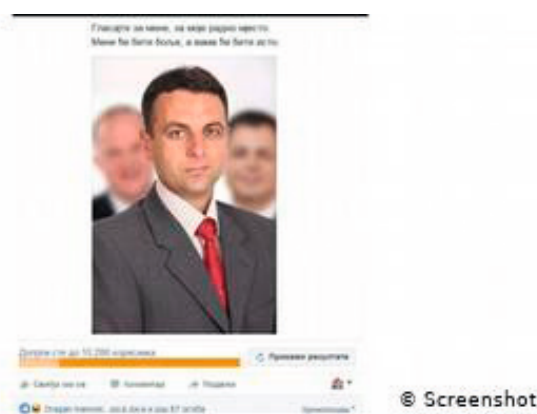
August 28, 2016

There is just over a month left until the local elections in BiH (October 2nd), but the campaign of political entities has been on for a long time already. For months. And not only on television, radio or in newspapers, but also on social networks, where there is no control when it comes to advertising. The BiH Central Election Commission told DW that it is an area very difficult to control. Buka magazine columnist Dragan Bursać says that this type of advertising should not be given much attention, considering that the use of social networks by political entities, as he points out, is ridiculous.

Marketing

“Their influence is minor. The state is reflected in people, people in the politics, and politics in the politicians. There are some beginnings of some informative efforts where they publish their actions and reactions on social networks, but for now it is all at the beginning”, says Bursać.

From outsiders to “big players”



Dragan Sajid Aja

However, this year the situation is a little different when it comes to the activities of political entities. Some of them are very active and have dedicated a good part of their

⁵³ <https://visoko.co.ba/kolika-je-snaga-drustvenih-mreza-u-izbornom-procesu-u-bih/>, visited, downloaded and adapted 17.09.2020. at 19:59

activities to social networks. Dragan Šajić Šaja, who is an independent candidate for councilor in the Assembly of the City of Banja Luka, says that as a total outsider, who won only 85 votes in the last local elections, he had to change his tactics in some way. He opted for an “honest campaign” – “Vote for my job” - because, as he claims, “he can’t lie to voters”. He chose Twitter because, according to him, it is the easiest way to be noticed.



Profile “trade”

“I didn’t start from scratch on Twitter, but a friend gave me his profile. I lost 80 followers on the first day, but I got the attention of the others. Our political scene is very inspiring because there are always statements made by “serious” politicians, which can be turned into an excellent tweet. My goal is to make sense of the absurd custom of poor people voting for rich politicians who only increase the balance in their bank account during their term. I have no mercy towards either the government or the opposition because I think that these are two sides of the same coin”, says Šajić, aware that Twitter does not have much power among voters, considering that the average voter is in front of a TV.

One of the most active politicians with a “longer tenure” on social networks is Igor Radojičić, a candidate for mayor of Banja Luka. He has been in virtual interaction with voters for about five years, in continuity. This type of communication with voters is increasingly important, he says, although he claims that personal contact cannot replace anything.

Social networks vs. personal contact with voters

“I see this as an important form of communication whose popularity and influence will only grow. Both for informing and for explaining views. My fan page is my little newspaper. This is the path to that group of citizens, especially the younger ones, who do

not follow the classic media, campaigns, rallies... And for a wider access to the citizens, nothing in our country can replace the “infantry”, that is personal contact, field visits and activist network. Well, I combine both.”

The NDP election headquarters is also aware of the importance and possibilities of social networks and their reach in election campaigns. They claim that they gained experience in 2012, because even then they hired significant human resources that absolutely used the power of social networks in the campaign.

“After four years, this type of communication with citizens has become even more established as an unavoidable segment of the overall campaign. If there were restrictions on the use of social networks by the rural or less literate population before, this is not the case now. If we tell you that we expect almost 30 percent of the votes from the citizens that we will animate through, first of all, Facebook and Twitter, then our expectations are clear and we have all human and technical resources for this type of campaign,” says Marinko Učur, spokesman for the NDP and a member of the election headquarters of



this party’s candidate for mayor of Banja Luka, Dragan Čavić.

Dragan Čavić

Neutralization by bots

BiH is certainly not yet one of the countries with a high degree of use of new technologies and their application in the electoral process, so it is difficult to expect a significant percentage of votes from there. This area is not fully regulated even outside BiH, where most attention is paid to public services in the process of controlling media advertising of political entities. Everyone else, more or less, is in the function of some political structure, which is difficult to ban, including social networks outside the official duration of the campaign.

“Social networks are not such a problem because they do not have that much influence. There is a whole army of bots, party robots, which spin everything and neutralize each other. I do not believe that this will be crucial for the political entities in the campaign. More attention will be paid to seeing if they are active all year round,” says analyst Asim Metiljević.



Milorad Dodik and Igor Radojičić

Circumventing regulations

Paid advertising from the day elections are announced to the day of the official election campaign is prohibited by the Election Law of Bosnia and Herzegovina to all political entities. However, it is obvious that a large number of political entities violate these rules by paid advertising on the Internet, and especially on Facebook and Twitter.



Ivana Korajlić

Earlier, some members of the CEC were of the opinion that it was necessary to change the Election Law and to define this area more clearly, given the growing influence of social networks. However, everything remained only on the proposal. Therefore, at the beginning of the year, Transparency International sent recommendations for amendments to the Election Law, which also refer to the introduction of a mechanism for the prevention of misuse of public funds.

“As for the ban on advertising from day elections are announced to the official start of the campaign, as well as the pre-election silence, they are not defined in detail, so they allow circumvention. For example, we had a situation where we reported a party that put up billboards with slogans and their colors long before the start of the campaign, and on the day of the start they just added the party logo to the billboard. Also, pre-election rallies are held under the pretext that they are conventions, party assemblies, or even panels that are allegedly organized by an institution, and are used to promote parties and candidates”, says Ivana Korajlić from TI.

Honest communication, path to the voter



Nikolina Trninić

The story about advertising outside the official campaign is in the background for the Democratic People's Alliance candidate for the Assembly of the City of Banja Luka, Nikola Trninić. Social networks are for her a good channel for communication with the public and potential voters. She is aware that in BiH they still do not have a significant influence, as is the case in some European countries, but she believes in open and honest communication with citizens.

"I did not rearrange my accounts on the networks and subordinate them to the election goals, because I it to be meaningless. My communication with friends, companions and those I follow is open and honest. This approach may be wrong, but I think that what voters ask of candidates, especially those who are present on the networks, are genuineness and honesty, and they will not find them in rehearsed and prepared leaflets. I think that this is exactly what sets me apart from other candidates, who, probably according to someone's recommendations, "quickly", often wrongly and aggressively use accounts on social networks, which some activate only for the election campaign," Trninić said.

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13. ABOUT THE AUTHOR



Prof. Dr. Suad Arnautović was born on November 17, 1958 in Sarajevo. The House of Representatives of the BiH Parliamentary Assembly appointed Dr. Arnautović member of the BiH Central Election Commission in June 2004. After the expiration of his seven-year mandate, he was reappointed to that position on September 22, 2011, and in March 2020, he was elected a member of the Central Election Commission of BiH for the third time. He was the President of the Central Election Commission of Bosnia and Herzegovina in the period January 2008 - May 2009.

He published the following books: **“Controversies about elections and electoral system in Bosnia and Herzegovina”**, Sarajevo, 2017, **“Political system of Bosnia and Herzegovina” (co-author)**, Sarajevo, 2010, **“Political representation and electoral system in Bosnia and Herzegovina in XX century”**, Sarajevo, 2009, **“Analyses of politics- Chrestomathy”**, Sarajevo, 2008; **“Ten Years of Democratic Chaos – Electoral Processes in Bosnia and Herzegovina from 1996 to 2006, Essays, Analyses and Comments”**, Sarajevo, 2007; **“Municipalities in Bosnia and Herzegovina – Demographic, social, economic and political facts”**, (co-author), Sarajevo, 2006; **“Local Elections 2004- Lessons Learned”**, (co-author), Sarajevo, 2005; **“Propaedeutics of Political Marketing, Understanding and Organizing Successful Election Campaigns”**, Sarajevo, 2001; **“Local Elections Campaign”**, Sarajevo, 2000; **“How Bosnia was Defended”**, Sarajevo, 1997; **“Elections in Bosnia and Herzegovina ‘90– Analyses of electoral process”**, Sarajevo, 1996.

Prof. Arnautović has as an author or co-author published several papers in the field of political science, electoral and parliamentary law, electoral systems, political representation and political parties:

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14. THE ROLE OF SOCIAL MEDIA IN ELECTORAL PROCESS – GUIDELINES FOR ELECTION STAKEHOLDERS

Reviewed by Peter Wolf, IDEA Int. Stockholm

The impact of social media on global elections and democracy has continuously grown over the last decade. Initially the role of these new and interactive online platforms was largely seen positive and with much optimism. Not only as part of the “Arab Spring” social media were expected to become the facilitators of democratic change in the 21st century, a new opportunity for citizens to make their voices heard, and a new and urgently needed direct communication channel between citizens, politicians and institutions.

The challenges brought by social media emerged slower and later. It took time to realize how many citizens become locked in “echo chambers” where no meaningful dialog is not possible anymore. Echo chambers that they may sometimes have joined knowingly and voluntarily. Even more worryingly also “echo chambers” that have silently been imposed by platforms algorithms that quickly learned how users tend to stay online longer if presented with ever more extreme and polarizing content, with content that confirms their own assumptions instead of giving broad perspectives. We have seen hate speech and discriminatory behavior against women and minorities spreading unhindered in the largely anonymous online sphere. We have seen how the transnational nature of cyberspace made foreign interference simple and cheap for perpetrators and at the same time difficult to detect, trace and prevent for competent national authorities. We have seen disinformation and conspiracy theories drowning out factual and accurate information sources. At the latest with the Cambridge Analytica scandal we have also seen how powerful, opaque and manipulative online political advertising can become and what disregard for privacy and data protection modern online campaigns can entail.

All these factors shifted the focus of the global debate towards the question of how the most damaging and manipulative effects of social media can be mitigated and what can be done without endangering fundamental civic and political rights, including the freedom of expression and the freedom of holding opinions without interference. Unfortunately, this sometimes has also overshadowed the potential benefits social media can undoubtedly also bring to elections and democracy.

By now it is widely recognized that more transparency is at the very least a starting point for resolving these problems. More transparency for users that allows them to better understand why they are seeing which content. More transparency for oversight agencies to track what and how much political actors spend for online activities and advertising. More transparency for researchers to better understand the algorithms and data used on the platforms. More transparency for traditional media and civil society to better follow, cover and analyse online campaigns.

Social media platforms have already started to provide some transparency tools. But countries increasingly recognize the limitations of this self-regulation and see the need for carefully designed regulation and oversight in this domain.

Significant international and European effort has been made research and to address these challenges, including by the Council of Europe who generously supported this publication. And yet this “The Role of social media in electoral process – Guidelines for election stakeholders” has to bridge an important gap: it applies global experiences in the context of Bosnia Herzegovina and enriches them with domestic lessons learned. The contribution of this publication is essential as no technology, no legislation, no institution can tackle the electoral and democracy challenges arising from the online information environment alone. In the end it is a well-informed citizenry, a well-informed civil society and well-informed political parties and candidates that make all the difference.

Electoral stakeholders and citizens alike may find it difficult to navigate all these quickly evolving developments. Political actors may especially find it difficult to be certain about what that can and what they cannot do online with all these new possibilities. They will find this publication useful as it goes beyond outlining international experiences and recommendations: it explains how social media are used in elections in Bosnia and Herzegovina and to what extent the current legal framework applies to social media, including with an extensive overview of jurisprudence. Beyond this, they will find a chapter with key guidance for electoral stakeholders about how to effectively and safely navigate the pitfalls of the online space as part of their campaign. Ultimately, this guide also allows the reader to explore the question of whether a new legal framework for social media in elections is required in Bosnia and Herzegovina.

I hope this publication will reach widespread circulation amongst electoral stakeholders, political actors and the citizens of Bosnia and Herzegovina and help them to utilize, possibly also regulate, social media in a way that is conducive for a positive electoral and democratic development in their country.

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ISBN 978-9958-555-60-2

