

# REPUBLIC OF SLOVENIA

# 2018 EARLY PARLIAMENTARY ELECTIONS

# ODIHR NEEDS ASSESSMENT MISSION REPORT 13-16 March 2018



Warsaw 6 April 2018

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#### REPUBLIC OF SLOVENIA 2018 EARLY PARLIAMENTARY ELECTIONS

#### **ODIHR Needs Assessment Mission Report**

#### I. INTRODUCTION

In anticipation of an official invitation from the authorities of the Republic of Slovenia to observe the 2018 early parliamentary elections and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) undertook a Needs Assessment Mission (NAM) from 13 to 16 March. The NAM was composed of Ana Rusu, ODIHR Senior Election Adviser, and Oleksii Lychkovakh, ODIHR Election Adviser.

The purpose of the mission was to assess the pre-election environment and the preparations for early parliamentary elections. Based on this assessment, the NAM should recommend whether to deploy an ODIHR election-related activity for the forthcoming elections, and if so, what type of activity best meets the identified needs. Meetings were held with officials from state institutions as well as with representatives of political parties, civil society and the media. A list of meetings is annexed to this report.

ODIHR would like to thank the Ministry of Foreign Affairs of the Republic of Slovenia for their assistance and co-operation in organizing the visit. ODIHR would also like to thank all of its interlocutors for taking the time to meet with the NAM.

#### II. EXECUTIVE SUMMARY

Early parliamentary elections are expected to be held in the second half of May as a result of the resignation of the prime minister on 14 March. The 90 members of the National Assembly are elected for a four-year term by two methods: 88 are elected by an open list proportional system with a threshold of four per cent, and 2 are elected by the Italian and Hungarian minorities through a first-past-the-post system. For the National Assembly elections the country is divided into eight constituencies, each electing eleven members of parliament.

The elections will be conducted under a revised legal framework. Changes include new provisions on the participation of persons with disabilities, digitalization of voter register for national minorities and new campaign finance regulations. In line with OSCE commitments, the law was also amended to include explicit provisions for election observation.

The elections are administered by the National Election Commission (NEC), eight Constituency Election Commissions, 88 District Election Commissions and over 3,000 Polling Boards. NEC is considering a set of measures to comply with legal requirement to make all polling stations accessible. These measures are being discussed with the government, local authorities and disabled persons organizations. All ODIHR NAM interlocutors expressed full confidence in the competence and impartiality of the election administration.

Voter registration is passive and is managed by the Ministry of Interior. All citizens who have reached 18 by election day have voting rights. Those who have been declared mentally incapable or are placed under guardianship can be deprived of the right to vote by a court decision. The minority voter lists were recently digitalized and integrated into the general voter list. All ODIHR NAM interlocutors expressed trust in the voter registration process and the accuracy of the registers.

All citizens with voting rights are eligible to stand for the office. Candidates are nominated by political parties or voters. Each gender must make up at least 35 per cent of candidates on a list. Parties met by ODIHR NAM stated they have no issues in complying with these requirements and expressed full confidence in the candidate registration process.

The official campaign starts 30 days before the elections and runs until 24 hours before election day. The campaign is expected to focus on issues of economic reforms, healthcare, migration, security, as well as border-related issues between Slovenia and Croatia. No ODIHR NAM interlocutors raised concerns about the ability to campaign freely or restrictions in reaching out to voters.

Campaign finance legislation has been amended to address previous recommendations. Key changes ban donations from legal entities, introduce detailed reporting and disclosure requirements, and increase sanctions for campaign finance violations. While all ODIHR NAM interlocutors welcomed these amendments, several underlined that the ban on donations from legal entities is overly restrictive and that the Court of Audit would require more resources to undertake campaign oversight more efficiently.

Media landscape is pluralistic with television as the main source of election-related information. The role of Internet, and, specifically, the social media, as a source of such information is increasing at the cost of print media. Most of ODIHR NAM interlocutors stated that media provide the contestants with the possibility to convey their messages to voters, but underlined that most private media are divided along political lines. Another concern of a number of ODIHR NAM interlocutors was the potential usage of disinformation tools including fake news in electoral campaign coverage.

Election dispute resolution is primarily regulated by the election law. The NEC and the ConECs adjudicate complaints about alleged election irregularities. Their decisions can be appealed to the Supreme Court. The Constitutional Court considers appeals regarding candidacy rights and election results. ODIHR NAM interlocutors expressed general confidence in the integrity and impartiality of the complaints adjudication system, although some noted that electoral stakeholders may benefit from more clarity on the process and on appropriate remedy channels.

The ODIHR NAM noted strong stakeholder confidence in the integrity of the electoral process and in the professionalism and impartiality of the election administration. A number of ODIHR recommendations have been considered and amendments have enhanced some aspects of the electoral framework. Nevertheless, some ODIHR NAM interlocutors noted remaining issues with legislation and challenges with implementation of certain requirements for upcoming elections, particularly concerning campaign finance, media coverage, election dispute resolution, as well as participation of persons with disabilities, which could benefit from an external assessment.

Given these identified issues, an assessment of the electoral process would help to develop recommendations on further improvements, in particular on the implementation of legislation pertaining to the campaign finance, media regulations, election complaints and appeals as well as accessibility of the polling stations and materials. On this basis, the ODIHR NAM recommends the deployment of an Election Assessment Mission for the upcoming early parliamentary elections.

#### III. FINDINGS

#### A. BACKGROUND AND POLITICAL CONTEXT

Presidential election was held in Slovenia on 22 October 2017 with a run-off on 12 November 2017. The incumbent president Borut Pahor won in the second round with 52.94 per cent of votes. Previous parliamentary elections were held in July 2014. Seventeen parties participated in the race, including seven new parties, some of which were formed only months before the elections.

The Modern Centre Party (SMC) won the elections with 36 seats followed by other six political parties: Slovenian Democratic Party (SDS) with 21 seats, the Democratic Party of Pensioners of Slovenia (DeSUS) with 10, the Social Democrats (SD) and the United Left (ZL) both with 6, the New Slovenia-Christian Democrats (NSi) with 5, and the Alliance of Social Liberal Democrats (ZSD) with 4.2 The centre-left government took office in September 2014. It was headed by Prime Minister Miro Cerar of the SMC, which ruled in a coalition with the DeSUS and SD. The opposition, often described as fragmented, consisted of ZL, SDS and NSi. A number of ODIHR NAM interlocutors noted a phenomenon where a new party emerges just before an election to win a majority of votes.

Early parliamentary elections are expected to be held in the second half of May as a result of the resignation of the Prime Minister on 14 March. The resignation came after the Supreme Court ruled to annul the results of 2017 referendum on the construction of a railway.<sup>3</sup>

Previously ODIHR observed the 2017 presidential election by deploying an Election Expert Team (EET) and the 2011 early parliamentary elections by deploying an Election Assessment Mission (EAM).<sup>4</sup>

#### B. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

The parliamentary elections are primarily regulated by the Constitution, the Law on Elections to the National Assembly (election law), the Elections and Referendum Campaign Act, and the Voting Rights Register Act.<sup>5</sup> Latest key changes to the electoral legislation include new provisions on electoral participation of persons with disabilities, digitalization of voter register for national minorities, and new campaign finance regulations. In line with OSCE commitments and a previous ODIHR recommendation, the law was also amended to include explicit provisions for election observation. Previously ODIHR assessed the electoral legal framework as comprehensive, providing a sound legal basis for the conduct of democratic elections. Slovenia is a party to major international and regional instruments related to democratic elections.<sup>6</sup>

These were early elections called following the resignation of the government in May 2014.

See previous ODIHR election reports on Slovenia.

Law on Elections to the National Assembly was amended in 2017 and the Elections and Referendum Campaign Act and the Voting Rights Register Act - in 2013.

Two seats reserved for national minority candidates were both won uncontested by the Hungarian and Italian candidates.

The Court found illegal the provisions of the Elections and Referendum Campaign Act allowing the government to use public money to campaign for one of the choices. The referendum will have to be repeated.

Including the 1950 European Convention on Human Rights, 1966 International Covenant on Civil and Political Rights, 1965 International Convention on the Elimination of All Forms of Racial Discrimination, 1979 Convention on the Elimination of All Forms of Discrimination against Women, 1995 Council of Europe Framework Convention for the Protection of National Minorities (FCNM), 2003 UN Convention against Corruption, and 2006 Convention on the Rights of Persons with Disabilities. Slovenia is also a member of the Council of Europe's Venice Commission and Group of States against Corruption (GRECO).

The 90 members of the National Assembly are elected for a four-year term by two methods: 88 are elected by an open list proportional system, with seats allocated using the d'Hondt method based on an electoral threshold of four per cent, whilst 2 MPs are elected by the Italian and Hungarian minorities through a first-past-the-post system. For the National Assembly elections the country is divided into eight constituencies, each electing eleven members of parliament. For the election of the representatives of the Italian and Hungarian minority communities, two special constituencies are formed. The law provides for multiple voting methods including early and postal voting.

#### C. ELECTION ADMINISTRATION

The elections are administered by the National Election Commission (NEC), eight Constituency Election Commissions (ConECs), 88 District Election Commissions (DECs) and over 3,000 Polling Boards (PBs) across the country and in over 30 diplomatic representations.

The NEC is a permanent body appointed by the National Assembly, headed by a president and supported by a deputy president, and comprising five members and five deputy members.<sup>7</sup> The president and the deputy president are appointed from amongst the Supreme Court judges. One member and one deputy are appointed from among legal experts, and the remaining members and deputies are appointed on the proposal of the parliamentary groups taking into account proportional representation of the parties in the parliament.

ConECs and DECs consist of a president, a deputy president, three members and three deputies. ConECs members include two judges and two legal experts, while DECs have one of each. In both cases, the remaining members and deputies are appointed according to political representation in the parliament.

PBs consist of a president, a deputy president, two members and two deputies appointed on the basis of party nominations. All political parties that the ODIHR NAM met with indicated their intention to nominate members to PBs. Training for PBs is provided by DECs.

Following recent amendments, specific efforts have been undertaken to facilitate voting by persons with disabilities, including ensuring accessible polling stations and wheelchair-friendly voting booths. During last presidential election some 56 per cent of polling stations were wheelchair accessible. Voters with disabilities who are unable to reach a polling station on election day are also able to vote by post.

In the short time left before elections the NEC is considering a set of measures to comply with legal requirements to make all polling stations accessible, including by seeking alternative locations for polling stations, procuring special voting containers and merging some polling stations into accessible locations. These measures and their combinations are discussed with the government, local authorities and disabled persons organizations. All ODIHR NAM interlocutors expressed full confidence in the competence and impartiality of the election administration.

For all levels, deputy commissioners take part in discussions but do not have the right to vote, except in the absence of a member. Deputies do not necessarily come from the same party as the member they replace.

According to the 2017 amendments to the election law all public buildings and public services, including polling stations should be fully accessible from 1 February 2018. The NEC informed the ODIHR NAM that currently some 80 per cent of the polling stations are wheelchair accessible.

#### D. VOTER REGISTRATION

Voter registration is passive and is managed by the Ministry of Interior. All citizens who have reached 18 by election day have voting rights. At odds with international standards, those who have been declared mentally incapable or who are placed under guardianship can be deprived of this right by a court decision.<sup>9</sup>

The Voting Rights Register Act was amended in 2013 to digitalise voter registers for national minorities and provide local authorities with access to correct necessary data. In line with the Act on Personal Data Protection, as well as international standards, voters' ability to check and correct registration data was limited to the individual's entry only. In addition, the amendments give NEC additional responsibilities regarding data protection in the context of verification of data by voters.

Voter register, which is based on voter's domicile is extracted from the population register. <sup>11</sup> There are three types of voter lists used for parliamentary elections: general voter lists, which include all citizens who are eligible to vote (some 1,621,000 voters), voter lists of some 95,000 citizens who are residing abroad, and voter lists for the Italian and Hungarian national minority communities with some 2,100 and 5,800 voters respectively. The minority voter lists were recently digitalized and integrated into the general voter list. <sup>12</sup>

Any voter can check his or her data online and request corrections no later than 15 days before election day. All ODIHR NAM interlocutors expressed trust in the voter registration process and in the accuracy of the registers.

#### E. CANDIDATE REGISTRATION

All citizens with voting rights are eligible to stand for the office. Candidates are nominated by political parties or groups of voters. A political party may nominate lists in every constituency with the support of three National Assembly deputies; in a particular constituency — with the support of 50 or 100 voters. A nomination by a group of voters requires the support of at least one hundred voters residing in the constituency. Candidate lists must be submitted to the respective ConECs no later than 30 days prior to the elections.

The number of candidates on a list may not exceed the number of deputies to be elected in the constituency. There is no minimum number of candidates required on a candidate list. The law provides for a candidate to stand in two electoral districts if the number of candidates on a list is below the number of deputies to be elected in a constituency. A candidate may stand in all electoral districts if she or he is the only candidate on each list submitted by voters.

Female candidates must make up at least 35 per cent of candidates on the list, except in cases where there are only three candidates and when there must be at least one male and one female candidate. Parties that the ODIHR NAM met with stated they have no difficulties in complying with these

<sup>&</sup>lt;sup>9</sup> See the 2006 Convention on the Rights of Persons with Disabilities.

See Article 17 of the <u>United Nations General Comment No. 16 to the International Covenant for Civil and Political Rights</u>, as well as paragraph 24 of the <u>1991 OSCE Moscow Document</u>.

Voters abroad are assigned to the constituencies of their last domicile in the country.

A specialised Commission is making decisions on inclusion to minority voter lists based on the criteria provided in the Voter Rights Register Act. The Commission also has the right to add additional criteria.

Candidates are nominated through a list for each constituency and can only stand in one constituency.

The signatures of 100 voters are required if the nominating party prospective candidates do not reside in the constituency.

requirements and expressed full confidence in the candidate registration process, though some underlined that due to early elections they will have less time to collect signatures and compile their candidate lists.

#### F. CAMPAIGN AND CAMPAIGN FINANCE

The official campaign starts 30 days before the elections and runs until 24 hours before election day. <sup>15</sup> Parties that the ODIHR NAM met with stated that, along with traditional means of campaigning such as advertisement in media, placing visual campaign materials and door-to-door campaigning, they continue to increase emphasis on campaigning online and in social media. The campaign is expected to focus on issues of economic reforms, healthcare, migration, security, as well as border-related issues between Slovenia and Croatia. No ODIHR NAM interlocutor raised concerns about the ability to campaign freely or restrictions in reaching out to voters.

Campaign finances are regulated by the Political Parties Act and Elections and Referendum Campaign Act, both amended to address previous recommendations of ODIHR and the Group of States against Corruption of the Council of Europe (GRECO). <sup>16</sup> Key changes banned donations from legal entities, introduced mandatory detailed reporting and disclosure requirements, and increased monetary sanctions for failure to comply with regulations. Several ODIHR NAM interlocutors underlined that the ban on donations from legal entities is overly restrictive. They noted that existing debts of certain parties for the services of legal entities could be an indication of a possible circumvention of this requirement.

Political parties are entitled to annual support from the state on the basis of votes received in the last parliamentary elections. To Some ODIHR NAM interlocutors underlined that political parties are heavily reliant on public funding and that current system of state subsidies distribution favours smaller parties.

Each contestant is obliged to open a special bank account for the campaign. Campaigns can be funded by political party's funds, individual donations and loans. Some parties that the ODIHR NAM met with indicated that provisions on loans leave a room for interpretation. Any citizen can donate up to approximately EUR 16,600 to each contestant; cash donations are allowed up to EUR 50. Campaigns cannot be financed by legal entities or foreign sources (both individual and entity). The expenditure ceiling is calculated on the basis of 0.40 EUR per eligible voter in each electoral unit contested.

Contestants whose lists have obtained mandates for deputies to the National Assembly are entitled to the reimbursement of campaign expenses in the amount of EUR 0.33 per vote but not exceeding their total expenditures. In addition, those lists that obtained at least six percent of the total number of votes cast in the electoral unit or at least two per cent of the total number of votes cast in the country are also entitled to partial reimbursement of expenses in the amount of EUR 0.17 per vote in favour of the list in the electoral unit or country.<sup>19</sup>

Many ODIHR NAM interlocutors indicated that parties campaign well before the official timeframe.

Public funds are allocated annually to parties that have received at least one per cent of the votes cast in the last parliamentary elections. Of the annual subsidy, 25 per cent is distributed among the eligible political parties in equal shares and 75 per cent in proportion to the number of votes the parties received.

Other ODIHR NAM interlocutors underlined that according to the Political Parties Act the loans can be taken only from specialised financial institutions with Slovenian residence. One of the parties attempted to take a loan from an individual with unclear residence.

The Ministry of Public Administration also has a role in campaign finance regulation by issuing interpretations of the related legal provisions.

Candidates of the Italian and Hungarian national communities are also entitled to partial reimbursement of elections campaign expenses.

Political and campaign finance oversight is implemented by several bodies. The Inspectorate at the Ministry of Interior is supervising some aspects of the implementation of the law, the Agency of the Republic of Slovenia for Public Legal Records and Related Services (AJPES) is collecting and publishing political parties' annual and campaign finance reports and the Court of Audit reviews and audits these reports. There is no campaign finance supervision during the campaign period carried out by the Court of Audit and only the reports of the contestants entitled for reimbursement of expenses are audited. Expenses of the so-called "third parties" during the campaign are also not under supervision. <sup>20</sup>

There are no requirements for interim reporting on campaign donations and expenditures. Within 15 days of closing their bank account, all candidates eligible for reimbursement are obliged to submit detailed financial reports to AJPES. The Court of Audit then examines their accuracy and timeliness of their submission. Within six months of closing the bank account, the Court of Audits shall conduct a financial audit of the campaign accounts and publish the findings on its website. Financial sanctions are envisaged for various types of campaign finance irregularities, such as unlawful financing, untimely or failure of submission of reports, as well as false reporting.

With the exception of the ban on donations from legal entities, most ODIHR NAM interlocutors were supportive of the campaign finance regulations. Some indicated that the Court of Audit would require more resources to undertake campaign oversight most efficiently.

#### G. MEDIA

The media landscape is pluralistic. Television is the main source of election-related information. The role of Internet, and, specifically, social media, as a source of such information is increasing at the cost of print media. Public broadcaster, RTV Slovenia includes three national television channels and three national radio channels. <sup>21</sup> Commercial television is represented by three main national television channels: Pop TV, *Kanal A* and TV3.

Coverage of the elections in broadcast media is regulated by the Elections and Referendum Campaign Act, the Radio and Television Corporation of Slovenia Act (RTV Act) and internal regulations adopted by the RTV Slovenia and other media broadcasters for each election. The law obliges broadcasters to ensure balance and impartiality in providing each contestant with equal treatment in terms of airtime and political advertisements.

The public broadcaster provides parties with free airtime during the campaign period based on their results in last parliamentary and European Parliament elections. Parliamentary and non-parliamentary parties must receive equal time for free presentations within their respective categories, and non-parliamentary parties are entitled to one-third of the total time provided for campaign presentations. Paid advertisements must clearly indicate the entity funding it.

Broadcasters plan to organize a number of debates with the participation of various political parties. TV Slovenia plans to have two debates with all political parties, two debates with parliamentary parties only and one debate with non-parliamentary parties.<sup>22</sup>

The Media Inspectorate of the Ministry of Culture and the Market Inspectorate of the Ministry of

The draft law "On political foundations", which aims to address these issues is under parliament's consideration.

There are also regional channels in Maribor and Koper. In addition, RTV Slovenia carries special programming for the Italian and Hungarian communities.

Debates for candidates in Italian and Hungarian communities are organized by the RTV regional studios.

Economy are the competent bodies for the supervision of the implementation of the RTV Act. Neither the regulatory body nor civil society organizations systematically monitor media coverage during the campaign. Most of the complaints on media related campaign violations are submitted to media themselves. Most of ODIHR NAM interlocutors stated that media provide the contestants with possibility to convey their messages to voters, but underlined that most private media are divided along political lines depending on political affiliation of their owners. Another concern raised by a number of ODIHR NAM interlocutors was the potential usage of disinformation tools including fake news in the electoral campaign coverage.

#### H. COMPLAINTS AND APPEALS

Election dispute resolution is primarily regulated by the election law. The NEC and the ConECs adjudicate complaints about alleged election irregularities. Their decisions could be appealed to the Supreme Court. The Constitutional Court is acting as Electoral Judge and considers appeals regarding candidacy rights and election results. Political parties and voters can address the Constitutional Court in case their electoral or other human rights are violated. The Court also reviews legislation and can decide on the constitutionality of election legislation provisions.<sup>24</sup>

Complaints regarding the voter register, after being reviewed by local authorities, can be submitted to the local court and further appealed to the Supreme Court. According to the ODIHR NAM interlocutors, the deadlines for filing and adjudicating appeals appear to be sufficient for timely and effective legal remedy.

ODIHR NAM interlocutors expressed general confidence in the integrity and impartiality of the complaints adjudication system, although some noted that electoral stakeholders may benefit from more clarity on the process and appropriate remedy channels. Previously, ODIHR recommended establishing a uniform, hierarchical dispute resolution procedure for all decisions and acts of election management bodies.

#### IV. CONCLUSIONS AND RECOMMENDATION

The ODIHR NAM noted strong stakeholder confidence in the integrity of the electoral process and in the professionalism and impartiality of the election administration in organizing the elections. A number of ODIHR recommendations have been considered and amendments have enhanced some aspects of the electoral framework. Nevertheless, some ODIHR NAM interlocutors noted remaining issues with legislation and challenges with implementation of certain requirements for upcoming elections, particularly concerning the campaign finance, media coverage, election dispute resolution as well as participation of persons with disabilities and thus suggested that, the elections could benefit from an external assessment.

Given these identified issues, an assessment of the electoral process would help developing recommendations on further improvement, in particular on the implementation of legislation pertaining to the campaign finance, media regulations, election complaints and appeals as well as accessibility of the polling stations and materials. On this basis, the ODIHR NAM recommends the deployment of an Election Assessment Mission for the upcoming parliamentary elections.

The Union of Journalists of Slovenia is a media self-regulatory body, which has developed its Code of Ethics. There were, however, very few cases when any complaints were lodged with this body.

In these cases the parliament should amend the provision in question with two third majority as required by Constitution.

#### ANNEX: LIST OF MEETINGS

#### **Ministry of Foreign Affairs**

Blažka Kepic, Head of Department for International Organisations Tjaša Pečan, Department for International Organisations

#### **Constitutional Court**

Sebastian Nerad, Secretary General Andreja Krabonja, Counsellour for Election Law Tina Prešeren, Head of Analysis and International Cooperation Department

#### **Ministry of Public Administration**

Mateja Prešern, Head of Unit for Transparency, Integrity and Political System Anja Hostnik, Senior Adviser, Unit for Transparency, Integrity and Political System Klaudija Korazija, Head of International Relations

#### **Ministry of Interior**

Alenka Colja, Head of Division for Civil Status, Public Documents and Residence Registration

#### **State Election Commission**

Dušan Vučko, Head of the Office Nina Mujagic, Assitant to the Head of Office

#### **Court of Audit**

Zoran Mladenovič, Supreme State Auditor, Petra Zemljič, Counsellor Dijana M. Zupanc, Head of Minister's Office

#### <u>Political Parties (in alphabetical order):</u>

Franc Jurša, Democratic Party of Pensioners of Slovenia
Tomaž Gantar, Democratic Party of Pensioners of Slovenia
Primož Hainz, Democratic Party of Pensioners of Slovenia
Marjana Kotnik Poropat, Democratic Party of Pensioners of Slovenia
Robert Ilc, New Slovenia - Christian Democrats
Simona Kustec Lipicer, Party of Modern Centre
Monika Mandič, Party of Modern Centre
Branko Grims, Slovenian Democratic Party
Vinko Gorenak, Slovenian Democratic Party
Matjaz Nemec, Social Democrats

#### **Human Rights Ombudsman Office**

Miha Horvat, Deputy Ombudsman

#### **Radio-Television Slovenia**

Igor Kadunc, Director General Andrej Stopar, Managing Editor, Channel One Radio Slovenia Nataša Rijavec Bartha, Head of Current Affairs Kaja Jakopič, Editor of New Media Susana Vidas Karoli, International Department Republic of Slovenia Page: 10
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#### **Private media:**

Tjaša Slokar Kos, POP-TV News Director and Chief Editor Anže Božič, POP-TV Journalist Peter Jancic – Independent Journalist

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### **Civil Society organisations:**

Sebastijan Peterka, Transparency International Vid Tomić, Transparency International Goran Kustura, National Council of Disabled Persons' Organizations

# Academia:

Jurij Toplak, Professor Matej Avbelj, Professor